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LICENSE AGREEMENT

between

BATTERY PARK CITY AUTHORITY,

Licensor

and

BOP NORTH COVE MARINA LLC

Licensee

Licensed Premises:  
North Cove Marina

Battery Park City — New York, New York

Dated as of May 6, 2015

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Execution Version

LICENSE AGREEMENT (this "License Agreement") made as of the 6th day of May, 2015, between BATTERY PARK CITY AUTHORITY ("Licensor"), a body corporate and politic constituting a public benefit corporation of the State of New York having an office at 200 Liberty Street, 24th Floor, New York, New York 10281, and BOP NORTH COVE MARINA LLC ("Licensee"), a Delaware limited liability company having an office at 250 Vesey Street, 15<sup>th</sup> Floor, New York, New York 10281.

WITNESSETH:

WHEREAS, Licensor is the owner of a marina located in the North Cove in Battery Park City, New York, New York, which the Parties shall refer to as "North Cove Marina"; and

WHEREAS, Licensor and Licensee desire to enter into this License Agreement, under which Licensee shall agree to manage and operate the North Cove Marina on behalf of Licensor; and

WHEREAS, Licensor must perform certain necessary repairs to the Project Area, including, but not limited to, remediation of the piles underlying Battery Park City, which will render a portion of the North Cove Marina unavailable for use during 2015; and

WHEREAS, certain floating structures, including floating piers and docks (or ramps existing on such structures, piers or docks) (the "Structures") that were in use at the North Cove Marina during the prior operator's term are no longer available for Licensee's use;

WHEREAS, as a result, Licensor and Licensee shall procure such Structures in order for the North Cove Marina to operate; and

WHEREAS, upon researching such procurement, Licensor and Licensee have learned that the fabrication of such Structures will likely take several months; and

WHEREAS, due to the time required to obtain the Structures and to perform the necessary repairs to the North Cove Marina, including, but not limited to, remediation of the piles underlying Battery Park City, Licensor and Licensee have concluded that the North Cove Marina will not be operating at full capacity during the remainder of 2015; and

WHEREAS, as a result of negotiations, Licensor and Licensee now wish to take these conclusions into consideration as to better align the management and operating needs of the North Cove Marina with the conditions located thereat; and

WHEREAS, the Marina requires upgrades to Structures and the parties wish to work together to carry out these improvements, which shall become part of the Licensor Facilities upon purchase and installation.

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

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall have the following meanings.

“Affiliate” shall mean, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct or cause the direction of the decision-making, management and policies, directly or indirectly, whether through the ownership of voting securities, by contract, relation to individuals or otherwise (subject to the rights of third parties to veto or approve customary major decisions); and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Annual Marketing Commitment” shall have the meaning provided in Section 13.01(a).

“Architect” shall mean AvroKO Architecture, PLLC or any other architect approved by Licensor, which approval shall not be unreasonably withheld.

“Assignment” shall have the meaning provided in Section 11.01(a).

“Base Fee” shall have the meaning provided in Section 3.01(a).

“Base Revenue” shall have the meaning provided in Section 4.01.

“BPCA Docks Cost” shall have the meaning provided in Section 13.05(d).

“Business Days” shall mean all days which are not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

“Commencement Date” shall mean the effective date of this License Agreement.

“Constituent Documents” shall have the meaning provided in Section 11.10.

“Construction Agreements” shall mean agreements for construction, rehabilitation, alteration, repair or demolition performed pursuant to this License Agreement.

“Construction Documents” shall have the meaning provided in Section 12.02(b).

“Contractor” shall have the meaning provided in Section 36.02.

“CPA” shall mean an independent public accounting firm which is (x) an accounting firm having at least eight (8) partners, or (y) a firm approved by Licensor, which approval shall not be unreasonably withheld.

“Default” shall mean any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default.

