

LEASE AGREEMENT

between

HUDSON RIVER PARK TRUST,

LANDLORD,

and

PIER55, INC.,

TENANT

Dated as of \_\_\_\_\_, 2016

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AGREEMENT OF LEASE (“Lease”), made as of the \_\_\_ day of \_\_\_\_\_, 2016 (the “Execution Date”), between **HUDSON RIVER PARK TRUST** (“Landlord”), a New York State Public Benefit Corporation, created and operating pursuant to the Act (as defined herein), having its headquarters at 353 West Street (a/k/a Pier 40), New York, New York 10014 and **PIER55, INC.** (“Tenant”), a Delaware nonstock corporation, organized and existing under the laws of the State of Delaware and having an office at 555 West 18th Street, New York, New York 10011. Landlord and Tenant are sometimes hereinafter referred to individually as a “Party,” and collectively as the “Parties.”

W I T N E S S E T H:

WHEREAS, pursuant to 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 boundaries of the Park, which includes the Premises (as hereinafter defined);

WHEREAS, pursuant to Section 7.3(b) of the Act, the State of New York (the “State”), by and through its Office of Parks, Recreation and Historic Preservation and its Department of Environmental Conservation, and Landlord entered into a long-term lease agreement, dated as of April 3, 1999 (such lease agreement, as same has been amended (including pursuant to Section 5 of Chapter 517 of the laws of 2013, the “Statute Amendment”)) and as such lease agreement may be further amended, modified or supplemented from time to time, the “State Lease”), conveying to Landlord a possessory interest in the State-owned property within the Park (including the Premises) and confirming Landlord’s right to properly exercise the powers and responsibilities provided to Landlord under the Act (including entering into this Lease);

WHEREAS, the property known as Pier 54 already existing on the date hereof, the redevelopment of which is the subject of this Lease, shown on the Tax Map of the City of New York as Tax Lot 7 in Tax Block 651, is located generally south of West 14th Street and West Street (as already existing and as more particularly shown on the site plan annexed hereto as Schedule 1.01(c), “Pier 54” and such site plan, the “Site Plan” ) is a part of the State-owned property within the Park and is included in the leased premises under the State Lease and leased to Landlord;

WHEREAS, pursuant to Section 8.3(e) of the Act (added to the Act by Section 9 of the Statute Amendment), Pier 54 may be reconstructed outside of its historic footprint subject to certain limitations on size as set forth therein, and it is contemplated, as more particularly set forth in this Lease, that the reconstruction and redevelopment of Pier 54 shall include and extend to portions of the adjacent areas shown in the Concept Design (as hereinafter defined) and the Site Plan, including those portions of the lands under water of the Hudson River on which the Premises will be situated (“Lands Under Water”) and the area above the surface of the Hudson River (“Above Water Surface Area”), and, once reconstructed and redeveloped into a new Pier in accordance with the Concept Design, shall be known as Pier55 (such reconstructed and redeveloped pier, “Pier55”), all as shown on the Site Plan and the Concept Design;



WHEREAS, the Premises is designated solely for “Park Use” as that term is defined under the Act;

WHEREAS, as part of its responsibility, Landlord is charged under the Act with providing a place for recreation, reflection, education and cultural expression for the public;

WHEREAS, pursuant to such responsibility, Landlord, through the New York State Department of Transportation, has applied for and received a federal Congestion Mitigation and Air Quality grant to reduce vehicular emissions by constructing a new public pedestrian esplanade walkway and bus stop along the Hudson River from Bloomfield Street to West 14th Street (the “CMAQ Project,” and sometimes referred to herein as the “Esplanade Work”);

WHEREAS, pursuant to Section 7.01 of the Act, Landlord is authorized to enter into contracts, leases or other agreements and to apply for and accept contributions, funds and grants from public and private entities and individuals and to do all things necessary and convenient to carry out its functions, powers and duties;

WHEREAS, pursuant to its Amended and Restated Certificate of Incorporation, a copy of which is attached hereto as Schedule 1.01(i), Tenant was formed exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), with the specific purposes of lessening the burdens of government through the construction and operation of public parks and public recreational facilities, making grants and expenditures for the foregoing purposes, and conducting any other activities that may be necessary, useful, or desirable for the furtherance or accomplishment of the foregoing purposes, consistent with its not-for-profit and tax-exempt status;

WHEREAS, Tenant and Landlord have a strong commitment to the recreational and cultural life of the City of New York (the “City”) and the Park;

WHEREAS, subject to the terms and conditions in this Lease, Tenant desires to support the Park and assist Landlord through Tenant’s agreement as embodied in this Lease to undertake responsibility for assisting with the funding and managing the reconstruction of the Premises, following demolition of Pier 54 by Landlord (at Landlord’s sole cost and expense), and the redevelopment of the Premises as a vibrant public open space to be managed, maintained and operated by Tenant, and by Tenant’s agreeing to plan, execute and manage public arts events, programming, performances and other Permitted Events (as defined below) for the benefit of New Yorkers and other visitors to the Park pursuant to the terms hereof;

WHEREAS, Landlord has determined that its interests and that of the public will be best served by having Tenant enter into this Lease and, subject to the terms and conditions hereof, assume the obligations hereunder to promote the redevelopment and enhance the maintenance of the Premises as a significant public amenity and in furtherance of Landlord’s mission to plan, design, develop, construct, operate and maintain the Park for the benefit of the public;

WHEREAS, Tenant and Landlord have developed the Concept Design (as defined below) for the redevelopment of the Premises, a rendering of which is annexed hereto as Schedule 1.01(a);

WHEREAS, Landlord wishes to advance its public purpose and mission by incentivizing Tenant through the provisions of this Lease to redevelop, lease and use and operate the Premises for Park Uses, including the Permitted Events, consistent with the provisions of the Act;

WHEREAS, Tenant and Landlord agree that the CMAQ Project will proceed independently from the Project, but given the close geographic proximity between the two projects, Landlord will coordinate planning and construction of the CMAQ Project to ensure that the CMAQ Project and the Project are constructed as compatibly, including with regard to schedule, as possible;

WHEREAS, Tenant's covenants hereunder are predicated upon both Landlord's commitments as further defined below and the completion of the scope of work to complete the CMAQ Project, with the CMAQ Project estimated to have a total cost of approximately Nineteen Million Dollars (\$19,000,000);

WHEREAS, the City, the State and Landlord have agreed to fund the sum of Thirty-Six Million Dollars (\$36,000,000), in the aggregate, for the Esplanade and for portions of the Project, with Seventeen Million Dollars (\$17,000,000) (as such \$17,000,000 amount may be increased pursuant to Section 17.02(c), Section 17.02(e), Section 17.04(g) or Section 17.08(c), "Landlord's Pier Financial Commitment") dedicated to portions of the Project other than the Esplanade;

WHEREAS, Tenant has agreed, subject to the conditions, terms and staging set forth herein, to make a substantial contribution, from charitable contributions made to Tenant as a not-for-profit corporation exempt from federal income tax under Code Section 501(c)(3), to assist in the funding of the Project (but only following the demolition of Pier 54 by Landlord at Landlord's sole cost and expense), including certain costs of planning, designing and the seeking of regulatory approval for the Project;

WHEREAS, Landlord has determined that its interests and that of the public will be best served by having Tenant organize and provide, in cooperation with Landlord as set forth in this Lease, Permitted Events, programming, operation, maintenance and financial support of the Project, and that entry into, and the terms of, this Lease including holding Permitted Events in accordance with Article 9 hereof, are permitted and appropriate under the State Lease and the Act;

WHEREAS, Landlord and Tenant desire to memorialize the terms, conditions and time frames for the Parties' respective funding commitments and performance obligations for the development of the Project, including, but not limited to, the design, public review and approval process and Project construction, and the hosting of the Permitted Events and Fundraising Events;

WHEREAS, Landlord wishes to demise and let unto Tenant, and Tenant wishes to hire and take from Landlord, on the terms and subject to the conditions set forth herein, the Premises; and

WHEREAS, the New York State Department of Environmental Conservation and the New York State Office of Parks, Recreation and Historic Preservation, jointly acting on behalf of

the State, as owner of fee title to the Premises and the landlords under the State Lease, have consented to and support Landlord's entry into this Lease and have entered into the Consent Agreement (as defined below).

NOW, THEREFORE, in furtherance of the mutual terms and conditions of this Lease, for Ten Dollars (\$10) and other good and valuable consideration (including Tenant's promise to pay for the construction of the Tenant Construction Components and for the maintenance of the Tenant Maintenance Components and Tenant having secured the pledges under the Pledge Agreement), the mutual receipt and sufficiency of which the Parties hereby acknowledge, the Parties, for themselves and their respective successors and assigns, hereby provide and agree as follows:

## ARTICLE 1

### CERTAIN DEFINITIONS

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

“ACOE” means the US Army Corps of Engineers, or its successors.

“Act” means that certain act approved and enacted as of September 8, 1998 under Chapter 592, Section 7845 of McKinney's Session Laws of New York, as has been amended (including by the Statute Amendment), and as same may be further amended from time to time.

“Affiliate” means, with respect to any Person, any other Person which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person, including any Person in which such first Person holds any ownership or membership interest. Affiliate shall not include any licensee or operator of any Concessionaire Unit.

“Amphitheatre” means the amphitheatre shown in the Concept Design, located in the northwestern portion of the Premises.

“Approval Expenses” shall have the meaning set forth in Section 17.04(e), and shall also include those costs and expenses otherwise indicated in Article 17 to be included in Approval Expenses.

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

“Authorizations and Filings” means any and all permits, authorizations, approvals, consents or other governmentally required actions of any kind and the making of any and all notifications, submissions or other filings which constitute necessary antecedents to the taking of the specified action under this Lease.

“Bank” means JPMorgan Chase Bank, N.A. or another bank, brokerage company or other financial institution selected by Tenant and reasonably acceptable to Landlord.

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

“Casualty Restoration” means either a Landlord’s Casualty Restoration or a Tenant’s Casualty Restoration.

“Central Space” means the central performance space shown in the Concept Design, located in the northeastern portion of the Premises as shown in the Concept Design.

“Certified Public Accountant” means a qualified independent certified public accountant or accounting firm selected by Tenant with experience performing services for businesses of the same type as Tenant; provided that Tenant has provided prior written notice to Landlord of the identity of such entity.

“Change Order” means a written authorization by Landlord or Tenant under the terms of their respective Contracts ordering a change in the scope, quality, cost or schedule of a Landlord Construction Component or a Tenant Construction Component, respectively, excluding a Major Change Order.

“CMAQ Grant” means the approved application for the CMAQ Project.

“Concept Design” means the requirements, design and plan for the Project including the requirements for dealing with existing conditions, existing utilities, structural issues and space allocations as more particularly set forth in Schedule 1.01(a) (as same may be revised as mutually agreed by the Parties in accordance with Article 17).

“Condemnation Restoration” means a restoration of any portion of the Premises (together with Tenant’s Trade Fixtures) remaining after a Taking of less than the whole of the Premises and/or a restoration of any portion of the Premises which have been changed or altered as a result of a temporary taking for a period less than the remainder of the Term, or as a result of any governmental action not constituting a Taking, but creating a right to compensation as provided in Section 13.01, 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.

“Consent Agreement” means the letter agreement executed by the State of New York, as annexed hereto as Schedule 1.01(g).

“Construction Commencement Date” means the date on which Tenant commences the Tenant Construction Components.

“Construction Documents” means written and graphic materials prepared by the Executive Landscape Architect, which shall illustrate and describe the further development of

the Concept Design and shall consist of phased contract drawings and technical specifications setting forth in detail the quality levels of materials and systems and other requirements for the Project Construction Work.

“Construction Pledge Agreement” means that certain Pledge Agreement, of even date herewith, by and between Donor and Tenant.

“Construction Security Agreement” means that certain Security Agreement, of even date herewith, by and between Donor and Landlord.

“Construction Work” means any capital project, construction or construction work performed by or on behalf of either Party, including construction of the Improvements, any Restoration, or other capital improvement, or other construction work performed in connection with the use, maintenance or operation of the Premises.

“Contract” means a contract for any Construction Work which may be performed at the Premises during the Term of this Lease.

“Contractor” means any entity engaged to perform Construction Work on the Premises, whether a general contractor, a subcontractor or a construction manager responsible for performing Construction Work.

“Date of Taking” means the date on which title to the whole 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.

“DEC” means the New York State Department of Environmental Conservation, or its successor.

“Default” means any event, and only an event, set forth in Section 27.01 of this Lease.

“Demolition” means Landlord’s obligations for and in connection with the demolition, clearing, removal and cleanup of Pier 54 (excluding the underlying pile field, which pursuant to the Concept Design is to remain in place), disposal of all debris off-site and preparation of the site for commencement of Tenant’s Project Construction Work, as provided herein and as shown in those certain drawings titled “Bloomfield to West 14th Street Site Preparation & Removals (C4094),” dated January 21, 2015 (the work for which a New York City Department of Buildings permit was issued February 23, 2015) and previously agreed upon by the parties.

“Design Documents” means plans, drawings or designs, upon which Project Construction Work shall be based, starting with further refinements to the Concept Design, and continuing through the design development phase, and which shall be approved in writing by both Parties.

“Designer” means Heatherwick Studio, UK Company No. 04170748.

“Development Agreements” means all agreements with Development Professionals.

“Development Professionals” means architects, landscape architects, other design professionals, landscape specialists, engineers, environmental consultants, and other similar specialized service professionals engaged or proposed to be engaged to provide services for purposes of realizing the Construction Work as each are approved by Landlord and Tenant.

“Donor” shall have the meaning set forth in the Construction Security Agreement.

“Donor Account” shall have the meaning set forth in the Security Agreement.

“Donor Escrow Agreement” shall have the meaning set forth in the Security Agreement.

“Donor Event of Default” shall have the meaning set forth in the Construction Security Agreement.

“Equipment” means all personal property or equipment (other than Tenant’s Trade Fixtures) now or hereafter permanently incorporated in or attached to and used in the operation of the Premises, including, but not limited to, all machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment, chutes, ducts, pipes, tanks, fittings, conduits and wiring, incinerating equipment, hoists, communication equipment, and all additions or replacements thereof, and all other Finish Work (other than Tenant’s Trade Fixtures).

“Esplanade” means the esplanade immediately adjacent to the Premises and generally located south of West 14<sup>th</sup> Street and north of Bloomfield Street, as such Esplanade is to be redeveloped and reconstructed at such location, a rendering of which is attached hereto as Schedule 1.01(b).

“Esplanade Rights” means a non-exclusive grant of rights over and across the Esplanade, as shown in the Concept Design and Schedule 1.01(b), and all walkways, paths and driveways now or hereafter located thereon, at no cost or charge to Tenant, for the benefit of Tenant, its Representatives, vendors, licensees and invitees, which rights shall be appurtenant to and run with the leasehold interest in the Premises created hereby, for the following purposes: (i) for vehicular (commercial and private), pedestrian and other access, egress and ingress to and from the Premises, and (ii) for other purposes related to Permitted Events and related activities, including customary park uses, queuing and Permitted Event Support Activities (provided that such uses described in this clause (ii) will not contravene the program purpose of the CMAQ Grant as set forth in Section II of the Interim Program Guidance dated November 12, 2013 issued pursuant to The Congestion Mitigation and Air Quality Improvement Program Under the Moving Ahead for Progress in the 21<sup>st</sup> Century Act and prepared by the Air Quality and Transportation Conformity Team of Federal Highway Administration’s Office of Natural Environment, in cooperation with the Federal Transit Administration’s Office of Planning and Environment, as amended from time to time, provided that Landlord will cooperate reasonably with Tenant to oppose any amendment that would have a material adverse effect on the uses described in this clause (ii)), Landlord hereby covenanting and agreeing to keep the Esplanade open to the public at all times during Park Hours and to keep it open to Tenant and its Representatives and vendors at all times as necessary for access, ingress and egress to and from the Premises and for the other purposes set forth above.

“Esplanade Work” means all of the construction and other work required to complete the Esplanade, as detailed in Schedule 1.01(b) (or as same may be revised as mutually agreed to by the Parties in accordance with Article 17); provided that the final design of such work shall comply with the Requirements. For the avoidance of doubt, the terms “Esplanade Work” and “CMAQ Project” shall have the same meaning, and are used interchangeably, in this Lease.

“Executive Landscape Architect” means, collectively, a team led by Mathews Nielsen Landscape Architects P.C., including, as subconsultants, Ove Arup & Partners, Mueser Rutledge Consulting Engineers, and Environmental Consultant, any successor to any such party, and such other consultants as the Parties may mutually agree shall be engaged by the Executive Landscape Architect in the future.

“Farmers Market” means events for the sale of agricultural or similar products or other products customarily sold in farmers markets in New York City, with such number of vendors as is appropriate for the space (or other vendor-themed events as to which Landlord consents, with Landlord’s consent not to be unreasonably withheld or delayed), for which Tenant obtains any permits required from governmental agencies, it being agreed that any operation similar to a flea market shall not constitute a Farmers Market hereunder.

“Final Completion” means (i) with respect to all Improvements constructed by Tenant in accordance with this Lease, that Landlord has reasonably determined that all work, including all punch list items, remaining after Substantial Completion, has been completed in accordance with the Construction Documents; and (ii) with respect to completion of Landlord Construction Components by Landlord, that Tenant has reasonably determined that all work, including all punch list items, remaining after Substantial Completion, has been completed in accordance with the Construction Documents.

“Finish Work” means any Project Construction Work visible to any person who shall enter the Premises after the Substantial Completion Date, which Finish Work may include, but not necessarily be limited to, railings, finished paving, signage, softscape (soil, plant materials, bushes, trees, etc.), park furniture or other park amenities. In no event shall Finish Work include structural elements of the Premises.

“Foundation” shall have the meaning set forth in the Maintenance Security Agreement.

“Foundation Event of Default” shall have the meaning set forth in the Maintenance Security Agreement.

“Friends of Hudson River Park Trust” means Friends of Hudson River Park Trust, an independent nonprofit 501(c)(3) organization dedicated to the completion, care, and enhancement of the Park, and the designated fundraising partner of Landlord.

“Fundraising Event” means any fundraising event, including formal or informal dinners or other events, with or without music, dancing, entertainment, performances or other events which would constitute a “Permitted Event” hereunder; provided that in all such cases the express purpose and intent of such event shall be for the charitable purpose of raising money for the sole purposes of (a) in the case of a Fundraising Event sponsored or held by Tenant, funding Tenant’s obligations to pay “Permitted Costs” and (b) in the case of a Fundraising Event

sponsored or held by Landlord, paying for Landlord's costs in connection with the operations of the Park, including the Premises.

"General Public" means members of the public who visit the Premises for the purpose of passive and/or active open space recreation.

"Governmental Authority" 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.

"Gross Broadcasting Revenues" means revenues actually received by Tenant from any broadcast, transmission, simulcast, streaming or other broadcast dissemination of any Permitted Event at the Premises, live or prerecorded, via any media now known or hereafter devised anywhere in the world and in perpetuity.

"Improvements" means any and all buildings, structures, fixtures, facilities, piers and pier supports, pilings, bulkheads, footings and foundations and all other improvements and appurtenances of every kind and description now existing upon, under or over the Land or hereafter erected, constructed or placed upon, under, within or over the Land or any portion thereof (other than Trade Fixtures) as part of the Project, including the new pier referred to herein as Pier55, generally as shown in the Concept Design, and any and all Alterations, replacements and substitutions thereof, including landscaping, Finish Work and all Equipment. The initial Improvements to be constructed after Demolition, pursuant to Article 17, are generally described in the Concept Design.

"Index" means the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by Landlord, but not more often than once every three (3) years; provided that such Index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the improvements to the Premises.

"Interstitial Space" means the interstitial space of the Premises (as such interstitial space is shown in the Concept Design).

"Land" means all those certain plots, pieces and parcels of land, together with the Lands Under Water on which the Improvements are intended to be built and the Above Water Surface Area, all as shown on the Site Plan and Concept Design.

"Landlord Construction Components" means the Demolition, the Esplanade Work and any Finish Work necessary to complete the Project.

"Landlord Events" means events and activities on the Premises conducted by or under the direction of Landlord, including concerts, music festivals, exhibits, and/or art programs and other like activities of the nature set forth in the definition of Permitted Events, whether directly or through collaboration with third parties.



“Landlord Finish Work” means any Finish Work paid for by Landlord.

“Landlord Maintenance Components” means the items listed on Schedule 1.01(h) as Landlord Maintenance Components.

“Lease Rules and Regulations” means those certain Rules and Regulations Governing Leases, Licenses, Concession Agreements and Other Agreements promulgated by Landlord pursuant to Section 7 of the Act and known as Part 752.

“Lease Year” means each twelve (12)-month period falling within the Term commencing January 1 and ending December 31.

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

“Maintenance Pledge Agreement” means that certain Pledge Agreement, of even date herewith, by and between Foundation and Tenant.

“Maintenance Security Agreement” means that certain Security Agreement, of even date herewith, by and between Foundation and Landlord.

“Major Change Order” means a written authorization by Landlord or Tenant under the terms of their respective Contracts ordering a change in the scope, quality, cost or schedule of the Project Construction Work that (i) affects both Landlord Construction Components and Tenant Construction Components or (ii) materially affects the aesthetics, functionality or public access features of a Tenant Construction Component or Landlord Construction Component.

“Notice of Exclusive Control” shall have the meaning set forth in the Construction ACA or the Maintenance ACA.

“Park Hours” means 6:00 a.m. to 1:00 a.m., seven (7) days a week; provided that Landlord and Tenant may change the Park Hours that apply to the Premises by mutual agreement and subject to the Park Rules and Regulations after conferring with each other in good faith before the effectuation of any such change.

“Park Rules and Regulations” means the rules and regulations for the Park (including the Premises and all other areas of the Park) promulgated by Landlord and attached hereto as Schedule 1.01(d), as the same may be amended and modified from time to time in reasonable, good faith advance consultation with Tenant, and subject to the terms of this Lease. Any such amendments to the Park Rules and Regulations must apply to the entire Park and not just the Premises.

“Park Uses” shall have the meaning set forth in Section 3(h) of the Act as in effect on the date hereof and shall include Permitted Events and Permitted Event Support Activities.

“Permits” means any and all permits, authorizations, approvals, consents, other governmentally required actions, and other Authorizations and Filings of any kind which constitute necessary antecedents to the commencement by Tenant of the Project Construction Work.

“Permitted Costs” means any and all costs, expenses, charges and disbursements of Tenant associated with, related to, in connection with or resulting from this Lease, the Premises, Permitted Events or Fundraising Events or Tenant’s other permitted activities, including: (a) costs of programming, operation, management, maintenance, upkeep, repair, refurbishment and replacement of the Premises; (b) fees or costs to Landlord for any services which Landlord might provide and for any revenue sharing obligation of Tenant to Landlord; (c) expenses, fees, costs, royalties and reimbursements of or to performers, producers, directors, authors, service or goods providers, and others for any and all costs associated with the Premises or any Permitted Event or Fundraising Events; (d) capital expenditures relating to the Premises or associated improvements, fixtures or equipment; (e) general and administrative costs, salaries, taxes (if any), cost and expense of utilities, insurance and any and all other costs of Tenant incurred in connection with operating the Premises or any Permitted Events or Fundraising Events; and (f) other costs and expenses associated with or necessary for any Permitted Events or Fundraising Events, or Tenant’s other permitted activities, including the costs and expenses of coordinating, arranging or producing Permitted Events or Fundraising Events and costs and expenses associated with marketing, public relations or fundraising for the Premises or any Permitted Events; provided, however, that Permitted Costs shall not include any costs for the Project Construction Work (including Tenant’s Project Construction Work) prior to the Post-Completion Term.

“Permitted Event Support Activities” means the pre-event preparation, installation and set-up and the post-event breakdown, disassembly, removal, repairs and cleanup relating to or arising out of any Permitted Event, and logistical support for Permitted Events before, during or after such Permitted Events.

“Permitted Events” means, collectively, any one or more of the following occurring at the Premises: (i) public performances or concerts of instrumental, vocal or other music; (ii) performances of dramatic works, opera or theater of any kind or public readings of prose or poetry; (iii) public talks by academics, writers, researchers or public figures; (iv) performance art presentations; (v) dance performances; (vi) art displays, installations or exhibitions; (vii) cinema, film or movie presentations or shows; (viii) the presentation of works of art or matters of public interest akin to the foregoing; and (ix) other performances, concerts, presentations, displays, readings, installations, shows, exhibitions and/or programs or similar events permitted under the Act, in each of the foregoing cases, whether live, recorded or in combination, and shall also include such ancillary activities as ticketing, concessions and Portosans or other temporary bathrooms or toilets, and the recording, copying, exhibiting, filming, broadcasting, transmitting, simulcast, streaming or other dissemination and/or distribution (including without limitation via the Internet) of any Permitted Event at the Premises, live or prerecorded, via any media and by any devices now known or hereafter devised anywhere in the world and in perpetuity. For the avoidance of doubt, Tenant shall own and retain the exclusive rights under copyright and all other intellectual property rights (with the free right to assign and/or license the same) in and to all Permitted Events.

It is hereby acknowledged that each of the foregoing constitutes Park Uses and, accordingly, is consistent with the public purposes of the Act. The term “Permitted Events” shall be deemed and construed to refer to all Permitted Events whether (a) under the programming, artistic or spending control of Tenant or its designee (it being agreed that all performances by artists, performers, production companies and similar persons who are invited by Tenant to perform at the Premises and who perform under Tenant’s direction, supervision or control shall be deemed to be under the programming, artistic and operating control of Tenant for all purposes hereunder) or (b) sponsored, produced, arranged, organized or coordinated by Tenant or its designee, provided that it is hereby acknowledged and agreed that for all purposes hereunder, as between Landlord and Tenant, Tenant shall be responsible for all Permitted Events, notwithstanding any appointment of a designee by Tenant to control, sponsor, produce, arrange, organize, coordinate or control any Permitted Events.

“Permitted Investments” means publicly-traded equities, liquid fixed income securities rated AA or better, or other liquid non-speculative investments as may be proposed by Tenant and approved by HRPT, which approval will not be unreasonably withheld or delayed, whose fair market value can be determined by the Bank on a daily basis and in the Tenant Monthly FMV Notice (defined in the Tenant Escrow Agreement), and cash.

“Permitted Periods” means: (a) with respect to the conduct of Permitted Events, the time when the Park is open (i.e., between the hours of 6:00 a.m. and 1:00 a.m.) during which Tenant or its designee may be engaged in conducting a Permitted Event or Fundraising Event, and (b) with respect to Permitted Event Support Activities or Passive Permitted Events, any time, whether within or outside of Park Hours.

“Person” means an individual, corporation, partnership, joint venture, estate, 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 57 Redevelopment Project” means the redevelopment contemplated for Pier 57 pursuant to a lease with the developer thereof substantially in accordance with the depiction of the Pier 57 Redevelopment Project described in Schedule 1.01(e).

“Pier Project” means all components of the Project other than the Esplanade or Esplanade Work.

“Pledge Agreement” means each of the Construction Pledge Agreement and the Maintenance Pledge Agreement.

“Post-Completion Term” means all portions of the Term following the Substantial Completion Date (including any Extension Term).

“Premises Revenues” means Gross Broadcasting Revenues and all other revenues actually received by Tenant under this Lease.

“Prohibited Person” means any individual or entity convicted of a felony or a crime under 18 U.S.C. §§ 1961-1968 of The Racketeer Influenced and Corrupt Organizations Act.

“Project” means the Demolition and the redevelopment of the Premises into Pier55 for the purpose of achieving a vibrant, public open space and cultural venue for Permitted Events pursuant to the plan embodied in the Construction Documents, which Project shall include as elements thereof all Landlord Construction Components and all Tenant Construction Components.

“Project Components” means Landlord Construction Components and Tenant Construction Components, collectively.

“Project Construction Work” means all Construction Work required to complete the Project through and including Final Completion, including all Tenant Construction Components and all Landlord Construction Components.

“Project Manager” means Celine Armstrong or any other persons or companies mutually selected by both Tenant and Landlord and charged with assisting Tenant and Landlord with overseeing the implementation of the Project Construction Work. Project Managers will be hired by Tenant, but they will report to both Tenant and Landlord.

“Representative” means, with regard to any Person, such Person’s agents, contractors, subcontractors, trustees, directors, officers, employees or volunteers.

“Requirements” means any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, guidelines, directives, instructions, resolutions and requirements of all Governmental Authorities applicable (now or at any time during the Term) to the Premises.

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

“Season” means the period of April 1 through October 31 (or, if applicable, portion thereof in the first or last calendar year) during each calendar year of the Post-Completion Term.

“Security Agreement” means each of the Construction Security Agreement and the Maintenance Security Agreement.

“Shifting Control Notice” shall have the meaning set forth in the Construction ACA or the Maintenance ACA.

“Southern Space” means the southern performance space shown in the Concept Design, located at the southern side of the Premises as shown in the Concept Design.

“Substantial Completion” means (i) with respect to the completion of Tenant Construction Components by Tenant in accordance with this Lease, that Landlord has reasonably determined that the following conditions have been satisfied: (a) all work with respect to such Tenant Construction Components has been completed in accordance with the Construction Documents, all systems of the Premises are operating and such work and systems have been accepted by Tenant (as evidenced by controlled inspection reports to be submitted by Tenant to Landlord, if such type of work is customarily subjected to testing under controlled conditions), except, in each case, for minor repairs, corrections, and adjustments of a “punch list” nature

which can be completed promptly and with minimal interference to the occupancy and use of the Premises by Tenant; and (b) the Designer, Tenant, the Executive Landscape Architect and Landlord have approved, in writing, a final punch list of such minor repairs, corrections and adjustments; and (ii) with respect to the completion of Landlord Construction Components by Landlord, that Tenant has reasonably determined that the following conditions have been satisfied: (a) all work with respect to such Landlord Construction Components has been completed in accordance with the Construction Documents, except for minor repairs, corrections, and adjustments of a “punch list” nature which can be completed promptly and with minimal interference to the occupancy and use of the Esplanade; and (b) the Designer, Tenant, Executive Landscape Architect and Landlord have approved, in writing, a final punch list of such minor repairs, corrections and adjustments.

“Substantial Completion Date” means the first date upon which Substantial Completion of all of Landlord Construction Components and Tenant Construction Components occurs or has occurred.

“Substantially All of the Premises” means such portion of the Premises (including, without limitation, the Esplanade Rights) as would leave remaining, after a Taking, a balance of the Premises that would not readily accommodate a facility to support the uses described in Article 9 on a commercially reasonable basis as reasonably determined by Tenant due either to the area so taken or the location of the part so taken (including a Taking which results in lack of sufficient access, ingress and egress in relation to the part not so taken in light of economic conditions, zoning laws, physical constraints, or building regulations then existing or prevailing and after performance and/or observance by Tenant of all covenants, agreements, terms and conditions contained herein or by law required to be performed or observed by Tenant).

“Taking” means any (i) taking, whether permanent or temporary, of the Premises (together with Tenant’s Trade Fixtures) or any part thereof, including, without limitation, the Esplanade Rights, 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 and (ii) solely for the purposes of effecting any Condemnation Restoration, any Governmental Action Changes, (as hereinafter defined) irrespective of whether the same affects the whole 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.

“Taxes” means real property taxes assessed and levied against the Premises, or any part thereof, 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.

“Tenant Construction Components” means all aspects of the Project Construction Work except for Landlord Construction Components.

“Tenant Maintenance Components” means the items listed on Schedule 1.01(h) as Tenant Maintenance Components.

“TFF Period” means (i) with respect to the TFF (as hereinafter defined), an up to fourteen (14)-day period between April 16 and May 5 (ending on the Sunday on or prior to May 5) in a calendar year during which the TFF is being conducted on the Pier 57 Roof (as hereinafter defined); provided that if Tenant receives prior written notice from Landlord or Pier 57 Tenant (as hereinafter defined) at least twelve (12) months in advance of February 15 of any future year during the Post-Completion Term that the TFF is planned to be hosted on the Pier 57 Roof during a different fourteen (14)-day period between March 1 and May 5 in such future year, then the TFF Period in such future year shall be shifted to such fourteen (14)-day period between March 1 and May 5 referenced in such notice for purposes of such future year or (ii) with respect to a TFF Alternative (as hereinafter defined), the up to fourteen (14)-day period between April 1 and April 30 in a calendar year during which such TFF Alternative is being conducted on the Pier 57 Roof; provided that, with Tenant’s prior written approval (in its sole discretion), a TFF Alternative may be held during any other fourteen (14)-day period in such calendar year that has been so approved by Tenant in writing. Notwithstanding the foregoing, in no event shall the TFF Period include dates for both the TFF and a TFF Alternative in the same calendar year and in no event shall the TFF Period exceed fourteen (14) consecutive days in any calendar year.

“Trade Fixtures” means the personal and other property (including, but not limited to, furniture, inventory, machinery, equipment, lighting, sound equipment, seating, sets, stages, theater equipment, vehicles, vessels and operating facilities) of or utilized by Tenant in its trade or business or operation, and all other personal property owned by Tenant on or at the Premises.

“Value Engineering” means the process by which the value of a Project Component is optimized by examining the relative performance (function) of project scope elements to their associated costs, with the goal of reducing the overall cost of the Project Component while remaining consistent with requirements for performance, quality, aesthetics, reliability and safety.

## ARTICLE 2

### DEMISE OF PREMISES AND TERM

Section 2.01 Demise of Premises. Landlord does hereby lease to Tenant, and Tenant does hereby lease, hire and take from Landlord, for the Term set forth in Section 2.02 (including any Extension Term) and on all other terms, conditions and provisions of this Lease, the Land, together with (a) all Improvements now or hereafter existing from and after the completion of Demolition (which include, for the avoidance of doubt, all of Pier55); (b) all rights of access, including the right of ingress and egress, including queuing for Permitted Events as may be necessary from time to time; and (c) all incorporeal hereditaments, appurtenances and all other rights and privileges now or hereafter belonging or appertaining to the Land for the benefit of the Land or the Improvements (collectively, the “Premises”); reserving, however, unto Landlord the right to ensure continuous public access for Park Uses pursuant to Section 9.01 and for purposes of vouchsafing to the general public, as required by the Act, enjoyment of the Premises for Park Uses pursuant to Section 9.01, and further reserving to Landlord such possessory rights to the Premises as may be required to enforce Landlord rights hereunder, subject, however, to Tenant’s rights to hold the Permitted Events and to limit public access as set forth in Article 9 hereof and to the other terms and conditions of this Lease. Tenant shall make use of the Premises solely for

the purposes set forth in this Lease. Landlord shall not have any right to encumber its interest in the Premises without Tenant's prior written consent, in Tenant's sole and absolute discretion.

Section 2.02 Term.

(a) Subject to the terms hereof, Landlord hereby leases to Tenant and Tenant hereby leases, hires and takes from Landlord the Premises for a term to commence on the date upon which all of the Commencement Conditions (as defined below) shall have been satisfied (the "Commencement Date") and that shall end on a date which shall be twenty (20) years after the Substantial Completion Date (the "Expiration Date") or such earlier or later date that the term of this Lease expires or otherwise terminates pursuant to the terms hereof, including the Extension Term if the term is extended as set forth below (the "Term"). Upon the Commencement Date, Tenant shall assume possession and control of the Premises pursuant to the terms, covenants and conditions of this Lease. The "Commencement Conditions," all of which must be satisfied in order for the Commencement Date to occur and the Term to begin, are that: (i) all Permits, which together constitute the prerequisite legal conditions to the commencement of construction of the Premises, shall have been received; (ii) Landlord shall have completed the Demolition and the construction of the Esplanade to the point that adequate ingress and egress will be available to Tenant and its Representatives as, when and to the extent necessary to construct and develop the Premises as contemplated hereby; (iii) Landlord shall have delivered to Tenant a written notice ("Notice of Possession") that it is, by delivery of said Notice of Possession, delivering possession and control of the Premises to Tenant (subject to Tenant's acceptance thereof); and (iv) Tenant shall have delivered a written notice to Landlord, titled "COMMENCEMENT NOTICE," stating that (x) Tenant has completed the bidding process contemplated by Section 17.06(a) and 17.07 and has selected, and is prepared to contract with, in accordance with Section 17.06(b), the Contractor that will act as prime contractor or construction manager for the construction of the Tenant Construction Components, and (y) Tenant agrees that the conditions in clauses (i) and (ii) of this Section 2.02(a) have been satisfied and that none of the Termination Conditions has occurred and that, therefore, Tenant is prepared to accept possession of the Premises and to commence construction of the Premises. Notwithstanding that the Term shall commence, and the Commencement Date shall occur, after the Execution Date, all of the terms, provisions and covenants of this Lease (including the provisions of Article 17 with regard to the Project) which by their terms are applicable prior to Tenant taking possession of the Premises shall become effective and binding upon the Execution Date, other than to the extent provided expressly to the contrary herein; for avoidance of doubt, Tenant shall not have any responsibility for the condition of the Premises, nor any obligation or liability under the provisions of Articles 5 through 16 hereof, until the Commencement Date.

(b) Termination Right of Tenant Exercisable as of the Tenth Anniversary Date. In addition to all other rights of Tenant hereunder to terminate this Lease, Tenant shall have the right (but not any obligation) to terminate this Lease for any or no reason (in its sole discretion) effective as of the date that is the tenth (10th) anniversary of the last day of the first Season after the Substantial Completion Date (the "Tenth Anniversary Date"); provided, however, that such right shall be contingent upon Tenant's having paid to Landlord, as provided below, an amount equal to Five Million Dollars (\$5,000,000) (the "Year 10 Termination Payment"). It shall be a further condition to the exercise of this option to terminate this Lease effective as of the Tenth Anniversary Date that Tenant shall have delivered written notice of its

intention to so terminate this Lease no later than one (1) year prior to the Tenth Anniversary Date. If Tenant exercises its option to terminate the Lease on the Tenth Anniversary Date, Tenant shall pay to Landlord, by bank check or wire transfer of federal funds, the full amount of the Year 10 Termination Payment on or before the Tenth Anniversary Date. If Tenant's notice of intention to terminate shall have been delivered and the Year 10 Termination Payment shall have been paid, all as aforesaid, then this Lease shall be deemed to have been terminated at 11:59 p.m., New York City time, on the Tenth Anniversary Date, with the same force and effect as if such date were the date set forth herein for the Expiration Date.

(c) Option to Extend. Tenant shall have the option (but not any obligation) to extend the initial twenty (20) year Term for one (1) additional term that shall expire on the earlier to occur of (i) the date that is the tenth (10th) anniversary of the effective date of such extension and (ii) the date that is the thirtieth (30th) anniversary of the Commencement Date (the "Extension Term"). It shall be a condition to the effective exercise of such option right that Tenant shall have served a notice of the exercise of its option right to extend the Lease for the Extension Term no later than one (1) year prior to expiration of the initial twenty (20) year Term. Any such Extension Term shall be upon the same terms and conditions set forth in this Lease (as the same may be amended in writing from time to time by Landlord and Tenant), except for the respective initial construction and demolition obligations of the Parties.

### ARTICLE 3

#### RENTAL; PLEDGE

Section 3.01 Rent. The entire rent, fee and charge for the demise of the Premises under this Lease (collectively, "Rental") shall be One Dollar (\$1.00) per Lease Year during the Term. Landlord acknowledges and agrees that all such Rental has been paid in advance by Tenant for the entire Term, including the Extension Term; provided that Tenant shall not be entitled to a refund of any portion of such Rental in the event of any termination of this Lease prior to the expiration of the Term or any inability or failure of or by Tenant to exercise its option for any Extension Term. Landlord acknowledges and agrees that the foregoing Rental is a fair rental value for the Premises and that in setting such Rental, Landlord has taken into account the value of Tenant's financial contributions, maintenance, repairs, improvements, public use benefits, and events and programming at the Premises (i.e., Permitted Events) and other in-kind considerations provided by Tenant under the terms and provisions of this Lease.

#### Section 3.02 Pledge.

(a) Tenant has secured pledges under (x) the Construction Pledge Agreement in the amount of up to \$139.5 million to enable Tenant to pay Tenant's obligations in connection with the Tenant Construction Components and/or to fund certain termination payments (the "Construction Pledge"), and (y) the Maintenance Pledge Agreement in the amount of up to \$25 million to assist Tenant, if needed, in paying Tenant's obligations in connection with the Tenant Maintenance Components (the "Maintenance Pledge"), (the pledges in clauses (x) and (y), collectively, the "Pledge"), subject to the limitations set forth herein and in the applicable Pledge Agreement. Tenant shall comply with the terms and provisions of each Pledge Agreement.