“Depository” shall mean a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity) that (i) is subject to (x) the jurisdiction of the courts of the State of New York and (y) the supervision of the Comptroller of the Currency of the United States, the Department of Financial Services of the State of New York, or the Comptroller of the State of New York, and (ii) has assets of not less than Five Hundred Million (\$500,000,000) Dollars.

“Design Development Plans” shall have the meaning provided in Section 12.02(b).

“Dock Rental Fee” shall have the meaning provided in Section 13.05(d)(iv).

“Due Date” shall mean, with respect to an Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof.

“Easement” shall have the meaning provided in Section 26.01.

“Event of Default” shall have the meaning provided in Section 24.01.

“Expiration Date” shall have the meaning provided in Article 2.

“FSO” shall have the meaning provided in Section 13.02(d).

“Governmental Authority” shall mean the United States of America, the State of New York, New York City and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing or any combination of the foregoing, now existing or hereafter created, having jurisdiction over the Licensed Premises or any portion thereof (but specifically excluding the Licensor in its proprietary capacity hereunder).

“Impositions” shall have the meaning provided in Section 6.01.

“Indemnitees” shall have the meaning provided in Section 19.01.

“Interests” shall have the meaning provided in Section 11.01(a).

“Involuntary Rate” shall mean the Prime Rate plus 3% per annum but in no event in excess of the maximum permissible interest rate then in effect in the State of New York.

“License Agreement” shall mean this License Agreement and all amendments, modifications and supplements thereof.

“License Fees” shall have the meaning provided in Section 3.02.

“License Year” shall mean (i) the portion of the year beginning on the Commencement Date and ending on October 31, 2015, and (ii) each year thereafter during the Term or portion thereof, beginning on November 1 and ending on October 31.

“Licensed Premises” shall mean the premises described in Exhibit A attached hereto; provided that such description shall be deemed to be adjusted to the extent needed to conform to the boundaries to exclude, any area (i) other than the water and the land under water in such premises and (ii) upon which the Licensor Facilities were constructed, except for the area occupied by the chain mere system.

“Licensee” shall mean BOP North Cove Marina LLC and any successor, assignee or transferee to its interest hereunder.

“Licensee Contractor” shall have the meaning provided in Section 12.01(a).

“Licensee Equipment” shall have the meaning provided in Section 13.04(a).

“Licensee Improvements” shall mean any permanent improvements made on the Licensed Premises by Licensee, unless paid for by Licensor.

“Licensee Maintenance” shall have the meaning provided in Section 13.04(a).

“Licensee Security” shall have the meaning provided in Section 13.02(d).

“Licensee Statement” shall have the meaning provided in Section 4.01(e).

“Licensor” shall mean Battery Park City Authority, unless and until Licensor’s interest in this License Agreement is transferred, at which time Battery Park City Authority shall be released from any and all obligations hereunder and thereafter “Licensor” shall mean only the licensor of the Licensed Premises at the time in question under this License Agreement.

“Licensor F & E” shall have the meaning provided in Section 13.04(a).

“Licensor Facilities” shall mean the breakwalls, structures, and other improvements and appurtenances of every kind and description existing on the Licensed Premises or on the Easement as of the Commencement Date or hereafter erected, constructed, or placed in or upon the Licensed Premises or the Easement including, without limitation, any and all alterations and replacements thereof, additions thereto and substitutions therefor, performed or provided by Licensor or Licensee, but not including the Licensee Equipment or Licensee Improvements.

“Licensor Maintenance” shall have the meaning provided in Section 13.03(b).

“Licensor Security” shall have the meaning provided in Section 13.02(d).

“Major Occupancy Agreement” shall have the meaning provided in Section 11.01(a).

“Major Occupant” shall have the meaning provided in Section 11.01(a).

“Marina” shall have the meaning provided in Section 13.01(a).

“Marina Guidelines” shall have the meaning provided in Section 13.01(a).

“New York City” shall mean The City of New York, a municipal corporation of the State of New York.

“Occupancy Agreement” shall have the meaning provided in Section 11.05.