Tenant shall not amend either Pledge Agreement in any material respect without Landlord's written consent, which consent will not be unreasonably withheld or delayed.

(b) Construction Pledge.

(i) Tenant will maintain one or more segregated accounts with respect to the Construction Pledge (collectively, the "Construction Combined Account") and one or more segregated cash accounts with respect to the Construction Pledge (collectively, the "Construction Cash Account" and collectively with the Construction Combined Account, the "Construction Account"), each with the Bank. The Construction Account is to be used solely to receive contributions in satisfaction of the Construction Pledge; provided, that, withdrawals from the Construction Account shall be permitted for the purposes of discharging Tenant's obligations hereunder with respect to the Tenant Construction Components including pursuant to Section 27.04(f) hereof. Tenant grants to Landlord a first priority perfected security interest in the Construction Account and all monies now or hereafter deposited into the Construction Account as security for the obligations of Tenant in respect of the Tenant Construction Components and Tenant's other cost obligations pursuant to Section 17.02 hereof, and for other uses permitted under Section 3.b. of the Construction Pledge Agreement. Tenant shall not, without obtaining the prior written consent of Landlord, pledge, assign or grant any security interest in the Construction Account or any assets therein or permit any lien or encumbrance to attach thereto or any levy to be made thereon, or any UCC-1 Financing Statements, except any naming Landlord as the secured party, to be filed with respect thereto and except for those that Tenant has not authorized the filing of, so long as promptly upon learning of the unauthorized filing, it pursues its rights under Section 9-513 of the New York Uniform Commercial Code and promptly has such UCC-1 Financing Statement terminated, and in all events within thirty (30) days after such filing.

(ii) Simultaneously herewith, Tenant, Landlord and the Bank will enter into an Account Control Agreement (Securities and Deposit Accounts) (the "Construction ACA") substantially in the form attached hereto as Exhibit A with respect to the Construction Combined Account. Prior to the giving of a Notice of Exclusive Control (as defined in the Construction ACA), Tenant shall be permitted to control the investment of the monies and assets in the Construction Combined Account and to exchange or trade investments in the Construction Combined Account provided that Tenant shall only be permitted to invest in Permitted Investments. The assets held in the Construction Combined Account shall be the "Construction Combined Account Investment Assets." All interest which accrues on the Construction Combined Account Investment Assets shall accrue for the benefit of Tenant and shall be taxable to Tenant. Notwithstanding anything to the contrary in the Construction ACA, prior to the giving of a Notice of Exclusive Control, Landlord shall have no right to control the investment of the monies and assets in the Construction Combined Account or to exchange or trade investments in the Construction Combined Account. Provided that Landlord does not deliver a Notice of Exclusive Control or a Notice of Right of Withdrawal except as ex-

pressly permitted under this Lease, Landlord shall not be liable for any loss sustained on the investment of any Construction Combined Account Investment Assets. Tenant hereby indemnifies Landlord for any claims from Bank against Landlord for fees, costs and expenses payable to the Bank in accordance with the Construction ACA (other than any expenses owed by Landlord in accordance with the second sentence of Section 5 of the Construction ACA).

(iii) Simultaneously herewith, Tenant, Landlord and the Bank will enter into a Blocked Account Control Agreement (the “Construction BACA”) substantially in the form attached hereto as Exhibit B with respect to the Construction Cash Account. Prior to delivery of a Shifting Control Notice (as defined in the Construction BACA), Tenant shall be permitted to control the investment of the monies in the Construction Cash Account. The assets held in the Construction Cash Account shall be the “Construction Cash Account Investment Assets” and collectively with the Construction Combined Account Investment Assets, the “Construction Account Investment Assets.” All interest which accrues on the Construction Cash Account Investment Assets shall accrue for the benefit of Tenant and shall be taxable to Tenant. Notwithstanding anything to the contrary in the Construction BACA, prior to delivery of a Shifting Control Notice, Landlord shall have no right to control the investment of the monies in the Construction Cash Account. Provided that Landlord does not deliver a Shifting Control Notice except as expressly permitted under this Agreement, Landlord shall not be liable for any loss sustained on the investment of any Construction Cash Account Investment Assets. Tenant hereby indemnifies Landlord for any claims from Bank against Landlord for fees, costs and expenses payable to the Bank in accordance with the Construction BACA (other than any expenses owed by Landlord in accordance with the second sentence of Section 6 of the Construction BACA).

(iv) The fair market value (“FMV”) of the Construction Account Investment Assets shall be determined as set forth in the monthly notice to be delivered by the Bank to HRPT and Donor pursuant to Section 4(b) of the Construction ACA and Section 2 of the Construction BACA (collectively, the “Construction Monthly FMV Notice”). Notwithstanding such monthly determinations by the Bank, in the event the FMV of the Construction Account Investment Assets at the end of any Business Day is reduced such that it is more than 3% below the value set forth in the most recent Construction Monthly FMV Notice due to market value reductions and not withdrawals permitted hereunder, based on information available to the parties on JPMorgan Access (as defined in the Donor ACA), a “Construction Adverse Change” shall be deemed to have occurred and Landlord shall have all remedies on account thereof as set forth in the Construction Security Agreement. Tenant agrees to take all reasonable actions necessary to cooperate with Landlord to ensure that the Bank (x) provides copies of all relevant statements, (y) discloses to Landlord such other information as Landlord may from time to time reasonably request in connection therewith, and (z) provides Landlord with on-line viewing rights access as contemplated by Section 2 of the Construction BACA.

(v) Tenant and Landlord agree to take all actions necessary to terminate the Construction ACA and Construction BACA in accordance with their respective terms within three (3) Business Days of the termination of the Construction Security Agreement and Tenant will be entitled to withdraw from the Construction ACA and Construction BACA any Construction Account Investment Assets remaining therein. The obligation in the preceding sentence will survive any termination of this Agreement.

(vi) If, upon the occurrence of a Donor Event of Default, Tenant has unexpended contributions received in respect of the Construction Pledge that have not been transferred to the Construction Account, Tenant agrees to transfer to the Construction Account within three (3) Business Days, the lesser of (x) the amount necessary to allow the Required Value (as defined in the Construction Security Agreement) to be satisfied and (y) the aggregate amount of unexpended contributions received in respect of the Construction Pledge that have not been transferred to the Construction Account.

(c) Maintenance Pledge.

(i) From the date that is three (3) Business Days after the date that is one year prior to the estimated Substantial Completion Date (as set forth in a written notice delivered to Foundation from Tenant and Landlord at least thirty (30) days prior thereto and attaching a corresponding construction schedule) (such date, the "Maintenance Account Commencement Date"), Tenant will maintain one or more segregated accounts with respect to the Maintenance Pledge (collectively, the "Maintenance Combined Account") and one or more segregated cash accounts with respect to the Maintenance Pledge (collectively, the "Maintenance Cash Account" and collectively with the Maintenance Combined Account, the "Maintenance Account"), each with the Bank. The Maintenance Account is to be used solely to receive contributions in satisfaction of the Maintenance Pledge; provided, that, withdrawals from the Maintenance Account shall be permitted for the purposes of discharging Tenant's obligations hereunder with respect to the Tenant Maintenance Components including pursuant to Section 27.04(f) hereof. Tenant grants to Landlord a first-priority perfected security interest in the Maintenance Account and all monies now or hereafter deposited into the Maintenance Account as security for the obligations of Tenant in respect of the Tenant Maintenance Components in accordance with Section 15.01 hereof, and for other uses permitted under Section 3.b. of the Maintenance Pledge Agreement. Tenant shall not, without obtaining the prior written consent of Landlord, pledge, assign or grant any security interest in the Maintenance Account or any assets therein or permit any lien or encumbrance to attach thereto or any levy to be made thereon, or any UCC-1 Financing Statements, except any naming Landlord as the secured party, to be filed with respect thereto and except for those that Tenant has not authorized the filing of, so long as promptly upon learning of the unauthorized filing, it pursues its rights under Section 9-513 of the New York Uniform Commercial Code and promptly has such UCC-1 Financing Statement terminated, and in all events within thirty (30) days after such filing.

(ii) On or prior to the Maintenance Account Commencement Date, Tenant, Landlord and the Bank will enter into an Account Control Agreement (Securities and Deposit Accounts) (the “Maintenance ACA”) substantially in the form attached hereto as Exhibit C with respect to the Maintenance Combined Account. Prior to the giving of a Notice of Exclusive Control (as defined in the Maintenance ACA), Tenant shall be permitted to control the investment of the monies and assets in the Maintenance Combined Account and to exchange or trade investments in the Maintenance Combined Account provided that Tenant shall only be permitted to invest in Permitted Investments. The assets held in the Maintenance Combined Account shall be the “Maintenance Combined Account Investment Assets.” All interest which accrues on the Maintenance Combined Account Investment Assets shall accrue for the benefit of Tenant and shall be taxable to Tenant. Notwithstanding anything to the contrary in the Maintenance ACA, prior to the giving of a Notice of Exclusive Control, Landlord shall have no right to control the investment of the monies and assets in the Maintenance Combined Account or to exchange or trade investments in the Maintenance Combined Account. Provided that Landlord does not deliver a Notice of Exclusive Control or a Notice of Right of Withdrawal except as expressly permitted under this Lease, Landlord shall not be liable for any loss sustained on the investment of any Maintenance Combined Account Investment Assets. Tenant hereby indemnifies Landlord for any claims from Bank against Landlord for fees, costs and expenses payable to the Bank in accordance with the Maintenance ACA (other than any expenses owed by Landlord in accordance with the second sentence of Section 5 of the Maintenance ACA).

(iii) On or prior to the Maintenance Account Commencement Date, Tenant, Landlord and the Bank will enter into a Blocked Account Control Agreement (the “Maintenance BACA”) substantially in the form attached hereto as Exhibit B with respect to the Maintenance Cash Account. Prior to delivery of a Shifting Control Notice (as defined in the Maintenance BACA), Tenant shall be permitted to control the investment of the monies in the Maintenance Cash Account. The assets held in the Maintenance Cash Account shall be the “Maintenance Cash Account Investment Assets” and collectively with the Maintenance Combined Account Investment Assets, the “Maintenance Account Investment Assets.” All interest which accrues on the Maintenance Cash Account Investment Assets shall accrue for the benefit of Tenant and shall be taxable to Tenant. Notwithstanding anything to the contrary in the Maintenance BACA, prior to delivery of a Shifting Control Notice, Landlord shall have no right to control the investment of the monies in the Maintenance Cash Account. Provided that Landlord does not deliver a Shifting Control Notice except as expressly permitted under this Lease, Landlord shall not be liable for any loss sustained on the investment of any Maintenance Cash Account Investment Assets. Tenant hereby indemnifies Landlord for any claims from Bank against Landlord for fees, costs and expenses payable to the Bank in accordance with the Maintenance BACA (other than any expenses owed by Landlord in accordance with the second sentence of Section 6 of the Maintenance BACA).

(iv) The FMV of the Maintenance Account Investment Assets shall be determined as set forth in the monthly notice to be delivered by the Bank to HRPT and Donor pursuant to Section 4(b) of the Maintenance ACA and Section 2 of the Maintenance BACA (collectively, the “Maintenance Monthly FMV Notice”). Notwithstanding such monthly determinations by the Bank, in the event the FMV of the Maintenance Account Investment Assets at the end of any Business Day is reduced such that it is more than 3% below the value set forth in the most recent Maintenance Monthly FMV Notice due to market value reductions and not withdrawals permitted hereunder, based on information available to the parties on JPMorgan Access, a “Maintenance Adverse Change” shall be deemed to have occurred and Landlord shall have all remedies on account thereof as set forth in the Maintenance Security Agreement. Tenant agrees to take all reasonable actions necessary to cooperate with Landlord to ensure that the Bank (x) provides copies of all relevant statements, (y) discloses to Landlord such other information as Landlord may from time to time reasonably request in connection therewith, and (z) provides Landlord with on-line viewing rights access as contemplated by Section 2 of the Maintenance BACA.

(v) Tenant and Landlord agree to take all actions necessary to terminate the Maintenance ACA and Maintenance BACA in accordance with their respective terms within three (3) Business Days of the termination of the Maintenance Security Agreement and Tenant will be entitled to withdraw from the Maintenance ACA and Maintenance BACA any Maintenance Account Investment Assets remaining therein. The obligation in the preceding sentence will survive any termination of this Lease.

(vi) For purposes of determining the amount of the Maintenance Pledge under the Maintenance Pledge Agreement and Maintenance Security Agreement, Tenant shall have the right to deliver to Landlord, no earlier than 90 days and no later than 30 days prior to (i) the third (3rd) anniversary of the Substantial Completion Date and (ii) each anniversary of the Substantial Completion Date thereafter for Landlord’s reasonable approval the calculation of Tenant’s expected obligations in connection with the maintenance and repair of Tenant Maintenance Components in accordance with Section 15.01 hereof through the end of the Term (the “Ongoing Maintenance Amount”), which shall be equal to the product of (x) the sum of (1) the average annual Tenant Maintenance Components costs required to be borne by Tenant for the preceding three years and (2) future average annual capital maintenance or capital replacement costs not otherwise reflected in the three prior year’s maintenance expenditures and reasonably expected to be incurred during the Term of this Lease, (y) the number of years remaining in the Term of this Lease, and (z) a compounding inflation factor of 3%. Any notice of the Ongoing Maintenance Amount from Tenant must be accompanied by Foundation’s written approval thereto. If Tenant fails to deliver its determination of the Ongoing Maintenance Amount (or Foundation’s approval thereto) in the time periods set forth above, Landlord shall, in its reasonable discretion, calculate the Ongoing Maintenance Amount and the same shall be subject to Tenant’s approval which Tenant shall use its reasonable efforts to provide with-

in thirty (30) days of its receipt of Landlord's calculation, and which approval must be accompanied by Foundation's written approval thereto; provided that (i) if such approval of Landlord's calculation of the Ongoing Maintenance Amount by Tenant and Foundation shall have not been granted within sixty (60) days of Tenant's receipt thereof, then there shall be deemed to have been a dispute between the Parties as to the Ongoing Maintenance Amount and the provision of the next sentence shall be instituted, (ii) in the event Tenant, but not Foundation, has granted approval, then the Ongoing Maintenance Amount shall be deemed for all purposes hereunder other than for purposes of the definition of Foundation Event of Default to be the amount agreed upon by Tenant, and (iii) during the pendency of any such dispute, for all purposes hereunder other than for purposes of the definition of Foundation Event of Default, (1) before the initial Ongoing Maintenance Amount is determined, the Ongoing Maintenance Amount shall be deemed to be \$879,204, and (2) after the initial Ongoing Maintenance Amount is determined, the Ongoing Maintenance Amount shall be deemed to continue to be the immediately preceding amount agreed to by the Parties. Any disputes as to the determination of the Ongoing Maintenance Amount will be resolved by arbitration in accordance with Article 29 of this Lease.

(vii) If, upon the occurrence of a Foundation Event of Default, Tenant has unexpended contributions received in respect of the Maintenance Pledge that have not been transferred to the Maintenance Account, Tenant agrees to transfer to the Maintenance Account within three (3) Business Days, the lesser of (x) the amount necessary to allow the Required Value (as defined in the Maintenance Security Agreement) to be satisfied and (y) the aggregate amount of unexpended contributions received in respect of the Maintenance Pledge that have not been transferred to the Maintenance Account.

#### ARTICLE 4

##### SPONSORSHIP AND MARKETING; NAMING RIGHTS

Section 4.01 Naming Rights and Recognition Features. The Premises shall be known as "Pier55." The logo and other identifying elements for the Premises shall be those set forth in Schedule 4.01 hereto (together with the name Pier55, collectively, the "Designated Name"), with such changes and additions thereto (provided that "Pier55" shall always be a part of the name of the Premises) as may be determined by Tenant from time to time, subject, however, solely with regard to any such changes, to consultation with Landlord in order (x) to avoid conflicts or confusion with other uses of the Park and (y) to, in good faith, consider Landlord's reasonable request with respect to consistency with other signage used in the Park. The Concept Design shall incorporate, and the Premises shall display and include in perpetuity (for so long as Pier55 exists), appropriate signage and displays of the Designated Name, and shall also display and include in perpetuity (for so long as Pier55 exists) recognition, through a plaque or other means determined by Tenant (the "Recognition") for the financial and other contributions of Tenant and its Affiliates, Representatives and principals, including major donors to Tenant and the Donor, all consistent with the requirements set forth in Schedule 4.01 and in all respects as determined by and to the satisfaction of Tenant. Landlord shall cause and ensure that

the Premises will be named and known by the Designated Name on a permanent and perpetual basis (for so long as Pier55 exists), and that the signage and other Recognition determined by Tenant will be exclusively, permanently, perpetually and continuously affixed in the location and manner determined by Tenant. Landlord shall also ensure that the Designated Name will remain the sole name of the Premises (for so long as Pier55 exists) in its entirety and in perpetuity. Notwithstanding the foregoing, after the expiration or termination of the Term in accordance with the terms and conditions of this Lease, in the event that (x) a significant capital contribution to the Premises in excess of Ten Million Dollars (\$10,000,000) is necessary because the Premises or a major structural element thereof is damaged or destroyed in whole or in material part or shall have otherwise deteriorated to a material extent; (y) such damage, destruction or deterioration is not the result of a breach of this Lease by Landlord and is not covered by insurance and no other source of funds exists for rebuilding; and (z) Tenant informs Landlord in writing that it does not intend to make such contribution, then Landlord may, in consideration for such contribution by Person(s) other than Tenant or its Affiliates or Representatives, supplement the Designated Name and other names and recognition with secondary names and recognition (or grant new naming rights for or provide recognition on any portion of the Premises that is then not named or does not then bear any recognition); provided that any and all such secondary names and recognition (1) must not change or in any way alter the Designated Name, any other primary name or the Recognition, (2) must be placed below or otherwise follow the Designated Name, any other primary name and the Recognition (as applicable), and (3) must be smaller and subordinate in design and placement (and shall in no event be more prominent or dominant in stature than the Designated Name, any other primary name or the Recognition). In the event that Tenant elects (in its sole discretion) to make such contribution or any portion thereof, Landlord and Tenant shall negotiate the terms and conditions thereof in good faith; provided that the terms and conditions offered to Tenant shall be no less favorable to Tenant than the terms and conditions offered to any other Person. This Section 4.01 shall survive the expiration or earlier termination of this Lease.

Section 4.02 Fundraising; Sponsorship Revenues. During the Term, Tenant may raise funds and solicit contributions for its operations and activities, including for the maintenance and operation of the Premises and Permitted Events and for payment of any Permitted Costs, in any manner it determines to be appropriate, including seeking sponsorship, contributions or grants from sponsors, advertisers or others, selling memberships, general solicitations and mailings, or other means; provided, however, that (x) neither Tenant nor Landlord (nor their respective affiliates) shall make solicitations that create the false impression that such Party is raising funds for the other Party (including, for example, solicitations by Tenant that give the impression that it is raising funds for areas of the Park outside the Premises, or solicitations by Landlord or Friends of Hudson River Park Trust or similar groups that give the impression that they are raising funds for the Premises or any Tenant Permitted Events), and (y) in the case of mass mailing solicitations to the public, in order to reduce the likelihood of confusion of Tenant's mass mailing solicitations with Landlord's mass mailing solicitations, any such mass mailing solicitations by Tenant shall not (i) mention Landlord or the Park in any prominent way other than as the location of the Premises in the Park, (ii) solicit funds expressly for Premises maintenance (although, for the avoidance of doubt, the Parties hereto agree that any funds so solicited may be used for any lawful purpose, including Premises maintenance), and (iii) mention any Landlord Permitted Events without Landlord's prior approval. The coordination and cooperation meetings provided for in Section 8.01 below shall address, among

other things, the Parties' respective fundraising activities. Without limiting the generality of the foregoing, Tenant shall have the exclusive right during the Term to, and from time to time may, (a) enter into donor recognition, sponsorship, strategic partnership, pouring rights and/or naming rights agreements with one or more Persons with respect to the Premises or any portion thereof, (b) otherwise solicit and obtain financial contributions for the Premises, and (c) offer recognition to one or more Persons for such contributions to the Premises or any portion thereof. Without limiting the foregoing, during the Term, in addition to amending or modifying the Designated Name in accordance with Section 4.01, Tenant may from time to time, in its sole discretion, designate other names and recognition for the Premises and any portion thereof (including the Amphitheatre, the Central Space, the Southern Space and any other spaces, stages, features, or elements at the Premises) either in connection with fundraising or without any fundraising related thereto; provided that no such other names or recognition (i) may continue beyond the Term without Landlord's written consent, or (ii) reference guns, gambling, tobacco, pornography, Prohibited Persons, political or religious organizations. All revenues derived by Tenant from sponsorship, strategic partnerships, pouring rights and/or naming rights at the Premises may be used by Tenant only to pay the Permitted Costs and for no other purposes. Landlord may propose to Tenant, for Tenant's consideration in its sole discretion, Landlord's suggestions with regard to donor recognition, sponsorship, strategic partnerships, pouring rights and/or naming rights, provided that Tenant shall have no obligation whatsoever to adopt such suggestions and may choose not to pursue them in Tenant's sole discretion.

Section 4.03 Broadcast/Royalty Rights. Notwithstanding the provisions of Article 3, Landlord shall be entitled to five percent (5%) of the Gross Broadcasting Revenues from Permitted Events at the Premises, with Tenant to retain ninety-five percent (95%) of such Gross Broadcasting Revenues. Tenant may use its share of such revenues only to pay Permitted Costs. Landlord's share of Gross Broadcasting Revenues shall be calculated on an annual basis, with each fiscal year's share to be determined in the following fiscal year after the Annual Financial Statements for the preceding fiscal year have been finalized. Tenant shall pay Landlord's share of the Gross Broadcasting Revenues to Landlord annually, within thirty (30) days of such determination. Except as provided in this Section 4.03, Landlord shall not have any right or entitlement whatsoever to any revenues or profits from Permitted Events or any productions, works or materials created or developed by or for Tenant, whether for Permitted Events or otherwise. Landlord understands that Tenant may create or commission the creation of works and productions for the Premises, and agrees that, as between Landlord and Tenant, Tenant shall have the exclusive ownership and rights to any such productions or works and to any royalties or profits derived therefrom, and Landlord hereby waives and disclaims any such rights, ownership or entitlement.

Section 4.04 Marketing. Tenant may market its events, as it deems appropriate, using such forms of media, public relations, marketing and advertising as it determines to be appropriate, including, but not limited to, radio, television, print, Internet, social media (including, but not limited to, Facebook and Twitter and similar or successor vehicles), publicity, direct mail, out-of-market advertising, grassroots and earned-media. Tenant will, where possible, include in all promotional announcements on Tenant's website and social media platforms promotion for its events, a reference to Landlord's website — [www.HudsonRiverPark.org](http://www.HudsonRiverPark.org) (or its replacement) — for cross-promotional purposes. Additionally, subject to Section 4.02, Tenant shall include the Park logo and the Designated



Name in any promotional materials regarding its Permitted Events, and Landlord shall include Tenant's logo in any promotional materials regarding Landlord Permitted Programming, in each case unless impracticable. Landlord will include a list of Permitted Events in the event listings on Landlord's website, social media (including, but not limited to, Facebook and Twitter), listings in Landlord's summer events calendar, other Internet and other promotion controlled by Landlord, if any, and wherever else deemed appropriate by the Parties, subject to and in accordance with the following terms and provisions. Except pursuant to Tenant's written request, any reference to Tenant or its Affiliates, sponsors, Representatives, Permitted Events or Fundraising Events shall require Tenant's prior written consent, both as to substance and form, it being understood that Landlord may reference the Permitted Events as part of the events occurring at the Park and include in connection therewith the information about such Permitted Events (including Tenant's logo) in the manner and to the extent put into the public domain by Tenant. Except pursuant to Landlord's written request, any reference to Landlord or its Affiliates, sponsors, Representatives, Landlord Permitted Programming shall require Landlord's prior written consent, both as to substance and form, it being understood, however, that in connection with describing the location of Permitted Events, Tenant shall include a reference to the Park (e.g., "Pier55 in Hudson River Park" as opposed to merely "Pier55 at West 13<sup>th</sup> and West Street"). The Parties shall respect each other's intellectual property and shall cooperate reasonably so as not to violate any contractual arrangements either may have with third parties relating to use of such third parties' names or intellectual property. Neither Party will use the name or logo of the other Party or its Representatives or Affiliates in any sales or marketing publication, advertisement or otherwise without (a) prior full disclosure of such use and (b) the written consent of the other Party (in such Party's sole discretion). In any statement or release made to the public relating to this Lease, each Party (the "Releasing Party") will acknowledge the involvement of the other Party as its counterparty to this Lease. If such other Party notifies the Releasing Party in writing that such other Party has found that any release, advertisement, or statement made to the public by the Releasing Party relating to the programs and activities offered at the Premises is materially incorrect or misleading, the Releasing Party shall exercise reasonable efforts to correct such release, advertisement or statement.

## ARTICLE 5

### IMPOSITIONS AND TAXES

Section 5.01 Obligation to Pay Impositions. Tenant shall not be responsible or liable for, and shall have no obligations whatsoever hereunder to pay, any Taxes, any real property general or special assessments, or any other governmental assessments, fees or levies or other impositions (including all interest, costs, fines or penalties imposed or assessed thereon) (collectively, "Impositions") with respect to, related to or in connection with this Lease or the Premises, all of which shall be the sole responsibility of and shall be paid by Landlord as the same may be due and payable and prior to delinquency; provided, however, that Tenant shall pay (a) any and all legally applicable, if any, sales, use or similar taxes, and license, permit and other similar fees in connection with the Permitted Events, Tenant's Fundraising Events and any concessions operated on the Premises by Tenant or its designee or licensee, and (b) any fines or penalties attributable to the acts or omissions of Tenant in connection with Tenant's use of the Premises in violation of the express terms and conditions of this Lease, without any contributory acts or omissions of Landlord.

## ARTICLE 6

### UTILITIES

Section 6.01 Utility Service to Premises. Tenant must establish accounts for and pay all costs for 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 Improvements, subject to reimbursement from Landlord as provided below in this Section 6.01. Tenant shall maintain and repair all meters and Landlord and Tenant shall procure (at Tenant's cost) all Authorizations and Filings necessary to secure delivery of such utility services. Landlord acknowledges and confirms that all of the foregoing costs and expenses of Tenant shall be Permitted Costs for all purposes hereunder. Landlord agrees to reimburse Tenant for the cost of utilities related to Landlord Events and Landlord's Fundraising Events. Such reimbursed costs shall be based on Tenant's reasonable estimation of actual utility consumption related to Landlord Events and Landlord's Fundraising Events, and shall be billed at Tenant's costs without mark-up. If electrical transformers and utility structure to service the Premises are placed anywhere at the Park that is not on the Premises, Landlord hereby grants a license to Tenant and/or a utility company reasonably approved by Tenant to keep and maintain such transformers and utility structure (and any associated cabling to and from the Premises and other elements of electrical infrastructure as shall be necessary to provide electrical service to the Premises) at such location.

## ARTICLE 7

### SECURITY

Section 7.01 Security. Tenant shall be solely responsible to provide, at its sole cost and expense, reasonable security at all Permitted Events, Permitted Event Support Activities and Tenant's Fundraising Events and Landlord shall have no responsibility or liability for such security. Landlord shall provide, and be responsible for, at Landlord's sole cost and expense, general security for the Premises and security for all Landlord Events and Fundraising Events, and such security by Landlord shall be reasonably sufficient for the Premises and similar to and no less extensive than the security for the remainder of the Park. Without limiting the generality of the foregoing, Landlord, as part of its overall security for the Park, shall provide, at Landlord's sole cost and expense, for public safety in the form of New York City Parks Enforcement Patrol ("PEP") officers or such successor security entity designated by Landlord. Tenant acknowledges that Landlord currently employs PEP officers to maintain public safety and security and enforce Park Rules and Regulations and other applicable laws at the Premises and throughout the Park, and Tenant agrees that it shall at all times abide by the directives of PEP officers acting in their official capacity (or officers of such successor security entity designated by the Landlord) and shall use commercially reasonable efforts to cause its employees, agents, concessionaires, vendors, contractors and invitees to obey such health and safety directives to the extent legally required; provided, however, that (i) except in emergencies where required to protect health or safety, such PEP officers and their directives shall not interfere with Permitted Events or Tenant's other operations permitted under this Lease, and (ii) in the event a PEP officer improperly interferes with Tenant's rights under, or issues directives that are inconsistent with the terms of, this Lease, if requested by Tenant Landlord shall promptly direct such PEP officer

(and advise all other PEP officers) to cease doing so and shall otherwise cooperate with Tenant in connection therewith. 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 for the Permitted Events, Permitted Event Support Activities and Tenant's Fundraising Events. Tenant shall be permitted, but shall have no obligation, to supplement Landlord's general security efforts as Tenant deems appropriate; provided that any such supplementation shall be coordinated with and be accomplished in a manner reasonably acceptable to Landlord and Tenant. Notwithstanding any provision hereof to the contrary, the security provided by Landlord shall cooperate with Tenant's security, and not interfere with any Permitted Events, Permitted Event Support Activities or Tenant's Fundraising Events, except as and to the extent necessary to maintain public safety and security and enforce applicable law and Park Rules and Regulations, subject to the limitations set forth in this Lease. Landlord and Tenant shall cooperate with each other and coordinate efforts with regard to security matters. The same safety and security standards shall apply to the Premises as apply to the remainder of the Park.

Section 7.02 Enforcement Option. At Tenant's option (in its sole discretion) and reasonable cost and expense, Landlord shall, subject to receiving a request therefor reasonably in advance from Tenant, unless PEP officers (or officers of such successor security entity designated by Landlord) are not available despite Landlord's reasonable best efforts, assign one or more PEP officers (or officers of such successor security entity designated by Landlord) to be stationed at the Premises or at such other location in the Park as selected by Tenant and reasonably acceptable to Landlord to, among other things, supplement other security at the Premises and to monitor activity in the vicinity of the Premises. At Tenant's option, Tenant's security will be the only security at Permitted Events and Landlord's security shall not interfere therewith, provided, however, that Landlord's security (whether PEP or a successor entity) may, in exigent circumstances, enter upon that portion of the Premises in which a Permitted Event is occurring to the extent necessary to maintain public safety and security and enforce applicable law.

## ARTICLE 8

### COORDINATION

Section 8.01 Coordination Meetings. The Parties agree that they shall ensure and arrange that appropriate senior staff members from both Landlord and Tenant shall meet no less frequently than quarterly to discuss programming and operations at the Premises. At such meetings, or more frequently if appropriate, the Parties shall keep each other reasonably informed with regard to developments that affect the Premises. Without limiting the generality of the foregoing, Landlord shall promptly notify Tenant, in writing, as to any material development with regard to the redevelopment or operation of Pier 57 and the Gansevoort Peninsula and any lease, license or other agreements related thereto, or any matters related to the Esplanade, that could have a material impact on the Premises. Landlord and its Representatives shall cooperate fully with Tenant in Tenant's operation of the Premises and in connection with Permitted Events and Tenant's Fundraising Events. If requested by Tenant, Landlord shall (and shall cause its Representatives to) exercise their best efforts to assist Tenant (at Tenant's reasonable cost) in its operation of the Premises and in connection with the Permitted Events and Tenant's Fundraising Events.

## ARTICLE 9

### USE OF PREMISES

The following provisions of this Article 9 shall apply only during the Post-Completion Term:

Section 9.01 Park Use. The Premises shall be used exclusively for Park Uses (including Permitted Events, Tenant Fundraising Events and Permitted Event Support Activities). Tenant shall provide and ensure public access to the Premises for Park Uses on a continuous basis, consistent with other public park areas of the Park, during Park Hours, in accordance with and subject to the terms and provisions of this Lease; provided, however, that:

(a) Tenant may temporarily limit access to portions or all of the Premises by the General Public (x) as may be necessary to perform or cause the performance of Permitted Event Support Activities and (y) to hold or conduct Permitted Events during Permitted Periods, in accordance with the following limitations:

(i) Limitations upon access to the Premises by the General Public in connection with Permitted Event Support Activities shall be only for so much of the Premises and for such period as shall be reasonably required in order for Tenant to perform or cause to be performed such Permitted Event Support Activities, and, to the extent deemed practicable and reasonable in Tenant's reasonable judgment, taking into account all factors related thereto, Permitted Event Support Activities shall occur outside of Park Hours or during periods of lower park usage by the General Public. In the event that transport of equipment or materials to the Premises or similar activities necessary as part of Permitted Event Support Activities require a limitation upon entry to the Premises by the General Public, such limitation upon entry shall only be for such period required for the activity, and entry to the Premises shall resume promptly upon completion of such activity; and

(ii) During a Permitted Event (and for a reasonable period of time before and after such Permitted Event in order to facilitate entry and exit by attendees) Tenant may limit access by the General Public to any portions of the Premises utilized for such Permitted Event (including the areas further described in Section 9.01(e)) in those instances where attendance at the Permitted Event requires attendees to have obtained, from Tenant or its designee, admission tickets, entry vouchers or pre-arranged entry permissions or authorizations for such Permitted Event.

(b) For Fundraising Events described in Section 9.06, Tenant may temporarily limit access by the General Public to the Premises in order to undertake such Fundraising Events, including support activities related thereto, in the same manner and subject to such limitations as are set forth above for a Permitted Event or Permitted Event Support Activities.

(c) In addition, Tenant may impose closures and reasonable restrictions on public access to portions or all of the Premises, if reasonably required to ensure public health, security or safety (including crowd control), or in connection with repairs, ordinary maintenance or capital maintenance, including, without limitation, landscaping, snow removal and repaving, and otherwise as customarily done by Landlord in other areas of the Park; provided, however, that such closures and restrictions shall be limited to areas reasonably required and for such periods of time as are reasonably necessary.

(d) Tenant shall provide advance notice to Landlord of closures and other material limitations on public access, including the details thereof, when such closures and other material limitations are scheduled by Tenant, and, if not scheduled in advance, as soon as practicable once the necessity therefor is known to Tenant (but not later than one (1) week prior to the date thereof except in the case of emergencies).

(e) For purposes of this Section 9.01, the portion of the Premises utilized for Permitted Events, which Tenant may temporarily limit access to the General Public in connection with such Permitted Events, shall include without limitation (i) the related stage, performance, seating and viewing areas; (ii) areas on which any related furniture, fixture or equipment is located, including, without limitation, any ticketing booths, concessions, Portosans or other temporary bathrooms or toilets, or recording, filming, broadcasting, logistics, transmission, distribution or other equipment; (iii) queuing areas and areas required for crowd circulation, pre-event assembly and site activation, post-event dispersion, storage, circulation during intermissions or events and before and after events, and similar event-related uses that are customary or typical for similar events; and (iv) other areas as necessary to ensure crowd control and assure public safety.

(f) The Interstitial Space depicted on Schedule 9.01(f) (and other service areas, if any) shall not (without Tenant's prior written consent in its sole discretion) be available for public access and is not subject to the terms or conditions for public access set forth herein, except to the extent required under the Americans with Disabilities Act to provide access for persons requiring reasonable accommodation.

In accordance with the provisions of this Section 9.01, Tenant shall use good faith to plan and execute Permitted Events, Permitted Event Support Activities and Tenant's Fundraising Events in such a manner as to minimize, to the extent practicable, the time and extent of closures of the Premises, or any portion thereof (other than the Interstitial Space depicted on Schedule 9.01(f), and other service areas, if any), during Park Hours and provided further, that Permitted Events that require closing the entire Premises during Park Hours to members of the General Public who are not attending such Permitted Events, other than closures specified above in Section 9.01(a) and Section 9.01(c) and other than Permitted Events that are un-ticketed or if ticketed 100% free to the public (which are not restricted hereby), shall not occur more than four times on average in any month per year, with a limit of no more than five times a month if necessary.

Section 9.02 Number of Permitted Events. Tenant shall be required to produce, arrange, organize, sponsor or coordinate Permitted Events (other than Fundraising Events) that take place on at least twenty-one (21) days per annum during each calendar year of the Post-Completion Term ("Minimum Permitted Events"), such Minimum Permitted Events to be

prorated for each of the first and last calendar year of the Post-Completion Term. Tenant may produce, arrange, organize or coordinate Permitted Events (other than Passive Permitted Events) that take place on up to but not more than a maximum of six (6) days per week on average during the Season (the “Maximum Limitation”). Tenant agrees further that there shall be no Permitted Events (other than Passive Permitted Events) on at least four (4) days during each calendar month of the Season, except for a period during each Season of up to eight (8) consecutive weeks during which, at Tenant’s election, the Central Space and the Southern Space may be used solely for Permitted Events (the “8 Week Period”), provided that during such 8 Week Period, festivals and exhibits shall be open to the general public on an unticketed basis on no less than an average of four (4) days per calendar month and will not be considered a scheduled Permitted Event. For the avoidance of doubt, there shall be no Maximum Limitation applicable during (i) any 8 Week Period, and (ii) the “off-season,” to wit, the months of January, February, March, November and December (the “Off-Season”) of each calendar year during the Post-Completion Term. Tenant may maintain equipment in the Central Space that is required for one or more Permitted Events, including lighting, sound equipment, an open tent (that does not obstruct access to the Central Space), marquee or temporary stage, provided that (x) such equipment maintained in the Central Space shall not be maintained there for a period longer than eight consecutive weeks (with Tenant trying to avoid such eight weeks taking up all of July and August to the extent reasonably permitted by the schedule for Permitted Events) and (y) such equipment shall be positioned to the extent reasonably practicable so as to allow for access by the general public to such portion of the Central Space as is not used by the above equipment. Subject to the Maximum Limitation and the requirements of Section 9.10 with regard to Landlord Permitted Programming, the number and duration of Permitted Events shall be determined by Tenant in its sole discretion.

Section 9.03 Free and Low Cost Permitted Events. Prior to the commencement of each Season, Tenant will create and provide to Landlord written policies for low-cost tickets, including those for students and seniors, which are consistent with other not-for-profit cultural organizations in New York City. In formulating and carrying out such policies, it is agreed that no fewer than fifty-one percent (51%) of the Permitted Events held during each Season shall be made available to the general public by Tenant either (x) without need to have obtained an admission ticket, entry voucher or pre-arranged entry permission or authorization or (y) if an admission ticket, entry voucher or pre-arranged entry permission or authorization is required, then on a free or low-cost basis, and such fifty-one percent (51%) open-entry or free or low-cost Permitted Events shall be reasonably distributed across each Season (and the Parties agree that at least half of the 51% of Permitted Events which are required to be made available to the general public on such free or low cost basis hereunder shall be made available to the general public completely free). If Tenant holds Permitted Events during an Off-Season, no fewer than fifty one percent (51%) of the aggregate number of Permitted Events held during such Off-Season and the Season immediately succeeding such Off-Season shall be made available to the general public by Tenant on a free or low-cost basis (Tenant’s obligation to offer such free or low-cost basis attendance opportunities, the “OEFLC Obligation”). Landlord understands and agrees that Tenant or its designees may sell seats or tickets to, or otherwise charge for, all other Permitted Events (i.e., forty-nine percent (49%) of Permitted Events) on such basis as it shall determine to be appropriate, provided that (i) all Permitted Events that take place in the Southern Space will be free, and (ii) such 49% of Permitted Events shall be made available to the general public at market prices for comparable events in New York City. Following the end of each Season, within a reasonable period after the Permitted Event data for such Season becomes available,

Tenant shall provide Landlord with a written report specifying, in reasonable detail, the dates and approximate number of attendees at the Permitted Events (and the breakdown of which dates had free and low-cost basis opportunities provided at the Permitted Events) held during the twelve (12)-month period immediately preceding the end of such Season.

Section 9.04 Passive Permitted Events. The Maximum Limitation shall not apply to Permitted Events that consist of a Farmers Market or similar activity, art displays, installations or other exhibitions that do not require any additional limitation of access by the General Public to the Premises beyond the limitations contemplated by Section 9.01 (such Permitted Events, the “Passive Permitted Events”). Should Tenant desire that any Passive Permitted Event remain in place during any Landlord Permitted Programming, then such Passive Permitted Event may so remain, except that Tenant shall be required to obtain the prior written consent of Landlord therefor, such consent not to be unreasonably withheld or delayed, Landlord hereby agreeing that such consent will be granted unless: (a) Landlord is required to incur material additional expense in preparing or setting up for or performing or dismantling any Landlord Permitted Programming because of the presence of such Passive Permitted Event and Tenant does not agree to reimburse Landlord for such additional expense, (b) such Passive Permitted Event materially obstructs or interferes with or creates an unsafe condition for the general public attending Landlord Permitted Programming, or (c) the presence of such Passive Permitted Event during Landlord Permitted Programming would cause a violation of any applicable laws, rules or regulations, the consequence of which would prohibit the performance of Landlord Permitted Programming. Tenant may, at its sole cost and expense and at its option, provide security to protect any Passive Permitted Event that will remain on the Premises during any Landlord Permitted Programming; provided that such security does not unreasonably interfere with the conduct of Landlord Permitted Programming, including ingress and egress of the public to and from Landlord Permitted Programming, or create an unsafe condition for the public attending Landlord Permitted Programming.

Section 9.05 Non-Profit; Permitted Costs. Notwithstanding any provision hereof to the contrary, any and all revenues derived by Tenant through ticket sales, fees, royalties, concessions, charges or Fundraising Events or through any other means shall be used solely to pay or offset the Permitted Costs. In no event shall any such revenues be used for any other purposes whatsoever, it being the intent of Tenant to operate as a not-for-profit corporation exempt from federal income tax under Code Section 501(c)(3) (whether classified as a private operating foundation described in Code Section 492(j)(3), a private foundation described in Code Section 509(a), or a public charity) described in Code Section 509(a)(1) or (2)) and to not utilize any revenues generated hereunder for purposes other than the Permitted Costs.

Section 9.06 Tenant’s Fundraising Events. During the Season in each calendar year during the Post-Completion Term, Tenant shall have the right to hold up to, but not more than, four (4) large Fundraising Events at the Premises that utilize most or all of the Premises to raise money to pay for Permitted Costs (including the costs and expenses of Permitted Events and Fundraising Events); provided that any revenues from such events shall be utilized solely to pay the Permitted Costs and that advance notice of all such Fundraising Events shall be given to Landlord and the Friends of Hudson River Park Trust, with the Parties to coordinate efforts and cooperate on such Fundraising Events and fundraisers reasonably and in good faith. In addition to the foregoing, Tenant shall also be permitted to hold smaller Fundraising Events on the

Premises each calendar year that (x) are held in the Interstitial Space or (y) do not require closing any part of the Premises to the General Public. Fundraising Events shall be scheduled in accordance with Section 9.11, and shall be subject to Landlord's right of cancellation as set forth in Section 9.09; provided that Tenant shall endeavor to provide notice of such smaller Fundraising Events to Landlord no later than one (1) week prior to the date thereof.

Section 9.07 Royalties. Tenant shall pay for any and all fees or royalties due to the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., or such other similar entities or other parties as may be required for any music, film or other programming utilized during Permitted Events or Tenant's Fundraising Events, and Landlord shall pay for any such fees or royalties relating to Landlord Permitted Programming or Landlord's Fundraising Events. Neither Party shall have any liability for the obligation of the other Party under this Section 9.07.

Section 9.08 Artistic and Programming Control. Tenant shall have the sole artistic and programming control and sole administrative and operating control over all Permitted Events and all of Tenant's Fundraising Events. Notwithstanding any other provisions of this Lease, no use of the Premises by any Person (other than by Tenant and its designees and other than passive and active open space recreation use of the Premises by the General Public, subject to the terms of Section 9.01 hereof), and no program or event of any kind, shall be permitted at the Premises, without Tenant's prior written consent in each instance, except that Landlord Permitted Programming and Landlord's Fundraising Events shall be permitted as provided in Section 9.10. Other than Landlord Permitted Programming and Landlord's Fundraising Events expressly permitted hereunder, Tenant shall have the sole and exclusive right to manage, maintain (subject to the provisions of Article 15), program and operate the Premises. Landlord shall, and shall cause all employees, contractors and other Representatives of Landlord, including security and maintenance personnel and contractors, to cooperate with Tenant in its operation of the Premises and with regard to the foregoing, including Tenant's enforcement of all reasonable practices and procedures established by Tenant for the Permitted Events or Tenant's Fundraising Events. Landlord shall have no liability for, and Tenant shall be solely responsible and liable for, Tenant's administrative and managerial operations and procedures and shall determine, in the discretion of Tenant's board of directors, where it might locate any back office or other support facilities that are not at the Premises, how it plans to raise funds, what its budget will be, how it will be staffed and managed (including terms of employment and compensation arrangement), Tenant's operational structure or the creation of any subsidiaries or affiliates, and all other operational and structural decisions, subject in all cases to the constraints that it must be operated as a not-for-profit corporation exempt from federal income tax under Code Section 501(c)(3) (whether classified as a private operating foundation described in Code Section 4942(j)(3), a private foundation described in Code Section 509(a), or a public charity described in Code Section 509(a)(1) or (2)) and that all revenues it receives must be used to pay Permitted Costs. For avoidance of doubt, nothing in this Lease shall limit (w) the manner in which Tenant may compensate its staff, officers or directors, (x) Tenant's other arrangements with such parties (which might include, by way of example, royalty or license arrangements for their work or paying for their services, productions or intellectual property, or working with them to generate for Tenant royalties, fees or profits from productions or works created by or for Tenant, including through co-productions or co-investment in new or offsite productions or reproductions), (y) other commercial exploitation of any productions, works, property or rights



of Tenant (either through creation of a commercial subsidiary or by entering into licensing or royalty arrangements, investment arrangements, joint ventures or other means), or (z) establishment of an affiliated not-for-profit corporation exempt from federal income tax under Code Section 501(c)(3) and classified as a public charity described in Code Section 509(a)(1) or (2) (if necessary or desirable for structuring or similar purposes) in order to raise funds for productions (including at Fundraising Events) and to conduct such productions at the Premises, *so long as, in all such cases*, any revenues, proceeds or profits received by Tenant are used solely to pay Permitted Costs and Tenant complies in all respects with the laws and regulations applicable to a not-for-profit corporation exempt from federal income tax under Code Section 501(c)(3) (whether classified as a private operating foundation described in Code Section 4942(j)(3), a private foundation described in Code Section 509(a), or a public charity described in Code Section 509(a)(1) or (2)).

Section 9.09 Landlord's Right to Cancel. Landlord expressly reserves the right, acting reasonably and in good faith and with as much advance notice to Tenant as practicable in the circumstances, to require Tenant to cancel any Permitted Event, solely in cases of (a) material threat to public safety or (b) other public safety emergency. The exercise of the right of cancellation by Landlord shall be further conditioned upon (i) Landlord's, acting by and through its Chairperson or President (or the functional equivalent of such persons), having first delivered a notice in writing and telephonically to the Chairperson or President of Tenant (or the functional equivalent of such persons) of its intent to exercise its right to reasonably and in good faith cancel a Permitted Event pursuant to this Section 9.09, which shall, with particularity, explain the material threat to public safety or other public safety emergency, as applicable, and (ii) except in exigent circumstances where there is a threat to human life that requires immediate cancellation, Landlord's meeting with Tenant in person (it being understood and agreed that Tenant and Landlord shall use their respective reasonable best efforts to expeditiously facilitate and attend such meeting) in order to discuss more fully the nature of the material threat to public safety or other public safety emergency, as applicable, and reach an accommodation which, in the Parties' reasonable judgment, will sufficiently address and mitigate such material threat to public safety or other public safety emergency. Except in the case of exigent circumstances where there is a threat to human life that requires immediate cancellation, no cancellation by Landlord of any Permitted Event or any Tenant's Fundraising Event shall be effective until the Parties have so met and exercised their respective reasonable best efforts to reach such an accommodation in good faith.

Section 9.10 Landlord's Right to Conduct Events at the Premises. Landlord reserves the right, solely during each Season in the Post-Completion Term (it being agreed that no Landlord Permitted Programming or Landlord's Fundraising Events shall be conducted during the Off-Season without Tenant's prior written consent, which consent shall not be unreasonably withheld), to conduct and/or allow to be conducted at the Premises: (a) subject to Section 9.11(b), Landlord Events and Pier 57 Extra Events that in the aggregate utilize up to, but no more than, twenty-one (21) days during such Season (it being understood and agreed that (x) such maximum number shall be pro-rated for each of the first and last Season of the Post-Completion Term and (y) such maximum number may be exceeded with Tenant's prior written consent pursuant to Section 9.11(c), such maximum number for such calendar year as determined pursuant to clauses (x) and (y) of this Section 9.10, the "Landlord Events Limit"), and (b) up to, but no more than, two (2) Fundraising Events during any calendar year in the Post-Completion

Term for the benefit of Landlord and the Park, including the Premises (such events collectively, and together with the Landlord Events and the Pier 57 Extra Events (as hereinafter defined) (excluding the TFF), the “Landlord Permitted Programming”; and such maximum number of fundraising events together with Landlord Events Limit, the “Landlord Programming Limit”). Landlord acknowledges and agrees that the preparation, set up, dismantling, breakdown and cleanup relating to any Landlord Permitted Programming or Landlord’s Fundraising Event, in addition to Landlord Permitted Programming or Landlord’s Fundraising Event itself, shall not interfere or conflict with and must be scheduled for dates and times that do not interfere or conflict with or otherwise adversely affect Tenant’s operation of the Premises, any Permitted Events or Tenant’s Fundraising Event. Without limiting the generality of the foregoing, (A) after each such Landlord Permitted Programming or Landlord’s Fundraising Event, Landlord shall leave the Premises in no worse condition or repair than it was in immediately prior to setup for such event and (B) Landlord shall cause the dismantling, breakdown and cleanup relating to each such event to be completed as soon as reasonably practicable (and in no event later than twenty-four (24) hours) after such Landlord Permitted Programming or Landlord’s Fundraising Event, as applicable. In addition to, and not in limitation of, the foregoing, Landlord Permitted Programming shall be managed by Landlord such that it adheres to the public access, payment of royalties, concessionaires and prohibition on unlawful or prohibited use sections of this Article 9, in each case, as applicable and deeming and construing (1) the obligations that apply to Tenant and Permitted Events as applying to Landlord and Landlord Permitted Programming, respectively, and (2) any Landlord consent required with respect to any such obligation as a consent required from Tenant. Landlord acknowledges and agrees that in no event shall any Landlord Permitted Programming or Landlord’s Fundraising Event or other activity involve or interfere with Tenant’s fixtures or equipment within the Amphitheatre, which Tenant may maintain in the Amphitheater throughout the Season, without Tenant’s prior written consent in Tenant’s sole discretion. Revenue generated by all Fundraising Events sponsored by Landlord and concessionaires licensed or permitted at the Premises by Landlord shall be used solely to pay for Landlord’s costs in connection with the operations of the Park, which shall include the Premises.

Section 9.11 Scheduling. The Parties shall collaborate, in good faith, to accommodate each other’s scheduling priorities whenever practicable, consistent with the following provisions of this Section 9.11:

(a) Not later than six (6) months prior to the commencement of each Season, Tenant shall provide to Landlord a schedule for Permitted Events and Tenant’s Fundraising Events for such Season (the “Tenant’s Advance Schedule”) (it being understood and agreed that Tenant may block off in Tenant’s Advance Schedule and in the Master Schedule the full number of days to which it is entitled during such Season pursuant to Section 9.02, regardless of whether or not there is a confirmed Permitted Event or Tenant’s Fundraising Event scheduled for any such dates). Tenant’s Advance Schedule shall indicate the days reserved for the TFF Period during such Season (provided that Tenant has previously received timely notice thereof in accordance with the terms of this Lease) and the specific days remaining open during such Season (which shall be no less than four (4) days per month during such Season (except during any 8 Week Period, provided that during such 8 Week Period, festivals and exhibits shall be open to the general public on an unticketed basis on no less than an average of four (4)

days per calendar month, subject to the terms of Section 9.02 hereof), and which shall include three (3) consecutive days during March or April and three (3) consecutive days in October) (such specific days remaining open during the Season and any and all days during the Off-Season for which Landlord has obtained Tenant's prior written consent to conduct Landlord's events or activities on such days, collectively, "Landlord Available Days").

(b) No later than five (5) months prior to the commencement of each Season, Landlord shall provide to Tenant a schedule for events which comprise Landlord Permitted Programming for such Season, which events must be scheduled on and occur on Landlord Available Days ("Landlord's Advance Schedule"). Subject to this Section 9.11(b), Landlord (i) shall only schedule Landlord Permitted Programming or Landlord's Fundraising Events on Landlord Available Days and (ii) shall neither (A) schedule any Landlord Permitted Programming or Landlord's Fundraising Events on any dates or times that interfere, conflict or compete with any Permitted Event, Tenant's Fundraising Events or Permitted Event Support Activity (e.g., events shown on Landlord's Advance Schedule shall not occur on days when they would be reasonably likely to interfere with any Permitted Event, Tenant's Fundraising Event or Permitted Event Support Activity shown on Tenant's Advance Schedule), nor (B) include an aggregate number of Landlord Permitted Programming and Landlord's Fundraising Events for such Season that exceed the Landlord Programming Limit. Landlord may, in its sole discretion, elect to reserve the Premises (but only on a Landlord Available Day) for Landlord Permitted Programming, even though such event may take place at the Pier 57 Roof and be conducted thereon by a Pier 57 Tenant rather than by Landlord (such event, conducted by Landlord or by a Pier 57 Tenant, a "Pier 57 Extra Event"). Each day on which any Pier 57 Extra Event is scheduled or occurs at the Pier 57 Roof (x) shall be counted against the Landlord Programming Limit and (y) shall be scheduled in accordance with this Section 9.11(b) solely on Landlord Available Days. Pier 57 Extra Events shall count against Landlord's Available Days in the same manner as other Landlord Permitted Programming. Tenant's Advance Schedule and Landlord's Advance Schedule, once exchanged, shall be combined and maintained by Tenant as the "Master Schedule" and regularly updated and maintained thereafter by Tenant as a calendar reasonably accessible to Landlord. If Tenant determines (in its sole discretion) after Tenant establishes the Master Schedule that, for any reason, it will not require a date allocated to it in the Master Schedule, then Tenant shall promptly notify Landlord that it is releasing such date and, with Tenant's prior written (including, e-mail) approval (in its sole discretion), Landlord will be free to utilize such date in a manner that is reasonably acceptable to Tenant. If Landlord determines after Tenant establishes the Master Schedule that, for any reason, Landlord will not require a date allocated to Landlord in the Master Schedule, then Landlord shall promptly notify Tenant that it is releasing such date and, subject to the Maximum Limitation, Tenant will be free to utilize such date. Landlord may also, with the prior written (including, e-mail) consent of Tenant (in its sole discretion), utilize any date not allocated to either Party on the Master Schedule and, subject to the Maximum Limitation, Tenant may also utilize any such date. Any conflicts with respect to any such date shall be resolved in favor of Tenant. Landlord understands and agrees that dates shown on the Master Schedule as dates of or blocked off by Tenant

shall remain dates solely available to Tenant (regardless of whether or not there is a confirmed Permitted Event or Tenant's Fundraising Event scheduled for such date) and no such date shall be an open date unless and until Tenant releases such date in writing pursuant to this Section 9.11(b). Without Tenant's prior written (including e-mail) consent (in its sole discretion), other than as expressly permitted under Section 9.10, Landlord shall not schedule or hold any Landlord Permitted Programming or Fundraising Events at the Premises at any time during any calendar year during the Term.

(c) In order to coordinate security and other functions, Tenant and Landlord shall meet as required and at least once per month (either in person or telephonically) during the year to discuss details regarding each Party's upcoming events, including for each such event, to the extent such information has been developed and is available: (i) the type of event (i.e., the nature of the event from among those listed in the definition of Permitted Events, including whether the Permitted Event is a Passive Permitted Event); (ii) which event space it will occupy (or whether it will take place on a portion of the Premises other than an event space); (iii) the dates for, and duration of, the event; (iv) the approximate hours during the day that the event is expected to be conducted; (v) the name of the performance and the headline performer; and (vi) the general nature and extent of the pre-event preparation, installation and setup and the post-event breakdown, disassembly, removal, repairs and cleanup, and other support activities relating to and arising out of the event (clauses (i) through (vi) of this Section 9.11(c), together, the "Schedule Elements"). Each Party understands and agrees that the Schedule Elements provided to it by the other Party are provided for coordinating purposes only and shall not be binding upon the other Party and may be amended at any time and from time to time by the other Party, in such other Party's sole discretion, so long as such amendment is in accordance with the terms and conditions of this Lease, including the scheduling provisions of this Section 9.11; provided that each Party shall use reasonable best efforts to inform the other Party of material changes to the Schedule Elements for such Party's events.

(d) Each of Tenant and Landlord shall also inform the other Party, as soon as reasonably practicable after either obtains actual knowledge of any construction, maintenance, repair, off-Premises event or condition, which is likely to impede the other Party from utilizing a date on the Master Schedule or which may otherwise impact the conduct of a Permitted Event, Fundraising Event or Landlord Permitted Programming. To the extent practicable, such information shall also be placed on the Master Schedule.

Section 9.12 Concessions. Tenant shall have the right, subject to applicable law and the limitations set forth herein, to operate concessions on the Premises, to license or otherwise permit concessionaires to operate on the Premises, and to otherwise generate concession revenues on the Premises (including, through the sale of food, beverages and merchandise related to Permitted Events or Tenant's Fundraising Events) and shall have the right to conduct or permit Farmers Market or similar activities at the Premises, subject to applicable law. During days on which there are no Permitted Events or Tenant's Fundraising Events, Tenant may allow up to four (4) food trucks or other food vehicles, mobile vending carts, venues for the sale of merchandise related to Permitted Events, ice cream sales facilities, venues for the sale of food

and beverages (alcoholic and non-alcoholic), booths or other concessions (each, a “Concessionaire Unit”) to operate on the Premises; provided that (x) all such Concessionaire Units shall be of an appearance and size reasonably appropriate to their surroundings, (y) the location of Concessionaire Units and Farmers Market shall not unreasonably interfere with or obstruct Landlord Events, and (z) the Parties may, acting reasonably and in good faith and considering all relevant circumstances, mutually agree that Tenant may allow more than four (4) Concessionaire Units on the Premises during such days. During Permitted Events and Tenant’s Fundraising Events (and for reasonable periods of time before and after such events), Tenant may allow such number of Concessionaire Units on the Premises as may be reasonably sufficient or appropriate to service the anticipated number of attendees at the Permitted Events or Tenant’s Fundraising Events, as applicable, without regard to the limitations imposed during days when there are no Permitted Events, provided that the number of Concessionaire Units at any Permitted Event shall be proportionate to the scale of such Permitted Event, as reasonably determined by Tenant. For the avoidance of doubt, any vendors participating in a Farmers Market shall not constitute a Concessionaire Unit hereunder. Any and all revenues received by Tenant from Concessionaire Units or otherwise shall be used solely to pay Permitted Costs.

Section 9.13 Pier 57; Other Surrounding Areas.

(a) During (i) the fourteen (14)-day TFF Period of each calendar year during the Post-Completion Term, if and when either the Tribeca Film Festival substantially in its current form (the “TFF”) or a generally comparable or similar substitute event in such calendar year for the TFF (a “TFF Alternative”) is conducting its programming on the Pier 57 rooftop, as such contemplated rooftop area is shown in the Pier 57 Redevelopment Project attached hereto as Schedule 1.01(e) (the “Pier 57 Roof”), or (ii) such days and times when the Master Schedule allocates to Landlord a Landlord Available Day for Landlord Permitted Programming to be held on the Pier 57 Roof (each, a “Pier 57 Allocated Event”), Tenant shall not use the Premises for any Permitted Event or Tenant’s Fundraising Event that generates “plainly audible sound” within the meaning of New York City Local Law No. 113 (such noise generation as applicable to specific location where audible, a “Noise Effect”) that can be heard at the Pier 57 Roof. Correspondingly, on all days and times other than (x) during the TFF Period or (y) any specific date and time when the Master Schedule provides that a Pier 57 Allocated Event is to be held, Landlord shall not permit any event (including any events that would qualify as Permitted Events if held at the Premises) or any other use of the Pier 57 Roof (including the roof of the “head house”) by Landlord’s tenant or licensee of Pier 57 (the “Pier 57 Tenant”) or any third-party licensee, subtenant, or other Person, if such event or other use generates, or is reasonably expected to generate, a Noise Effect that can be heard at the Premises (such actual or reasonably anticipated Noise Effect, a “Pier 57 Noise Violation”). The foregoing restrictions on Noise Effects shall not apply to or restrict noise generated by general public use of the Pier 57 Roof or the Premises that is unrelated to an organized event and that does not involve amplified music or other amplified sound; provided that the Parties shall cooperate reasonably with each other, and Landlord shall cause the Pier 57 Tenant to cooperate reasonably with the Parties, to try to reduce such noise or any other noise emanating from Pier 57 or other areas to the extent that it interferes with any Permitted Event, Tenant’s Fundraising Event, or Pier 57 Allocated Event or violates the Park Rules and Regulations relating to noise.

(b) Landlord shall reserve to itself such rights in connection with the leasing or licensing of Pier 57 as to enable Landlord to take appropriate action to constrain and regulate the activities of the Pier 57 Tenant so as to enable Landlord to prevent, or impose appropriate remedies against, the Pier 57 Tenant for a Pier 57 Noise Violation or other violation of the terms of this Section 9.13. Landlord hereby further covenants to assert and enforce such reserved rights against the Pier 57 Tenant in the event Tenant demonstrates the existence (or the reasonably anticipated existence) of a Pier 57 Noise Violation or other violation of this Section 9.13. The lease with the Pier 57 Tenant shall (w) prohibit any and all Pier 57 Noise Violations (except during the TFF Period) and any and all nightclubs at Pier 57, (x) include a covenant by Pier 57 Tenant that Pier 57 Tenant shall not initiate or cause any action whatsoever to prevent or discontinue a Noise Effect at Pier 57 (other than as expressly set forth in Section 9.13(a) with respect to the TFF, TFF Alternative and Pier 57 Allocated Event) that may be caused directly or indirectly in whole or in part by a Permitted Event, (y) include an acknowledgement by the Pier 57 Tenant that, in addition to Park Uses by the general public, the Premises is intended to be used for concerts, performances, shows and other Permitted Events on a regular basis and that neither Tenant nor any of its Representatives has any obligations whatsoever to prevent or discontinue a Noise Effect at Pier 57 (other than as expressly set forth in Section 9.13(a) with respect to the TFF, TFF Alternative and Pier 57 Allocated Event), and (z) identify Tenant as an express third-party beneficiary of such provision with right of enforcement, by inclusion in such lease of a provision in the form of Schedule 9.13(b) hereto (the “P57 Lease Provision”). Upon execution of such lease for Pier 57, Landlord shall deliver a true and complete copy of such lease, including the P57 Lease Provision. Upon notice from Tenant of the occurrence of a Pier 57 Noise Violation or other violation of this Section 9.13, Landlord shall promptly, as soon as practicable but in no event more than twenty-four (24) hours after its receipt of notice from Tenant, exercise and diligently pursue such enforcement rights that it has reserved to itself; provided, however, that if the circumstances require quicker action by Landlord, then Landlord shall exercise its reasonable best efforts to take action sooner. By way of example and not limitation, Landlord shall, upon Tenant’s request, take immediate action to stop any imminent or actually occurring Pier 57 Noise Violations that are or are threatening to interfere with a Permitted Event, and if Landlord shall fail to do so then Tenant shall be free to do so on Landlord’s behalf. In the event that Landlord fails to exercise its enforcement rights promptly within such periods and/or fails thereafter to diligently pursue its enforcement rights, then Tenant shall be entitled, in addition to its other rights at law or in equity, to immediately apply to a court of competent jurisdiction for a mandatory injunction to enforce its rights and shall have the right, but not any obligation, to take such action in its own name as third-party beneficiary, to the extent of all of the rights of Landlord under its lease with the Pier 57 Tenant to prevent the occurrence of a Pier 57 Noise Violation and to seek damages therefor. Landlord shall ensure that Tenant shall have the right to seek damages and obtain monetary relief from the Pier 57 Tenant for any violation of the provisions of its lease as to which Tenant is a third-party beneficiary, and Landlord shall cooperate with Tenant in such regard. Notwithstanding the foregoing, Tenant shall be obligated to indemnify and hold Landlord harmless from and against all liability, loss or damage, including, without limiting the foregoing, reasonable attorneys’ fees and disbursements, that Landlord may suffer solely by reason of Tenant’s effort to enforce such third-party beneficiary rights conferred by such lease for Pier 57 if such enforcement by Tenant is conducted wrongfully or improperly. Landlord shall also include in the P57 Lease Provision and enforce, as applicable, one or more provisions in the lease with the Pier 57 Tenant with respect to the

Post-Completion Term (i) which, if a marina shall be constructed or is present on the southern water portion of the Pier 57 leased premises, shall prohibit the Pier 57 Tenant from allowing amplified music or other amplified sounds to emanate from such marina that may cause a Noise Effect at the Premises during periods in which Tenant is undertaking Permitted Events or Fundraising Events, and (ii) which, if Construction Work or any other construction activity is undertaken by or on behalf of the Pier 57 Tenant on the exterior (including the marina and the perimeter walkway) or rooftop of Pier 57, shall (A) prohibit such construction from taking place after 6:00 p.m., New York City time, during which Tenant is undertaking a Permitted Event or Fundraising Event, or (B) obligate the Pier 57 Tenant to mitigate noise from such construction and thereby avoid the Noise Effect at the location of the Permitted Event or Fundraising Event at the Premises, or minimize such Noise Effect to a degree reasonably acceptable to Tenant. Landlord shall in all events not use, or permit the marina area of Pier 57 (as shown in the Pier 57 Redevelopment Project) to be used, for any purpose other than as a marina, and shall not allow (and shall establish rules and regulations that prohibit) any Noise Effect at the Premises from such marina during any Permitted Events or Fundraising Events.

(c) Without limitation of the foregoing provisions of this Section 9.13, Landlord shall, with respect to the Post-Completion Term, and upon receipt of notice from Tenant, consult, in good faith, with Tenant, provide reasonable cooperation to Tenant, and exercise reasonable efforts, considering all circumstances, to comply with Tenant's request to protect Permitted Events and Fundraising Events from being adversely affected by a Noise Effect or other nuisances or interferences caused by, or which may be caused by, evening (*i.e.*, after 6:00 p.m., New York City time) construction work or other construction activity, amplified music or sounds or other nuisances or interferences emanating from the marina, or use of the Pier 57 Roof (other than daily open space use by the general public) by the Pier 57 Tenant or any other Person at Pier 57 or other portions of the Park.

(d) In the event that the City undertakes construction of a municipal facility at the Gansevoort Peninsula during the Post-Completion Term, at which location evening or weekend construction work or other construction activity may occur during periods in which Tenant is scheduled to conduct or hold (or is conducting or holding) Permitted Events or Fundraising Events, then Landlord shall, upon receipt of notice from Tenant, request of the City that such evening (*i.e.*, after 6:00 p.m., New York City time) or weekend construction work or other construction activity not take place, or be restricted such that no Noise Effect is created at the Premises during such scheduled periods, it being recognized and acknowledged by the Parties that Landlord does not have the right or ability to cause the City to so modify its intended construction activity and that therefore Landlord's request of the City in such respect shall be supplicatory in nature.

(e) Landlord shall, during the Term of this Lease, require any future lessee of Pier 57 to enter into a Cooperation Agreement with Tenant and Landlord pursuant to which such lessee(s) shall acknowledge and agree to the terms hereof substantially in the form annexed hereto as Schedule 9.13(e).

**Section 9.14** Requirements for Conduct of Business. Acknowledging that Tenant is primarily responsible for obtaining all Authorizations and Filings for the Permitted Events and Tenant's Fundraising Events, Landlord will reasonably assist and cooperate with Tenant (at

Tenant's reasonable cost and expense), including by executing all applicable documents, so that Tenant may obtain and maintain, in full force and effect, the Operating Permits and other Authorizations and Filings imposed or mandated by any Governmental Authority in connection with Tenant's use of the Premises (including, but not limited to, for the Permitted Events, Tenant's Fundraising Events, the Concessionaire Units and for Tenant to obtain utilities for the Premises pursuant to Section 6.01). To the extent that there are any such Authorizations and Filings that are available to Landlord but not to Tenant, upon Tenant's reasonable request, Landlord shall use reasonable best efforts to obtain such Authorizations and Filings for the benefit and use of Tenant and at the reasonable costs and expense of Tenant. Landlord shall obtain (at its own costs and expense) any and all such Authorizations and Filings imposed or mandated by any Governmental Authority in connection with or related to Landlord Permitted Programming or Landlord's Fundraising Event. In addition, Tenant shall, at all times, adhere to the Park Rules and Regulations as set forth on Schedule 1.01(d) to the extent they are consistent with the terms of this Lease. Landlord hereby confirms that the rights granted to Tenant in this Lease, including the rights to hold Permitted Events and Tenant Fundraising Events, are consistent with such Park Rules and Regulations and all other rules and regulations applicable to the Park as of the date hereof, and that to the extent of any inconsistency, Landlord hereby grants Tenant a variance and waiver therefrom. In the event of any conflict or inconsistency between rules and regulations of the Park as in effect on the date hereof and any of the terms of this Lease, the terms of this Lease shall control. Landlord shall confer in good faith with Tenant prior to initiating or approving any changes to the Park Rules and Regulations or Lease Rules and Regulations that may have any adverse effect on the Premises or Tenant's operation at the Premises. In the event the Park Rules and Regulations or Park Hours are applied or changed in a manner that conflicts or is inconsistent with the terms of this Lease or which interferes with Tenant's use and enjoyment of the Premises as intended hereby, including, without limitation, through any interference or adverse effect on any Permitted Event (any such change, an "Adverse Change"), Landlord shall be in default hereunder and Tenant shall be entitled to seek legal and equitable relief, including under Article 78 of New York Civil Practice Laws and Rules to invalidate such Adverse Change and to recover damages (other than consequential damages as set forth in Section 28.03 hereof) therefor. While Landlord has advised that it is not permitted to contract away its statutory rights to change the Park Rules and Regulations or Park Hours, the intent of this Lease is for Landlord not to allow Adverse Changes and to be liable therefor if they occur. It is further understood that any such changes in Park Rules and Regulations or Park Hours will apply throughout the Park and that there will be no such changes that apply only to the Premises. Landlord hereby grants Tenant any and all permits that might be required for the Permitted Events or Tenant Fundraising Events under Section 751.7(d)(3) or the other provisions of the Park Rules and Regulations, and further hereby grants any and all approvals, consents, variances and waivers required for Permitted Events and Tenant Fundraising Events.

Section 9.15 Unlawful Use and Prohibited Use. Tenant shall not include in the Permitted Events or its other uses of the Premises, authorize the inclusion in any Permitted Events, or authorize the Premises or any part thereof to be used or occupied for, any unlawful, illegal activity that violates the Requirement or this Lease; provided, however, that the foregoing and the remainder of this Section 9.15 shall not apply to or restrict in any way Tenant's right to use the Premises for Permitted Events or Tenant's Fundraising Events. Neither Landlord nor Tenant shall keep, or authorize any Person to keep, on the Premises any article, object, item, substance or thing that is reasonably likely to cause material damage to the Premises or any part



thereof, or that may constitute a public or private nuisance, or any other article, object, item, substance or thing (e.g., an explosive device) that is prohibited from being on the Premises by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises. Promptly, upon the discovery of any unlawful, illegal, hazardous, or prohibited business, use or purpose of or on the Premises, the Party responsible for such use, business or purpose (or if no Party is responsible therefor, Landlord) shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Notwithstanding the foregoing, as and to the extent permitted under applicable law, Tenant shall (after obtaining any applicable Authorizations and Filings) have the right, after reasonable consultation with Landlord and the consideration of Landlord's views, in good faith, during any calendar year during the Post-Completion Term, to use fireworks and pyrotechnics on the Premises solely in connection with Permitted Events, and Landlord hereby specifically consents to such use as and to the extent permitted under applicable law and for all purposes under the Park Rules and Regulations. As reflected in the Concept Design, the maximum capacity for programming for any Permitted Event at the Premises will be 3,200 attendees.

Section 9.16 Vehicles. During the Post-Completion Term, except for vehicular access reasonably required or appropriate in connection with public health, safety or security, vehicular access to and on the Premises shall be limited to the use of vehicles as necessary for Permitted Events, Fundraising Events, Permitted Event Support Activities and maintenance, repair and construction activities undertaken pursuant to Article 15 or the other provisions of this Lease. The Parties will cooperate to create a plan delineating protocols for authorized vehicles needing access to the Premises that will minimize, to the extent reasonably practicable, interference with the public bike paths and walking paths, and shall provide such other information reasonably required by the Parties to ensure public safety and security. For purposes of the Project Construction Work, there shall be no restrictions on the use of vehicle on the Premises.

Section 9.17 Exclusive Rights. Subject to Landlord's right to hold Landlord Permitted Programming and Landlord's Fundraising Events as expressly permitted hereunder, in carrying out its responsibilities under this Lease, Landlord shall not permit any other Person to hold or conduct any events, programming or other similar activities on the Premises, including permitting any Concessionaire Units or similar uses at the Premises (it being agreed that Tenant shall have the exclusive right to do so). No performances or other events of any kind, other than Landlord Permitted Programming and Landlord's Fundraising Events, shall be held at the Premises without Tenant's prior written consent in its sole discretion.

Section 9.18 Esplanade. Landlord hereby grants the Esplanade Rights to Tenant for the length of the Term. Tenant shall have the right to use the Esplanade in accordance with the Esplanade Rights, and Landlord shall ensure that the Esplanade is open and available for such use during the Term. Landlord shall comply with and perform the terms of the Esplanade Rights set forth in the definition thereof. Landlord shall ensure that any and all portions of the Esplanade that are needed for access, ingress and egress to and from the Premises are open twenty-four (24) hours per day, seven (7) days per week to Tenant and its Representatives (and vendors for any and all deliveries commissioned by Tenant and its Representatives to and from the Premises), and by the general public during Park Hours. Landlord shall maintain and keep the Esplanade appropriately lighted and in good operating order, repair and condition and free

and clear from trash, debris, ice, snow, nuisances and obstructions (in all cases at least to the same level and standard as the esplanade alongside and in the rest of the Park). If Landlord fails to perform any of the foregoing, Tenant shall have the right (but not any obligation), after reasonable notice and right to cure, to do so, and Landlord shall reimburse the reasonable costs incurred by Tenant in so doing. Landlord shall use reasonable best efforts to schedule maintenance work on the Esplanade during the Off-Season and to limit any closures of accessways to the Premises. In the event the portion of the Esplanade adjacent to any single accessway to the Premises needs to be closed to perform necessary maintenance and repair, Landlord will ensure that access to the Premises shall be available through the remaining accessway.

## ARTICLE 10

### RIGHT OF ENTRY

Section 10.01 Landlord's Entry. Landlord's reserved rights under Section 2.01 include, upon such prior notice to Tenant which is practicable under the circumstances, the right to enter the Premises in the event of any exigent circumstances which in Landlord's reasonable judgment pose imminent security, health and safety risks to the general public. During any such period of entry, pursuant to Section 2.01 or this Section 10.01, Tenant or its designee may accompany the personnel entering the Premises.

Section 10.02 Non-Interference. Except in exigent circumstances (in which event Landlord shall use its reasonable best efforts to minimize such interference), no entry onto the Premises or any activity thereon pursuant to Section 10.01 or otherwise by Landlord or its Representatives shall interfere with Tenant's use or occupancy of the Premises or any Permitted Event or Permitted Event Support Activities. Landlord shall cause any and all such entry to be made and conducted in a reasonable manner under the circumstances and in cooperation and coordination with Tenant to the maximum extent practicable, recognizing Tenant's rights under this Lease and the importance of protecting the integrity of Permitted Events.

## ARTICLE 11

### INSURANCE INDEMNIFICATION

Section 11.01 Tenant's Insurance and Indemnity.

(a) During the Term, Tenant shall maintain reasonable and customary (i) commercial general liability insurance coverage against claims for personal and bodily injury, death or property damage, as set forth in Schedule 11.01 hereto, solely in connection with (x) the hosting of Permitted Events and Tenant's Fundraising Events and associated Permitted Event Support Activities, (y) the failure of Tenant to satisfy its obligations under Section 15.01 hereof with respect to the repair and maintenance of Tenant Maintenance Components, and (z) such other matters which may arise solely by reason of Tenant's occupancy and use of Premises pursuant to this Lease (expressly excluding, without limitation, all matters referred to in Section 11.02(b)), and (ii) worker's compensation insurance covering all persons employed by Tenant on or about the Premises (but excluding any persons employed by or acting on behalf of Landlord

pursuant to the Maintenance Services Arrangement or otherwise). Tenant shall have the right in its sole discretion, but not any obligation, from time to time to maintain (i) general liability insurance coverage for any and all additional matters affecting the Premises, and/or (ii) flood insurance and/or other casualty insurance covering any damage or destruction to those portions of the Premises with respect to which Tenant has been allocated maintenance responsibility pursuant to Article 15 hereof and identified in Schedule 11.01, and/or any damage or destruction to those portions of the Premises with respect to which Landlord has been allocated maintenance responsibility pursuant to Article 15 hereof and identified in Schedule 11.01. For the avoidance of doubt, any and all insurance which Tenant elects to maintain in its sole discretion shall not be deemed to be insurance which Tenant is required to maintain under this Article 11. Tenant shall also have the right in its sole discretion, but not any obligation, to insure any or all Trade Fixtures and Equipment located at the Premises.

(b) Tenant shall indemnify, defend and hold harmless Landlord, the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City, the New York City Department of Parks and Recreation and their officials, commissioners, employees and agents (hereinafter, collectively, the "Landlord Indemnitees") from and against all claims, liabilities, losses, damages, expenses, accidents and occurrences (including all reasonable attorneys' fees and other reasonable costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences) (collectively, "Damages") actually imposed upon or incurred or suffered by any such Landlord Indemnitee if and to the extent (but only if and to the extent) arising out of, relating to, or in connection with the following matters:

(i) Permitted Events, Permitted Event Support Activities and Fund-raising Events, as well as any of Tenant's Concessionaire Units and Farmers Markets;

(ii) the performance of Construction Work in connection with Tenant's Construction Components;

(iii) Tenant's failure to satisfy its obligations under this Lease in its occupancy and use of the Premises or the Esplanade;

(iv) the performance of any work undertaken by Tenant pursuant to its obligations under Article 15 hereof, excluding any work required to be performed by Landlord under any Maintenance Service Arrangement; and

(v) the presence on the Premises at any time of persons visiting or working on the Premises at the express direction or invitation of Tenant.

(c) Notwithstanding the foregoing indemnification obligations of Tenant: (A) Tenant's indemnity shall not extend to any Damages arising out of, relating to, or in connection with (i) the violation of law, negligence, malfeasance or nonfeasance of any Landlord Indemnitees, Landlord's Representatives, any PEP officers or security personnel who report to

Landlord, or any governmental bodies or employees, or any agents, employees, contractors, vendors or representatives of any of the foregoing, (ii) Landlord Permitted Programming or Landlord's Fundraising Events, (iii) the public's use of the Premises as a park, except to the extent such Damages may have been caused by Tenant's negligence or other tortious act or acts, (iv) any obligations to be discharged by Landlord under this Lease or any breach by Landlord of this Lease (including the Maintenance Services Arrangement), or (v) matters for which Landlord is required to indemnify Tenant; and (B) in no event shall Tenant have any obligation or liability to any Person beyond that which it recovers from the insurance policies that Tenant is required to maintain hereunder, and Tenant's indemnification obligation hereunder shall be limited to the extent of Tenant's liability insurance coverage under the policies required to be maintained by Tenant pursuant to Section 11.01(b); provided, however, that Tenant's indemnification obligation as heretofore limited is conditioned on Tenant's having not materially failed to maintain the insurance policies required to be maintained hereunder and, and, to the extent applicable, Tenant has used reasonable efforts to recover the full amount of the coverage under such policies to satisfy its indemnification obligation hereunder.

(d) In addition to the foregoing:

(i) Tenant shall require its sublessees, concessionaires, subtenants, licensees, contractors and subcontractors to carry commercial general liability, workers compensation, and disability insurance, with limits commensurate to the exposure inherent to the subject operations but not less than \$1,000,000 or required statutory amounts (whichever is greater), and to similarly indemnify Landlord Indemnitees from all Damages from the acts of such Persons at the premises and to name Landlord Indemnitees as additional insureds on such general liability insurance policies.