“Occupants” shall have the meaning provided in Section 11.05.

“Operator” shall have the meaning provided in Section 13.06.

“Operating Agreement” shall have the meaning provided in Section 13.06.

“Percentage Payments” shall have the meaning provided in Section 4.01(a).

“Permitted Boat” shall mean a boat permitted as stated in the Marina Guidelines, together with tenders normally used in the operation of such a boat.

“Permitted Boat Use” shall mean use of a Permitted Boat for uses consistent with normal Marina operations other than a Prohibited Use, subject to the applicable provisions of this License Agreement, the Marina Guidelines and the Requirements.

“Permitted Sub-Occupancy” shall have the meaning provided in Section 11.05.

“Permitted Sub-Occupant” shall have the meaning provided in Section 11.05.

“Person” shall mean an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, State, County or municipal government or any bureau, department or agency thereof.

“PILOT” shall mean any payments in lieu of Taxes or any other assessment on real property in lieu of Taxes.

“Pre-Schematics” shall have the meaning provided in Section 12.02(b).

“Prime Rate” shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this License Agreement with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 360-day year with twelve months of 30 days each.

“Prohibited Person” shall have the meaning provided in Section 11.01(c).

“Prohibited Use” shall mean commercial fishing operations, ferry or water taxi service and any other use prohibited in this License Agreement or the Marina Guidelines.

“Project Area” shall mean the area generally known as Battery Park City.

“Related Parties” shall have the meaning provided in Section 37.01.

“Requirements” shall have the meaning provided in Section 14.01.



“Revenue” shall have the meaning provided in Section 4.01(b).

“Schematics” shall have the meaning provided in Section 12.02(b).

“Scheduled Completion Date” shall have the meaning provided in Section 13.05(a).

“Security Deposit” shall have the meaning provided in Section 3.01(c).

“Slip Occupants” shall have the meaning provided in Section 11.05.

“Taxes” shall mean the real property taxes assessed and levied against the Licensed Premises or any part thereof pursuant to the provisions of Chapter 58 of the Charter of New York City and Chapter 2, Title 11, of the Administrative Code of The City of New York, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part.

“Term” shall mean the term of this License Agreement as set forth in Article 2 hereof.

“Termination at Will” shall have the meaning provided in Section 13.28.

“Transaction” shall mean an Assignment, Transfer or Major Occupancy Agreement.

“Transfer” shall have the meaning provided in Section 11.01(a).

“Unavoidable Delays” shall mean delays incurred by Licensee due to strikes, lockouts not instituted by Licensee, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Licensee is bound to observe pursuant to the terms of this License Agreement), enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the reasonable control of Licensee (but not including Licensee’s insolvency or financial condition), including delays in work ordered or directed by Licensor, provided that Licensee (i) shall have notified the Licensor not later than ten (10) days after Licensee knows or should have known of the occurrence of same and the effects of which a prudent Person in the position of Licensee could not have reasonably prevented and (ii) shall be proceeding with reasonable diligence, to the extent possible, to correct such delay.

“View Corridor” shall have the meaning provided in Section 13.13.

## ARTICLE 2

### PREMISES AND TERM OF LICENSE AGREEMENT

Licensor does hereby license to Licensee, and Licensee does hereby hire and take from Licensor, the Licensed Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Licensed Premises subject

to all matters of record, for a term of ten (10) years and six (6) months (the “Term”) commencing on the Commencement Date and expiring, unless sooner terminated as hereinafter provided, on October 31, 2025 (the “Expiration Date”). In order to ensure a smooth transition, Licensor shall maintain the insurance on the Licensed Premises until June 1, 2015 (the “Transition Period”) at which point, Licensee shall maintain the levels and types of insurance as set forth in Article 8. Until such date as Licensee assumes responsibility for the provision of insurance as set forth in Article 8, Licensee’s activities will conform to those as limited by Licensor’s insurance coverage for the Licensed Premises. For the avoidance of any doubt, prior to commencing any activity on the Licensed Premises during this Transition Period, Licensee shall coordinate such activity with Licensor and Licensor’s agents.