(ii) The Parties confirm and agree that the indemnification provisions (including the limitations thereto) set forth in Section 11.01(b) are the sole and exclusive remedy available to Landlord Indemnitees arising out of or relating to the Damages specified in this Section 11.01; provided, however, that nothing in this Section 11.01(d)(ii) shall prevent either Party from seeking injunctive or other equitable relief.

#### Section 11.02 Landlord Insurance.

(a) Tenant acknowledges and accepts that Landlord may not purchase an insurance policy with respect to any Damages that may arise out of (i) Landlord's use or occupancy of the Premises under this Lease, including Landlord Permitted Programming or Landlord's Fundraising Events, (ii) the exercise of Landlord's reserved rights to ensure the general public's use of the demised Premises as a park pursuant to Section 2.01 hereof, (iii) Landlord's undertaking of services pursuant to the Maintenance Services Arrangement set forth in Article 15, (iv) any security it is responsible for pursuant to Article 7 hereof, and (v) Landlord's providing of security services pursuant to Article 7 hereof; provided, however, (A) the foregoing shall not limit any liabilities or obligations of Landlord under this Lease, and (B) Landlord shall maintain policies of insurance insuring the matters described in the foregoing clauses (i)-(v), flood, property damage and other matters to the same extent and in the same

manner it maintains policies of insurance with respect to any such matters for 20% or more of other piers in the Park other than the Premises (and Tenant shall be named as additional insured on all of such policies of insurance), and such insurance policies described on Schedule 11.01 hereto; provided further, however, that if such insurance on piers is maintained solely as a requirement, not existing as of the date hereof, for ensuring continuing coverage by the National Flood Insurance Program of existing Park buildings, then any piers covered under such required insurance coverage shall be excluded when calculating whether 20% or more of other piers in the Park have insurance coverage. Tenant further acknowledges that Landlord may become subject to the New York Court of Claims Act, and that, provided that the Court of Claims Act shall apply to the Landlord, then, consistent with Section 8 of the Court of Claims Act, Landlord shall be responsible for a final judgment rendered by a court of competent jurisdiction (a "Final Judgment") to the extent the Final Judgment directs that Tenant is entitled to Damages for causes attributable to the negligence of Landlord or of its officers or employees when acting within the course and scope of their employment, provided, however, that notwithstanding any provision hereof to the contrary, Landlord agrees that neither its becoming subject to the New York Court of Claims Act nor any of the foregoing shall in any way limit Landlord's obligations under this Lease (including Landlord's indemnification and other obligations under Section 11.04(b) below) nor Tenant's rights, protections and remedies under this Lease, and any and all Tenant's rights, protections and remedies under this Lease shall continue to apply, and be interpreted so as to be valid and enforceable in the same manner and to the same extent after any applicability of the New York Court of Claims Act as before such applicability. If there is any delay, refusal or other impediment by a court in granting a Yellowstone injunction or any other equitable relief requested by the Tenant, including declining jurisdiction or determination by a court that Yellowstone relief cannot or should not be granted because of the applicability of the Court of Claims Act/general municipal law, then in any such event the running of the period of time for Tenant's cure of any underlying alleged Default or Event of Default in any Default Notice or Event of Default Notice by Landlord is and shall be automatically tolled and suspended for such period of time as is necessary for a court of competent jurisdiction to render a final unappealable judgment on the merits with respect to the underlying Default or Event of Default, plus fifteen (15) days after such unappealable judgment. Notwithstanding the foregoing limitation on Landlord's obligation to purchase insurance, and as an exception to Landlord's right to not purchase insurance, with respect to defense costs associated with its defending any action for Damages arising out of and attributable to the Landlord risk responsibility matters set forth in items (i)-(v) above ("Tenant Defense Costs"), Landlord may purchase an insurance policy in the form of a third-party liability policy that will make insurance proceeds available to the extent necessary to reimburse Tenant for any Tenant Defense Costs actually incurred by Tenant ("Tenant Defense Costs Policy"), provided, however, that notwithstanding any provision hereof to the contrary Landlord agrees that neither its purchasing a Tenant Defense Costs Policy nor the foregoing provisions or the following sentence shall in any way limit Landlord's obligations under this Lease (including Landlord's indemnification and other obligations under Section 11.02(b) below) nor Tenant's rights, protections and remedies under this Lease. Such policy, if obtained, shall provide that the proceeds of such policy shall be made available only to the extent that in a Final Judgment a court determines that no portion of the Damages awarded to a third-party are attributable to the risks assigned to and assumed by Tenant pursuant to Section 11.01 above. The Tenant Defense Costs Policy, if obtained, shall be a "contractual liability coverage" policy.

(b) Landlord shall indemnify, defend and hold harmless Tenant and its Representatives (hereinafter, collectively the “Tenant Indemnitees”) from and against all Damages actually imposed upon or incurred or suffered by any such Tenant Indemnitee if and to the extent arising out of, relating to, or in connection with (i) any breach of this Lease by Landlord and any condition, including environmental, existing at the Premises as of the Commencement Date, (ii) Landlord Permitted Programming, (iii) Landlord’s Fundraising Events, (iv) Landlord’s use or maintenance of the Premises and all other work of Landlord in the Park, (v) any security it is responsible for pursuant to Article 7 hereof, and (vi) all uses of the Premises by the general public other than Permitted Events and Tenant’s Fundraising Events, including any injuries suffered by persons visiting or working on the Premises at the direction or invitation of Landlord; provided, however, that Landlord’s indemnity shall not extend to any Damages arising out of, relating to, or in connection with the violation of law, negligence, malfeasance and/or nonfeasance of any Tenant Indemnitees, or which occur in the Amphitheater or the Interstitial Space while it is under the exclusive control or use of Tenant.

(c) Landlord shall indemnify and hold harmless Tenant Indemnitees, and other agents, contractors, vendors and invitees, from and against all personal injury and property damage and all cost, expense, loss and other damages to the Premises or incurred or suffered by any such indemnified Person as and to the extent arising out of, relating to, or in connection with any entry onto the Premises by Landlord or its Representatives, including any acts or omissions with respect to such entry and any and all work performed pursuant to Section 10.01.

Section 11.03 General Insurance Requirements. All insurance required to be maintained by Landlord or Tenant shall:

(a) Be maintained with financially responsible insurance carriers licensed to do business in the State of New York (or otherwise with the reasonable consent of Landlord).

(b) Be endorsed to provide written notice to Landlord and Tenant at least thirty (30) days prior (or ten (10) days prior in the event due to nonpayment of premium) to the cancellation or non-renewal of such policies, which notice shall be sent to Landlord or Tenant at the addresses set forth in Article 32 (it being agreed that Tenant shall provide notice and proof of alteration to the Landlord resulting in any material alteration of such policies that may limit or lessen coverage as required under this Lease); and

(c) With regard to policies required to be maintained by Tenant, name Landlord and 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, and the City of New York Department of Parks and Recreation (to the extent of an insurable incident by such entities other than Tenant or Landlord), as additional insured thereunder (“Additional Insureds”), except with respect to any blanket policies as permitted hereunder, and except that the foregoing requirement to name the Additional Insureds shall not apply to policies maintained by Tenant with respect to matters for which Landlord is required to self-insure or purchase insurance under Section 11.02, it being

agreed that such insurance policies will not name Landlord or any of the other Additional Insureds as additional insureds thereunder.

(d) With regard to policies or insurance or self-insurance maintained by Landlord or Landlord's contractors in connection with the Project, including Landlord's Construction Components, name Tenant and its Representatives as additional Insureds.

Section 11.04 General Insurance Provisions.

(a) All insurance proceeds (if any) payable with respect to a property loss on account of the Premises shall be paid to the Party which is responsible for Casualty Restoration, pursuant to Article 12 ("Casualty Restoration Party") to be held in trust for the purpose of paying for the cost of the Restoration, with any excess paid to Tenant for use for Permitted Costs. Any proceeds received by Tenant or Landlord shall be applied to Casualty Restoration (either by Landlord or Tenant) in accordance with the provisions of this Lease. Neither Tenant nor Landlord shall have any personal liability with regard to any proceeds received by it and retained in good faith and in accordance with the provisions of this Lease. If either Party believes that the other Party has not applied the insurance proceeds in accordance with this Lease, the complaining Party's sole remedy shall be to bring an action to have the proceeds applied or paid in accordance with this Lease (including payment to Tenant as provided herein).

(b) Cooperation in Collection of Proceeds. Tenant and Landlord shall cooperate in connection with the collection of any insurance money 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) General Requirements Applicable to Tenant's Policies. Each insurance carrier from whom Tenant or Landlord procures any insurance required of it hereunder must be licensed to do business in New York State (or otherwise reasonably acceptable to such counterparty) and be rated at least "A-" 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.

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

(e) Waiver of Subrogation. All policies of insurance required under this Lease shall include a waiver of the right of subrogation with respect to all the named insureds and additional insureds. All policies of insurance required under this Lease by Landlord's contractors in connection with the Project, including Landlord's Construction Components, shall

include a waiver of the right of subrogation with respect to all the named insureds and additional insureds.

(f) Required Insurance Policy Clauses. Each policy of insurance required to be carried by a Party hereunder pursuant to the provisions of this Article 11 shall contain (i) a provision that no act or omission of Tenant, including, without limitation, any use or occupation of the Premises for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy, (ii) an agreement by the insurer that such policy shall not be cancelled or denied renewal without at least thirty (30) days' prior written notice to Landlord (10 days' for cancellation or non-renewal for non-payment of premium), and (iii) a provision that notice of accident or claim to the insurer by Landlord shall be deemed notice by all Persons having any interests in said policy; provided that a copy of any such notice by the insuring party to the insurer shall have been delivered to Landlord.

(g) Notices from the insurer to either Party shall be delivered to such Party in accordance with Article 32, except that in the case of Landlord, such notice shall be made to the attention of Landlord's Finance Department (or as such Party may otherwise direct from time to time).

(h) Primary Protection. All insurance policies required by this Article 11 shall be primary protection.

(i) Adjustments for Claims. All flood and casualty insurance policies (if any) which Tenant may elect in its discretion to maintain hereunder shall provide that all adjustments for claims with the insurers shall be made by Tenant and its agents in coordination with Landlord, with both of Landlord and Tenant to act reasonably and in good faith, and Tenant shall direct casualty loss proceeds to be paid to the Casualty Restoration Party based upon the actual amount of the loss, as such amount shall have been determined by adjustment with the insurer; provided, however, that if Tenant exercises its termination rights under Section 12.02(f), Landlord shall have the sole right to adjust all claims. Upon demand of any Party, subject to the foregoing, Landlord and Tenant shall confirm in writing to each flood and casualty insurer (if any) that all insurance proceeds as aforesaid shall be delivered to the Casualty Restoration Party.

(j) 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) [intentionally omitted];
- (vi) Explosion, Collapse and Underground Property Damage; and



(vii) Watercraft exclusions that limit the coverage beyond that available under ISO CG 00 01 .

Section 11.05 Evidence of Insurance. Prior to the Commencement Date, Tenant and Landlord shall deliver or cause to be delivered to the other certificates of insurance with respect to all policies of insurance required to be maintained by Tenant pursuant to this Article 11, . At Landlord's request, Tenant shall deliver a copy of each entire original policy required hereby.

Section 11.06 Compliance with Policy Requirements. Neither Landlord nor Tenant shall violate, and each of Landlord and Tenant shall use reasonable best efforts to cause its licensees or invitees to not violate, any of the conditions, provisions or requirements of any insurance policy required, or which Tenant may elect to maintain in its discretion, under this Article 11, provided that the foregoing shall not diminish or alter Tenant's rights with regard to the use of the Premises as provided herein

Section 11.07 Separate Insurance. N/A.

Section 11.08 Excess and/or Master or Umbrella Policies. Any insurance required by the provisions of this Article 11 to be maintained by Tenant may, at Tenant's option, be effected by excess and/or master or umbrella policies issued to Tenant or an Affiliate covering the Premises and other properties owned or leased by Tenant or any Affiliate. Tenant shall furnish to Landlord complete copies of such policies (which may be redacted for confidential information) together with proof reasonably satisfactory to Landlord that the premiums for each of such policies required to be maintained by Tenant (or installment payments then required to have been paid on account of such premiums) shall have been paid, and that the liability insurance limits required pursuant to this Article 11 have been specifically allocated to the Premises.

Section 11.09 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 11.10 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 that such insurance shall not directly or indirectly result in a diminution of the insurance coverage specified in Schedule 11.01.

Section 11.11 Modification by Insurer. Without limiting any of either Party's obligations or rights under this Article 11, in the event that an insurer modifies, in any material respect, any insurance policy that Tenant is required to maintain in accordance with this Lease that may limit or lessen coverage to Landlord, Tenant shall give notice to Landlord of such modification within thirty (30) days of Tenant's receipt of notice thereof.

Section 11.12 Insurance in Addition to Article 17. The foregoing provisions of this Article 11 are separate from and in addition to, and shall not apply to, any insurance requirements or provisions in Article 17, excepting Section 11.03(d) and 11.04(e).

## ARTICLE 12

### DAMAGE, DESTRUCTION AND RESTORATION

Section 12.01 Notice. If the Premises (together with Tenant's Trade Fixtures) or any part thereof are destroyed or damaged by fire or casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen ("Casualty"), the Party first obtaining actual knowledge of such destruction or damage shall promptly notify the other Party.

#### Section 12.02 Casualty Restoration.

(a) Landlord's Obligation to Restore. Subject to the provisions of Section 12.02(d), upon the occurrence of any Casualty, Landlord shall, in accordance with the provisions of this Article 12, restore the Landlord Maintenance Components, but only to the extent of any insurance required to be carried by Landlord pursuant to Section 11.02(a)(B) or recovery of damages from third parties who may be responsible for the damage or destruction, including any insurance proceeds paid to Landlord by the insurer of any such third-party ("Third-Party Damages"), and from any funds or other resources made available to and received by Landlord from any Governmental Authorities to pay for a restoration of the Premises as a result of the Casualty ("Governmental Resources"), and from any insurance proceeds received from any insurance policy Landlord or Tenant in their sole discretion had acquired that covered such loss or damage (all such insurance proceeds, Third-Party Damages and Governmental Resources are hereinafter referred to together as "Restoration Resources"). Any such restoration of Landlord Maintenance Components shall be, to the extent reasonably practicable, given the amount of Restoration Resources, of the same scope, character and quality of the Improvements as they existed immediately prior to the Casualty (a "Landlord's Casualty Restoration"). Except to the extent it has elected to self-insure, in no event shall Landlord be required to advance or otherwise provide any of its own funds or otherwise incur or pay any out-of-pocket costs or expenses in connection with any Casualty Restoration.

(b) Tenant's Obligation to Restore. Tenant shall, subject to and in accordance with the provisions of this Article 12, restore the Tenant Maintenance Components, but only to the extent of insurance proceeds available to it as provided below. Any such restoration of Tenant Maintenance Components Share shall be, to the extent reasonably practicable given the amount of any insurance proceeds (if any) made available to Tenant therefor, of the same scope, character and quality of the Improvements as they existed immediately prior to the Casualty (a "Tenant's Casualty Restoration"). Notwithstanding any provision contained herein to the contrary, Tenant shall be required to perform and complete any Tenant's Casualty Restoration only as and to the extent of any insurance proceeds (if any) which are actually made available to Tenant therefor in the event that Tenant elects in its sole discretion to maintain any flood and casualty insurance on the Premises (and other Landlord funds which shall be made available to Tenant if any Landlord insurance policies are in effect, and to the extent of any Third-Party Damages and Governmental Resources), and in no event shall Tenant be required to advance or

otherwise provide any of its own funds or otherwise incur or pay any out-of-pocket costs or expenses in connection with any Tenant's Casualty Restoration. For the avoidance of doubt, nothing contained in Article 11, this Article 12 or this Lease shall obligate or require Tenant to maintain any flood and/or casualty insurance on the Premises or any part thereof. Notwithstanding the foregoing provisions of Sections 12.02(a) and (b), the parties may mutually agree to implement Value Engineering in connection with their respective Restoration obligations to achieve cost-savings in connection therewith, subject to the other provisions hereof regarding implementing Value Engineering.

(c) Landlord's Commencement and Performance of Landlord's Construction Work. Subject to Force Majeure, and further subject to Section 12.02(a), Landlord shall commence the Construction Work in connection with a Landlord's Casualty Restoration promptly and in any event not later than thirty (30) days of the receipt by Landlord of sufficient Restoration Resources to pay for Landlord's Casualty Restoration, and shall prosecute all Construction Work in connection with the Landlord's Casualty Restoration to completion with diligence and dispatch. All such Construction Work shall be performed in a good and workman-like manner with the same (or better) scope, character and quality of materials as were in place for the Improvements as they existed immediately prior to the Casualty. Landlord shall use all commercially reasonable, good faith efforts to seek to recover all Landlord insurance proceeds (if any) and Third-Party Damages and Governmental Resources in order to seek to make funds available for a Landlord's Casualty Restoration.

(d) Tenant's Commencement and Performance of Tenant's Construction Work. Subject to Force Majeure, and further subject to Section 12.02(b), Tenant shall commence the Construction Work in connection with a Tenant's Casualty Restoration promptly and in no event later than thirty (30) days of the receipt by Tenant of sufficient insurance proceeds (if any) to pay for Tenant's Casualty Restoration and shall prosecute all Construction Work in connection with Tenant's Casualty Restoration to completion with diligence and dispatch. All such Construction Work shall be performed in a good and workman-like manner with the same (or better) scope, character and quality of materials as were in place for the Improvements as they existed immediately prior to the Casualty.

(e) General Construction Requirements. All Construction Work associated with a Landlord's or Tenant's Casualty Restoration, shall be performed generally in accordance with the protocols and procedures prescribed in Article 17 hereof for the performance of any Construction Work, to the extent reasonably applicable to the Casualty Restoration and with appropriate modifications and supplementation according to the general circumstances regarding the nature and timing of the work performed, and Landlord and Tenant shall both take all good faith, reasonable steps to coordinate the undertaking and performance of Landlord's Casualty Restoration Construction Work and Tenant's Casualty Restoration Construction Work in order to avoid interference with the Construction Work each is required to perform and in order to accommodate, to the extent practicable in the circumstances, the Construction Work exigencies affecting each of Landlord and Tenant. If as a necessary and reasonable construction means and methods protocol, the Construction Work associated with Landlord's Casualty Restoration should be performed and completed before the Construction Work associated with Tenant's Casualty Restoration, then Tenant shall not be required to commence its Construction Work until Landlord shall have completed its Construction Work to the point where Tenant can begin. The

converse shall apply in the event Landlord's Casualty Restoration Construction Work cannot reasonably be undertaken until Tenant shall have completed Tenant's Casualty Restoration Construction Work to the point where Landlord can begin. Both Landlord and Tenant shall be obligated to keep the other informed as to the status of the Construction Work being performed by each of them in connection with a Casualty Restoration in order to promote, to the maximum extent feasible, the efficient and professional achievement of any Casualty Restoration dependent on the completion of both a Landlord's Casualty Restoration and a Tenant's Casualty Restoration. During any delay in the commencement of Casualty Restoration Construction Work attributable to Landlord's seeking a Third-Party Damages recovery and the disbursement to it of Governmental Resources or any delay occasioned by Tenant's insurer's (if any) or Landlord's insurer's (if any) adjusting or disbursing the flood and/or casualty insurance proceeds (if any), any such proceeds of which are potentially available for Tenant's Casualty Restoration or Landlord's Casualty Restoration, as the case may be, the same shall constitute an event of Force Majeure in the commencement of such Construction Work, provided that, in the case of the Tenant and Tenant's efforts to adjust any insurance claim under any flood insurance and/or casualty policy, Tenant is diligently and continuously seeking recovery (including litigation or arbitration, as Tenant deems appropriate) of any flood insurance and/or casualty policy proceeds, including in cases where such insurer may have formally denied or rejected coverage. During the period of such Force Majeure, Tenant shall take (or Landlord shall do so pursuant to the Maintenance Services Arrangement) all reasonable steps (and the same shall constitute Permitted Costs) to ensure that portions of the Premises accessible to the public shall be safe and free from conditions hazardous to life and property, including, if any Party in its reasonable judgment, or any Tenant's flood and/or casualty insurer, if any, determines necessary, the erection of a fence around the Premises ("Pre-Restoration Safety Work").

(f) Tenant's Right to Terminate. Notwithstanding any provision contained herein or elsewhere in the Lease to the contrary, if a Casualty renders, or is reasonably likely to render, the Premises (including damage or destruction to Tenant's Trade Fixtures) unusable for the Permitted Events, or Tenant's Fundraising Events hereunder for more than one hundred eighty (180) days in the reasonable judgment of Tenant, Tenant shall have the right, in its sole and absolute discretion, to terminate this Lease upon written notice to Landlord, given at any time after the occurrence of a Casualty. In such event, this Lease shall terminate on the date set forth in Tenant's notice with the same force and effect as if such date were the date set forth herein as the Expiration Date. In the event of such termination, all insurance proceeds (other than insurance proceeds with respect to Tenant's Trade Fixtures, which shall remain the sole property of and be paid promptly to Tenant) shall be the property of and be paid promptly to Landlord. The provisions of this clause (f) shall survive the expiration or sooner termination of this Lease. Notwithstanding the provisions of Section 2.02(b), if Tenant exercises any right to terminate under this clause (f), subsequent to any Tenant's notice of intention to terminate this Lease on the Tenth Anniversary Date in accordance with Section 2.02(b), Tenant shall not be required to make any Year 10 Termination Payment (and the termination of this Lease shall not be subject to or dependent on such Year 10 Termination Payment).

(g) Tenant's Election to Undertake Landlord's Casualty Restoration. Notwithstanding the foregoing, during the initial Term or during any Extension Term, within forty-five (45) days after the occurrence of a Casualty, Tenant shall have the right in its sole discretion, but shall not have any obligation, to give written notice to Landlord that Tenant elects

to have Tenant perform a Landlord's Casualty Restoration. Upon receipt of such notice, Landlord covenants and agrees to permit Tenant to undertake any Construction Work to effect a Landlord's Casualty Restoration on all of the same terms and conditions applicable to the performance of Construction Work pursuant to Section 12.02(e) hereof; provided, however, that Tenant shall first have demonstrated in a reasonably satisfactory manner to Landlord (i) that the design of the proposed Landlord's Casualty Restoration is consistent with the character of the Park, (ii) that it is likely of approval from the relevant Governmental Authorities, and (iii) that Tenant has secured sufficient funds, together with the funds to be made available to Landlord, to undertake and complete the Landlord's Casualty Restoration proposed by Tenant. In such event, Landlord shall make available to Tenant all funds which are required for the performance of Landlord's Casualty Restoration as provided below. Nothing contained in this Section 12.02(g) obligates Tenant to perform any Landlord's Casualty Restoration until and unless Tenant shall make the foregoing election in its sole discretion.

Section 12.03 Reimbursement of Expenses and Application of Insurance Proceeds. If Tenant elects to undertake Landlord's Casualty Restoration Work and Landlord permits Tenant to undertake such work as provided in Section 12.02(d), the Landlord's insurance proceeds, Third-Party Damages and any Governmental Resources disbursed to Landlord, if any, shall be made available promptly to Tenant and shall be applied by Tenant as follows:

(a) All insurance and Third-Party Damages proceeds and Governmental Resources actually received by Landlord shall be paid promptly to the Tenant for application to the Casualty Restoration as provided herein.

(b) Before applying the Landlord's insurance proceeds and Third-Party Damages to the Casualty Restoration, the Tenant shall first reimburse (i) itself (and/or Landlord as the case may be) for any Pre-Restoration Safety Work, and (ii) Landlord and Tenant to the extent of the necessary and proper expenses incurred by such Party (including, without limitation, court costs and reasonable attorneys' fees and disbursements) paid or incurred by either or both of them in the collection of such Landlord's insurance proceeds and Third-Party Damages.

(c) The Tenant shall apply all remaining Landlord's insurance proceeds, Third-Party Damages and Governmental Resources to the Casualty Restoration.

(d) Any Landlord's insurance proceeds, Third-Party Damages remaining after the completion of a Casualty Restoration shall be paid promptly to Tenant and shall be used for Trade Fixtures and Permitted Costs.

Section 12.04 Effect of Casualty on this Lease. Except as otherwise provided herein, this Lease shall not terminate, be forfeited nor be affected in any manner by reason of damage to, or total, substantial or partial destruction of, the Premises, or by reason of the untenability of the Premises or any part thereof, and Tenant's obligations hereunder shall continue as though the Premises had not been damaged or destroyed and shall continue without any abatement, suspension, diminution or reduction whatsoever.

## ARTICLE 13

### CONDEMNATION

Section 13.01 Continuation of Lease; Termination. If during the Term there shall be any Taking of the Premises (whether of the whole of the Premises, Substantially All of the Premises, or a partial Taking of less than Substantially All of the Premises, and including any Governmental Action Changes, in each case, whether permanent or temporary), the following consequences shall result, subject to the further provisions hereof:

(a) In order to insure the continued access of the public to Permitted Events and other benefits in the Premises as provided by Tenant under this Lease, including providing for the operation and maintenance of the Premises as provided herein, in the event of any Taking (other than a temporary Taking), Tenant shall have the right to continue all of Tenant's rights hereunder, including to use the Premises and the Trade Fixtures for Permitted Events and Tenant's Fundraising Events, on all of the same terms and conditions herein (except for any initial construction obligations of Tenant) for the remainder of what would have been the unexpired Term (including any Extension Term), pursuant to a new lease directly with the State, or the successor to the State as the owner of the Premises (or, in the event of a partial Taking, with Landlord and the State or its successor) ("New Lease"). Tenant shall have the right to seek injunctive relief to obtain a New Lease and to stay any termination of this Lease by reason of such Taking. If for any reason the State or any successor thereto (or Landlord, as applicable) fails or refuses to enter such New Lease with Tenant within ninety (90) days of the Taking (or in connection with any Tenant's application for injunctive relief), then (unless in the event of a partial Taking in which Tenant elects, at its sole option by notice to Landlord within forty-five (45) days of the partial Taking, to continue this Lease with respect to the remainder of the Premises not so taken) Tenant shall be entitled to receive the payments set forth in Section 13.01(b). The Parties' intent is that Tenant's rights hereunder shall continue notwithstanding any Taking so that Permitted Events can continue to be held for the full Term, and the Parties shall therefore cooperate, notwithstanding any Taking, to, at Tenant's request and subject to Tenant's approval, restructure their arrangements to the maximum extent possible and legally allowable to put Tenant in as close to its position hereunder as possible after any such Taking; and

(b) If the New Lease is not executed and delivered or other arrangements satisfactory to Tenant are not entered into in accordance with Section 13.01(a), at Tenant's election, in the case of any Taking, except a partial Taking as to which Tenant elects at its sole option to continue this Lease with respect to the Premises not so taken, or a temporary Taking, this Lease and the Term shall terminate and expire on the Date of Taking or such other date as Tenant shall determine and the award for the Taking shall be paid as follows in the following order: (i) in the case of a Taking by the federal government, to the State of New York, for the Land; (ii) to Tenant, for the value of the Improvements, as follows: (A) if during the first ten (10) years after the Substantial Completion Date, the greater of the then present value of all of the Improvements constructed by Tenant or one hundred percent (100%) of Tenant's Costs, or (B) if during years eleven (11) and thereafter following the Substantial Completion Date, the amount

in clause (b)(ii)(A) shall be reduced in each year by five percent (5%) for each of years eleven (11) through twenty-five (25), and then eight percent (8%) per year thereafter; (iii) to Tenant, for the value of Tenant's Trade Fixtures; (iv) to Landlord for the value of Landlord Finish Work, as follows: (A) if during the first ten (10) years following the Substantial Completion Date, one hundred percent (100%) of the value of Landlord Finish Work, or (B) if during years eleven (11) and thereafter following the Substantial Completion Date, the amount in clause (b)(iv)(A) shall be reduced in each year by five percent (5%) for each of years eleven (11) through twenty-five (25), and then eight percent (8%) per year thereafter; and (v) the excess of the award, if any, to Landlord and Tenant in equal parts; provided that in the event of a temporary Taking, Tenant shall receive a share of Tenant's Costs which is equal to (x) a fraction, the numerator of which is the number of days during the period of the temporary Taking, and the denominator of which is three hundred sixty-five (365), multiplied by (y) the amount of the award which would otherwise be payable to Tenant in clause (b)(ii) divided by (z) the number of years then remaining in the Term; provided, further, that if the New Lease is executed and delivered as provided in Section 13.01(a), the entire award payable in respect of such Taking shall be paid as provided in this Section 13.01(b) without reference to the payments to Tenant, except as provided in Section 13.06.

Section 13.02 Tenant's Restoration. Except in the event of a Taking which does result in a termination of this Lease pursuant to Section 13.01 or Section 13.08, and except in the event of the timely execution and delivery of the New Lease, in the event of a partial Taking of less than Substantially All of the Premises as to which Tenant elects at its option to continue this Lease, subject to Force Majeure, and further subject to Section 13.04(b), Tenant shall proceed promptly to complete with diligence and dispatch a Condemnation Restoration of the remaining portion of the Premises not so taken (including replacement of all Tenant's Trade Fixtures), including all restoration, alterations and modifications to the remaining portion of the Premises not so taken so that the completed Condemnation Restoration comprises a fully functioning and integrated complex as a whole, subject to and only to the extent of the award or damages for the Taking which are actually made available to Tenant therefor, and in no event shall Tenant be required to advance or otherwise provide any of its own funds or otherwise incur or pay any out-of-pocket costs or expenses in connection with any Condemnation Restoration. Landlord agrees to promptly pay over to Tenant all proceeds from any award or damages for said Taking received by Landlord for the purposes of such Condemnation Restoration. Subject to the foregoing, all Condemnation Restoration shall be performed in a good and workmanlike manner with the same (or better) scope, character and quality of materials as were in place at the Premises (and all Trade Fixtures) subject to the Taking.

Section 13.03 Governmental Action. In case of any governmental action not resulting in a taking per se of the Premises, but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement; provided, however, that if such governmental action results in changes or alterations of the Premises ("Governmental Action Changes"), then the Condemnation Restoration Party shall effect a Condemnation Restoration with respect thereto only to the extent of the award or compensation received therefor, and any excess proceeds shall be payable to Tenant to be used for Permitted Costs.

Section 13.04 Condemnation Restoration Procedure.

(a) Subject to Force Majeure, and further subject to Section 13.04(b), the Party which is required hereunder to effect a Condemnation Restoration (“Condemnation Restoration Party”) shall receive and apply the award or damages received for a Taking for the purpose of the Condemnation Restoration (less all necessary and proper expenses, excluding legal fees, paid or incurred by either Landlord or Tenant in connection with the condemnation proceedings, which shall be promptly paid to the Party incurring the same), as may be necessary to pay the entire cost of such Condemnation Restoration. Any balance of the award held by the Condemnation Restoration Party after completion of, and payment for, the Condemnation Restoration shall belong to and shall be promptly paid to Tenant for use for Permitted Costs.

(b) Notwithstanding the foregoing, during the last fifteen (15) years of the initial Term or at any time during the Extension Term, within forty-five (45) days after the occurrence of a partial Taking which at the election of Tenant does not result in termination of this Lease, Tenant shall have the right to give written notice to Landlord that Tenant elects to require Landlord to perform Tenant’s obligations with respect to the Construction Work for a Condemnation Restoration on all of the same terms and conditions as applicable to Tenant hereunder, and upon such notice, Landlord covenants and agrees to perform such Condemnation Restoration on all of the same terms and conditions applicable to Tenant herein in the place of Tenant, and Tenant automatically shall be relieved of all liability and obligations for any Condemnation Restoration.

(c) All Construction Work associated with any Condemnation Restoration performed by the Condemnation Restoration Party shall be performed generally in accordance with the protocols and procedures prescribed in Article 17 hereof (other than the funding provisions thereof) for the performance of any Construction Work, to the extent reasonably applicable to the Condemnation Restoration and with appropriate modifications and supplementation according to the general circumstances regarding the nature and timing of the work performed.

Section 13.05 Collection of Awards. Each of the Parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article 13 and shall cooperate with each other to permit collection of the award.

Section 13.06 Tenant’s Right to Excess Award. Notwithstanding anything to the contrary contained herein, the amount of any award or payment allowed or retained by Landlord which shall not have been previously applied for the purpose of a Condemnation Restoration in accordance with this Lease shall be paid promptly over to Tenant for use for Permitted Costs.

Section 13.07 Tenant’s Appearance at Condemnation Proceedings. Tenant shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith.

Section 13.08 Tenant’s Right to Terminate. Notwithstanding any provision contained herein to the contrary, if there is any Taking of the Premises (together with any Trade Fixtures)



or if there shall be any Governmental Action Changes, such that the Premises or any Trade Fixtures are unusable for the Permitted Events, Tenant's Fundraising Events or other permitted uses hereunder for more than one hundred eighty (180) days in the reasonable judgment of Tenant, Tenant shall have the right in its discretion to elect to terminate this Lease upon written notice to Landlord. In such event, this Lease shall terminate on the date set forth in Tenant's notice with the same force and effect as if such date were the Expiration Date. Upon termination solely by reason of such election by Tenant, the entire award shall be the property of and shall be paid promptly to Landlord. Notwithstanding the provisions of Section 2.02(b), if this Lease shall terminate as a result of any Taking or through the exercise of any other termination right of either Party under this Lease (including Tenant's exercise of any termination right under this Article 13 and excluding termination under Section 2.02(b)) that occurs subsequent to the Tenant's notice of intention to terminate this Lease on the Tenth Anniversary Date in accordance with Section 2.02(b), Tenant shall not be required to make any Year 10 Termination Payment (and the termination of this Lease shall not be subject to or dependent on such Year 10 Termination Payment) and Tenant shall receive all payments to which it is entitled under this Article 13. For the avoidance of doubt, the foregoing provisions of this Section 13.08 shall be in addition to and not in limitation of Tenant's rights in Section 13.01(b).

Section 13.09 Tenant's Costs. "Tenant's Costs" means the final cost of the initial construction and installation of the Improvements (together with any Alterations, replacements, refurbishments or additions thereto or any other Improvements which are paid for by Tenant, including all hard and soft costs) as shown on Tenant's books and records.

## ARTICLE 14

### ASSIGNMENT

Section 14.01 Assignment. No assignment or sublease of this Lease or the Premises by either Landlord or Tenant, in whole or in part, will be effective unless it is approved in writing by the other Party and signed by a duly authorized Representative of such other Party, except with respect to Permitted Events and concessions permitted herein, which shall be deemed not to be assignments or subleases hereunder.

## ARTICLE 15

### REPAIRS AND MAINTENANCE, ETC.

Section 15.01 Maintenance of the Premises. (a) At all times during the Post-Completion Term, Tenant shall, at its sole cost and expense, keep, repair and maintain (or cause to be kept, repaired and maintained) the Tenant Maintenance Components in good and safe order and condition. Landlord acknowledges and agrees that Tenant may, as set forth herein, contract with Landlord or third parties for the performance of its maintenance and repair obligations for the Tenant Maintenance Components, and the Parties have agreed that Landlord may perform such maintenance and repair of the Tenant Maintenance Components on behalf of, and at the sole cost and direction of, Tenant, subject to and in accordance with Section 15.02.

(b) Landlord shall be responsible, at Landlord's sole cost and expense, at all times during the Post-Completion Term, for the keeping, maintaining and repairing of the Landlord Maintenance Components and performing clean-up solely in connection with Landlord Events pursuant to Section 9.10. Landlord shall keep, repair and maintain the Landlord Maintenance Components (or shall cause the Landlord Maintenance Components to be kept, repaired and maintained) in good and safe order and condition.

(c) Each of Landlord and Tenant shall neither commit nor suffer, and each Party shall use commercially reasonable precaution to prevent, waste, damage or injury to the Premises.

(d) All materials for repairs and maintenance performed by Landlord and Tenant shall be at least equal in quality and class to the original installed materials, such that original design loads and other performance specifications with respect to the Premises are preserved in all material respects unless the Parties mutually agree, in writing, to deviate from such quality, class or specifications.

(e) The minimum standard to which both Tenant Maintenance Components and Landlord Maintenance Components are repaired and maintained shall be the level to which similar repair and maintenance is performed by Landlord elsewhere in the Park.

(f) Except as provided in Section 15.04 and Section 9.10 (with regard to clean-up in connection with Landlord Events), or pursuant to any reimbursement arrangement set forth in the Maintenance Services Arrangement: (i) all repairs and maintenance to the Tenant Maintenance Components shall be made at no cost or expense to Landlord and shall be made in compliance with the Requirements, and (ii) all repairs and maintenance of the Landlord Maintenance Components shall be made at no cost or expense to Tenant and shall be made in compliance with the Requirements.

(g) The Parties acknowledge and agree that during the Post-Completion Term, except as provided for herein: (i) Tenant shall have no obligation whatsoever to reimburse Landlord (and Landlord shall not invoice Tenant) for any costs or expenses of repairing and maintaining the Landlord Maintenance Components, all such items being part of the Landlord Maintenance Components to be maintained at Landlord's sole cost and expense, (ii) Landlord shall have no obligation whatsoever to reimburse Tenant (and Tenant shall not invoice Landlord) for any costs or expenses of repairing and maintaining the Tenant Maintenance Components, all such items being part of the Tenant Maintenance Components to be maintained at Tenant's sole cost and expense, and (iii) all repair and maintenance obligations for the Premises have been allocated to either (x) Tenant as Tenant Maintenance Components, or (y) Landlord as Landlord Maintenance Components, each as set forth herein. Any dispute regarding the allocation of repair and maintenance obligations as between Tenant and Landlord with respect to any component of the Premises not specified in the definitions, or for which the Parties are not in agreement as to the interpretation therefor, of either Tenant Maintenance Components or Landlord Maintenance Components shall be resolved in accordance with the procedures set forth in Article 29, provided however, that until such resolution is final the maintenance and repair obligations with respect thereto shall be performed by whichever Party can undertake and complete the repair and maintenance work in the shortest time frame and at the lowest overall

cost, with direct out-of-pocket expenses related thereto incurred by the performing party divided equally between Tenant and Landlord and paid with reasonable promptness by the non-performing party, and with direct out-of-pocket expenses of the prevailing party in the dispute subject further to reimbursement from the non-prevailing party within a reasonable period, not to exceed ninety (90) days, after final determination of responsibility.

(h) Landlord shall use all reasonable best efforts to schedule all repair and maintenance of the Premises, including with regard to the Landlord Maintenance Components, and the Esplanade so as to minimize interference with Permitted Events, Permitted Event Support Activities and Tenant's Fundraising Events. Tenant shall use all reasonable best efforts to schedule all repair and maintenance of the Premises, including with regard to the Tenant Maintenance Components, so as to minimize interference with Landlord Events.

Section 15.02 Annual Maintenance Services Proposal. (a) At least nine (9) months prior to the commencement of each Season in each calendar year during the Post-Completion Term (or in the case of the first (1st) Season in the Post-Completion Term, at least nine (9) months prior to the scheduled Substantial Completion Date), Landlord may, at its option and in its sole and absolute discretion, provide Tenant with a written proposal (the "Annual Maintenance Services Proposal") for Landlord to maintain and perform ordinary repairs of the Tenant Maintenance Components (an ordinary repair being a relatively low cost repair of a particular element of Tenant Maintenance Components, performed with some regularity, the need for which results from regular wear and tear and does not include a capital repair, a capital replacement or additions to, or enlargements of, any such particular element), on behalf of Tenant, in accordance with Section 15.01, during the immediately following twelve (12)-month period between April 1 and March 31 (or portions thereof, as applicable, during the first and last calendar year of the Post-Completion Term) (each such period, an "Annual Maintenance Period"). The Annual Maintenance Services Proposal shall include, in reasonable detail: (a) the scope of maintenance and ordinary repair work; (b) the standards, expressed as both performance specifications and the frequency, extent and quality of services for maintenance and ordinary repairs (the "Standards"), such Standards to be not less than the level to which similar repair and maintenance is performed by Landlord elsewhere in the Park; (c) the cost budget, including, but not limited to, labor and fringe, materials and supplies, equipment, third party contracted work, supervision and other line items as would typically be included in a maintenance and ordinary repair cost budget, including contingency; and (d) payment terms and appropriate true-up mechanisms should the actual costs of performing maintenance and repair on a quarterly and annual basis be more or less than the cost budget. Landlord agrees that, with respect to the Annual Maintenance Services Proposal: (i) the cost budget and all elements thereof shall be fair and reasonable, and (ii) the Standards shall include a requirement that the services to be provided shall be no less exacting than (but may be more exacting than) the maintenance and ordinary repair standards applicable to other portions of the Park and shall, subject only to the satisfactory performance of capital repair and replacement performed by Tenant (if not performed by Landlord as Additional Services (as such term is defined below)), and the repair and maintenance of those elements of Tenant Maintenance Components used by Tenant for Permitted Events, Permitted Event Support Activities, Fundraising Events, Tenant's Concessionaire Units, and with respect to the restroom facilities on the Premises, be sufficient to satisfy the good and safe order and condition requirement for Tenant Maintenance Components as set forth in Section 15.01.

(b) At Tenant's request, provided that such request is received by Landlord in writing not less than three (3) months prior to the date that the Annual Maintenance Services Proposal may otherwise be submitted by Landlord to Tenant, and in Landlord's sole discretion should Landlord elect to accept such request from Tenant, the Annual Maintenance Services Proposal shall include additional services to be provided to the Tenant Maintenance Components (the "Additional Services") as set forth herein. The Additional Services may include cleaning of the Restroom Facilities, capital replacement and capital maintenance of certain long-lived assets, such as park furniture, railings, light poles, pavement, lawns, trees and other similar long-lived assets, it being understood and agreed that: (i) Landlord will undertake Additional Services through third-party contractors and vendors procured in accordance with Landlord's procedures and requirements with bid scopes and specifications, (ii) Additional Services shall be subject in all cases to the prior review and approval of Tenant, in Tenant's sole discretion, with respect to bid scopes, specifications and maximum price (such Tenant review and approval to be undertaken by Tenant as part of its review of the Annual Maintenance Services Proposal and prior to the issuance of bids by Landlord), and (iii) Additional Services included in the Annual Maintenance Services Proposal will be performed by Landlord for the related charges on a pass-through basis specified in the cost budget in consultation with, but without approval by, Tenant. If and to the extent that received bid prices for items included among the Additional Services exceed the cost budget, then approval by Tenant shall be required. The Annual Maintenance Services Proposal, including the Additional Services, shall be solely for elements of Tenant Maintenance Components, provided however that such services shall not include the repair and maintenance of elements of Tenant Maintenance Components (including all structures and facilities related thereto) used for Permitted Events, Permitted Event Support Activities, Fundraising Event, or Tenant's Concessionaire Units, which elements shall remain the sole responsibility of Tenant to be performed solely by Tenant or contractors working on behalf of Tenant.

(c) During the period between September 1 and November 30 before each Annual Maintenance Period, as and to the extent requested by either Tenant or Landlord, the Parties will meet as often as reasonably necessary, exchange information upon request, and otherwise work together in good faith to try to agree upon the Annual Maintenance Services Proposal for such Annual Maintenance Period. If (i) Landlord elects not to provide an Annual Maintenance Services Proposal for the upcoming Annual Maintenance Period to Tenant or does not submit an Annual Maintenance Services Proposal at least 9 months prior to the commencement of any Season, or (ii) during the period of September 1 to November 30, (x) Tenant notifies Landlord that it does not wish Landlord to perform the maintenance and repair services specified in the Annual Maintenance Services Proposal for the upcoming Annual Maintenance Period, (y) Landlord notifies Tenant that it elects not to perform such services for the upcoming Annual Maintenance Period, or (z) the Parties cannot agree upon the Annual Maintenance Services Proposal by no later than November 30, then Tenant shall be solely responsible hereunder (in accordance with the terms hereof) for maintaining and repairing the Tenant Maintenance Components in accordance with Section 15.01 during the upcoming Annual Maintenance Period to which such Annual Maintenance Services Proposal relates or would have related.

(d) If the Parties mutually agree to the Annual Maintenance Services Proposal (as it may be modified by mutual agreement) for any Annual Maintenance Period, then such

proposal shall become the maintenance services arrangement (the “Maintenance Services Arrangement”) solely for and during the Annual Maintenance Period to which such Annual Maintenance Services Proposal relates. The Parties may by mutual written agreement amend the Maintenance Services Arrangement from time to time until the end of the applicable Annual Maintenance Period to, among other things, add or remove services and adjust the cost budget accordingly; provided that if Tenant requires that supplemental services not identified in the Maintenance Services Arrangement be performed during such Annual Maintenance Period, or that an increase in the Additional Services be undertaken, then Landlord shall, in good faith, reasonably cooperate with Tenant to add such services provided that such addition is commercially reasonable and may be accommodated using Landlord’s procedures and requirements, and subject further to payment by Tenant of the related additional costs (if any) in accordance with the Maintenance Services Arrangement. During the period when a Maintenance Services Arrangement is in effect, Tenant’s repair and maintenance obligation with respect to those elements of the Tenant Maintenance Components which are included in the Maintenance Services Arrangement shall be deemed satisfied, to the extent that Landlord is responsible for such obligation pursuant to such Maintenance Services Arrangement.

(e) The Parties acknowledge and agree that unless and until there is mutual agreement on the Annual Maintenance Services Proposal for an Annual Maintenance Period (including scope, standards and cost), (i) Tenant shall have no obligation whatsoever to employ Landlord to provide maintenance or repair services during such Annual Maintenance Period and Tenant may instead arrange for the Tenant Maintenance Components to be kept, maintained and repaired by Tenant or a third party contractor reasonably selected by Tenant (and reasonably acceptable to Landlord (with respect to the experience, integrity, insurance, etc. of such third party contractor, such consent to be granted or withheld within fifteen (15) Business Days of request and submission of supporting documentation, with any disapproval to be accompanied by a reasonably detailed explanation)), in each case, at the sole cost and expense of Tenant, and (ii) Landlord shall not be required to perform such services. Each Party’s decision regarding whether or not to agree to an Annual Maintenance Services Proposal or any portions thereof for any Annual Maintenance Period shall not be subject to the alternative dispute resolution procedures set forth in Article 29. All Impositions payable by Landlord in connection with the reimbursable expenses of Landlord pursuant to the Maintenance Services Arrangement for the maintenance and repair of the Tenant Maintenance Components shall be reimbursable by Tenant, unless such Impositions are attributable to the acts or omissions of Landlord or its Representatives.

Section 15.03 Maintenance Termination. (a) The Parties acknowledge and agree that if Landlord (i) fails to keep, maintain or repair portions of the Tenant Maintenance Components pursuant to Section 15.02 and any applicable Maintenance Services Arrangement, and (ii) such failure remains uncured for at least thirty (30) days (or, in the case of failures which are not susceptible to cure within thirty (30) days, provided Landlord promptly commences and diligently pursues cure of such failure with all reasonable dispatch, such longer period as shall be reasonably necessary to cure, but in no event longer that 90 days in the case of material failures, unless the Parties mutually agree to an extension) after Landlord’s receipt of written notice thereof from Tenant (which notice shall include specific instructions as to how Landlord can cure such failure) (the “Maintenance Services Arrangement Default Notice”), Tenant shall have the right (but not any obligation) to cancel, terminate or render of no further force or effect, such

Maintenance Services Arrangement. Instead Tenant shall arrange for the Tenant Maintenance Components to be kept, maintained and repaired by Tenant or a third party contractor reasonably selected by Tenant (and reasonably acceptable to Landlord with respect to the experience, integrity and insurance of such third party, such consent to be granted or withheld within fifteen (15) Business Days of request and submission of supporting documentation, with any disapproval to be accompanied by a reasonably detailed explanation) and at the sole cost and expense of Tenant.

(b) If Tenant exercises its right to terminate such Maintenance Services Arrangement pursuant to this Section 15.03, then from and after the date of such termination, Tenant shall have no obligation whatsoever to pay any charges to Landlord pursuant to the Maintenance Services Arrangement (other than for invoices with respect to periods prior to the date of such termination payable pursuant to the Maintenance Services Arrangement) and Landlord shall promptly refund Tenant for any and all sums actually paid in advance by Tenant pursuant to such Maintenance Services Arrangement for periods from and after the date of such termination. This Section 15.03 shall not be subject to the alternative dispute resolution procedures set forth in Article 29.

Section 15.04 Tenant Right to Perform Supplemental Services. (a) Tenant shall have the right (but not any obligation) at any time following Landlord's receipt of a Maintenance Services Arrangement Default Notice to issue a notice to Landlord that Tenant elects to perform certain supplemental repair and maintenance services to address, in whole or in part, one or more of the deficiencies specified in such Maintenance Services Arrangement Default Notice (the "Supplemental Services Notice"). The Supplemental Services Notice shall set forth in reasonable detail: (i) the scope of the supplemental repair and maintenance services that Tenant elects to perform, including a description of the services and the location on the Premises where such services are to be performed, (ii) the third party contractor which shall be undertaking the supplemental repair and maintenance services on behalf of Tenant (together with the submission of such insurance certificates as may be required under this Lease), and (iii) the date and approximate time of the commencement and completion of such supplemental repair and maintenance services, provided that, except in exigent circumstances, the date and time of commencement shall not be prior to twenty-four (24) hours from the date and time that Landlord receives the Supplemental Services Notice.

(b) Upon receipt of the Supplemental Services Notice, and during the conduct of the work related thereto, Landlord shall provide such reasonable cooperation as may be necessary to facilitate the performance by Tenant's contractor of the supplemental repair and maintenance services specified in the Supplemental Services Notice.

(c) If and to the extent that Tenant performs such supplemental repair and maintenance services, then Tenant shall not be entitled to: (a) exercise its right to terminate the Maintenance Services Arrangement solely by reason of Landlord's failure to cure the particular deficiency specified in the Maintenance Services Arrangement Default Notice and subsequently addressed by Tenant pursuant to the Supplemental Services Notice (provided however that such limitation shall only be effective if the associated supplemental repair and maintenance services are performed by Tenant during Landlord's cure period with respect to such failure as set forth in Section 15.03), or (b) recover from Landlord any sums paid by Tenant to perform such

supplemental repair and maintenance services unless such sums relate to costs already paid by Tenant to Landlord for work that Landlord does not perform and for which Landlord has not incurred or obligated an expense (such as a service contract or supply order which Landlord cannot cancel or for which Landlord cannot be reimbursed or credited by a vendor, or labor costs for Landlord's repair and maintenance staff which Landlord has assigned to the Maintenance Services Arrangement). In such a case Landlord shall reimburse such amounts to Tenant pursuant to terms which shall be more particularly be set forth in the Maintenance Services Arrangement.

(d) Notwithstanding the foregoing, Tenant shall not be limited or constrained from pursuing its termination right pursuant to Section 15.03 with respect to any failure by Landlord specified in a Maintenance Services Arrangement Default Notice which is not addressed by Tenant pursuant to the Supplemental Services Notice, or should Tenant's performance of supplemental repair and maintenance services pursuant to a Supplemental Services Notice be undertaken after the expiration of Landlord's cure period as set forth in Section 15.03.

Section 15.05 Negligence. The Parties acknowledge and agree that, notwithstanding any other provision of this Lease, to the extent any maintenance, repair or replacement of any items, parts or components is necessitated by the negligence, malfeasance or nonfeasance of one of the Parties or its Representatives, such Party shall be solely responsible for the costs and expenses thereof, regardless of whether such maintenance, repair or replacement is of or to the Tenant Maintenance Components or the Landlord Maintenance Components.

Section 15.06 Periodic Inspections. Landlord shall be required to make periodic inspections of Landlord Maintenance Components, using a qualified third party professional, and make such reports available to Tenant promptly after receipt thereof. Tenant shall have a corresponding obligation for Tenant Maintenance Components. In each such case, such inspections shall be conducted no less frequently than is necessary to be in compliance with time periods established by general industry standards during the Post-Completion Term. Each Party shall be required to reasonably address findings in the report related to its components, within a period of time specified in such report (or within such other period that is reasonable and practical under the circumstances), with respect to repairs and replacements that are reasonably necessary to prevent deterioration to the Premises that are severe, conditions which may cause material damage to the Premises, conditions which may adversely affect the functionality of the Premises, or conditions which may constitute a threat to public safety.

Section 15.07 Access of Landlord to Premises to Perform Obligations. Landlord, upon reasonable advance notice to Tenant, and in a manner that would not unreasonably interfere with Tenant's use of or access to the Premises, shall have access to the Premises for the purpose of inspecting the Premises to ascertain the condition of the Tenant Maintenance Components and the Landlord Maintenance Components. During such periods of access for the purpose of undertaking inspections, Tenant or its designee may accompany Landlord. Landlord may also enter the Premises from time to time, as may be reasonably necessary or appropriate, to perform its maintenance and repair obligation hereunder (including, under the Maintenance Services Arrangement) including with respect to clean-up following Landlord Events. All such access by Landlord shall be subject to the general provisions with respect to entry and work in Article 10.

In any entry onto the Premises or work on the Premises, Landlord and its Representatives shall exercise their reasonable best efforts not to interfere with any Permitted Events, Tenant's Fundraising Events or Permitted Event Support Activities.

## ARTICLE 16

### CHANGES AND ALTERATIONS

Section 16.01 No Alterations Without Prior Approval. From and after the Commencement Date, neither Party shall make any changes, alterations, improvements, installations, additions or perform any other Construction Work (collectively, "Alterations") on or to the Premises, of any nature, without the prior written consent of the other Party; provided, however, that no temporary change, alteration, improvement, installation, addition or other work in connection with any Permitted Event or Tenant's Fundraising Event or which is specifically contemplated by the Design Documents or otherwise permitted hereunder shall be considered to be an "Alteration" for any purpose hereunder; provided, further, however, that the term "Alteration" also does not include ordinary maintenance and repair, decorations and installation of equipment (other than any Equipment, which, upon installation or annexation to the Premises, would constitute fixtures). The other Party's approval of the plans and specifications for any such Alterations, or any revisions thereto, or the other Party's inspection of such Alterations to verify conformance with the plans and specifications therefor, shall not constitute an opinion or agreement by such other Party 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 such other Party, waive any of such other Party's rights or release the Party proposing to undertake such Alterations from any of its obligations hereunder.

#### Section 16.02 Conditions Applicable to Alterations.

(a) Conditions to Alterations. Notwithstanding Section 16.01, subject to prior written notice to Landlord, and to the provisions of this Section 16.02, Tenant, at its sole cost and expense, may make Alterations which are non-structural, and which do not adversely affect utility services or plumbing and electrical lines in any material respects, on or to the interior of the Premises, and which do not increase the bulk and/or height of the structures on the Premises in any material respects; provided, that (i) Tenant shall consult with Landlord in good faith with respect to the employing of contractors or mechanics for such Alterations; (ii) no Default or Event of Default shall have occurred and be continuing; and (iii) Tenant shall have furnished Landlord with detailed plans and specifications for the proposed Alterations, and in good faith and reasonably consider any comments from Landlord on such plans and specifications.

(b) Compliance with Requirements Governing Alterations. Each Party shall, at its sole cost and expense, comply with all Requirements applicable to any Alteration undertaken by such Party, including, without limitation, obtaining, prior to commencement of any such Alteration, Authorizations and Filings 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. The other Party shall not be required to pay for or contribute to the costs of any such Alteration. The Party undertaking the Alteration shall reimburse the other Party for any documented, out-of-pocket reasonable costs



and expenses incurred by such other Party in connection with such Alteration, including fees of Development Professionals engaged by such other Party (but who are not employees of such other Party) to review the plans and specifications of the Party undertaking the Alterations, and verifying conformance therewith during or following the completion of any such Alterations, and documented, out-of-pocket reasonable costs and expenses incurred on account of any failure of such other Party to comply with any requirements of this Lease pertaining to the making of such Alterations. The Parties acknowledge and agree that the other Party may not seek reimbursement from the other Party under this Section 16.02(b) for costs and expenses of such other Party's employees.

(c) Right to Inspect Alterations. At all times during the progress of an Alteration and until final certificates of approval therefor shall have been delivered to the other Party (i.e., the Party not undertaking the Alteration), such other Party shall have the right to have its Representatives inspect the work being performed at the Premises and to verify compliance with the most recent plans and specifications for such Alteration provided to the other Party; provided, that if the Party undertaking the Alteration is Tenant, Landlord shall give Tenant reasonable notice of Landlord's intention to inspect the Premises and Tenant or its designee may accompany Landlord during any such inspection. Landlord shall use reasonable best efforts to minimize interference with Tenant's operations when conducting such inspections and in no event shall any such inspections occur during any Permitted Event or Tenant's Fundraising Events. All such access by Landlord shall also be subject to the general provisions with respect to entry and work in Article 10.

Section 16.03 No Allowances. In no event shall any Party be entitled to any abatement, allowance, reduction or suspension of any charge, cost or expense payable by such Party under this Lease, nor shall such Party be released of or from any other obligations imposed upon such Party under this Lease because of the construction of any Alteration by such Party.

## ARTICLE 17

### DESIGN AND CONSTRUCTION WORK FOR PROJECT

Section 17.01 Joint Decision Making. Tenant and Landlord shall arrange for preparation of the Design Documents and Construction Documents and performance of all Project Construction Work in accordance with the requirements of this Article 17 and at all times subject to all other terms of this Lease. Tenant and Landlord hereby agree that:

(a) All design decisions will be mutually approved by the Parties, regardless of which Party is holding the Development Agreements, and that all Development Professionals shall coordinate with the Project Manager who in turn will coordinate with both Parties on all material aspects of the Project. No change in the Development Professionals agreed upon or contractual scope of services or other change in any aspect (or any approval or consent) will be effective unless approved in writing by the Project Manager. All payments to the Development Professionals must be preceded by review and approvals of invoices by the Project Manager.

(b) With respect to Tenant Construction Components and Finish Work, all construction decisions affecting the scope of work, technical specifications, scheduling, means and methods and programming or Contracts will be made by Tenant, except Major Change Orders.

(c) With respect to Landlord Construction Components other than Finish Work, all construction decisions affecting the scope of work, technical specifications, scheduling, means and methods and programming or Contracts will be made by Landlord, except Major Change Orders.

(d) All Major Change Orders will be mutually approved by the Parties in accordance with this Article 17.

Section 17.02 Landlord and Tenant Cost Obligations. Subject to and as may otherwise be prescribed in this Article 17:

(a) In addition to all other costs as may be required to be paid by Tenant pursuant to the express terms of this Article 17, Tenant shall be solely responsible for the payment of (i) all costs associated with the preparation of the Design Documents by the Designer, (ii) Tenant's share of the Approval Expenses (pursuant to Section 17.04), and (iii) the payment for performance and completion of Tenant Construction Components (except as provided in Section 17.08 with respect to Landlord Change Orders) in accordance with the Construction Documents and pursuant to any Contract.

(b) In addition to all costs as may be required to be paid by Landlord pursuant to the express terms of this Article 17, Landlord shall be solely responsible for the payment of (i) all costs associated with the preparation of the Construction Documents by the Executive Landscape Architect (including its subconsultants and subcontractors), (ii) Landlord's share of Approval Expenses (pursuant to Section 17.04), and (iii) the payment for performance and completion of Landlord Construction Components (except as provided in Section 17.08 with respect to Tenant Change Orders) in accordance with the Construction Documents and pursuant to any Contract; provided, however, that subject to Section 17.02(d), Landlord shall not be required to pay in excess of Landlord's Pier Financial Commitment for the total costs due to the design and performance of the Demolition and Finish Work, and Landlord's share of Approval Expense (pursuant to Section 17.04) except to the extent due to Landlord Change Orders or Landlord Delays. For purposes of clarity, Landlord's Financial Pier Commitment shall not operate to limit Landlord's obligation to pay the costs for the design, performance and completion of the Esplanade, it being agreed that Landlord shall be fully responsible for and shall pay all costs of (and Tenant shall have no obligation or liability for) the Esplanade Work.

(c) Based on current estimates it is expected that Landlord will pay (and Landlord agrees to pay) at least Nineteen Million Dollars (\$19,000,000) for the Esplanade Work, but notwithstanding anything to the contrary herein, in the event that Landlord pays less than Nineteen Million Dollars (\$19,000,000) for the Esplanade Work, the difference between such lesser amount and Nineteen Million Dollars (\$19,000,000)

shall increase Landlord's Pier Financial Commitment for all purposes under this Article 17.

(d) Notwithstanding anything to the contrary herein, Landlord shall expend a total of at least Seventeen Million Dollars (\$17,000,000) (subject to increase for costs arising out of Landlord Change Orders or Landlord Delays and pursuant to Section 17.02(c) hereof) on portions of the Project other than the Esplanade, in addition to the Nineteen Million Dollars (\$19,000,000) to be expended by Landlord on the Esplanade Work. The Parties agree that no expenditure by Landlord shall count towards Landlord's Pier Financial Commitment or this Seventeen Million Dollars (\$17,000,000) requirement unless approved by each of Landlord and Tenant in its reasonable discretion.

(e) Each Party agrees to perform its obligations under this Article 17 and to complete its respective Project Component in accordance with the Project Schedule and in a manner that avoids disruption to the other Party's performance of its obligations and completion of its Project Component. Except for any changes authorized by both Parties in accordance with this Article 17, Tenant shall be liable to Landlord for all costs incurred by Landlord due to Tenant's acts or omissions, including any that increase the cost of Landlord Construction Components, Demolition, Finish Work or cause a delay in Landlord's ability (or increase the cost) to achieve Substantial Completion of Landlord Construction Components in accordance with the Project Schedule (each, a "Tenant Delay"). Likewise, except for any changes authorized by both Parties in accordance with this Article 17, Landlord shall be liable to Tenant for all costs incurred by Tenant due to Landlord's acts or omissions, including any that increase the cost of Tenant Construction Components or Finish Work, cause a delay in Tenant's ability to achieve Substantial Completion of Tenant Construction Components in accordance with the Project Schedule, or impact Tenant's ability to use and occupy the entire Premises for the use and purpose authorized by this Lease (each a "Landlord Delay"), it being understood that Landlord may complete the Esplanade Work after Substantial Completion of Tenant Construction Components; provided such completion work does not prevent Tenant's ability to use and occupy the entire Premises as authorized by this Lease. Notwithstanding the preceding, however, it is agreed that each Party's liability for Tenant Delays or Landlord Delays, as the case may be, shall in no event exceed Two Million Dollars (\$2,000,000), excluding (i) the proceeds of any applicable insurance with respect to such delays, and (ii) any costs incurred by Tenant and otherwise recoverable from Landlord under Section 28.04.

#### Section 17.03 Design Protocol.

(a) The Parties acknowledge that Tenant has entered into a letter of intent with Designer, dated October 28, 2013, most recently amended by that twelfth amendment, dated as of August 1, 2015, to commence preparation of the Design Documents.

(b) The Parties acknowledge that Landlord has entered into a Consultant Agreement with the Executive Landscape Architect, dated as of December 5, 2013 to commence preparation of the Construction Documents.

(c) The Parties agree that Tenant has entered into a full scope Development Agreement with Executive Architect, and that Landlord shall have direct contractual privity with Executive Landscape Architect, and Tenant shall have direct contractual privity with Executive Architect and Designer. It is the Parties' intent to execute full-scope Development Agreements with Designer and the Executive Landscape Architect to complete, respectively, the Design Documents and Construction Documents for the Project Construction Work. In executing such Development Agreements, the Parties will mutually agree on the structure for such agreements, including the contracting Party or Parties for each agreement; provided, however, that Landlord and Tenant shall at all times have direct contractual privity with each of the Designer and the Executive Landscape Architect. All Development Agreements, regardless of the contracting Party, including revisions thereto, shall be subject to the written mutual approval of the Parties prior to execution.

(d) The Parties shall collaborate with each other and, pursuant to this collaboration, the hiring of any Project Manager or Contractor by either Party shall be subject to and conditional upon the prior approval of the other Party.

(e) Designer and the Executive Landscape Architect shall report to both Landlord and Tenant on all matters relating to the Project Components, and any decisions with respect to the Design Documents and Construction Documents that may affect the scope, design, constructability, technical specifications, substantial cost, means and methods, and schedule shall be made jointly by the Parties, subject to any construction decisions made under clauses (b) and (c) of Section 17.01. To ensure effective decision making, management and coordination, all reporting and coordination between the Parties shall be conducted through such Project Manager(s) as may be mutually designated and agreed upon by the Parties pursuant to a reasonable protocol to be established by the Parties.

(f) The Parties expect to proceed in general accordance with a preliminary design schedule attached hereto as Schedule 17.03(f) (the "Design Schedule"). The Design Schedule shall be modified only with the prior written agreement of both Parties.

(g) The Parties confirm that Tenant has entered into a full scope Development Agreement with Fabian Jabro and Starling Keene d/b/a Standard Architects to serve as executive architect for the Project ("Executive Architect"). Executive Architect shall be one of the Development Professionals. The Parties agree, and Tenant shall ensure, that the Executive Architect cooperate and work closely with Designer and Executive Landscape Architect in the preparation of the Design Documents, and provide its services consistent with Article 17 hereof and the Scope Division Matrix attached hereto as Schedule 17.03(g). The Parties will have the Designer and Executive Landscape Architect perform their services pursuant to, and in compliance with, the Scope Division Matrix attached hereto as Schedule 17.03(g).

Section 17.04 Permits. In connection with the application for and obtaining of Permits, the following provisions shall apply:

(a) Seeking Permits. Landlord, as applicant for the Permits, together with the assistance of the Designer, the Executive Landscape Architect, and Tenant, shall undertake diligent and commercially reasonable good faith efforts to secure the Permits,

and to comply with and assist Tenant in obtaining any and all other Permits necessary to satisfy all Requirements as shall be necessary, to enable the occupancy and use of the Premises for the intended use and purposes of this Lease. Landlord and Tenant shall jointly agree on all decisions concerning the Permits, including the application, or any changes to such applications, for the Permits. The Parties agree that Executive Architect and Executive Landscape Architect shall assist Landlord and Tenant in securing Permits for the Project.

(b) Review of Applications. All applications for the Permits, including any changes to such applications, shall, prior to submission to the appropriate public authority or body, be subject to the review and written approval of both Tenant and Landlord.

(c) Environmental Consultant and Counsel. In connection with the Permits relating to environmental matters, Landlord has retained AKRF, Inc. ("Environmental Consultant") to conduct studies and analyses and to prepare all necessary environmental review documentation, and Sive, Paget and Riesel ("Environmental Counsel") to provide related legal counsel and representation. All such studies, analyses and documentation prepared by the Environmental Consultant shall be furnished to Tenant within two (2) Business Days of receipt of same by Landlord, and Landlord shall keep Tenant promptly and fully informed of its discussions with the Environmental Counsel and any material counsel or decisions made in connection with or with respect to all environmental matters. Tenant shall pay to Landlord as an express obligation hereunder one-half of the costs (or billable hours, as the case may) to Landlord associated with each invoice submitted to Landlord by the Environmental Consultant or the Environmental Counsel with respect to the Pier Project; provided, that such Tenant's share of costs does not exceed the amount of Three Hundred-Fifty Thousand Dollars (\$350,000), except as such amount may be adjusted as reasonably agreed to by the Parties. Tenant shall pay such costs as shown on each invoice to Landlord within thirty (30) days after notice of demand therefor from Landlord and, within thirty (30) days of Landlord's receipt of such payment from Tenant, Landlord shall pay the Environmental Consultant or the Environmental Counsel the entire amounts reflected on the related invoices submitted by the Environmental Consultant or the Environmental Counsel. Landlord shall be solely responsible for any such invoices relating to the Esplanade Work.

(d) Meetings. Landlord shall notify Tenant at least five (5) days in advance of scheduling (or rescheduling, as the case may be) of any and all meetings with reviewing agencies in connection with any Permit, and will advise Tenant promptly of any issues or difficulties that arise. Tenant shall have the right, if Tenant so desires, to attend any meetings or hearings with governmental agencies involved in issuing any Permit and, correspondingly, Landlord shall have the right to request that Representatives of Tenant attend any such meetings or hearings upon reasonable advance written notice from Landlord.

(e) Approval Expenses. In addition to the costs and expenses associated with services performed by the Environmental Consultant and the Environmental Counsel as prescribed in Section 17.04(c), each Party shall pay one-half of all costs (or billable hours, as the case may be) and expenses of any kind or nature incurred in connection with

submitting the Pier Project for public review and obtaining the Permits and any other governmental submissions with respect to the Pier Project, including, but not limited to, third-party application fees, testing costs, architectural, engineering, geotechnical, survey and environmental studies, consulting fees and disbursements and other pre-construction costs (“Approval Expenses,” the same being inclusive of the costs and expenses associated with the services of the Environmental Consultant and the Environmental Counsel). The Total Project Costs shall be inclusive of the Approval Expenses. Notwithstanding the foregoing, (x) the costs of the Designer and the Executive Landscape Architect, while included in the Total Project Costs, shall not be included as Approval Expenses and shall be paid for by the Parties as specifically provided in Section 17.02, and any and all approval, permitting or other costs associated with the Esplanade Work shall be paid for solely by Landlord, and (y) in the event Tenant exercises its right to terminate this Lease prior to the Commencement Date pursuant to Section 28.05 hereof, and provided Landlord is not in breach of Section 17.04(f) or any of the other terms and provisions of this Lease, Tenant shall reimburse Landlord for Approval Expenses (and other costs incurred under Section 17.04 hereof, other than for Demolition and other hard costs) it expended in excess of Four Million Dollars (\$4,000,000), but only to the extent of such excess and to the extent such amounts have been approved by Tenant in accordance with the last sentence of Section 17.02(d) hereof.

(f) Contracts with Development Professionals. Upon (i) Tenant’s request at any time after Landlord has incurred Approval Expenses (and other costs incurred under Section 17.04 hereof, other than for Demolition and other hard costs) in excess of Four Million Dollars (\$4,000,000), or (ii) Landlord’s request at any time after Landlord has incurred Approval Expenses (and other costs incurred under Section 17.04 hereof, other than for Demolition and other hard costs) in excess of Seven Million Dollars (\$7,000,000), then in either such case of (i) or (ii), Landlord shall assign to Tenant all of Landlord’s rights and obligations under each of the Development Agreements.

(g) Southern Balcony. Notwithstanding anything to the contrary herein, the cost of constructing the southern balcony, as shown in Schedule 17.04(g) (the “Southern Balcony”), shall be borne equally by Landlord and Tenant on a 50/50 basis. The Parties’ respective obligations to contribute to the cost of the Southern Balcony shall be capped at Five Hundred Thousand Dollars (\$500,000) each. The foregoing Southern Balcony shall be leased by Tenant as part of the Premises and treated as part of the Premises for all purposes.

#### Section 17.05 Project Development.

(a) In furtherance of advancing the Project design, the Parties shall, and will cause the Development Professionals to, engage in further refinements to the Concept Design in order to create schematic designs and more advanced design development drawings for the Project, to the extent required to submit complete applications for the Permits.

(b) Pending and following the issuance of the Permits, the Parties shall prepare, cause to be prepared, identify, acquire, confirm or perform the following:

(i) engagement of a pre-construction manager (the “Pre-Construction Manager”) on terms mutually agreeable to the Parties;

(ii) completion of the Design Documents, the Parties acknowledging that a list of the approved (a) Design Documents, as of August 10, 2015, is attached hereto as Schedule 17.05(b)(ii)-1, and (b) Design Documents, as of the date hereof, is attached hereto as Schedule 17.05(b)(ii)-2;

(iii) upon the Parties’ approval of the Design Documents, the Executive Landscape Architect shall prepare Construction Documents and submit for the Parties’ review and approval a set of Construction Documents that are (A) sixty percent (60%) complete for each Project Component (the “60% Construction Documents”), and (B) one hundred percent (100%) complete for each Project Component (the “100% Construction Documents”);

(iv) budgets for the Project (each, a “Budget”), based off of the 60% Construction Documents and the 100% Construction Documents, which include (A) the estimated cost of the Project Construction Work prepared by the Pre-Construction Manager or other qualified cost estimator, as may be mutually approved, and (B) the estimated cost of the Development Professionals and all costs associated with the issuance of all Permits as prepared and agreed upon by Tenant and Landlord, broken down into each of the Project Components, or to a greater degree as agreed upon by the Parties, which estimated costs shall not be greater than the Maximum Cost;

(v) if a Budget prepared as per Section 17.05(b)(iv), or the bid prices received or estimated to be received for the Contracts, together with the estimated cost of the Development Professionals and all costs associated with issuance of all Permits, shall exceed the Maximum Cost, then and in such event, the Parties shall undertake Value Engineering to seek to modify the Project Construction Work such that the Budget may be reduced to the Maximum Cost or less, or otherwise to a Budget acceptable to both Parties, provided that any such modifications must be mutually agreed to by both Parties in writing;

(vi) a schedule for completion of the Project (the “Project Schedule”);

(vii) the means and methods for achieving the Project Components, including Project site logistics and phasing plans, to the extent not previously determined;

(viii) any Development Agreements not previously entered into that are required for preparation of the Contracts; and

(ix) preparation and execution of a Contract or Contracts, conducting the bidding therefor and the selection of the Contractor or Contractors to commence performance of the Project Construction Work, and such Contracts as shall be appropriate to enter into for the proper sequencing of the Project

Construction Work, as such sequencing shall be agreed to by the Parties and as contemplated by the Project Schedule.

Tenant and Landlord agree to evaluate each of the foregoing in good faith and to not arbitrarily withhold their respective approvals thereof. Tenant and Landlord agree that they shall not commence the Project Construction Work unless and until Tenant and Landlord shall have confirmed in writing that all of the foregoing have been satisfied to their satisfaction, or such satisfaction has been waived by the Parties in writing, and that the Parties are willing to commence the Project Construction Work.

(c) Subject to compliance with the terms contained in Section 17.05(b), Landlord shall proceed with performance of the Demolition and the Esplanade Work (unless and to the extent any Demolition or Esplanade Work shall have been earlier commenced upon the mutual written agreement of the Parties) and the other Project Construction Work. The Parties confirm that the Demolition attached hereto as Schedule 17.05(c) has been performed by Landlord.

(d) Project Manager will be instructed to provide each Party, monthly until Final Completion, an industry standard report regarding the status of the Project Construction Work and work undertaken by Development Professionals (the “Monthly Project Status Report”) setting forth at a level of detail generally included in such reports, and in form mutually acceptable to Tenant and Landlord: (a) the current amount of Total Project Costs including both projected and actual base contract and revised contract amounts and contingencies, and non-contractual expenses, (b) list of all awarded construction and other contracts and subcontracts, including Project Manager’s contract, Development Professionals contracts, insurance, bonding and other cost agreements forming a part of Total Project Costs, (c) changes, if any, to the Total Project Costs since the last issued Monthly Project Status Report, including but not limited to changes resulting from approved Change Orders, and open notices of modifications together with the estimated costs thereof, (d) identification of those portions of Total Project Costs and awarded contracts and subcontracts that are currently, or anticipated to be, Tenant Construction Components and Landlord Construction Components, (e) percentage completion for each phase of the Project and each contract and subcontract, and a listing of contractor and subcontractor applications for payment received, approved and disbursed by Tenant and Landlord respectively, and amounts of retainage for each contract and subcontract as applicable, (f) pending and settled contractor and subcontractor claims and Liens, (g) contract and subcontract close-out status, (h) contract and subcontract work to be completed and amounts remaining to be paid to satisfy, respectively, each of Tenant’s and Landlord’s commitments to the Total Project Costs, and (i) scheduled and actual completion dates for each contract and subcontract. The Project Manager shall, in addition, provide Tenant and Landlord with any documentation, data or back-up information reasonably requested by either or both with respect to each Monthly Project Status Report.

Section 17.06 Selection of the Contractor.

(a) Bidding. Upon approval of the Construction Documents by both Parties, Hunter Roberts Construction Group, LLC, with the assistance of the Executive Landscape Architect, shall prepare bid packages, which shall be used by Tenant and Landlord in connection



with bidding Contracts and to procure the Project Construction Work in the most optimal manner in accordance with the terms hereof and all Project documents. The Parties agree that Hunter Roberts Construction Group, LLC shall be selected as construction manager to perform the Project Construction Work, instead of and in place of the Pre-Construction Manager, whom the Parties confirm was Skanska USA Building, Inc.

(b) Selection of Tenant's Contractor. Tenant shall select and contract with the Contractor that will act as the prime contractor or construction manager for the construction of Tenant Construction Components, subject to the approval of Landlord, not to be unreasonably withheld, conditioned or delayed. With respect to the selection of Tenant's Contractors that will act as subcontractors, the Parties will mutually approve a bidders list for all scopes of work in excess of One Million Dollars (\$1,000,000) each, and Tenant shall thereafter be free to award subcontracts to any Contractor on such approved bidders' lists for any reason in the sole and unfettered discretion of Tenant. Upon presentment of a proposed bidders' list by Tenant, Landlord shall have thirty (30) days to notify Tenant in writing of any objection to any proposed bidders on such list, and shall be deemed to have approved any bidders to which such objection is not timely made.

(c) Selection of Landlord's Contractor. Landlord shall select and contract with the Contractor that will act as the prime contractor or construction manager for the construction of Landlord Construction Components, subject to Tenant's right to participate in all aspects of the procurement and selection process, including, without limitation, review and preparation of the request for proposals, review of bids and interview of bidders.

#### Section 17.07 Construction Contracts.

(a) Contract(s). Each Contract with a Contractor for a Project Component shall (i) provide for either a guaranteed maximum price or a stipulated sum, which amount shall not be greater than the amount reserved in the approved Budget for such Project Component (the sum of the guaranteed maximum price and stipulated sum for all Contracts are referred to herein as the "Maximum Contract Price") and which shall be broken down by trade; (ii) include a requirement that such Project Component shall be completed in accordance with the Project Component Schedule; and (iii) otherwise be in a form mutually and reasonably acceptable to Landlord and Tenant, which form shall be agreed upon by both Landlord and Tenant in advance of the relevant procurement, and in any event shall contain the terms set forth in this Section 17.07. The total costs of the Project Components shall be determined in accordance with, and subject to review and approval by Tenant and Landlord on an "open-book basis."

(b) Project Component Schedule. The Contract relating to each Project Component shall require the Contractor to provide, no later than Contract execution, a preliminary schedule for the completion of the construction of such Project Component (each, a "Project Component Schedule"), which Project Component Schedules shall establish the substantial completion date of the particular Project Component, and shall set forth the projected dates for the completion of the construction milestones and other milestones in connection with certain significant aspects of the construction of the Project. The Project Component Schedules shall be subject to review and written approval of each Party. The Contractors shall be required to update the Project Component Schedules on a monthly basis, with any Major Change Order or

Change Order revision to the Project Component Schedules subject to review and written approval of each Party.

(c) In addition to any other requirements of this Article 17, the Contracts entered into by Tenant and Landlord and their Contractors and materialmen shall include the following terms, and shall provide that such terms will survive the expiration or earlier termination of such Contracts:

(i) Notwithstanding that the Contractor or materialman may have performed work or furnished materials for the property interest of the other Party (or any part thereof), such other Party shall not be liable in any manner for payment or otherwise to the Contractor or materialman in connection with such work performed or materials furnished.

(ii) The Contractor or materialman shall make its books and records relating to any work performed or acquisition or furnishing of any Equipment available for inspection by the other Party during reasonable business hours.

(iii) The other Party is not a party to the Contractor's or materialman's Contract with Tenant or Landlord, as the case may be, and that such other Party will not in any way be responsible to any Person for any claims of any nature whatsoever arising or which may arise from such Contract.

(iv) At the sole discretion of the other Party, the Contractor's or materialman's Contract with Tenant or Landlord, as the case may be, shall be assignable to such other Party upon such other Party's assumption of the obligations of Tenant or Landlord, as the case may be, under such Contract.

(v) The Contractor or materialman shall defend, indemnify and hold Landlord and Tenant and each of their subsidiaries, Affiliates, heirs or assigns, successors, agents, officers, directors, shareholders, partners, members and employees, and such other Persons as may be reasonably required by Landlord or Tenant, harmless from and against any and all claims, lawsuits, damages, expenses, liens, penalties, costs and liabilities (including reasonable attorneys' fees) caused by or arising out of the acts or omissions of, or breach of the Contract by, the Contractor or materialman.