### ARTICLE 3

#### BASE LICENSE FEES

##### Section 3.01.

(a) For the period beginning on the Commencement Date and continuing thereafter throughout the Term, Licensee shall pay to Licensor, without notice or demand, the annual sums set forth on Schedule 1 at the end of this Article 3 for each year (or portion thereof) (collectively, the “Base Fee”)

(b) The Base Fee shall be payable in equal monthly installments in advance commencing on the Commencement Date and on the first day of each month thereafter during the Term, except that the entire Base Fee shall be due immediately for Stub Year as stated on Schedule 1. The Base Fee shall be paid when due, without notice, demand, abatement or deduction. The Base Fee shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable at the office of Licensor set forth above or at such other place as Licensor shall direct by notice to Licensee.

(c) Licensee shall deposit with Licensor on the signing of this License Agreement a security deposit in the amount of FIFTY THOUSAND dollars (\$50,000) (the “Security Deposit”) for the faithful performance and observance by Licensee of the terms, conditions and provisions of this License Agreement, including without limitation the surrender of possession of the Licensed Premises to Licensor as herein provided. Licensor shall be required to segregate the Security Deposit from other funds of Licensor and to pay interest thereon. If Licensee does not fulfill any of its obligations under the Licensed Agreement, Licensor may apply or retain the Security Deposit on account of such obligation or to reimburse Licensor for any actual sum which Licensor may expend or may be required to expend by reason of Licensee’s default. If Licensor applies or retains any part of the Security Deposit, Licensee, within ten (10) days after notice from Licensor, shall deposit with Licensor, the amount so applied or retained so that Licensor shall have the full Security Deposit then required on hand at all times during the Term. If Licensee shall fully comply with all of these terms, covenants, provisions and conditions of this License Agreement, the Security Deposit (or any balance thereof) shall be returned to Licensee after the Expiration Date and after delivery of possession of the entire Premises to Licensor. The Security Deposit shall not be construed as liquidated

damages, and if Licensor's claims hereunder exceed the Security Deposit, Licensee shall remain liable for the balance of such claims.

Section 3.02. All amounts required to be paid by Licensee pursuant to this License Agreement, including, without limitation, Base Fee, Percentage Payments and payments pursuant to Section 16.02 hereof, if any (collectively, "License Fees"), shall be payable in the same manner as Base Fee. License Fees shall be absolutely net to Licensor without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this License Agreement. Licensee shall pay all costs, expenses and charges of every kind and nature relating to the Licensed Premises (except Taxes or PILOT, if any) which are required to be paid by Licensee pursuant to this Agreement and which may arise or become due or payable during or after (but attributable to a period falling within) the Term.

#### SCHEDULE 1

License Year	Base Fee
Stub Year	\$200,000.00
1	400,000.00
2	412,000.00
3	424,360.00
4	437,091.00
5	450,204.00
6	463,710.00
7	477,621.00
8	491,950.00
9	506,708.00
10	521,909.00

## ARTICLE 4

### PERCENTAGE PAYMENTS

#### Section 4.01.

(a) At such time as Licensee has received Revenue of \$1,000,000 in any License Year (or part thereof) occurring during the Term of this Agreement ("Base Revenue"), Licensee shall pay to Licensor a sum equal to eight percent (8%) of the amount of all Revenue received by Licensee during a License Year in excess of \$1,000,000 (the "Percentage Payments").