(vi) Landlord and Tenant and each of their subsidiaries, Affiliates, heirs or assigns, successors, agents, officers, directors, shareholders, partners, members and employees, and such other Persons as may be reasonably required by Landlord or Tenant, shall be named as additional insureds under all policies of insurance required to be maintained by the Contractor or materialman under the Contract.

(vii) Landlord and Tenant and each of their heirs or assigns and successors, and such other Persons as may be reasonably required by Landlord or Tenant, shall be named as obligees under any payment and performance bonds or

other guaranties required to secure performance of the Contractor or materialman under the Contract.

(viii) Landlord and Tenant and each of their heirs or assigns and successors, and such other parties as may be reasonably required by Landlord or Tenant, shall be beneficiaries of any warranties required by the Contract.

(ix) Landlord and Tenant and each of their heirs or assigns and successors, and such other Persons as may be reasonably required by Landlord or Tenant, shall be intended third-party beneficiaries of the Contract.

(d) Any supplement or revision to any Contract that conflicts with the specific requirements of this Article 17 that governs such Contract or that constitutes a Major Change Order shall be subject to the written mutual approval of the Parties.

#### Section 17.08 Change Orders.

(a) The Parties shall maintain and contemporaneously update a log of all Change Orders and Major Change Orders issued in connection with each Party's respective Project Component (each a "Change Order Log") in a manner to be mutually agreed upon by the Parties and, in any event and at the minimum, consistent with good construction industry practice. Each Party will furnish a copy of its most up to date Change Order Log to the other Party in a manner and at times to be mutually agreed upon by the Parties, but in any event and at a minimum, no less frequently than once a month.

(b) In the event that a Party desires to issue a Major Change Order, it shall request in writing the other Party's approval of such Major Change Order. Within ten (10) Business Days of its receipt of a request for approval of a Major Change Order, the non-requesting Party shall notify the requesting Party in writing of its approval or disapproval thereof, and, in the case of disapproval, shall provide a detailed reason of its disapproval of such Major Change Order. Unless otherwise specified herein, whenever a consent or approval is required under this Article 17, the consent or approval of the non-requesting Party shall not be unreasonably withheld, conditioned, or delayed. Provided that both Parties have mutually agreed to a Major Change Order, such Major Change Order shall be effective only when set forth in a written Major Change Order executed by the Party holding the applicable Contract with the Contractor.

(c) Except as otherwise agreed to by the Parties in writing, the cost of any Change Order or Major Change Order issued solely at the direction or request of Tenant ("Tenant Change Orders") or Landlord ("Landlord Change Orders") shall be borne by, respectively, Tenant and Landlord. Except as otherwise agreed to by the Parties in writing, the cost of any Change Order or Major Change Order necessitated by legal requirements or field conditions shall be borne by Tenant to the extent such change affects Tenant Construction Components, and by Landlord to the extent such change affects Landlord Construction Components.

Section 17.09 Insurance.

(a) Landlord and Tenant agree that Schedule 17.09 hereto sets forth the types and limits of any insurance required to be maintained by the Development Professionals under the Development Agreements, or otherwise provided by the Parties, including, without limitation, professional errors or omissions insurance (if applicable to the services provided by the Development Professional), and Landlord and Tenant (and each of their subsidiaries, Affiliates, heirs or assigns, successors, agents, officers, directors, shareholders, partners, members and employees, and such other Persons as may be reasonably required by Landlord or Tenant) shall be named as additional insureds under all liability policies (excepting professional liability/errors and omissions insurance) maintained by the Development Professionals to the extent commercially available. Tenant acknowledges that if the \$10 million of coverage under the professional liability policy or policies required to be purchased by or on behalf of the Development Professionals under item (g) of Schedule 17.09 hereof should prove to be insufficient because claims that would otherwise be covered by such insurance exceed such \$10 million of coverage and any other available insurance proceeds, and no other insurance coverage applies, then Landlord shall not be responsible for any obligation in excess of (x) such \$10 million which would otherwise be covered by the professional liability policy or policies plus (y) any other applicable insurance coverage solely with respect to any casualty or claim arising from any defect or negligence in connection with the design or construction of any Landlord Maintenance Component which is covered by the professional liability insurance.

(b) Landlord and Tenant agree that the coverages identified under paragraphs (b), (c), (d), (e), (f), and (i) in Schedule 17.09 hereto set forth the types and limits of insurance Tenant shall cause each of its Contractors (other than subcontractors) to maintain, including, without limitation, general liability and workers' compensation, covering all construction work for each Party's respective Project Component. Tenant, through its Contractors (other than subcontractors), shall require all subcontractors to carry applicable coverage types identified in Schedule 17.09 in amounts commensurate (as determined by the applicable Contractor) with the Tenant Construction Components to be constructed by such Contractor, but otherwise with limits of not less than \$2,000,000 or required statutory amounts (whichever is greater).

(c) Landlord and Tenant agree that paragraph (a) of Schedule 17.09 hereto sets forth the placement of builder's risk insurance coverage for all Project Components. In the event Tenant requests that Landlord provide builder's risk insurance covering Tenant Construction Components, Landlord shall use commercially reasonable efforts to comply with such request; provided that all costs incurred by Landlord to provide such insurance shall be reimbursed by Tenant.

Section 17.10 Rights of Inspection. Each of Landlord and Tenant and their respective Representatives shall have the right, at any time and from time to time prior to the Substantial Completion Date, to visit the Premises and the Esplanade (or in its sole discretion, to maintain its field personnel at the Premises and Esplanade) in order to observe the performance of the Project Construction Work by Contractors engaged by Tenant or Landlord relating to any Tenant Construction Component or Landlord Construction Component (including, without limitation, the means, methods, procedures and techniques utilized by such Contractor). Each of Tenant and Landlord shall invite the other to attend job and/or safety meetings, if any, and shall provide

the other Party with reasonable prior notice thereof. Nothing herein shall impose any responsibility upon Landlord or Tenant for any failure by Tenant or Landlord or any of their respective Contractors to comply with any Requirements or observe any safety practices in connection with such construction, or constitute an acceptance of any work that does not comply in all respects with the Construction Documents, applicable Requirements or the provisions of this Lease. The use of field personnel by each of Landlord and Tenant shall be at their respective sole cost and expense, unless the necessity therefor results from the other Party's negligence or willful misconduct. Each of Tenant and Landlord shall keep the other Party fully informed of progress in undertaking any Project Construction Work. In furtherance of the foregoing, promptly, upon a Party's request, each of Tenant and Landlord shall provide such other Party with copies of all materials that are customarily provided to a construction lender (and other materials reasonably requested by such other Party) including, but not limited to, scheduling of payments, projections and certifications of constructions costs and requisitions, and all Construction Documents.

Section 17.11 Completion of Project Construction Work.

(a) Substantial Completion. Tenant shall provide written notice to Landlord that, in Tenant's opinion, the conditions qualifying Tenant Construction Components for Substantial Completion have been satisfied, together with supporting documentation therefor. Within fifteen (15) Business Days from Tenant's notice, Landlord shall advise Tenant whether or not, as reasonably determined by Landlord, such conditions have been satisfied, or whether Tenant has failed to submit adequate and sufficient evidence to permit Landlord to issue a determination. If, as reasonably determined by Landlord, the conditions for Substantial Completion of Tenant Construction Components have not been satisfied, Landlord shall advise Tenant of the reasons for Landlord's determination within fifteen (15) Business Days from Tenant's notice. Upon Substantial Completion of Tenant Construction Components, Tenant shall deliver to Landlord a copy of any legally required temporary certificate of completion or certificate of occupancy for the entire Premises (or the relevant portion thereof), to the extent reasonably obtainable without Substantial Completion of Landlord Construction Components.

(b) Final Completion.

(i) Tenant shall provide written notice to Landlord that, in Tenant's opinion, the conditions qualifying Tenant Construction Components for Final Completion have been satisfied, together with supporting documentation therefor. Within fifteen (15) Business Days from Tenant's notice, Landlord shall advise Tenant whether or not, as reasonably determined by Landlord, such conditions have been satisfied, or whether Tenant has failed to submit adequate and sufficient evidence to permit Landlord to issue a determination. If, as reasonably determined by Landlord, the conditions for Final Completion have not been satisfied, Landlord shall advise Tenant of the reasons for Landlord's determination within fifteen (15) Business Days from Tenant's notice.

(ii) Landlord shall provide written notice to Tenant that, in Landlord's opinion, the conditions qualifying the Esplanade Work and Finish Work for Final Completion have been satisfied, together with supporting documentation therefor.

Within fifteen (15) Business Days from Landlord's notice, Tenant shall advise Landlord whether or not, as reasonably determined by Tenant, such conditions have been satisfied, or whether Landlord has failed to submit adequate and sufficient evidence to permit Tenant to issue a determination. If, as reasonably determined by Tenant, the conditions for Final Completion of the Esplanade Work and Finish Work have not been satisfied, Tenant shall advise Landlord of the reasons for Tenant's determination within fifteen (15) Business Days from Landlord's notice.

(iii) Upon achieving Final Completion in accordance with the foregoing subsections (i) or (ii) of this Section 17.11(b), Tenant and Landlord shall deliver the following to the other Party: (A) within thirty (30) days after the issuance of any legally required permanent certificate of occupancy or certificate of completion, or as soon as prepared by the Architect, whichever is earlier, a complete set of "as-built" plans and surveys for Tenant Construction Components, Esplanade Work or Finish Work, as the case may be; and (B) as soon as available, a copy of any legally required permanent certificate of occupancy or certificate of completion for the entire Premises (or relevant portion thereof), or the Esplanade Work or Finish Work, as the case may be.

(c) Each Party shall have an unrestricted, non-exclusive, irrevocable license to use the "as-built" plans and surveys delivered to it in accordance with Section 17.11(b)(iii) for any purpose related to its interest in the Premises without paying any additional cost or compensation therefor; provided that such Party shall defend, indemnify and hold the other Party harmless for any claims, damages liabilities and costs (including reasonable attorneys' fees) arising out of the indemnifying Party's modifications of such plans and surveys. With respect to any plans, specifications, and surveys at any time furnished by a Party to the other, the receiving Party shall, at all times during the Term, exercise good-faith efforts to maintain such plans, specifications and surveys in accordance with the Confidentiality Obligation.

Section 17.12 Compliance with Requirements. Except as otherwise provided herein, Tenant assumes sole responsibility for compliance with all applicable Requirements in the performance of Project Construction Work related to Tenant Construction Components. Landlord assumes sole responsibility for compliance with all applicable Requirements in the performance of Project Construction Work related to Landlord Construction Components.

Section 17.13 No Representations or Warranties. Except as otherwise provided herein, Tenant and Landlord, respectively, understand and agree that the other shall not incur any liability to any Person for any act or omission in connection with their respective reviews and approvals of the Construction Documents for the Project Construction Work which is the responsibility of the other, or any other document, or failure to review or approve the foregoing in accordance with the provisions of this Lease. Neither Landlord's approval of the Construction Documents for Tenant Construction Components or any other document, nor Tenant's approval of Construction Documents for Landlord Construction Components or any other document (nor the approval by Landlord and Tenant of any plans and specifications, including the Design Documents and Construction Documents, nor any inspection by Landlord and Tenant of any construction on the Premises), shall be construed or interpreted, or otherwise relied upon, by any

Person as: (a) except to the extent set forth in Section 20.02(b), a representation, warranty or determination by Landlord that the Construction Documents for Tenant Construction Components comply with applicable Requirements, or are structurally or architecturally sound or safe, or technically correct, or as a representation, warranty or determination by Tenant that the Construction Documents for Landlord Construction Components comply with applicable Requirements or are architecturally sound or safe or technically correct; (b) an opinion by either Party that the work constructed pursuant to the Construction Documents of the other Party is adequate or sufficient for any purpose or use; (c) a waiver of any of Landlord's or Tenant's rights; or (d) a release of Tenant or Landlord from any of their obligations under this Lease.

Section 17.14 Risks of Loss. Except as may otherwise be provided for in accordance with Section 17.09(c), Tenant hereby assumes all risks of loss associated with Project Construction Work for Tenant Construction Components, and Landlord assumes all risks of loss associated with Project Construction Work for Landlord Construction Components.

Section 17.15 Costs and Expenses. Each Party understands and agrees that all Project Construction Work undertaken by and for such Party will be designed, constructed, maintained, secured and insured entirely at such Party's sole cost and expense without reimbursement or contribution by the other Party, or any credit or offset of any kind for any costs or expenses incurred, except as otherwise expressly provided in this Lease. Each Party 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 all Project Construction Work undertaken by or for such Party.

Section 17.16 Approvals; Resolution of Project Disputes.

(a) Approvals. Upon submission and receipt of any matter requiring Landlord's or Tenant's approval under this Article 17 (each, an "Approval Item"), Landlord or Tenant, as the case may be, shall notify the other Party whether: (i) the Approval Item is approved; (ii) the Approval Item is disapproved, setting forth the reasons for said disapproval in detail sufficient to apprise the other Party of the grounds for the disapproving Party's objections; or (iii) the disapproving Party requests additional information reasonably required for its review of the Approval Item, which request shall be in detail sufficient for the other Party to fully respond to such request and resubmit the Approval Item for approval; provided that, in any event, Landlord and Tenant shall use commercially reasonable efforts to review and respond to such submission as soon as practicable. If the other Party does not issue its approval or disapproval of any Approval Item or its request for additional information within five (5) Business Days after receipt of the Approval Item, the other Party shall have the right to give the non-responding Party written notice thereof, and if the non-responding Party fails to issue its approval or disapproval or request for additional information within five (5) Business Days after the non-responding Party's receipt of such notice, the non-responding Party shall be deemed to have approved the Approval Item in question. In the event that either Landlord or Tenant disapproves the Approval Item, the Parties shall work together to have the Designer, the Executive Landscape Architect or the Contractor revise the Approval Item and resubmit the same to Landlord and Tenant within ten (10) days after such disapproval, and the Parties shall indicate to each other whether the Approval Item is approved or disapproved in writing within five (5) Business Days after the Parties receipt of such revised Approval Item. If either Landlord

or Tenant does not give notice of disapproval of an Approval Item or notice of its reasonable request for additional information or notice of disapproval of a revised Approval Item within the applicable period set forth in the preceding two (2) sentences, then such Approval Item shall be deemed approved. Landlord and Tenant shall in good faith attempt to resolve any dispute relating to any Approval Item as set forth in Section 17.16(b).

(b) Resolution of Disputes.

(i) If the Parties are unable to successfully resolve a dispute, claim or other matter in controversy arising out of or related to an Approval Item (a “Project Dispute”) during the process identified in Section 17.16(a), then each Party shall designate a Senior Executive to meet with the designated Senior Executive of the other Party to seek, in good faith, to resolve the Project Dispute through negotiated resolution.

(ii) Any Project Dispute not resolved through such good-faith negotiation as provided for in clause (i) of this Section 17.16(b), and provided it occurs after approval of the Construction Documents in accordance with this Article 17, shall be subject to the dispute resolution process set forth in this Section 17.16(b) (and not any other dispute resolution mechanism otherwise provided for in this Lease) as a condition precedent to litigation. The Parties shall endeavor to resolve the Project Dispute by use of the Project’s designated mediator (the “Mediator”), who shall be designated upon mutual written agreement of the Parties prior to the bidding of any Contracts for Project Construction Work. Within five (5) Business Days of receiving notice that the Mediator is unable to serve as required by this Section 17.16(b) for any reason, the Parties shall mutually agree to the designation of another individual to replace and thereafter act as the Mediator. The Mediator shall issue a recommendation within five (5) Business Days after full submission of the Project Dispute by both Parties, which recommendation shall be deemed strictly confidential. The Parties shall endeavor, in good faith, to adopt the recommendation of the Mediator, but shall not be bound thereby, and the recommendation of the Mediator may not be introduced or otherwise used for any purpose whatsoever in any subsequent proceedings or litigation between the Parties. The costs of the Mediator shall be included in the Approval Expenses.

(iii) Progress Meetings. Not less frequently than weekly after the Execution Date and continuing through construction of the

(iv) Project, or as otherwise agreed to by the Parties, Landlord and Tenant shall meet to discuss: (A) achievement of milestones set forth in the Project Schedule and other significant events evidencing progress in the Project; (B) expected milestones and other significant anticipated events; (C) proposed revisions to this Lease’s milestones; and (D) significant issues for which action on the part of Tenant or Landlord is requested. Minutes of such meetings shall be prepared by Landlord and provided to Tenant.



(v) In addition to the meetings provided for in Section 17.04(d) and Section 17.16(b)(iii), the Parties agree to attend and participate in other Project meetings reasonably requested by either Party. Landlord will provide Tenant status reports on any public review of the Project and will advise Tenant promptly of any issues or difficulties that might arise. Tenant shall have the right, if Tenant so desires, to have representatives of Tenant attend any meetings or hearings with governmental agencies related to the public review, and, correspondingly, Landlord shall have the right to request that representatives of Tenant attend such meetings related to public review of the Project.

## ARTICLE 18

### COMPLIANCE WITH REQUIREMENTS; NON-DISCRIMINATION

Section 18.01 Compliance with Requirements. Each of Landlord and Tenant agrees to comply with all applicable Requirements.

Section 18.02 Non-Discrimination. Tenant shall not unlawfully discriminate against any employee or applicant for employment, or anyone desiring to access the Premises or participate in an activity or program at the Premises because of race, creed, religion, color, sex, age, national origin, disability, marital status or sexual orientation, or on any other basis that is now or may be in the future prohibited by applicable federal, state and local law.

## ARTICLE 19

### LIENS ON THE PREMISES

Section 19.01 Liens. Neither Landlord nor Tenant shall create or cause to be created any lien, encumbrance or charge upon the Premises or any part thereof. If any mechanics', laborers', vendors', materialman's or similar statutory lien (including tax liens) is filed against the Premises or any part thereof, in each case, directly because of the malfeasance or nonfeasance of a Party, or if any public improvement lien created or caused or suffered to be created by a Party (any such Party, a "Responsible Party") shall be filed against any assets of or funds of, or appropriated to, the other Party, then the Responsible Party shall, within sixty (60) days after receipt of notice of the filing of such lien or similar statutory lien or public improvement lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; provided, however, that the Responsible Party shall not be required to discharge any such liens if the Responsible Party shall have: (a) furnished the other Party with, at the Responsible Party's option, a cash deposit, bond, letter of credit from an institutional lender (in form reasonably satisfactory to the other Party) or other security (such as a personal guaranty reasonably satisfactory to the other Party in an amount sufficient to discharge the lien with interest and penalties) and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity.

## ARTICLE 20

### REPRESENTATIONS AND WARRANTIES

#### Section 20.01 Representations and Warranties of Tenant.

(a) During the Term, Tenant shall remain a nonstock corporation with all revenues actually received by Tenant pursuant to this Lease used solely to pay the Permitted Costs.

(b) Tenant makes the following representations and warranties:

(i) Tenant is a nonstock corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to execute, deliver and perform its obligations under this Lease. Tenant covenants and agrees that, during the Term, it shall maintain its corporate existence under the laws of the State of Delaware as a nonstock corporation and shall maintain its tax-exempt status pursuant to Code Section 501(c)(3) (whether classified as a private operating foundation described in Code Section 4942(j)(3), a private foundation described in Code Section 509(a), or a public charity described in Code Section 509(a)(1) or (2)).

(ii) This Lease has been duly authorized by all necessary action on the part of Tenant, has been duly executed and delivered by Tenant, and assuming due execution and delivery by Landlord, constitutes a legal, valid, binding and enforceable obligation of Tenant. Without limiting the generality of the foregoing, this Lease has been signed by a duly authorized signatory of Tenant.

(iii) The execution and delivery of this Lease, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under Tenant's Amended and Restated Certificate of Incorporation, bylaws, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Tenant is bound, or, to the knowledge of Tenant, any order, rule or regulation of any court, governmental agency or body having jurisdiction over Tenant or any of its activities or properties; provided, however, that Tenant is not making and shall not be deemed to have made any representations or warranties regarding the Act or the State Lease.

(iv) Tenant has not made any payments or provided any other consideration to Landlord's Representatives that would be reasonably likely to influence any such Representative's decision with regard to the entry of this Lease by Landlord and none of such Representatives has any interest, direct or indirect, in Tenant, in any such case, in violation of any applicable law.

(c) Tenant has provided Landlord copies of its Amended and Restated Certificate of Incorporation and bylaws as in effect on the date hereof. As set forth in Tenant's bylaws, the Chairperson and the President of Landlord shall be entitled to serve as ex-officio members of Tenant's board of directors, subject to applicable law and the willingness of such

persons to serve on Tenant's board of directors. Tenant may increase or decrease the number of, and may select and determine, in its sole discretion and without any restriction under this Lease, the other members of its board of directors and the structure and committees of its board of directors. Tenant may in all respects be structured and operated in any manner deemed appropriate by its board of directors and consistent with its purposes as a not-for-profit corporation exempt from federal income tax under Code Section 501(c)(3) (whether classified as a private operating foundation described in Code Section 4942(j)(3), a private foundation described in Code Section 509(a), or a public charity described in Code Section 509(a)(1) or (2)).

Section 20.02 Representations and Warranties of Landlord.

(a) During the Term, Landlord shall remain a public benefit corporation of the State of New York with all revenues actually received by Landlord pursuant to this Lease used to benefit the Park, including the Premises.

(b) Landlord hereby represents and warrants the following:

(i) Landlord is a public benefit corporation of the State of New York that is duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite power and authority to execute, deliver and perform its obligations under, and grant the rights and privileges provided by, this Lease.

(ii) This Lease has been duly approved by Landlord's board of directors and all other governing bodies whose approval is required, has been duly executed and delivered by Landlord, and assuming due execution and delivery by Tenant, constitutes a legal, valid, binding and enforceable obligation of Landlord, in accordance with all of the terms and provisions hereof. Without limiting the generality of the foregoing, this Lease has been signed by a duly authorized signatory of Landlord.

(iii) The execution and delivery of this Lease, and compliance with the provisions hereof (including use of the Premises as contemplated by this Lease), do not and will not conflict with or constitute a violation of or default under (in each case, with or without notice, the lapse of time or both) Landlord's organizational or governance documents, the Act, the State Lease or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Landlord is bound, or any order, rule or regulation of any court, governmental agency or body having jurisdiction over Landlord or any of its activities or properties.

(iv) All consents, approvals, licenses, permits and other authorizations required for Landlord's execution of this Lease have been obtained.

(v) This Lease and Tenant's use of the Premises contemplated hereby (including the terms of Article 9 and Tenant's control over the Premises and use thereof for Permitted Events) comply with Landlord's organizational or

governance documents, the Act, the State Lease, and any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Landlord is bound. To Landlord's knowledge, Tenant shall not be subject to any taxes or impositions by virtue of this Lease or its operations on the Premises contemplated hereby, except as may be required by applicable law in connection with the Permitted Events, Tenant's Fundraising Events or Tenant's concession revenues. To Landlord's best knowledge, Tenant shall not be restricted in any manner in which it holds or conducts Permitted Events that would not apply in the ordinary course if the Premises were not in the Park.

(vi) Based on Landlord's experience in conducting concerts, movies, dances, theatre, opera, concessions and other similar events at Pier 54 and elsewhere in the Park, the only Authorizations and Filings to Landlord's knowledge required in order to hold such events at the Premises are those set forth in the New York City Office of Citywide Event Coordination and Management's website which are as of the Execution Date set forth in Schedule 20.02(b)(vi) (as the same by be amended by the New York City Office of Citywide Event Coordination and Management from time to time, the "Operating Permits"). All such Operating Permits may be applied for and received by Tenant on the same basis as Landlord; and to the best of Landlord's knowledge after due investigation, there is no reason why Tenant would not be eligible to receive any Operating Permits for any such events at the Premises.

(vii) Except as set forth in Schedule 20.02(b)(vii), (A) Landlord, having conducted a good-faith inquiry into the title history of the Premises, including a review of the condemnation maps in accordance with which the State of New York acquired fee title to the Premises from the City of New York, hereby represents that it has good and valid leasehold title to the Premises, based upon the Act and the State Lease; (B) Landlord further represents and warrants that it has neither taken any action nor suffered any action to have occurred to transfer, assign, sublease, mortgage or otherwise encumber the Premises; and (C) Landlord further represents and warrants that the Premises are free and clear of any and all charges, encumbrances, encroachments, exceptions, reservations or defects in conditions of title ("Title Matters") affecting Landlord's interests in the Premises, other than the State Lease and the Act, and that there are no Title Matters, and there will not be any Title Matters created, suffered or authorized by Landlord during the Term (unless expressly authorized or created by Tenant), that do or could interfere or conflict with Tenant's use or possession of the Premises, including use for Permitted Events.

(viii) Landlord has Seventeen Million Dollars (\$17,000,000) of funds readily available and dedicated solely to pay the Landlord's Pier Financial Commitment to the Project in accordance with Article 17. Such funds have been made available to Landlord by the City, and approved by Landlord's board of directors for use in the Project in the manner set forth in Section 17.02(d). The City has approved funding for the Project, Landlord's Pier Financial Commitment thereto and the use of the Premises for Permitted Events in accordance with the

Funding Agreement dated as of the date of this Lease between Landlord and the City, a true, correct and complete executed copy of which has been delivered by Landlord to Tenant (the "Funding Agreement"). Landlord's rights to such funds for use in the Project are subject to the Trust's compliance with the terms, covenants and conditions set forth in the Funding Agreement, including customary City conditions on capital funds. Such funds may lawfully be used as set forth in Article 17, and shall not be used for any purpose or to pay any expenditure other than as set forth in Article 17. The Funding Agreement is in full force and effect and will remain in full force and effect without amendment or modification thereto until the Landlord's Pier Financial Commitment has been made in full.

(ix) Landlord has Nineteen Million Dollars (\$19,000,000) of funds readily available and dedicated solely to pay the costs of the CMAQ Project in accordance with Article 17 and which expenditures are subject to reimbursement in accordance with the terms and conditions of the CMAQ Grant. The CMAQ Project will only include the areas to be adjacent to the Premises, identified as the Esplanade and as detailed in Schedule 1.01(b), in the manner set forth in Article 17. To the extent that costs of the CMAQ Project exceed Nineteen Million Dollars (\$19,000,000), Landlord will have readily available funds to pay any such excess and shall pay such excess without causing or allowing any delay in the CMAQ Project or requesting or seeking funding from Tenant in any manner in connection with the CMAQ Project. Landlord believes that the CMAQ Project can be completed for Nineteen Million Dollars (\$19,000,000).

(x) The use and operation of, and the activities in and on, the Premises by Tenant as contemplated or permitted in this Lease, and all other terms and conditions contained in this Lease, including, without limitation, the hosting and conducting of all Permitted Events, Permitted Event Support Activities and Tenant's Fundraising Events and the hours of operation thereof, are and are intended to be, and shall be, expressly permitted by and may be conducted under this Lease, the Lease Rules and Regulations and the Park Rules and Regulations (and in the event of any inconsistency between the Park Rules and Regulations as of the date hereof and the provisions of this Lease, the provisions of this Lease shall prevail).

(xi) To Landlord's knowledge, the Consent Agreement has been duly authorized by all necessary action on the part of the State, has been duly executed and delivered by the State, and constitutes a legal, valid, binding, and enforceable obligation of the State. Without limiting the generality of the foregoing, the Consent Agreement, to Landlord's knowledge, has received all required approvals and been signed by a duly authorized signatory of the State.

(xii) To the best of Landlord's knowledge and belief, after reasonable investigation, all utility services (including sewer, water, gas and electricity) necessary for the operation of the Premises (including for the Permitted Events) will be available for Tenant to bring to the Premises by the Substantial

Completion Date. Landlord is not aware on the date hereof (it being agreed that this representation shall not be brought forward to any future date) of any reason that all such utility services would not be (assuming timely payment therefor and except to the extent caused by a Force Majeure) available during the Term or the Post-Completion Term, as applicable.

(xiii) The descriptions of the Pier 57 Redevelopment Project set forth in Schedule 1.01(e) and the Gansevoort Peninsula future park set forth in Schedule 20.02(b)(xiii), respectively, reflect Landlord's understanding thereof and are, to Landlord's knowledge and belief, true and accurate. Landlord shall update such descriptions in writing to Tenant from time to time as necessary to provide Tenant an accurate description of any related developments.

(xiv) To Landlord's knowledge, the City and the State are supportive of the Project.

(c) Landlord covenants and agrees that Tenant shall in no event be required to allocate or spend any portion of its operating budget on, or otherwise make any contributions to, any other pier (other than the Premises), park or project directly or indirectly because of this Lease or because of Tenant's operating, controlling, maintaining or repairing the Premises in accordance with the terms hereof or because of Tenant's hosting or sponsoring the Permitted Events or Tenant's Fundraising Events, or otherwise taking any action permitted hereunder.

(d) In consideration of all of the terms and conditions of this Lease, in the event any separate or additional Authorizations and Filings are required in connection with any use, operation or activities of Tenant under this Lease, including any or all Permitted Events, Permitted Event Support Activities and Tenant's Fundraising Events by Tenant or its designee, Landlord shall, promptly and without undue delay, issue to Tenant or its designees such Authorizations and Filings, or cooperate with Tenant or Tenant's designees to obtain such Authorizations and Filings required to be issued by any agency or authority of the City or the State other than Landlord.

(e) The Parties contemplate and agree that, if Tenant so elects, a temporary floating vessel of up to 4,000 square feet and connected to the interstitial space ramps will be incorporated into the Project, as further depicted in Schedule 20.02(e) hereto, to provide additional support facilities for Permitted Events held at the Amphitheater and the Central Space, provided that use of such vessel for Permitted Events at the Central Space shall not require additional closures of the Premises to the general public. Landlord hereby approves and consents to such vessel and agrees that Landlord will ensure that such vessel will be permitted to be moored at the Premises as shown in Schedule 20.02(e) on a seasonal basis for six months per annum (including the Season) throughout the Term, subject to obtaining third party governmental permits therefor. Landlord hereby agrees to exercise its reasonable best efforts and to cooperate with Tenant, at Tenant's cost, to file for and obtain such permits and otherwise to ensure that such vessel can be incorporated into the Project and moored at the Premises on a seasonal basis as described above.

(f) Landlord shall deliver, simultaneously with the execution hereof, an opinion from its general counsel, in the form attached hereto as Schedule 20.02(f).

## ARTICLE 21

### NO CLAIM AGAINST OFFICERS, EMPLOYEES OR AGENTS

Section 21.01 Limited Liability. No claim whatsoever shall be made by Tenant against any director, officer, agent, employee or volunteer of Landlord for, or on account of, anything done or omitted to be done in connection with this Lease, and no claim whatsoever shall be made by Landlord or anyone claiming by or through Landlord against any director, officer, member, agent, employee, volunteer, trustee, donor or other Representative or Affiliate of Tenant for, or on account of, anything done or omitted to be done in connection with this Lease. The Parties acknowledge and agree that each Party's directors, officers, members, agents, founders, employees, volunteers, trustees, donors and other Representatives and Affiliates shall have no liability whatsoever hereunder. If such elimination of liability is not permitted under applicable law, the Parties acknowledge and agree that each Party's directors', officers', members', agents', employees', volunteers', trustees', donors' and other Representatives' and Affiliates' liability hereunder shall be limited to the fullest extent permitted under applicable law and no such Person shall be liable for any monetary or other damages hereunder solely by reason of being a director, officer, member, agent, employee, volunteer, trustee, donor or other Representative or Affiliate (or any one or more of the foregoing) of any Party. Notwithstanding any other provision of this Lease, the obligations and liability (if any) of Tenant hereunder or otherwise in connection with, arising from or related to the Premises, the Permitted Events, the Fundraising Events or otherwise in connection with or related to this Lease are solely the obligations and liability of Tenant and no other Person (including any Affiliate, Representative or donor of Tenant) shall be liable or obligated therefor, except as expressly set forth in the Pledge Agreement.

## ARTICLE 22

### CONSENTS

#### Section 22.01 Consents and Approvals.

(a) Process. The Parties recognize that it will be essential to cooperate with each other in good faith in connection with this Lease. Whenever the consent or approval of a Party is required or permitted pursuant to this Lease, the Party or Parties from whom such approval or consent is requested shall act promptly, with time being of the essence, and shall not unreasonably withhold, condition or delay its consent or approval (regardless of whether or not this Lease expressly provides that such approval or consent shall not be unreasonably withheld, conditioned or delayed). Subject to the terms hereof, if a Party does not wish to grant a consent or approval under this Lease, such Party shall specify in its response the reason for objecting to any of the items contained therein and any actions required under this Lease as prerequisites for the withdrawal of such objection (citing any applicable section(s) hereof). Except in those circumstances for which a different time period is provided for in the Lease, if neither approval, consent, nor rejection is given by any such Party within thirty (30) days after request for

approval is given by a notice from the requesting Party, then the requesting Party shall send a second notice to the other Party. If neither approval, consent, nor rejection is given within five (5) Business Days after the second request for approval is given to such other Party by a notice from the requesting Party, such requested approval or consent shall be presumptively deemed to have been given; provided that each of such notices from the requesting Party shall have contained a cover sheet with the legend boldly marked, “PIER55 APPROVAL REQUEST—DEEMED APPROVED IF NOT REJECTED.”

(b) Standard. Without limiting the generality of the foregoing, notwithstanding any provision hereof to the contrary, Landlord shall not withhold consent to Tenant with regard to regulatory, permitting or other similar matters as to which it has consented to other licensees or lessees of other piers in the Park designated for Park Uses, and in all respects shall not treat Tenant or the Premises in a manner less favorable than any other such licensees or lessees or such other piers to the extent similarly situated. Without limiting the generality of the foregoing, Landlord shall not charge Tenant a higher rate per unit cost of maintenance and repair services under this Lease (including the Maintenance Services Arrangement) than any other licensees and lessees of any other pier or any other areas in the Park.

(c) 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.

(d) Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the Party requesting or requiring the consent or approval.

(e) 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. 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.

(f) 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.



(g) Approval Items. Notwithstanding the foregoing, all Approval Items and all provisions and procedures relating thereto shall be governed exclusively by Article 17.

## ARTICLE 23

### NO SUBORDINATION

Section 23.01 No Subordination. Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage hereafter existing; (b) any other Liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, except (i) the State Lease and (ii) liens or encumbrances suffered or created by Landlord (which Landlord agrees shall be subordinate to this Lease); or (c) any sublease, Liens or encumbrances now or hereafter placed on any interest of any subtenant of Tenant in the Premises. Landlord shall not encumber its interest in the Lease or the Premises with any mortgage or other lien or encumbrance of any kind.

## ARTICLE 24

### BOOKS AND RECORDS; FINANCIAL REPORTS

Section 24.01 Financial Reports. Subject to the Confidentiality Obligation (as hereinafter defined), Tenant shall prepare or cause to be prepared annual financial statements audited by a Certified Public Accountant ("CPA") based upon Tenant's fiscal year ("Annual Financial Statements"). Each such Annual Financial Statement shall be certified by the CPA as accurate pursuant to GAAP and shall disclose the Gross Broadcasting Revenues for the calendar year to which such Annual Financial Statement relates. Annual Financial Statements shall be delivered to Landlord no later than ninety (90) days following the end of the fiscal year.

Section 24.02 Retention of Records. Tenant agrees to retain materially complete and accurate books, records and other material documents relevant to this Lease for six (6) years after the expiration or termination of this Lease. However, if, at the expiration of such six (6)-year period, Landlord is in good faith and reasonably contesting any matter relating to such records or any matter to which such records relate, upon the written request of Landlord, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

Section 24.03 Confidentiality Obligation. Each Party (each, a "Receiving Party") acknowledges and agrees that any books, records or other information disclosed by the other Party or any of its Representatives pursuant to the terms hereof to the Receiving Party, any Governmental Authority or any other Person shall be kept strictly confidential by the Receiving Party (and the Receiving Party shall cause such Governmental Authority and such other Person to keep such books, records and other information strictly confidential) unless (and only to the extent) otherwise required by applicable law, including, but not limited to, the New York State's Freedom of Information Law (collectively, the "Confidentiality Obligation").

Section 24.04 Inspection and Audits of Books and Records. Landlord, the Comptroller of the City and the Comptroller of the State of New York and their duly authorized agents or representatives shall have the right from time to time, but not more often than four (4) times in the aggregate in any calendar year (unless necessary for Landlord to comply with applicable audit requirements), during regular business hours, upon at least forty-eight (48) hours' prior written notice to Tenant, to, subject to the Confidentiality Obligation, inspect and audit Tenant's books and records and other material documents relating in any manner to Tenant's conformance with any provision of this Lease or any other agreement related to the Premises. Tenant shall produce all such books and records upon such request of Landlord, the Comptroller of the City and the Comptroller of the State and their duly authorized agents or representatives for inspection at Tenant's principal place of business; provided that no such records shall be removed from Tenant's principal place of business without Tenant's prior written consent.

## ARTICLE 25

### PROTECTION OF THIS LEASE

Section 25.01 Protection by Landlord. In addition to its covenants under Section 35.01 and the other provisions hereof and not in limitation thereof, Landlord shall, to the maximum extent permitted by law, cooperate with Tenant reasonably and in good faith to avoid and prevent (x) any material adverse changes or occurrences that could interfere with Tenant's rights and privileges hereunder or its ability to hold or conduct Permitted Events as contemplated hereby and (y) any violations or potential violations of Landlord's covenant of quiet enjoyment set forth in Article 35 (collectively, "Adverse Acts").

Section 25.02 Equal Treatment. Landlord has not and shall not permit any other licensee, lessee or sublessee of any portion of the Park (including Pier 25, Pier 40, Pier 57, Chelsea Piers, Circle Line or Clinton Cove) to receive protections against Adverse Acts without first offering such protections to Tenant on the same terms, and shall not permit any Adverse Act to adversely affect Tenant unless it equally affects all such other lessees, concessionaires and licensees. In the event of any Adverse Act, Landlord shall, in addition to (and not in limitation of) its other obligations hereunder, use its best efforts to provide or secure for Tenant the rights and benefits intended hereby and to otherwise put in place alternate arrangements that put Tenant (or at Tenant's option, in its sole discretion, an Affiliate of Tenant) in the same position it would have been in but for the applicable Adverse Act.

Section 25.03 New Projects. Without limiting any other provisions in this Lease, Landlord covenants and agrees that it will not grant any other Person the right (including any option, or right of first offer, refusal or negotiation) to construct or develop any new project, or add to or expand any existing project, in the Park between Pier 57 and the Gansevoort Peninsula. The foregoing shall be a restrictive covenant running with the land and Tenant shall have the express right to seek injunctive and other equitable relief in the event of any breach or anticipatory breach of the foregoing restrictive covenant.

## ARTICLE 26

### COOPERATION WITH INVESTIGATIONS

Section 26.01 Cooperation With Investigations. Tenant shall reasonably cooperate with any investigation, audit, or inquiry, in each case, as and to the extent related to or in connection with this Lease or the Premises, conducted by a New York State or City Governmental Authority or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party-in-interest to the transaction, submitted bid, submitted proposal, contract, permit, lease or license that is the subject of the investigation, audit or inquiry.