(b) The term "Revenue" as used herein shall mean the dollar aggregate of the entire amount of the price actually collected and retained by Licensee for (i) all sales of merchandise, food and beverages, (ii) revenue from dockage fees and the rental of berths in the Licensed Premises, (iii) rent for use of portions of the Licensed Premises, (iv) fees collected for the provision of services, including, but not limited to, food and beverage services, (v) payments pursuant to agreements with third party providers of goods or services performed at the Licensed Premises, (vi) transactions which Licensee in the normal and customary course of Licensee's operations would credit or attribute to Licensee's business conducted in the Licensed Premises, (vii) any advertising revenue derived from the Licensed Premises, and (viii) all amounts received by Licensee under insurance policies in respect of loss of business at the Licensed Premises, sales or profits, whether paid by cash, check, on credit or debit, charge accounts, barter or otherwise, including, but not limited to (a) where the orders therefor originate from or are accepted by Licensee at the Licensed Premises, but delivery of the goods or services is made at any other place; (b) pursuant to mail, telephone, computer, or other electronic means where orders are received at, delivered or billed from the Licensed Premises, or are made by means of a third party agent, such as the Operator, and are attributable to the operation of the Licensed Premises for the uses contemplated by this License; and (c) by means of mechanical or other vending devices (it being agreed that this clause (c) shall not be interpreted to permit the use of such devices unless otherwise permitted by the terms of this License). Revenue shall include all amounts paid directly to Licensee by members of the public, or received by Licensee pursuant to license, concession, joint venture, leases or any other type of business agreement between Licensee and a third party providing such goods and services. If concessions include boat-based concessions, then Licensor shall be involved in the selection process and the concession shall be approved by Licensor. For the purposes of this Article 4 and calculation of Revenue, the term Licensee shall include the Operator. For the avoidance of doubt, the Dock Rental Fee and cost of Licensee Equipment shall not be deducted from the calculations of Revenue.

(c) The following items shall be excluded from Revenue:

- (i) any monies collected and retained by Licensee that relate to the operation of any Sailing School;
- (ii) the amount of any local, county, state or federal sales or excise tax or any use, luxury or other tax on such sales, provided that such tax was added to the price charged and was paid to the taxing authority

by Licensee; provided, however, no franchise or capital stock tax and no income or similar tax based upon income, profits or gross sales shall be deducted from Revenue;

- (iii) net fees actually charged to Licensee by credit card companies in connection with Licensee's credit card transactions whether based on a percentage of sales or a flat rate;
- (iv) proceeds from sales of Licensee Equipment or Licensee Improvements in proportion to the percentage of the total cost of same for which Licensee paid;
- (v) uncollectible credit accounts and checks (not to exceed two percent (2%) of Revenue in any one year); and
- (vi) cash, credit refunds or debit refunds and any discounts or allowances to customers made upon transactions included within Revenue.

(d) The Percentage Payments shall be payable as hereinafter provided in the same manner as the Base Fee, without any prior demand therefore and without any setoff or deductions whatever.

(e) Within one hundred (100) days after the expiration of the calendar year in which the Commencement Date occurs, each full calendar year thereafter during the Term and within sixty (60) days after the Expiration Date, Licensee shall submit to Licensor a statement certified by a CPA or Licensee's Chief Financial Officer (the "Licensee Statement") setting forth the aggregate Revenue received by Licensee for such License Year (or part thereof), and, if the aggregate Revenue received by Licensee for such License Year exceeds the Base Revenue or prorated portion thereof, the amount of the Percentage Payment payable to Licensor hereunder for such License Year. Each Licensee Statement shall be accompanied by a check in the amount, if any, of Percentage Payment payable for such License Year. Licensee's obligation to submit Licensee Statements shall survive for a period of one (1) year following the expiration of the Term or sooner termination of this License. In the event any figures used in the calculation of the Percentage Payment for any year change after the submission of a statement for such year, an appropriate adjustment shall be made retroactively, and this provision shall survive the expiration of the Term or sooner termination of this License Agreement.

(f) Licensee agrees to keep at its offices in New York City, or at another convenient location in New York, New York, disclosed in writing to Licensor by Licensee, for a period of six (6) years following the end of each License Year, permanent, complete and accurate records in accordance with generally accepted accounting principles, consistently applied, of all Revenue received by Licensee for such License Year and of all other data or facts necessary to determine or verify Revenue for the purpose of this License Agreement and all Percentage Payments due hereunder. Licensee agrees to keep, retain and preserve for at least six (6) years following the end of each License Year all original records, or accurate and adequate computer, scanned or photographic copies of same, and all sales tax reports, business and occupancy tax reports, and all reports and other records required to be kept or delivered pursuant

to all applicable Federal and State laws to which Licensee is subject. In the event of any dispute as to the amount of Percentage Payment due, Licensee agrees to preserve all the foregoing records until such dispute is resolved. All such records shall be open to the inspection and audit of Licensor, its agents and auditors for no more than one (1) course of review per License Year and at reasonable times during ordinary business hours at a location in New York City designated by Licensee, to the extent that such inspection shall be necessary to determine or verify Revenue for the purpose of this License Agreement and all Percentage Payments due hereunder. Any information obtained by Licensor as a result of such inspection and audit shall be held in confidence by Licensor, except in any proceeding or action to collect the cost of such audit or deficiency in the Percentage Payment or with respect to reporting requirements to which Licensor is subject, if such information has otherwise been publicly disclosed or if Licensor is obligated to make such information available to third parties.

(g) Licensor or Licensor's agents shall have the right to cause, upon thirty (30) days written notice to Licensee, an audit to be made of such of Licensee's records as shall be necessary to determine or verify Revenue for the purpose of this License Agreement and the amount of Percentage Payments due hereunder, and Licensee shall make all such records available for said examination at a location in New York City reasonably designated by Licensee. If the result of such audit shall show that the Licensee Statement for any period has been understated by four (4%) percent or more, then Licensee shall pay Licensor the cost of such audit, in addition to any deficiency payment required, which deficiency payment shall be paid with interest accruing at the Involuntary Rate from three (3) Business Days after a notice of deficiency is sent to Tenant until it is paid, provided that Licensor shall not have the right to demand the payment of any deficiency or interest thereon with respect to Percentage Payments pertaining to a License Year more than four (4) years prior to the date of the audit, provided that the financial statements for any License Year more than four (4) years prior to the date of the audit have not been restated. In the event of any restatement of financial statements after Licensor's review, Licensee shall promptly notify Licensor and provide a reasonable right of review and audit. A report of the findings of Licensor's accountant shall be binding and conclusive upon Licensor and Licensee, unless Licensee shall notify Licensor that Licensee disputes the findings of Licensor's accountant, in which event such dispute shall be resolved by arbitration in New York City in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the provisions of this License Agreement, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event of such dispute, Licensee shall pay the undisputed amount to Licensor pending resolution of the dispute.

(h) If Licensee shall fail to prepare and deliver within the time hereinabove specified any Licensee Statement required hereunder, Licensor may elect to make an audit of such of Licensee's books and records as may be necessary to determine Revenue for purposes of this License Agreement and the amount of Percentage Payments due hereunder, and Licensor shall prepare the Licensee Statements which Licensee has failed to prepare and deliver in accordance with generally accepted accounting principles, consistently applied. Such audit shall be made and such statement or statements shall be prepared by a CPA selected by Licensor. The statement or statements so prepared shall be binding on Licensee and Licensee shall pay on demand all reasonable expenses of such audit and the preparation of any such statements and all sums as may be shown by such audit and statements to be due as Percentage Payments.

## ARTICLE 5

### UTILITIES AND SERVICES

Section 5.01. Licensee shall obtain in its name all utilities directly from the appropriate utility company, including but not limited to, water, sewer, telephone, cable, gas and electrical rents, rates and charges, as applicable. Licensee shall pay all utility deposits and fees, and all monthly service charges for any utility services furnished to the Licensed Premises during the Term. Licensor shall aid Licensee in obtaining all utilities in its name, to the extent that Licensor's aid is required.