## ARTICLE 27

### TENANT DEFAULT; LANDLORD REMEDIES

Section 27.01 Default. Each of the following events, and only the following events, shall constitute a “Default” by Tenant hereunder with respect to which Landlord shall be entitled to serve Tenant with a Notice that a Default has occurred and is continuing; provided that Landlord, in good faith, believes that such a Default has occurred and is continuing. Certain procedures for issuing a Default Notice, opportunities for Tenant to cure said Defaults, and processes for resolving any disputes between the Landlord and Tenant after the issuance of any Default Notice and with respect to whether a Default has occurred and is continuing, or not, and whether Tenant has cured any Default, with respect to each particularized Default, and other matters, are set forth in Section 27.02. Landlord’s remedies, particularized with respect to each Default and the point in time when Landlord shall be entitled to exercise such remedies, are set forth in Section 27.04 hereof:

(a) A Donor Event of Default or a Foundation Event of Default shall have occurred under the Security Agreement and shall remain uncured after passage of all notice and cure periods thereunder;

(b) Tenant shall have failed to substantially undertake and perform the Tenant Construction Components of the Project Construction Work in all material respects, including the Substantial Completion thereof in the manner prescribed in Article 17 hereof;

(c) Tenant shall have failed to produce the Minimum Performances (i) in two (2) consecutive calendar years or (ii) during three (3) calendar years in any five (5)-calendar-year period. For purposes of this Lease, “Minimum Performances” means, (A) with respect to each whole calendar year in the Post-Completion Term, Tenant’s hosting Permitted Events on at least fifteen (15) days in such calendar year and (B) with respect to the first and last calendar years in the Post-Completion Term, Tenant’s hosting Permitted Events on such lower pro-rated number of days as the number of days remaining in the first or last calendar year, as applicable, in the Post-Completion Term bears to three hundred sixty-five (365) days;

(d) Tenant shall have exceeded the Maximum Limitation obligation set forth in Section 9.02 hereof, as determined after the end of any respective Season;

(e) Tenant shall have failed to comply with the OEFLC Obligation set forth in Section 9.03 hereof, as determined after the end of any respective Season;

(f) Tenant shall have failed to substantially comply with those limitations on pier closure to the general public prescribed in clauses (a), (b) and (c) of Section 9.01 hereof;

(g) If the Maintenance Services Arrangement is then in effect, Tenant shall have failed to reimburse Landlord for the costs thereof to the extent required in accordance with Section 15.01 and Section 15.02;

(h) If the Maintenance Services Arrangement is not then in effect, Tenant shall have failed to maintain the Tenant Maintenance Components as provided in Section 15.01;

(i) An audit conducted by an independent certified public accountant reasonably concludes that Tenant intentionally and materially misapplied the Premises Revenues by not applying the same to the Permitted Costs in violation of this Lease;

(j) Tenant shall have failed to maintain in full force and effect any of the material insurance policies required to be maintained by Tenant pursuant to Section 11.01(a) hereof;

(k) In the case of any default except for an (n) default where Landlord is entitled to reimbursement from Tenant for any material amount of money reasonably expended by Landlord to cure a Default by Tenant or in order to address an exigent circumstance as provided in Section 27.04(e), or Tenant's failure to restore Premises Revenues if unintentionally misapplied after Landlord has obtained a judgment in connection with seeking restoration of such Premises Revenues (after first proceeding under ADR as provided therein and/or in any Court proceeding), Tenant shall not have reimbursed Landlord or restored misapplied Premises Revenues within ten (10) Business Days after demand therefor from Landlord after the resolution in favor of Landlord as the prevailing Party;

(l) To the extent permitted by law, if Tenant shall make a general assignment for the benefit of its creditors, file a voluntary petition under the present or any future Federal Bankruptcy Act or any other present or future federal, state or other bankruptcy or insolvency statute or law or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Act or any other present or future federal, state or other bankruptcy or insolvency statute or law, or shall seek, or

consent to, or acquiesce in the appointment of, any receiver, custodian, liquidator or other similar official of Tenant, or of all or substantially all of its properties;

(m) There is a final non-appealable judgment in a court of competent jurisdiction finding that any material representation or warranty made by Tenant herein shall have been materially false as of the date the representation or warranty was made;

(n) Tenant shall have failed to remit to Landlord as prescribed in Section 4.03 hereof Landlord's share of Gross Broadcasting Revenues, within ten (10) Business Days of the date due;

(o) Any material Lien not permitted hereunder is filed against the Premises solely because of any malfeasance or nonfeasance of Tenant; or

(p) Tenant shall be in breach of any of the material terms, covenants or conditions of this Lease not specified in clauses (a) through (o) of this Section 27.01, beyond the periods of all Cure Opportunities applicable thereto (including all extensions and tolling thereof). For the avoidance, any alleged Default with respect to any Tenant or Landlord Casualty or Condemnation Restoration under Articles 11 and 12, respectively, shall constitute a (p) Default (and only a (p) Default).

Section 27.02 Notices; Dispute Resolution Processes and Cure Opportunities.

(a) Definitions:

“ADR” shall mean the Alternative Dispute Resolution procedure prescribed in Article 29 hereof, including without limitation the negotiation procedure and the non-binding arbitration procedure set forth therein.

“Conditional Limitation Notice” shall mean a Notice from Landlord to Tenant that an Event of Default has occurred (excluding with respect to any Default pursuant to Section 27.01(f), (m), (n), (o) or (p)), after the delivery of a proper Default Notice and an Event of Default Notice to Tenant, with respect to which the Cure Opportunity prescribed herein and/or in any Court Order (including as modified or augmented in any Court Order) with respect to such Default or Event of Default has expired or lapsed without cure by Tenant, so that Tenant shall no longer enjoy the opportunity to cure such Default by the terms hereof, subject to the 40-Day Period (as hereinafter defined), further subject to any requirements or conditions of any Court Order. Such Conditional Limitation Notice shall set forth a date upon which this Lease shall terminate and shall no longer be deemed to be in force and effect, which date shall be not less than forty (40) Business Days (the “40-Day Period”) from the date of service of said Conditional Limitation Notice upon Tenant, subject to Tenant's right to contest the existence of such Default or Event of Default and/or the propriety or efficacy of such Conditional Limitation Notice, by appropriate Court proceedings.

“Court” shall mean a court of competent jurisdiction qualified to adjudicate a dispute between Landlord and Tenant with respect to any matter arising under this Lease, including without limitation a Yellowstone Action (as defined below).

“Court Order” unless expressly qualified otherwise, shall mean a final, non-appealable judgment and accompanying order of a Court which the Parties agree shall be final and binding upon them

“Cure Opportunity” shall mean the period of time to which Tenant shall be entitled in order to effect a cure or correction of the identified Default in a Default Notice, as prescribed in Section 27.03(c) of this Lease with respect to any Default, as such Cure Opportunity may be extended, modified or augmented as provided in a Court Order, further subject to the 30-Day Period (as hereinafter defined), and subject to the 40-Day Period to the extent permitted by the Court without violating the termination efficacy of the Conditional Limitation Order.

“Default” shall have the meaning set forth in Section 27.01 above, provided, however, that a particular Default set forth in clauses (a)-(p) of Section 27.01 shall be referred to herein by its accompanying letter subparagraph; for example a “(b) Default” shall mean the particular Default as set forth in clause (b) of Section 27.01.

“Default Notice” shall mean a Notice from Landlord to Tenant wherein Landlord asserts, in good faith, that one or more of the Defaults has occurred and is continuing, and furthermore (a) specifying in reasonable detail the nature and all of the material facts (including without limitation specific dates or time periods of non-performance or default as applicable) of the alleged Default, including the relevant Section of this Lease which forms the basis for such alleged Default, (b) identifying the relevant “Cure Opportunity” prescribed in this Lease, and (c) otherwise complying in all respects with the requirements set forth in Section 27.03. No Notice shall constitute a valid or enforceable Default Notice for any purpose which Notice does not strictly comply with the provisions of this paragraph, including Section 27.03.

“Event of Default” shall mean that each of the following has occurred: (i) existence of any one of the Defaults specified in Section 27.01 as to which Landlord is entitled to and has given Tenant a valid Default Notice, (ii) Tenant shall have failed to effect a cure of said Default within the Cure Opportunity period prescribed herein and as defined below, subject to the tolling of any Cure Opportunity as provided herein or in a Court Order, or if the Court Order has conditioned the Default or Event of Default or Landlord’s right to terminate the Lease on the observance or performance of requirements or conditions, all such requirements or conditions have not been fulfilled, (iii) there is no outstanding Court Order that has determined that no such Default or Event of Default exists or that has suspended, enjoined or modified any asserted Default or Event of Default, and (iv) the Default has remained uncured for the period prescribed in Section 27.02(c) as the Cure Opportunity for the particular Default so noticed by Landlord after Tenant’s receipt of Landlord’s Default Notice, and such Cure Opportunity has not been tolled as hereinafter provided. The occurrence of or existence of all of the events or state of facts in clauses (i)-(iv) of this definition shall give rise to a right on the

part of Landlord to deliver a notice to Tenant (“Event of Default Notice”) which Event of Default Notice shall specifically state that, with the exception of a (c), (d) or (e) Default as to curing only, Tenant shall enjoy an additional thirty (30) Business Days from the date of Landlord’s delivery to Tenant of the Event of Default Notice (the “30-Day Period”) to cure the Default which it failed to cure within the Cure Opportunity period prescribed in Section 27.02(c) and further stating that upon the expiration of the 30-Day Period, Landlord may deliver a Conditional Limitation Notice to Tenant and, subject to Section 27.02(b)(iv), thereafter exercise and pursue such remedies as may be prescribed in Section 27.04 with respect to a particularized Default, subject to the filing of any Yellowstone Action or any Court Order.

“Yellowstone Action” shall mean an action commenced by Tenant in any Court for a declaratory judgment and/or other remedy or relief, including temporary or permanent injunctive relief or other equitable relief with respect to any Default Notice, Event of Default Notice, or Conditional Limitation Notice, including a declaration or determination that: no Default has occurred and is continuing under the Lease; no Default Notice has been given in accordance with the requirements of the Lease; Tenant has no duty to cure any Default asserted by Landlord in a Default Notice or Event of Default Notice; any alleged Default has been cured by Tenant; Landlord has no right to give any Event of Default Notice or Conditional Limitation Notice; and/or Landlord has or had no right to terminate the Lease as otherwise may be provided herein. In any such action Tenant may assert any other matter and may request any other remedy or relief which Tenant may properly assert or request.

“Yellowstone Injunction” shall mean a temporary or permanent injunction issued by a Court in connection with a Yellowstone Action which shall have the effect of tolling any Cure Opportunity otherwise prescribed herein, any 30-Day Period and any 40-Day Period, and/or staying or suspending any Default Notice, Event of Default Notice or Conditional Limitation Notice (or the right to give any of the same), and any and all other remedies or relief in any Court Order in any Yellowstone Action.

(b) Notices, Protocols and Processes. With respect to any alleged Default hereunder, as a predicate and condition precedent to Landlord’s exercising and pursuing any of its remedies provided for in Section 27.04 hereof and Tenant’s entitlement to dispute any assertion by Landlord that a Default or Event of Default has occurred and is continuing, the parties agree that they shall be required to proceed as follows and to abide by the procedural apparatus and criteria set forth below:

(i) Immediately upon serving any Default Notice, Landlord shall first proceed under ADR (except with respect to a Project Dispute) unless Tenant shall serve a separate written notice on Landlord within ten (10) Business Days after receipt of the Default Notice accepting such Default Notice, in which event the ADR shall not take place. If, however, within said ten (10) Business Day period (or within the Additional Period set forth below) Tenant shall serve upon Landlord a notice setting forth specific aspects of such Default Notice which Tenant disputes (“Tenant Dispute Notice” and each dispute articulated in such Tenant Dispute Notice a “Dispute”), then in such event within the later of (A)

fifteen (15) Business Days after the service of the Default Notice or (B) five (5) Business Days after the Tenant Dispute Notice, either Landlord or Tenant may serve upon the other a Meet and Confer Proposal (as hereinafter defined in Article 29) and the Parties shall thereafter proceed to seek to resolve the Dispute with respect to the Default in accordance with Article 29. For the avoidance of doubt, the commencement of the ADR shall be automatic upon the service of the Tenant Dispute Notice and shall not require any other or further notice or any action of either party, except that ADR shall not apply if Tenant has accepted the Default Notice, which acceptance may be manifested only in writing, or by the failure of Tenant to serve Landlord with a Tenant Dispute Notice within ten (10) Business Days of its receipt of the Default Notice and Tenant's continued failure to do so for a period of five (5) Business Days ("Additional Period") after Landlord's service on Tenant of a further notice ("Reminder Notice") that Landlord has not received Tenant's Dispute Notice within said 10-Business Day period. All periods of time (including Cure Opportunities) which would otherwise commence with respect to the giving of the Default Notice, shall automatically be tolled and suspended on the date of delivery of the Default Notice until the earliest to occur of (x) the delivery to Landlord by Tenant of an acceptance of the Default Notice, (y) the expiration of both the ten (10) Business Day period and the Additional Period for Tenant to deliver to Landlord such acceptance of the Default Notice without the delivery of a Tenant Dispute Notice, or (z) the completion of ADR and the delivery to the parties of the arbitrator's decision (the "ADR Tolling"). Notwithstanding any provision in this Lease to the contrary, Landlord shall not be entitled to give any Default Notice with respect to an alleged Default with respect to or arising out of any Project Dispute, until and unless there is a completion of the dispute resolution process set forth in Section 17.16(b). Upon completion of such dispute resolution process, thereafter upon the service on Tenant of a valid Default Notice, the provisions of Section 27.02(b)(iii) shall apply.

(ii) Unless Tenant has directly or impliedly accepted the Default Notice as provided in subdivision (i) above (except with respect to a Project Dispute), after and only after completion of ADR, including the delivery to the parties of the arbitrator's decision, the ADR Tolling shall be lifted, subject to the further provisions hereof.

(iii) If the Parties fail to resolve their dispute in any ADR (other than with respect to a Project Dispute, but including all other alleged Defaults under Article 17), or pursuant to Section 17.16(b) with respect to a Project Dispute, but Tenant, in good faith, believes that no Default has occurred and is continuing or if Landlord has delivered an Event of Default Notice and thereafter a Conditional Limitation Notice, then Tenant may, in all such events, no later than prior to either the expiration of (a) the Cure Opportunity, with respect to a Default Notice, (b) the expiration of the 30-Day Period, with respect to an Event of Default Notice, or (c) the 40-Day Period, with respect to a Conditional Limitation Notice, in each such case commence by effective service of process upon Landlord, a Yellowstone Action in which Tenant may seek a Yellowstone Injunction and/or



other relief. The filing of the Yellowstone Action shall automatically and without the necessity for further action by any Party or any Court Order toll the remainder of any unexpired cure period or other period under a Cure Opportunity, the 30-Day Period, or the 40-Day Period, as the case may be. Landlord hereby stipulates and agrees that it will not oppose a Yellowstone Injunction or Tenant's request for any other relief in a Yellowstone Action nor assert that Tenant is not able to cure any alleged Default or Event of Default, and that Landlord will not demand that the Court require Tenant to post a bond or other security (and Landlord agrees upon request by Tenant, to stipulate in the Yellowstone Action that none is necessary) in connection with Tenant's motion for a Yellowstone Injunction or other relief (whether legal or equitable) pending resolution of the Yellowstone Action.

(iv) If in the Yellowstone Action, a Court Order is issued finding that a Default has occurred and is continuing, that Landlord was entitled to give an Event of Default Notice or that an Event of Default has occurred, or that a Conditional Limitation Notice has been validly given, then, in each such case, as applicable, where either Tenant's Cure Opportunity, or the 30-Day Period or 40-Day Period has been further tolled by the Yellowstone Injunction, subject to any additional or further relief as the Court may award, Landlord and Tenant hereby stipulate and agree (and upon Tenant's request Landlord shall so stipulate in any Yellowstone Action) that Tenant shall be entitled to a Cure Opportunity (a) which is not less than, as applicable, either (x) the time remaining under the original Cure Opportunity, or (y) except in the case of a (c), (d) or (e) Default, the remaining time under the 30-Day Period, in each case prior to any tolling thereof, and in the case of either (x) or (y), plus twenty-five (25) Business Days after the date of the Court Order, and (b) the 40-Day Period prior to any tolling thereof, plus ten (10) Business Days after the date of the Court Order, provided, however, that, in any such instance in this subdivision (b) the Court Order includes a finding that the additional opportunity to cure within the 40-Day Period plus the additional 10-day period heretofore provided (or such other cure period as the Court may direct) does not invalidate or reduce any rights of Landlord under or with respect to the Conditional Limitation Notice other than providing any additional period for any Cure Opportunity for Tenant ("Conditional Limitation Finding") with respect to the automatic termination of the Lease as otherwise provided in applicable law. For the avoidance of doubt, Tenant shall not have any additional Cure Opportunity following any Court order upholding any Conditional Limitation Notice except and in accordance with any Conditional Limitation Finding.

(v) Upon the termination, expiration or lapse of any applicable Cure Opportunity or other period, whether by Court Order or as stipulated in clause (iv) above, if Landlord believes that the Tenant has failed to cure or correct the Default within the time or in the manner as prescribed in the Court Order or within the time as stipulated in clause (iv) above, Landlord shall apply to the Yellowstone Action Court upon not less than fifteen (15) days' prior notice to

Tenant for an order determining whether Tenant has cured the Default or not (“Landlord’s Application”).

(vi) If the Yellowstone Action Court determines Landlord’s Application and issues a Court Order finding that Tenant has not effected a cure or correction of the Default in the fashion and within the Cure Opportunity as stipulated herein or within such longer time period and/or such other manner prescribed by the Court (subject to the Court’s modification of any prior relief granted to Tenant), that an Event of Default has occurred, and that Landlord shall be entitled to serve a Conditional Limitation Notice upon Tenant (or that any Conditional Limitation Notice which has been theretofore delivered is effective), then and only in such event Landlord may thereafter proceed to serve a Conditional Limitation Notice, or if the same has theretofore been delivered, proceed to Landlord-Tenant Court in a summary proceeding to recover full possession of the Premises from Tenant by re-entry or otherwise, on account of termination of the Lease.

(c) Cure Opportunities. With respect to each of the Defaults set forth in Section 27.01, the following Cure Opportunities shall be applicable as set forth below, all such Cure Opportunities, to the extent applicable to the Default, being measured from the date of receipt by Tenant of the relevant Default Notice which is sent and delivered in accordance with Article 32. Notwithstanding any provision herein to the contrary, all cure periods provided in each of such Cure Opportunities shall be automatically extended, except in the case of a (c), (d) or (e) Default, for (a) such longer period as may be reasonable under the circumstances, provided that Tenant is diligently and continuously proceeding to effect a cure, (b) the 30-Day Period (if any), (c) the 40-Day Period (if any), (d) such further extension as provided in Section 27.01(b), including by Court Order, (e) Force Majeure, and (f) all ADR Tolling:

(i) With respect to an (a) Default, the Cure Opportunity shall be forty-five (45) days.

(ii) With respect to a (b) Default; provided that the Parties have concluded the dispute resolution process prescribed in Section 17.16 without resolution with respect to a Project Dispute (subject to ADR in all other respects, with respect to all other (b) Defaults), the Cure Opportunity shall be one hundred five (105) days.

(iii) With respect to a (c) Default; provided, Landlord has given Tenant Default Notice (w) in the case of a clause (c)(i) Default, within thirty (30) days after the end of the first (1st) calendar year in which the Minimum Performances obligation has not been met, or (x) in the case of a clause (c)(ii) Default, within thirty (30) days after the end of each of the first (1st) and second (2nd) calendar years in any five (5)-calendar-year period in which the Minimum Performances obligation has not been met, in each case, each such Default Notice specifying that Tenant has failed to produce the Minimum Performances in such preceding calendar year(s) and stating that Landlord may exercise its right to terminate this Lease if such failure shall continue for two (2) consecutive calendar years or three

(3) calendar years in any five (5)-calendar-year period, and such failures have continued for such two (2)-year or three (3)-calendar year period, as the case may be, without being cured. There shall be no further Cure Opportunity beyond that in the immediately preceding sentence, and an Event of Default shall be deemed to have occurred in the case of a clause (c)(i) Default, as soon as Tenant's failure to cure the clause (c)(i) Default shall have manifested itself after the expiration of such second (2nd) consecutive calendar year, and, in the case of a clause (c)(ii) Default, as soon as Tenant's failure to cure such clause (c)(ii) Default shall have manifested itself after the expiration of such third (3rd) consecutive calendar year within the five-year period, both as set forth in the (c) Default in Section 27.01. The Default Notice for a (c) Default shall attach true copies of all such Notices. Notwithstanding the foregoing, all Notices shall be subject to ADR as provided above, including the ADR Tolling, and the completion of ADR which shall be a predicate to the serving of an Event of Default Notice.

(iv) With respect to a (d) Default, the Cure Opportunity shall be as follows: provided Landlord has given Tenant a Default Notice within thirty (30) days after the end of the first (1st) calendar year in which the Maximum Limitation Obligation for the preceding Season has not been met, Tenant shall, in the next succeeding Season after which the Default Notice for a (d) Default has been served, cure the (d) Default by increasing the average number of days during the next following Season upon which Tenant shall not produce, arrange organize, etc., any Permitted Events, other than Passive Permitted Events, by the number of days in which Tenant exceeded such Maximum Limitation in the immediately prior year. There shall be no further Cure Opportunity beyond that in the immediately preceding sentence, except as provided in the last sentence of this clause (iv), and an Event of Default shall be deemed to have occurred as soon as Tenant's failure to cure the (d) Default shall have manifested itself after the expiration of the next succeeding Season, further subject to the last sentence of this clause (iv). The Default Notice for a (d) Default shall attach true copies of all such Notices. Notwithstanding the foregoing, all Notices shall be subject to ADR as provided above, including the ADR Tolling, and the completion of ADR which shall be a predicate to the serving of an Event of Default Notice. Further notwithstanding the foregoing, within the Season in which the Default has first occurred ("First Season"), upon receipt of notice thereof from Landlord of the occurrence of the Default, at the sole option of Tenant, Tenant shall have the opportunity to cure a (d) Default by scheduling and facilitating sufficient days within the First Season to compensate for the number of days in which a (d) Default shall have occurred; provided however that any failure by Tenant to cure any such Default in the First Season shall not give rise to an Event of Default or any right or remedy of Landlord with respect to such Default, except as expressly provided above.

(v) With respect to an (e) Default, the nature of the cure and the Cure Opportunity shall be as follows: provided Landlord has given Tenant a Default Notice within thirty (30) days after the end of the first (1st) calendar year in which the OEFLC Obligation for the preceding Season has not been met, in the next

succeeding Season after service by Landlord upon Tenant of the Default Notice for the (e) Default, Tenant shall make admission opportunities available to the general public on a free or low-cost basis for an additional number of Permitted Events, equal to the number of Permitted Events as to which the OEFLC Obligation was not met in the immediately preceding Season. There shall be no further Cure Opportunity beyond that in the immediately preceding sentence, and an Event of Default shall be deemed to have occurred immediately upon the failure of Tenant to cure the (e) Default as soon as such failure to cure the (e) Default shall have manifested itself after the expiration of the next succeeding Season. The Default Notice for a (e) Default shall attach true copies of all such Notices. Notwithstanding the foregoing, all Notices shall be subject to ADR as provided above, including the ADR Tolling, and the completion of ADR which shall be a predicate to the serving of an Event of Default Notice.

(vi) With respect to an (f) Default, the Cure Opportunity shall be thirty-six (36) hours after service of the Default Notice under this Lease; provided that Landlord's Default Notice with respect to an (f) Default shall specify a time and place in which a specified Senior Executive of Landlord shall offer to and shall be available to meet and confer with a Senior Executive of Tenant to seek to resolve the matter without litigation during a period commencing not later than twelve (12) hours after service on Tenant of such Default Notice and ending not later than twelve (12) hours prior to the expiration of said 36-hour period.

(vii) With respect to a (g) Default, the Cure Opportunity shall be seventy-five (75) days.

(viii) With respect to an (h) Default, the Cure Opportunity shall be sixty (60) days, or such longer period as may reasonably be required to cure such failure (not to exceed an additional sixty (60) days, or a total of one hundred twenty (120) days in the aggregate) so long as Tenant commences such cure within the original sixty (60) period and continues to cure the same with diligence and dispatch.

(ix) With respect to an (i) Default, the Cure Opportunity shall be one hundred five (105) days; provided that Landlord's Default Notice shall be accompanied by a copy of the audit and all back-up documentation therefor (failure to provide which shall render the Default Notice null and void).

(x) With respect to a (j) Default, the Cure Opportunity shall be twenty (20) Business Days to procure the relevant policy to ensure that the relevant policy will not be cancelled for non-payment.

(xi) With respect to a (k) Default, the Cure Opportunity shall be seventy-five (75) days, provided that Landlord's Default Notice shall be accompanied by an invoice in reasonable detail (failure to provide which shall render the Default Notice null and void).

(xii) With respect to a (l) Default, the Cure Opportunity shall be one hundred thirty-five (135) days in which Tenant may dismiss, discharge or otherwise cure the alleged Default or otherwise reasonably satisfy Landlord's concerns with regard thereto.

(xiii) With respect to an (m) Default, the Cure Opportunity shall be one hundred and thirty-five (135) days to cure the fact or event giving rise to such misrepresentation.

(xiv) With respect to an (n) Default, the Cure Opportunity shall be one hundred five (105) days.

(xv) With respect to an (o) Default, the Cure Opportunity shall be one hundred and thirty-five (135) days to remove or bond the non-permitted Material Lien.

(xvi) With respect to a (p) Default, the Cure Opportunity shall be one hundred five (105) days in the case of any material default which can be cured by the payment of a sum of money, or one hundred thirty-five (135) days in the case of any other non-monetary default; provided, however, that if such non-monetary default is susceptible of cure but cannot reasonably be cured within such one hundred thirty-five (135)-day period and Tenant shall have commenced to cure such default within such one hundred thirty-five (135)-day period and thereafter shall diligently and expeditiously have proceeded to cure the same, such one hundred thirty-five (135)-day period shall be extended for such time as is reasonably necessary for Tenant in the exercise of due diligence to cure such default, such additional period not to exceed an additional one hundred thirty-five (135) days; and provided further, however, that if such non-monetary default requires additional time to cure beyond the expiration of such additional one hundred thirty-five (135)-day period, Tenant shall have the right to one (1) or more further additional extensions of one hundred thirty-five (135) days each, subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 27.03 Notice and Default Notice; Force Majeure. All periods of notice and Cure Opportunity set forth in Section 27.01 and Section 27.02 shall be extended to account for any periods of Force Majeure (in addition to all other tolling or extensions as provided herein). Default Notices and Event of Default Notices under Section 27.01 and Section 27.02 shall only be valid and effective if they strictly comply with all terms and conditions in the definition of "Default Notice," and "Event of Default Notice," respectively, and if they further: specify the alleged Default in reasonable detail; reference Section 27.01 and the specific provision of the Lease giving rise to the alleged Default (and in the case of Event of Default Notices, specifying the failure of Tenant to comply with Cure Opportunities); contain all attachments and documentation as specified for a particular Default; explain that consequences of failure to cure might include termination of this Lease or other remedy; explain how any alleged Default can be cured by specific reference to Section 27.02; state in large, bold type in the heading of such notice: "NOTICE OF DEFAULT (or NOTICE OF EVENT OF DEFAULT, as the case may be)

– FAILURE TO CURE MAY RESULT IN TERMINATION OF LEASE OR OTHER REMEDY;” and in addition, with respect to a Default Notice: “IF TENANT DISPUTES THIS NOTICE OF DEFAULT, IT MUST SERVE ON LANDLORD A DISPUTE NOTICE EITHER WITHIN TEN (10) BUSINESS DAYS OF SERVICE OF THIS NOTICE OF DEFAULT, OR WITHIN A FURTHER FIVE (5) BUSINESS DAYS AFTER SERVICE ON TENANT OF A SUBSEQUENT REMINDER NOTICE FROM LANDLORD.” and are given to Tenant (including copies) strictly in accordance with Article 32.

Section 27.04 Remedies; Enforcement of Performance.

(a) After the delivery of an Event of Default Notice for the occurrence of an Event of Default under any of clause (a), (b), (c), (d), (e), (g), (h), (i), (j), (k) or (l) of Section 27.01 only, and the expiration of the 30-Day Period without cure by Tenant, Landlord, at any time thereafter may serve upon Tenant a Conditional Limitation Notice. Upon the expiration of the 40-Day Period (without cure by Tenant in the event of a Conditional Limitation Finding), this Lease and the Term and all rights of Tenant under this Lease to use and occupancy of the Premises shall expire and terminate as if the date specified in the Conditional Limitation Notice were the Expiration Date, and Tenant shall quit and peacefully surrender the Premises to Landlord forthwith;

(b) Upon the occurrence of an Event of Default under clauses (m), (o) and (p) of Section 27.01, and with respect to any dispute pursuant to Section 27.04(e) below, Landlord shall not have any right to terminate the Lease and Landlord’s remedy shall be limited solely and exclusively to seeking a money judgment in a Court pursuant to Court Order for any costs or damages incurred by Landlord by reason of such clauses (m), (o) and (p) Defaults having occurred and not having been cured or, if applicable, equitable relief, to the extent such equitable relief may be proper, as contemplated in Section 27.07 below; and in the case of an Event of Default under Section 27.01(n), Landlord’s remedy shall be limited solely and exclusively to seeking to recover in a Court pursuant to a Court Order the amount of Landlord’s share of Gross Broadcasting Revenues unpaid to it by the Tenant resulting in a (n) Default or in the case of a matter covered by Section 27.04(e) below, the amount expended by Landlord to address an exigent emergency situation;

(c) Upon the occurrence of an (f) Default, Landlord shall not have any right to terminate the Lease and Landlord’s sole and exclusive remedy shall be to immediately seek injunctive relief, as contemplated by Section 27.07 below, in a Court. Injunctive relief shall be the sole and exclusive remedy available to Landlord for an (f) Default; and Landlord shall have no right to seek Lease termination or money damages by reason of any such alleged Default; In seeking such injunctive relief, Landlord shall not be subject to ADR or any Dispute or Dispute Notice procedures. Rather, the parties shall resolve any dispute over whether an (f) Default has occurred or may reoccur exclusively in Court;

(d) Notwithstanding any provision in this Lease to the contrary, Landlord’s right of termination set forth in this Section 27.04 with respect to the Events of Default identified in Section 27.04(a) only shall be Landlord’s sole and exclusive right to terminate this Lease

under any and all circumstances, and Landlord hereby expressly and unconditionally waives any and all other rights under law or in equity (if any) to terminate this Lease; and

(e) In the case of any Default which results in an exigent emergency situation, upon such notice to Tenant (if any) as is reasonably practicable under the circumstances, Landlord may take such actions as Landlord, in good faith, may deem reasonably necessary in the exercise of its commercially reasonable judgment, to prevent imminent injury or damage to persons or property on the Premises, and any reasonable documented out-of-pocket cost and expense associated therewith, including reasonable attorneys' fees, shall be the responsibility of Tenant, and Tenant shall reimburse the same to Landlord within ten (10) Business Days after written demand therefor and receipt of supporting documentation conclusively evidencing the payment of such costs by Landlord and Landlord's entitlement to reimbursement. In the event Tenant notifies Landlord within (10) Business Days of receipt of both such demand and documentation that, in good faith, Tenant disputes Landlord's right to have taken action to address what Landlord believed was an exigent emergency situation, and/or the amount of such costs, such dispute shall be subject to the dispute resolution procedures set forth in Article 29, subject to Landlord's right to seek money damages in a Court proceeding for its documented expenditures if it is not satisfied by the arbitrator's decision. If Landlord is not the prevailing Party after the resolution of such dispute in ADR or in a Court proceeding, Tenant shall have no obligation to reimburse Landlord for the documented expenses.

(f) Notwithstanding any provision in this Lease to the contrary, in the event and upon the continuance of a Donor Event of Default, Landlord shall, in addition to any of its other rights hereunder, be permitted to deliver to the Bank (I) a Notice of Exclusive Control with respect to the Construction Combined Account (provided that (1) Landlord shall not have the right to either (x) deliver to the Bank a Notice of Right of Withdrawal or (y) withdraw funds from the Construction Combined Account, (2) Landlord shall not have the right to deliver to the Bank a Notice of Exclusive Control unless it simultaneously delivers to the Tenant the certificate described in (i) below and (3) Landlord shall withdraw any Notice of Exclusive Control delivered to the Bank within three (3) Business Days of the termination of any Donor Event of Default) and (II) a Shifting Control Notice with respect to the Construction Cash Account (provided that (1) Landlord shall not have the right to withdraw funds from the Construction Cash Account, (2) Landlord shall not have the right to deliver to the Bank a Shifting Control Notice unless it simultaneously delivers to the Tenant the certificate described in (i) below and (3) Landlord shall withdraw any Shifting Control Notice delivered to the Bank within three (3) Business Days of the termination of any Donor Event of Default. In the event (i) Landlord duly serves on Tenant a valid Event of Default Notice complying in all respects with the requirements of Section 27.01(a) of this Lease, (ii) this Lease is lawfully terminated, in accordance with the terms and provisions of Article 27 hereof, pursuant to the decision of an arbitrator pursuant to Section 29.02(e) hereof and a Court Order terminating this Lease and granting Landlord possession of the Premises, and (iii) Tenant has an outstanding liability under this Lease on account of undischarged payment or performance obligations in connection with Tenant Construction Components under Section 17.02 of this Lease, as evidenced by the Court Order terminating this Lease and granting Landlord possession of the Premises, Landlord shall have the right (1) to deliver to the Bank (I) a Notice of Exclusive Control in accordance with the Construction ACA and (II) a Shifting Control Notice in accordance with the Construction

BACA, (2) to deliver to the Bank a Notice of Right of Withdrawal in accordance with the Construction ACA (provided that such Notice of Withdrawal includes the certificate and all attachments referenced on Exhibit A-2 to the Tenant Construction ACA), and (3) on or after the date that is thirty (30) days after the date on which Landlord delivers the certificates described in (ii) and (iii) below in accordance therewith, to draw upon the Construction Account Investment Assets, provided that Landlord's aggregate withdrawals from the Construction Account shall in no event exceed the lesser of (a) (x) the Liability Amount (as defined in the Construction Security Agreement) less (y) any withdrawals by Landlord from the Donor Account made pursuant to Section 8 of the Construction Security Agreement and (b) (x) the then-applicable Required Value (as defined in the Construction Security Agreement) less (y) any withdrawals by Landlord from the Donor Account made pursuant to Section 8 of the Construction Security Agreement, and provided further that Landlord has delivered to Tenant the certificates described in (i), (ii) and (iii) below.

(i) Simultaneously with delivery to the Bank of a Notice of Exclusive Control under the Construction ACA and/or a Shifting Control Notice under the Construction BACA, Landlord shall deliver to Tenant a certificate signed by each of the Chairman of the Board and Chief Executive Officer of Landlord (1) stating "Landlord certifies that the circumstances described in the [first][second] sentence of Section 27.04(f) of the Lease between Landlord and Tenant have occurred and that Landlord may legally deliver the attached [[Notice of Exclusive Control] and/or [Shifting Control Notice]] pursuant to the terms of the Lease." and (2) attaching a copy of the Notice of Exclusive Control and/or Shifting Control Notice.

(ii) Simultaneously with delivery to the Bank of a Notice of Right of Withdrawal under the Construction ACA, Landlord shall deliver to Tenant a certificate signed by each of the Chairman of the Board and Chief Executive Officer of Landlord (1) stating "Landlord certifies that the circumstances described in the second sentence of Section 27.04(f) of the Lease between Landlord and Tenant have occurred and that Landlord may legally deliver the attached Notice of Right of Withdrawal pursuant to the terms of the Lease." and (2) attaching a copy of the Notice of Right of Withdrawal.

(iii) Thirty (30) days prior to withdrawing Construction Cash Account Investment Assets under the Construction BACA, Landlord shall deliver to Tenant a certificate signed by each of the Chairman of the Board and Chief Executive Officer of Landlord stating "Landlord certifies that the circumstances described in the second sentence of Section 27.04(f) of the Lease between Landlord and Tenant have occurred."

(iv) Landlord's right to draw upon the Construction Account Investment Assets in accordance with this Section 27.04(f) shall be subject to its adherence to the foregoing procedures.

(v) Provided it has not drawn upon the Construction Account Investment Assets prior to such time, Landlord shall have the opportunity to cure any



failure to deliver the certificates described in this Section 27.04(f) for fifteen (15) Business Days following notice from Tenant.

(vi) EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 27.04(f), LANDLORD SHALL HAVE NO RIGHT TO (I) DELIVER TO THE BANK ANY NOTICE OF EXCLUSIVE CONTROL UNDER THE CONSTRUCTION ACA OR SHIFTING CONTROL NOTICE UNDER THE CONSTRUCTION BACA, (II) DELIVER TO THE BANK ANY NOTICE OF RIGHT OF WITHDRAWAL UNDER THE CONSTRUCTION ACA, OR (III) MAKE ANY WITHDRAWAL FROM THE CONSTRUCTION ACCOUNT. ANY VIOLATION OF THIS SECTION 27.04(f) BY LANDLORD SHALL BE DEEMED A MATERIAL BREACH OF THIS LEASE.

(vii) To the extent Landlord exercises its remedies set forth in this Section 27.04(f), Landlord shall be obligated to use the proceeds of any withdrawal from the Construction Account exclusively for the construction of the Premises and shall be required to comply with the Design Documents, the Construction Documents and any other requirements set forth in this Lease regarding the design or use of the Premises, provided that, if the aggregate proceeds of the withdrawals from the Construction Account and any Donor Account Withdrawal are insufficient to comply with the foregoing, Landlord shall be permitted to make only those changes to the design or use of the Premises as are required based on the sufficiency of such proceeds (including through “value engineering”).

(g) Notwithstanding any provision in this Lease to the contrary, in the event and upon the continuance of a Foundation Event of Default, Landlord shall, in addition to any of its other rights hereunder, be permitted to deliver to the Bank (I) a Notice of Exclusive Control with respect to the Maintenance Combined Account (provided that (1) Landlord shall not have the right to either (x) deliver to the Bank a Notice of Right of Withdrawal or (y) withdraw funds from the Maintenance Combined Account, (2) Landlord shall not have the right to deliver to the Bank a Notice of Exclusive Control unless it simultaneously delivers to the Tenant the certificate described in (i) below and (3) Landlord shall withdraw any Notice of Exclusive Control delivered to the Bank within three (3) Business Days of the termination of any Foundation Event of Default) and (II) a Shifting Control Notice with respect to the Maintenance Cash Account (provided that (1) Landlord shall not have the right to withdraw funds from the Maintenance Cash Account, (2) Landlord shall not have the right to deliver to the Bank a Shifting Control Notice unless it simultaneously delivers to the Tenant the certificate described in (i) below and (3) Landlord shall withdraw any Shifting Control Notice delivered to the Bank within three (3) Business Days of the termination of any Foundation Event of Default. In the event (i) Landlord duly serves on Tenant a valid Event of Default Notice complying in all respects with the requirements of Section 27.01(a) of this Lease, (ii) this Lease is lawfully terminated, in accordance with the terms and provisions of Article 27 hereof, pursuant to the decision of an arbitrator pursuant to Section 29.02(e) hereof and a Court Order terminating this Lease and granting Landlord possession of the Premises, and (iii) Tenant has an outstanding liability under this Lease on account of undischarged payment or performance obligations in connection with Tenant Maintenance Obligations under Section 15.01 of this Lease, as evidenced by the Court

Order terminating this Lease and granting Landlord possession of the Premises, Landlord shall have the right (1) to deliver to the Bank (I) a Notice of Exclusive Control in accordance with the Maintenance ACA and (II) a Shifting Control Notice in accordance with the Maintenance BACA, (2) to deliver to the Bank a Notice of Right of Withdrawal in accordance with the Maintenance ACA (provided that such Notice of Withdrawal includes the certificate and all attachments referenced on Exhibit A-2 to the Maintenance ACA), and (3) on or after the date that is thirty (30) days after the date on which Landlord delivers the certificates described in (ii) and (iii) below in accordance therewith, to draw upon the Maintenance Account Investment Assets; provided that Landlord's aggregate withdrawals from the Maintenance Account shall in no event exceed the lesser of (a) (x) the Liability Amount (as defined in the Maintenance Security Agreement) less (y) any withdrawals by Landlord from the Donor Account made pursuant to Section 8 of the Maintenance Security Agreement and (b) (x) the then-applicable Required Value (as defined in the Maintenance Security Agreement) less (y) any withdrawals by Landlord from the Donor Account made pursuant to Section 8 of the Maintenance Security Agreement; and provided further that Landlord has delivered to Tenant the certificates described in (i), (ii) and (iii) below.

(i) Simultaneously with delivery to the Bank of a Notice of Exclusive Control under the Maintenance ACA and/or a Shifting Control Notice under the Maintenance BACA, Landlord shall deliver to Tenant a certificate signed by each of the Chairman of the Board and Chief Executive Officer of Landlord (1) stating "Landlord certifies that the circumstances described in the [first][second] sentence of Section 27.04(f) of the Lease between Landlord and Tenant have occurred and that Landlord may legally deliver the attached [[Notice of Exclusive Control] and/or [Shifting Control Notice]] pursuant to the terms of the Lease." and (2) attaching a copy of the Notice of Exclusive Control and/or Shifting Control Notice.