Section 5.02. Licensor shall not be liable for any failure (to the extent required by this License Agreement) to provide access to the Licensed Premises, to assure the beneficial use of the Licensed Premises or to furnish any services or utilities to the Marina when such failure is caused by natural occurrences, riots, civil disturbances, acts of terrorism, insurrection, war, court order, Governmental Authority actions, public enemy, accidents, breakage, repairs, strikes, lockouts, other labor disputes, the making of repairs, alterations or improvements to the Licensed Premises, the inability to obtain utilities, labor or other supplies or by any other condition beyond Licensor's reasonable control, provided that if any of the foregoing materially interferes with Licensee's beneficial use of the Licensed Premises during any sailing season (April 1 through October 31) in which the Marina is fully operational and is the result of the acts or omissions of Licensor, its employees, agents, contractors or representatives, then Licensee shall have the right to claim an abatement or set-off against payments due to Licensor hereunder in an amount equal to the proportionate share of the Base Fee and the Dock Rental Fee for the number of days that the Licensed Premises is rendered inaccessible or unusable. If any Governmental Authority promulgates or revises any statute, ordinance or building code, or imposes mandatory or voluntary controls or guidelines on Licensor or the Marina, relating to the use of the Licensed Premises, the Licensor Facilities or the Marina or the conservation of any utility or service provided with respect to this License Agreement, or if Licensor is required or elects to make alterations to the Licensor Facilities in order to comply with such controls or guidelines, Licensor may comply with such controls or guidelines, or make such alterations to the Licensor Facilities. Neither such mandatory or voluntary controls or guidelines, nor such compliance, nor the making of such alterations shall entitle Licensee to any damages, relieve Licensee of the obligation to pay any of the sums due hereunder, or constitute or be construed as a constructive or other eviction of Licensee. Notwithstanding the foregoing, to the extent practicable, Licensor shall with reasonable diligence take such steps as are reasonably available to Licensor to minimize the interference to Licensee's business arising from any such stoppage, interruption or reduction as a result of Licensor making repairs, alterations or improvements to the Licensed Premises, but this is not intended to prevent Licensor from working during business hours or such other hours as Licensor may desire to work or to obligate Licensor to perform such work on an overtime or other premium basis. Subject to the terms of the preceding sentence, it is expressly acknowledged that Licensor shall be undertaking necessary repairs to, and remediation of, the piles underlying the Esplanade around the Licensed Premises, which may require closure of certain portions of the Marina from time to time.

Section 5.03. Licensee acknowledges that it has investigated the Licensed Premises and has made a determination that the existing utilities available to the Licensed Premises and the capacities thereof are sufficient for Licensee's purposes under this License Agreement.

Section 5.04. Notwithstanding anything in this License Agreement to the contrary, Licensor does not assume any responsibility for the security of persons or property in, upon or about the Licensed Premises and Licensee expressly waives any such claims against Licensor. Licensor shall use reasonable diligence in carrying out its maintenance, repair and other obligations under this License Agreement; provided that, except to the extent caused by the gross negligence of Licensor, (a) Licensor shall not be liable under any circumstances for any damages (including punitive or consequential damages) for any failure to do so; (b) no reduction or discontinuance of the services described in this License Agreement shall be construed as an eviction of Licensee or release Licensee from any of its obligations under this License Agreement; (c) Licensor shall have no liability to Licensee, its servants, employees, contractors, agents, invitees, visitors, assignees, sublicensees, occupants or licensees for damages; and (d) Licensee shall reimburse Licensor for the cost of any repairs or maintenance necessitated by the acts, omissions or negligent or criminal or willful misconduct of Licensee or any assignees, sublicensees or occupants of the Licensed Premises or any of its servants, employees, contractors, agents, invitees, visitors, licensees, or by the use or occupancy or manner of use or occupancy of the Licensed Premises by Licensee or any such person.