(ii) Simultaneously with delivery to the Bank of a Notice of Right of Withdrawal under the Maintenance ACA, Landlord shall deliver to Tenant a certificate signed by each of the Chairman of the Board and Chief Executive Officer of Landlord (1) stating "Landlord certifies that the circumstances described in the second sentence of Section 27.04(f) of the Lease between Landlord and Tenant have occurred and that Landlord may legally deliver the attached Notice of Right of Withdrawal pursuant to the terms of the Lease." and (2) attaching a copy of the Notice of Right of Withdrawal.

(iii) Thirty (30) days prior to withdrawing Maintenance Cash Account Investment Assets under the Maintenance BACA, Landlord shall deliver to Tenant a certificate signed by each of the Chairman of the Board and Chief Executive Officer of Landlord stating "Landlord certifies that the circumstances described in the second sentence of Section 27.04(f) of the Lease between Landlord and Tenant have occurred."

(iv) Landlord's right to draw upon the Maintenance Account Investment Assets in accordance with this Section 27.04(g) shall be subject to its adherence to the foregoing procedures.

(v) Provided it has not drawn upon the Maintenance Account Investment Assets prior to such time, Landlord shall have the opportunity to cure any failure to deliver the certificates described in this Section 27.04(g) for fifteen (15) Business Days following notice from Tenant.

(vi) EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 27.04(g), LANDLORD SHALL HAVE NO RIGHT TO (I) DELIVER TO THE BANK ANY NOTICE OF EXCLUSIVE CONTROL UNDER THE MAINTENANCE ACA OR SHIFTING CONTROL NOTICE UNDER THE MAINTENANCE BACA, (II) DELIVER TO THE BANK ANY NOTICE OF RIGHT OF WITHDRAWAL UNDER THE MAINTENANCE ACA, OR (III) MAKE ANY WITHDRAWAL FROM THE MAINTENANCE ACCOUNT. ANY VIOLATION OF THIS SECTION 27.04(g) BY LANDLORD SHALL BE DEEMED A MATERIAL BREACH OF THIS LEASE.

(vii) To the extent Landlord exercises its remedies set forth in this Section 27.04(g), Landlord shall be obligated to use the proceeds of any withdrawal from the Maintenance Account exclusively for the maintenance of the Premises for Park Uses. The requirements set forth in this Section 27.04(h) will survive any termination of this Lease.

(h) Notwithstanding any provision in this Lease to the contrary, Landlord's right of termination set forth in this Section 27.04 with respect to an Event of Default identified in Section 27.01(b) only shall be retroactively invalidated, at Tenant's election, if Landlord ultimately procures 70% or more of the aggregate amount of funds remaining in the Donor Account and Construction Account as of the date of the termination, provided that if Tenant exercises its right under this Section 27.04(h) it will (i) affirm all its obligations under this Lease and (ii) ensure that Foundation re-instates Foundation's obligations under the Maintenance Pledge Agreement with respect to the Maintenance Pledge.

Section 27.05 Certain Consequences of Termination of Lease. If this Lease is terminated as provided in this Article 27, Tenant shall comply with Landlord's close-out procedures as set forth below:

(i) Tenant will furnish to Landlord within ninety (90) days of termination an inventory of all equipment, appurtenances and property purchased through or provided under this Lease, and carry out any reasonable Landlord directive concerning the disposition thereof (other than Tenant's Trade Fixtures),

(ii) Tenant will not incur any further obligation pursuant to this Lease beyond the termination date; provided that in no event shall the term "obligation," as used herein, be construed as including any lease agreement, oral or written, entered into between Tenant and any of its other landlords or any concession, service or maintenance agreements then in existence;

(iii) Tenant will turn over to Landlord or its designees, subject to the Confidentiality Obligation, all books, records, documents and materials

specifically relating to this Lease, including all maintenance records and all extant maintenance contracts, if any, except for any such books, records, documents and materials covered by the attorney-client privilege with respect to Tenant;

(iv) Tenant will submit to Landlord, within ninety (90) days of termination, subject to the Confidentiality Obligation, a final statement and reporting relating to the Lease (such report to be made by a certified public accountant); and

(v) Notwithstanding any other provisions of this Lease, Tenant shall not be relieved of any liability to Landlord for damages sustained by Landlord by reason of Tenant's breach of this Lease solely because of Landlord's termination of this Lease for such breach, and Landlord may withhold any payments which may otherwise be owing to Tenant at Lease termination for the purposes of set-off, until such time as the exact amount of damages due to Landlord from Tenant is determined. It is further agreed that Landlord shall not be relieved of any liability to Tenant for any damages sustained by Tenant by virtue of Landlord's breach of this Lease solely because of Tenant's termination of this Lease for such breach. In no event shall either Landlord or Tenant have any claim or be entitled to special, speculative or consequential damages from the other under any circumstances, by reason of any breach, Default or termination of this Lease, or otherwise.

Section 27.06 Waiver of Default; Strict Performance. 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. Without limiting the foregoing, no failure by Landlord to insist upon Tenant's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord by reason of the occurrence of a Default or Event of Default shall constitute a waiver of any such Default or Event of Default or of the right to strict performance of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default or Event of Default by Tenant, shall be waived, altered or modified except by a written instrument executed by the other party.

Section 27.07 Right to Enjoin Defaults or Threatened Defaults; Remedies Cumulative. In the event of Tenant's Default or threatened Default, Landlord shall be entitled to seek to enjoin the Default or threatened Default by appropriate legal proceedings and shall have the right to invoke any rights and remedies allowed at law or in equity, or by statute, or otherwise, other than any right to terminate this Lease which is exclusively governed by Section 27.04. Landlord's termination rights in Section 27.04 shall be in addition to any non-termination rights and remedies that Landlord would have at law or in equity consequent to or upon any Tenant's Default or Event of Default, and the exercise by Landlord of any right of termination under Section 27.04 shall be without prejudice to any other such rights and remedies. Notwithstanding anything to the contrary in this Lease, Landlord agrees to act reasonably and in good faith and to cooperate with Tenant to the extent reasonably practicable after the service of a Default Notice in order to avoid the need to terminate this Lease. Nothing in this Section 27.07

eliminates the prerequisite for arbitration pursuant to Article 29 or the dispute resolution process in Section 17.16(b), as applicable, except with respect to an (f) Default.

Section 27.08 Alternative Dispute Resolution Procedure. Notwithstanding any provision in this Lease to the contrary, in the event of any conflict between the provisions of Article 29 and the provisions of this Article 27 solely with respect to the time periods for giving of notices or taking any other action in connection with the alternative resolution of any Dispute hereunder, the time periods set forth in this Article 27 shall govern and control in all cases.

Section 27.09 Remedies Under Bankruptcy and Insolvency Codes.

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

(i) that Tenant shall comply with all of its obligations under this Lease;

(ii) that Tenant shall continue to use the Premises in the manner required by this Lease;

(iii) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(iv) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(v) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the then-estimated annual maintenance costs payable by Tenant hereunder, for the then-current Lease Year;

(vi) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to

assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(vii) that Landlord shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and

(viii) 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.

## ARTICLE 28

### LANDLORD DEFAULT; TENANT REMEDIES

Section 28.01 Tenant Termination Right. In addition to Tenant's other termination rights under this Lease (including pursuant to Section 2.02(b), Section 12.02(d), Section 13.08, and Section 28.05), Tenant shall have the right to terminate this Lease if Landlord fails to perform or observe any obligation of Landlord under any other provision of this Lease ("Landlord Default"), and such failure shall continue and shall not be remedied within forty-five (45) days after notice from Tenant specifying the same ("Tenant Default Notice") or, in the case of Force Majeure, if such failure cannot be cured within forty-five (45) days, such longer period as is reasonable under the circumstance (not to exceed 90 days) provided Landlord (a) advises Tenant in writing promptly after the receipt by Landlord of a Tenant Default Notice that Landlord intends to take all steps necessary to remedy such default with due diligence; and (b) duly institutes and diligently prosecutes to completion the steps necessary to remedy same. If Landlord serves Tenant with a Dispute Notice ("Landlord Dispute Notice") with respect to any Landlord Default alleged by Tenant in the Tenant Default Notice, such Dispute described in the Landlord Dispute Notice shall be addressed through the ADR process set forth in Article 29, and

if Landlord does not agree with the determination by the arbitrator, then Landlord shall have the right to seek judicial resolution. Notwithstanding the foregoing or anything to the contrary in this Lease, in the event Landlord does not have funds to or otherwise does not timely pay the amounts it is required to pay under Section 17.02 hereof, in addition to Tenant's other remedies set forth herein, Tenant shall not be obligated to pay any amounts or proceed with the Project until any related ADR process is completed or Landlord pays the amounts required.

Section 28.02 Waiver of Breach. No waiver of any Landlord breach of this Lease by Tenant 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 breach of this Lease by Landlord.

Section 28.03 Right to Enjoin Breach; Remedies Cumulative. In the event of a termination of this Lease, Landlord shall immediately pay all its outstanding obligations and liabilities (if any) of Landlord that are due to Tenant. In addition, Landlord acknowledges that in the event that Tenant does not receive the benefits of this Lease (including pursuant to Article 25) or if Landlord breaches or threatens to breach this Lease, Tenant could suffer significant and irreparable harm that could not be satisfactorily compensated in monetary terms, and that the remedies at law available to Tenant may otherwise be inadequate, and Tenant shall be entitled, in addition to any other remedies to which it may be entitled to under law or in equity, to specific performance of this Lease by Landlord including the immediate ex parte issuance, without bond, of a temporary restraining order enjoining Landlord from any such breach or threatened breach or the violation or threatened violation of this Section 28.03 or Article 25 or any of the other provisions hereof and to exercise such remedies cumulatively or in conjunction with all other rights and remedies provided by law. Landlord hereby acknowledges and agrees that Tenant shall not be required to post bond as a condition to obtaining or exercising any such remedies, and Landlord hereby waives any such requirement or condition. Tenant's rights of termination hereunder shall be in addition to any rights and remedies that Tenant would have at law or in equity consequent to or upon any breach of this Lease by Landlord and the exercise by Tenant of any right of termination shall be without prejudice to any other such rights and remedies. Tenant shall also have the right to make all claims for its losses and compensatory damages, but not punitive or consequential damages. In the event this Lease is terminated prior to the natural expiration of the Term due to Landlord Default, or for any reason other than through a default by Tenant, Tenant's obligations hereunder shall terminate.

Section 28.04 Tenant Self-Help. If Landlord is in breach or default of any of its obligations under this Lease (including under the Esplanade Rights), Tenant may perform any acts necessary to cure such alleged breach or default ("Tenant Self-Help"). In the event that Tenant seeks to exercise Tenant Self-Help, Landlord shall cooperate with Tenant in good faith to the extent reasonably necessary in order to perform all work with respect to Tenant Self-Help. Landlord or its Representatives shall have the right to be present during all periods of such access and Tenant Self-Help. Tenant shall not have any right to exercise Tenant Self-Help unless Tenant first gives Landlord prior written notice of its intention to use Tenant Self-Help, and Landlord has had the right to give notice to Tenant within thirty (30) days after receipt of Tenant's written notice that Landlord, in good faith, disputes Tenant's right to exercise Tenant Self-Help pursuant to a Dispute Notice. If Tenant gives such notice of its intention, and Landlord does not timely give such Dispute Notice to Tenant within said thirty (30)-day period,

Tenant may exercise Tenant Self-Help, any reasonable documented out-of-pocket cost and expense thereof, including reasonable attorneys' fees, shall be the responsibility of Landlord, and Landlord shall reimburse the same to Tenant within ten (10) Business Days after written demand therefor and after receipt of supporting documentation conclusively evidencing the costs and expenses attributable thereto. If Landlord shall fail to reimburse Tenant for such reasonable costs within ten (10) Business Days after Tenant's demand therefor, Tenant may terminate this Lease, unless Landlord reasonably disputes such costs within such ten (10)-Business Day period. In the event Landlord does timely notify Tenant that, in good faith, it disputes Tenant's right to exercise Tenant Self-Help, or the amount of any such costs, each pursuant to a Dispute Notice, Tenant shall not exercise any Tenant Self-Help or Landlord shall not pay any such costs, as the case may be, and any such dispute shall be subject to the alternative dispute resolution procedures set forth in Article 29. If Tenant is the prevailing Party after the final determination of such dispute and (a) Landlord fails to reimburse Tenant for such costs after the exercise of any Tenant Self-Help and Tenant's demand therefor, or (b) Landlord fails to reimburse Tenant for any disputed reasonable costs as determined within ten (10) Business Days after written demand therefor, then Tenant may terminate this Lease. If Landlord is the prevailing Party after the final determination of such dispute, Tenant shall not have the right to exercise Tenant Self-Help or to collect any disputed reasonable costs or to terminate this Lease with respect to such dispute.

Section 28.05 Termination Right Exercisable on or Before Commencement Date. Notwithstanding any provision hereof to the contrary, Tenant shall have the right, after good faith consultation with Landlord as set forth below, to terminate this Lease at any time prior to the Commencement Date, without any further obligation or liability and without any payment to Landlord, if any one (1) or more of the following occurs (individually, a "Termination Condition"; and collectively, the "Termination Conditions"):

(a) The aggregate amount of all hard and soft costs required to complete the Project (collectively, the "Total Project Costs"), is expected to exceed \$200 Million (the "Maximum Cost"), as demonstrated by either (x) the final bids received by Tenant under Section 17.06 and Section 17.07 hereof, when aggregated with all other hard and soft costs of the Project including costs previously incurred, or (y) a cost estimate prepared by a reputable third party cost estimator engaged by Tenant, in each case after taking into account any Value Engineering that may be mutually agreed upon by Landlord and Tenant in good faith, it being agreed that no Value Engineering shall materially alter the Essential Design Elements described below and that, while Landlord and Tenant shall engage in Value Engineering in good faith, neither Landlord nor Tenant shall be obligated to accept changes to the design of the Improvements that result from any Value Engineering;

(b) The design or expected form of the Improvements has been changed or is required to be changed from the design set forth in the then most current Concept Design that has been approved by Tenant, in such a manner or to such an extent that: (i) the size, aesthetic appearance or functionality of the Central Space, Interstitial Space or the Amphitheatre would be materially different than what is shown or described in the Concept Design; (ii) the functionality of the Central Space, Interstitial Space or the Amphitheatre is substantially impaired because of the elimination or reduction of support space, which support space cannot be substituted or reconfigured to the reasonable



satisfaction of Tenant; (iii) the shape, elevation, aesthetics or structure of the Improvements would be materially different from what is shown in the Concept Design; (iv) the size, location or shape of the Esplanade would be materially different from that shown in the Concept Design; or (v) the functionality of the park on the Premises is reduced materially from that which is indicated in the Concept Design (the foregoing matters described in this clause (b) being referred to collectively as the “Essential Design Elements”), in any such case, as a result of any governmental or permitting requirements or acts, any engineering, constructability or feasibility concerns, or other matters beyond the control of Tenant or that compel such material change in design;

(c) The use or functionality of the Premises for the Permitted Events shall have been impaired, disallowed, modified, jeopardized or reduced by any Governmental Authority or by any action of a Governmental Authority, except to an extent that is not material;

(d) The Commencement Date has not occurred, or construction of the Improvements and the Esplanade is not scheduled to commence, by the earlier of (i) May 1, 2017, and (ii) a date that is within twenty-four (24) months after the Execution Date, or the Substantial Completion Date shall have been extended so that the Substantial Completion Date is not expected to occur and the Premises or Esplanade is not anticipated to be opened for Permitted Events by the fourth quarter of 2019, or such later date as the Parties shall agree;

(e) The Contracts for the Project fail to include, notwithstanding the diligent efforts of Landlord and Tenant, a Project Component Schedule reflecting a construction period not to exceed thirty-six months from the Construction Commencement Date to the Substantial Completion Date;

(f) Any Permits for the development or Authorizations and Filings for the operation of the Premises have not been finally obtained by March 15, 2017 or any such Permits or Authorizations and Filings has been revoked or jeopardized or determined to be unavailable;

(g) There has been any material change in the design or anticipated use of Pier 57 or any material change in the anticipated use of the Gansevoort Peninsula as park/transfer station, in either case if such change would have a material adverse effect on the Project or Tenant’s use of the Premises, or the Parties shall have failed to agree upon a mutually satisfactory phasing and logistics plan for the coordination of the construction of the Esplanade and the Premises;

(h) Landlord shall be in default, after the expiration of any applicable notice and cure period, of any of its obligations, representations or warranties under this Lease, or any representation or warranty of Landlord set forth in Section 20.02 shall cease to be true in all material respects, other than defaults which are immaterial and which Landlord covenants to (and does) cure within the applicable cure period hereunder;

(i) Any material legislation or material regulation is passed or adopted or the Parties agree it is reasonably likely to be passed or adopted that would impose a material increase in the Total Project Cost of the Project or the costs of operating or maintaining the Premises or hosting Permitted Events thereon;

(j) It is reasonably foreseeable that any utility services (including sewer, water, gas and electricity) necessary for the Project Construction Work will not be available by the Commencement Date or that any such utility services necessary for the operation of the Premises (including for the Permitted Events) will not be available at the Premises by the Substantial Completion Date;

(k) Landlord has failed to demonstrate to Tenant's reasonable satisfaction that Landlord's funds are and will be fully and unconditionally available to Landlord when and as required for the CMAQ Project and Landlord Construction Components or Landlord has failed to provide Tenant with reasonable assurance in connection therewith;

(l) There shall have been a material adverse change in the feasibility, constructability or prospects for success of the Project or the use of the Premises contemplated hereby (including for the Permitted Events), in any such case for reasons that are not solely the result of changes in Tenant's circumstances that are not of general applicability; or

(m) The Consent Agreement and any consent or other agreement from the State or its agencies required by Tenant shall not have been granted.

The determination of whether or not a Termination Condition shall have occurred shall be made by Tenant in good faith, after good faith consultation with Landlord and after first delivering to Landlord at least thirty (30) days' prior notice of its intention to terminate this Lease pursuant to this Section 28.05, which notice shall be accompanied by an explanation of the reasons for termination. Any termination notice hereunder shall be in writing and shall be made solely by Tenant in its good faith discretion. Any disputes with regard to the foregoing shall be resolved pursuant to the dispute resolution provisions of Article 29. Tenant's obligations under Article 17 hereof shall be tolled during the period in which any dispute regarding the foregoing is being resolved (and during the thirty (30) day notice period provided in the first sentence of this paragraph). Notwithstanding any provision hereof to the contrary the "Force Majeure" provision of Section 37.11 shall not apply to the foregoing Termination Conditions, so that Tenant shall be entitled to terminate this Lease as the result of the occurrence of a Termination Condition even if such occurrence results from a Force Majeure.

Section 28.06 Survival. The rights and remedies of Tenant and the other provisions of this Article 28 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 29

### ALTERNATIVE DISPUTE RESOLUTION

Section 29.01 Alternative Dispute Resolution Procedure. Except as expressly set forth in this Lease to the contrary, all disputes, claims or controversies arising under this Lease

after the Commencement Date (other than a Project Dispute) between the Parties (each, a “Dispute,” which shall include a Dispute set forth in a Tenant Dispute Notice both as provided for and defined in Section 27.02(b)(i), a Dispute set forth in a Landlord Dispute Notice both as provided for and defined in Section 28.01, and any other Dispute (“Other Dispute”) set forth in a written notice served by one Party on another Party setting forth with particularity the facts and circumstances of such Other Dispute (“Other Dispute Notice,” and together with any Tenant Dispute Notice and any Landlord Dispute Notice, individually referred to as a “Dispute Notice”)) shall be addressed and attempted to be resolved in accordance with the procedures set forth below, and no claim shall be brought in any court or under other dispute resolution process, and no remedy shall be sought to be exercised by any Party, unless and until the procedures set forth in this Section 29.01 shall have been completed.

Landlord and Tenant shall use reasonable best efforts to negotiate a resolution to the Dispute for a period of thirty (30) Business Days (“30-Business Day Period”) beginning upon the date that any Party (which may be the same or a different Party serving any Default Notice) delivers a Meet and Confer Proposal (as hereinafter defined), which shall include a short statement of the factual basis of the Dispute, specifying with reasonable detail the matter or matters in dispute and the relief sought (and if monetary, the amount thereof). The “Meet and Confer Proposal” shall be delivered within (A) the later of (a) fifteen (15) Business Days after the service of any Landlord or Tenant Default Notice or (b) ten (10) Business Days after the service of the applicable Landlord or Tenant Dispute Notice, and (B) fifteen (15) Business Days after the service of the Other Dispute Notice, and shall propose a place and date and time for the Parties’ respective Representatives to meet with each other to seek to resolve the Dispute (which date shall be no later than five (5) Business Days from the date of delivery of the Meet and Confer proposal). These reasonable best efforts shall include taking the following sequential steps, all of which shall be completed within such 30-Business Day period:

(a) Each Party shall, promptly after delivery of the Dispute Notice, appoint a representative who shall be a senior executive (or equivalent position) of the appointing Party in charge of the matter in Dispute (a “Senior Executive”) to negotiate a resolution of the asserted Dispute.

(b) The Senior Executive of the Party receiving the Dispute Notice shall use his or her reasonable best efforts to meet with the noticing Party’s Representative at the place, on the date and at the time proposed in the Dispute Notice.

(c) The Senior Executive receiving the Dispute Notice, acting in good faith, may propose an alternate date, time and place for the Senior Executives to meet, but such date shall not be later than seven (7) Business Days following the delivery of the Dispute Notice.

(d) The Senior Executives, acting in good faith, shall use their respective reasonable best efforts to negotiate a mutually acceptable resolution of the asserted Dispute.

(e) If, acting in good faith, the Senior Executives are unable to achieve a mutually acceptable resolution of the asserted Dispute within twelve (12) Business Days

from the date of the Dispute Notice, then and in that event, each Party shall arrange for the chairperson (or equivalent position) of such Party (each, a “Chairperson”) to meet in person with the Chairperson of the other Party as often as they believe necessary to attempt in good faith to negotiate a resolution of the Dispute mutually acceptable to each Party by the end of the 30-Business Day period following the date of delivery of the Dispute Notice. Such 30-Business Day period may be extended by mutual agreement by the Chairpersons of both Parties. For the avoidance of doubt the foregoing 30-Business Day Period in this Article 29 shall be separate and distinct from the 30-Day Period in Article 27.

Section 29.02 Non-Binding Arbitration. Notwithstanding Section 29.01, no Party shall be prohibited from instituting formal nonbinding arbitration proceedings before the expiration of the aforesaid 30-Business Day period if so instituting arbitration is necessary in order to avoid the expiration of any applicable statute of limitations period, and, furthermore, the Parties shall not be estopped from seeking temporary or preliminary injunctive relief to protect their respective interests. If, upon the expiration of the 30-Business Day period following the date of delivery of the Dispute Notice, the Chairpersons are unable to negotiate a resolution of the Dispute, then the parties shall submit the Dispute to nonbinding arbitration in accordance with the following arbitration procedures:

(a) The arbitration will be conducted pursuant to the Non-Binding Arbitration Rules (“Arbitration Rules”) of the American Arbitration Association (“AAA”) in the Borough of Manhattan, New York, New York.

(b) The arbitrator will be selected from an AAA list using the AAA-recommended selection method.

(c) After the appointment of the arbitrator, the arbitrator shall hold a conference with the Parties as soon as practicable to define and narrow the issues and claims to be arbitrated, to define and limit discovery and to identify the form of evidence to be presented.

(d) Any arbitration shall be conducted by the arbitrator under the guidance of the Federal Rules of Civil Procedure and the Federal Rules of Evidence, but the arbitrator shall not be required to comply strictly with such rules in conducting any such arbitration.

(e) The arbitrator shall conduct such evidentiary or other hearings as the arbitrator shall deem necessary or appropriate and thereafter shall make a determination as soon as practicable.

(f) A full and complete record of the arbitration shall be maintained, and the judgment of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law of the arbitrator.

(g) Each Party will bear equally the costs and expenses of AAA and the arbitrator, and each party will bear its own costs and expenses.

(h) In no event will the arbitrator determine that any Party should be awarded punitive or exemplary damages or any other damages not measured by the prevailing Party's actual damages.

(i) All arbitration proceedings shall be confidential, except to the extent that disclosure is required by applicable law.

(j) The Parties hereby agree to consider the findings and determinations of the arbitrator in good faith before any Party may initiate litigation.

(k) In the case of any conflict between a term or condition of this Lease and a term or condition of the Arbitration Rules, the terms and conditions of this Lease shall govern and control in all respects.

Section 29.03 Exception for Design and Project Construction Work. Notwithstanding the foregoing, the provisions of this Article 29 shall not apply to any claims, disputes or other matters which are subject to any dispute resolution procedure in Article 17, including Section 17.16(b).

Section 29.04 Intent. The Parties acknowledge and confirm that the overriding intent of this Lease is that (x) the Premises will be used for Park Uses and (y) to ensure that Tenant will be able to hold Permitted Events on the Premises (up to the maximum number set forth in Section 9.02) in compliance with the terms hereof and that, subject to the limitations on closures to the public set forth in Section 9.01(c), interference with Permitted Events shall not be permitted.

## ARTICLE 30

### TERMINATION AND SURRENDER

Section 30.01 Surrender of Premises. Upon expiration of this Lease, Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord in good order, condition and repair to the extent Tenant is obligated to repair and maintain the same under this Lease, subject to Landlord's obligations therefor, reasonable wear and tear and damage by casualty and the elements excepted, free and clear of all Liens and encumbrances other than any of such Liens and encumbrances (a) in existence on the Execution Date, (b) caused or created by or consented to by Landlord, or (c) that Landlord has agreed may survive the expiration or earlier termination of this Lease. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the expiration or earlier termination of this Lease.

Section 30.02 Delivery of Contracts, Etc. Upon expiration of this Lease, Tenant shall deliver to Landlord (a) Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises and which Tenant has not elected to terminate, materially true and complete copies of maintenance records for the Premises as maintained by Tenant in the ordinary course for the three (3) immediately preceding years, all original licenses and permits then pertaining to the Premises, certificates of occupancy then in effect for the Improvements, and all warranties and guarantees then in effect which Tenant has received in connection with any work

or services performed or Equipment installed at the Premises. Upon Landlord's written request, Landlord and Tenant shall execute an assignment and assumption agreement with respect to any of the above to the extent they are assignable (which assignment of contracts, licenses and permits shall become effective upon Landlord's acceptance and assumption thereof), and copies of all financial reports, books and records in Tenant's possession in accordance with Article 24 and any and all other documents of every kind and nature whatsoever reasonably requested relating to the operation of the Premises and the condition of the improvements.

Section 30.03 Reversion of Improvements. Subject to Article 13, upon the expiration or termination of this Lease in accordance with the terms hereof, all Improvements (but for the avoidance of doubt not Tenant's Trade Fixtures) shall automatically revert to and rest in Landlord without any payment therefor. Tenant shall have no obligation to remove any Improvements or restore the Premises to their original condition, including renewals thereof, by expiration of time or otherwise. Tenant shall have the right and obligation to remove such structures and facilities owned by it as may then be located upon the demised Premises; or, in the event that Tenant fails to so remove such structures and facilities, Landlord may remove such structures and facilities and charge the cost and expense thereof to Tenant.

Section 30.04 Removal of Trade Fixtures and Equipment. Tenant may remove Tenant's Trade Fixtures and any other property of Tenant upon the expiration or sooner termination of this Lease, and nothing in this Lease shall be construed to give Landlord title to, or the right to prevent Tenant's removal of such Trade Fixtures or other property. In addition, in the event this Lease is terminated prior to the natural expiration of the Term other than through a default by Tenant, Tenant shall also be entitled to remove and retain as its property the Equipment. All property permitted or required to be removed by Tenant at the end of the Term remaining in the Premises after this Lease has expired or properly terminated in accordance with the express terms hereof and after at least ninety (90) days' prior written notice to Tenant of the continued presence of such property on the Premises shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or removed from the Premises by Landlord, at Tenant's reasonable expense.

Section 30.05 Survival Clause. The provisions of this Article shall survive the expiration or earlier termination of this Lease in accordance with the terms hereof.

## ARTICLE 31

### CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

Section 31.01 Waiver of Trial by Jury. Landlord and Tenant each hereby expressly waives all rights to 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 including, but not limited to, the relationship between Landlord and Tenant. This provision relating to waiver of jury trial shall survive the expiration or earlier termination of this Lease.

Section 31.02 Jurisdiction. Any and all claims asserted by or against any Party arising under this Lease or related thereto shall be heard and determined either in the courts of the United States located in New York City (“Federal Courts”) or in the courts of the State of New York (“New York State Courts”) located in the City and County of New York; provided that this Section 31.02 shall not prevent either Landlord or Tenant from seeking injunctive or other equitable relief. To this effect and to effect this Lease and its intent, it is understood and agreed by Landlord and Tenant that:

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

(b) With respect to any action between Landlord and Tenant in Federal Court located in New York City, Tenant and Landlord each 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 each hereby agrees that a final nonappealable judgment in any action or proceeding in connection with this Lease shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law; provided that Tenant does not waive any right to appeal or to obtain a stay, including without limitation all rights in connection with any Yellowstone Action.

(d) If Tenant or Landlord commences any action which arises under, with respect to or out of this Lease in a court located other than in the City, County and State of New York, upon request of the 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, Tenant or Landlord, as the case may be, shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

Section 31.03 Process. Each of the Parties irrevocably consents to the service of any and all process in any action or proceeding instituted against such Party by the mailing of copies of such process to such Party, to its address and in the manner set forth in Article 32. Nothing in this Section shall affect the right of Tenant or Landlord to serve legal process in any other manner permitted by applicable law.

## ARTICLE 32

### NOTICES

Section 32.01 Notices. All notices and communication to the Parties hereunder will be delivered by hand or sent by registered or certified mail, return receipt requested, or by

Federal Express, Express Mail or other overnight mail service that provides a receipt to the sender. Receipt of a notice by the Party to whom the notice is transmitted will be deemed to have occurred: (a) upon receipt, if hand delivered or if mailed; or (b) the next Business Day after transmittal by Express Mail or other overnight delivery service that provides a receipt to the sender.

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

If to Landlord:

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

with copies to:

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

and

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

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

If to Tenant:

Pier55, Inc.  
555 West 18th Street  
New York, New York 10011  
Attention: Chief Executive Officer



with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Robin Panovka

#### ARTICLE 33

#### SUBLEASE

Section 33.01 This Lease Is a Sublease. Notwithstanding the reference to this document as a “lease” and the reference to Landlord under this document as “Landlord,” Landlord is tenant of the Premises and other property pursuant to the State Lease. Landlord has provided Tenant with a true and complete copy of the State Lease, as it is in effect (including as amended or modified) on the date hereof, which is annexed hereto as Schedule 33.01. Landlord shall not execute any amendment or modification of the State Lease that applies to the Premises or that modifies or diminishes Tenant’s rights or privileges hereunder without Tenant’s prior written consent. Landlord shall cooperate with Tenant to obtain such estoppel certificates and other documentations as Tenant may reasonably require from the landlord under the State Lease.

#### ARTICLE 34

#### CERTIFICATES BY LANDLORD AND TENANT

Section 34.01 Certificate of Tenant. At any time during the Term, Tenant shall, within twenty (20) days after written request by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, a written statement (which may be relied upon by such Person) (a) certifying (i) that, to the knowledge of Tenant, 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 any item payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given Landlord notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease, and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in reasonable detail each such default.

Section 34.02 Certificate of Landlord. At any time during the Term, Landlord shall, within twenty (20) days after request by Tenant, execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested), and (ii) the date to which any item 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 reasonable detail each such default or Event of Default.

Section 34.03 Failure to Deliver Certificate. Tenant's failure to deliver the certificate required by Section 34.01 within such twenty (20)-day period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification, except as may be represented by Landlord, (b) there are no uncured defaults on the part of Landlord, and (c) no notice has been sent to Landlord of any default by Landlord which has not been cured. Landlord's failure to deliver the certificate required by Section 34.02 within such twenty (20)-day period shall be conclusive upon Landlord that (a) this Lease is in full force and effect, without modification, except as may be represented by Tenant, (b) there are no uncured Defaults on the part of Tenant hereunder, (c) amounts payable by Tenant have been paid to date, and (d) no notice has been sent to Tenant of any Default by Tenant which has not been cured.

## ARTICLE 35

### QUIET ENJOYMENT

Section 35.01 Quiet Enjoyment. Landlord warrants, represents and covenants that, during the Term, as long as this Lease has not been lawfully and properly terminated by Landlord according to the express terms of this Lease, Tenant shall and may (subject to the terms and conditions of this Lease, including the express reservation by Landlord set forth in Section 2.01) peaceably and quietly have, hold and enjoy the Premises and the Esplanade Rights appurtenant thereto, and Landlord shall protect and defend Tenant's use and enjoyment of the Premises and Esplanade Rights as contemplated in this Lease from and against all challenges or claims for and during the Term and for the uses permitted hereunder (including the Permitted Events) without let, hindrance, molestation or disturbance by or from Landlord or any other Person, whether claiming through Landlord or otherwise. This covenant shall run with the land and shall bind Landlord, its successors and assigns, and shall inure to the benefit of Tenant and any successors or assigns permitted hereunder. Landlord shall act in good faith as a State public benefit corporation and authority, and within its powers, to seek to protect Tenant's use and enjoyment of the Premises and Esplanade Rights as contemplated by this Lease (including the Permitted Events) from and against all challenges or claims. In this connection, Landlord hereby assures Tenant that the State of New York is possessed of the fee simple absolute title to the Premises, that Landlord is possessed of a good and valid leasehold under the State Lease, and that there are no other Persons with a right superior to, or which might deprive Tenant of, Tenant's use or enjoyment of the Premises or the Esplanade Rights under this Lease (including for the Permitted Events), and if any such challenges are asserted, Landlord shall defend against any and all such claims.

## ARTICLE 36

### RECORDING OF LEASE

Section 36.01 Recording. Concurrently with the execution and delivery of this Lease, Landlord and Tenant shall execute and deliver a memorandum of this Lease and the Parties shall thereafter execute and deliver a memorandum of each amendment or modification of this Lease, all in proper form for recording. Subsequently, Tenant may cause each such memorandum to be recorded in the Office of the Register of the City of New York (New York County) and Tenant shall pay and discharge all costs, fees and taxes in connection therewith.

## ARTICLE 37

### MISCELLANEOUS

Section 37.01 Headings, Captions and Table of Contents. The descriptive headings and captions used in this Lease are for the purpose 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 37.02 Governing Law. This Lease shall be deemed executed in the City of New York, State of New York, regardless of the domicile of Landlord or Tenant. 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 37.03 Amendments; Modifications; Waiver. This Lease may not be amended, modified or waived 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 37.04 Entire Agreement. This Lease, including the Maintenance Services Arrangement (if applicable) and the Exhibits and Schedules hereto, together with the Pledge Agreement, the Security Agreement, the Consent Agreement and the Cooperation Agreement, contains all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Lease, the Premises, the Esplanade Rights, Pier 54 and Pier55, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the Lease, the Premises, the Esplanade Rights or Pier 54 and Pier55, 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.

Section 37.05 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 or be held to 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 remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

Section 37.06 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 agents of each other or partners or co-venturers for any purpose.

Section 37.07 Interpretation. In this Lease, (a) words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Lease as a whole (including all of the Schedules hereto) and not to any particular provision of this Lease; (c) Article, Section, Exhibits and Schedule references are to the Articles, Sections, Exhibits and Schedules to this Lease unless otherwise specified; (d) unless otherwise stated, all references to any agreement shall be deemed to include the exhibits, schedules and annexes to such agreement; (e) the word “including” and words of similar import when used in this Lease means “including, without limitation,” unless otherwise specified; (f) the word “or” shall not be exclusive; (g) unless otherwise specified in a particular case, the word “days” refers to calendar days; and (h) references herein to this Lease or any other agreement contemplated herein shall be deemed to refer to this Lease or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified.

Section 37.08 Intentionally Omitted.

Section 37.09 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 37.10 Counterparts. This Lease may be executed in two (2) or more counterparts, all of which shall be considered an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more such counterparts have been signed by each Party and delivered (by facsimile, email, or otherwise) to the other Party. Signatures to this Lease transmitted by facsimile transmission, by electronic mail in “portable document format” (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signatures.

Section 37.11 Force Majeure. If either Landlord or Tenant shall be delayed or prevented from the performance of any act required by this Lease by reason of acts of God or the public enemy; weather; earth movement; lockout or labor trouble; acts of a Governmental Authority (other than Landlord in either its sovereign or contractual capacity); fires; freight embargoes; floods; epidemics; quarantine restrictions; strikes; acts of war or terrorism; riot; or other similar causes beyond the reasonable control of the Parties and without fault of the Party obligated (collectively, “Force Majeure”), performance of such act, including payment of any money due, shall be permanently excused for the period of the delay and the period for the

performance of such act shall be extended for a period equivalent to the period of such delay, at which time all payments due shall be resumed.

Section 37.12 Conflict of Interest. Each Party represents and warrants that, as of the date hereof, neither it nor, to such Party's knowledge, any of its officers, directors, employees, or volunteers has any interest, nor shall such Party knowingly acquire, and such Party shall instruct its officers, directors, trustees, employees and volunteers not to acquire, any interest in a party that derives profits from its dealings with Landlord or Tenant, directly or indirectly, which interest is not permitted under Section 9.08 or would or may reasonably be expected to violate any terms or conditions of this Lease. Each Party further represents and warrants that in the performance of this Lease, no person who it knows has such interest or possible interest shall be employed by it. Without limiting the generality of the foregoing, Landlord shall ensure that no director, trustee, officer or employee of Landlord, nor any person whose salary is payable, in whole or in part by Landlord, shall participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. Landlord shall ensure that no such person has any interest, direct or indirect, in this Lease or in the proceeds hereof. During the Term, Landlord shall not, and shall cause Landlord's Representatives not to, take any action or omit to take any action if the taking of such action or such omission would, or would be reasonably likely to, prohibit, interfere with or adversely affect the use of the Premises as contemplated under this Lease (including for the Permitted Events) or that would otherwise be reasonably likely to conflict with any provision of this Lease.

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

HUDSON RIVER PARK TRUST

By: \_\_\_\_\_

Name: Madelyn Wils

Title: President and Chief  
Executive Officer

PIER55, INC.

By: \_\_\_\_\_

Name: Barry Diller

Title: Chairman

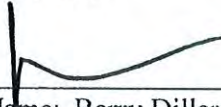
(Signature Page to Lease)

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

HUDSON RIVER PARK TRUST

By: \_\_\_\_\_  
Name: Madelyn Wils  
Title: President and Chief  
Executive Officer

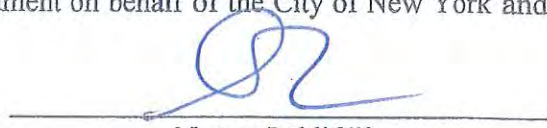
PIER55, INC.

By:  \_\_\_\_\_  
Name: Barry Diller  
Title: Chairman

(Signature Page to Lease)

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

On this 28<sup>th</sup> day of June, 2016, before me personally came Maddyn ML, to me known and known to me to be the President + CEO of the Hudson River Park Trust and the same person who executed the foregoing document, and he acknowledged that he executed the foregoing document on behalf of the City of New York and pursuant to the authority vested in him.



Notary Public  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02JE5022389  
Qualified in New York County  
My Commission Expires October 03, 2018

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me personally came Barry Diller, to me known and known to me to be the Chairman of Pier55, Inc., and the same person who executed the foregoing document, and he acknowledged that he executed the foregoing document on behalf of PIER55, Inc. pursuant to the authority vested in him.

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



STATE OF NEW YORK )

)ss.:

COUNTY OF NEW YORK )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me personally came \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ of the Hudson River Park Trust and the same person who executed the foregoing document, and he acknowledged that he executed the foregoing document on behalf of the City of New York and pursuant to the authority vested in him.

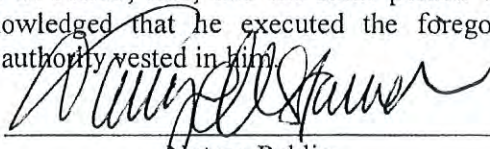
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

)ss.:

COUNTY OF NEW YORK )

On this 29<sup>th</sup> day of June, 2016, before me personally came Barry Diller, to me known and known to me to be the Chairman of Pier55, Inc., and the same person who executed the foregoing document, and he acknowledged that he executed the foregoing document on behalf of PIER55, Inc. pursuant to the authority vested in him.

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

TANYA M. STANICH  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02ST6080809  
Qualified in New York County  
My Commission Expires January 27, 2019