## ARTICLE 6

### IMPOSITIONS; DEPOSITS FOR IMPOSITIONS

Section 6.01. Licensee shall pay, as hereinafter provided, all of the following items (collectively, "Impositions") imposed by any Governmental Authority (other than Licensor acting solely in its capacity as such and not as a Governmental Authority): (a) occupancy and rent taxes, (b) water, water meter and sewer rents, rates and charges, (c) excises, (d) levies (not including Taxes or PILOT), (e) license and permit fees, (f) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (g) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (h) any and all other Governmental Authority levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever (not including Taxes or PILOT), and any interest or costs with respect thereto, which at any time during the Term are (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Licensed Premises (excluding any capital gains taxes imposed in connection with the execution of this License Agreement), or the use and occupancy thereof by Licensee and (2) encumbrances or liens on (i) the Licensed Premises, or (ii) any other appurtenances of the Licensed Premises, or (iii) any personal property (except personal property which is not owned by or leased to Licensee), equipment or other facility used in the operation thereof, or (iv) the License Fees (or any portion thereof) payable by Licensee hereunder, each such Imposition, or installment thereof, during the Term to be paid on or prior to the Due Date thereof. However, if, by law, any Imposition may at the option of the payer be paid in installments (whether or not



interest shall accrue on the unpaid balance of such Imposition), Licensee, after notice to Licensor, may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments, together with applicable interest, if any, provided that all such installment payments together with applicable interest, if any, relating to periods prior to the date definitely fixed in Article 2 hereof for the expiration of the Term shall be made prior to the Expiration Date.

Section 6.02. Licensee shall furnish to Licensor, within thirty (30) days after any Due Date, official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Licensor, evidencing the payment thereof.

Section 6.03. If the Licensed Premises shall at any time become subject to Taxes or PILOT, Licensor shall pay the Taxes or PILOT on or before the due date thereof or otherwise discharge the same. Nothing herein contained shall require Licensor to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, capital or transfer gains tax, transfer or gift taxes of Licensee, or any corporate franchise tax imposed upon Licensee.

Section 6.04. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Licensed Premises, or shall become payable, during the Term) shall be apportioned between Licensor and Licensee as of the Commencement Date or the Expiration Date, as the case may be, so that Licensee shall pay the prorated portion of such Imposition included in the period of time after the Commencement Date or before the Expiration Date, and Licensor shall pay the remainder thereof. Other than in respect of Impositions relating, in part, to a period of time before the Commencement Date, no such apportionment of Impositions shall be made if this License Agreement is terminated prior to the Expiration Date as the result of an Event of Default, and Licensee shall be fully responsible for the payment of such Impositions for the License Year during which this License Agreement is terminated.

Section 6.05. Licensee shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 6.01 hereof, payment of such Imposition shall be postponed if, and only as long as neither the Licensed Premises nor any part thereof, or interest therein or any income therefrom or any other assets of, or funds appropriated to, Licensor would, by reason of such postponement or deferment, be, in the reasonable judgment of Licensor, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and neither Licensor nor Licensee would by reason thereof be subject to any criminal penalty or liability or any civil liability or penalty in excess of the amount so contested.

Section 6.06. Licensor shall not be required to join in any proceedings referenced in Section 6.05 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Licensor, in which event, Licensor shall join and cooperate in such proceedings or permit the same to be brought in

its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Licensee shall reimburse Licensor for any and all costs or expenses which Licensor may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. In the event Licensee shall institute a proceeding referenced in Section 6.05 hereof and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Licensor, Licensor nevertheless, shall, at Licensee's cost and subject to the reimbursement provisions hereinabove set forth, cooperate with Licensee in such proceeding.

Section 6.07. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, as of the time or date stated therein.

Section 6.08.

(a) In order to assure the payment of all Impositions, Licensee, upon the demand of Licensor at any time after the occurrence and during the continuance of an Event of Default hereunder, shall deposit with Depository on the first day of each month during the Term, an amount equal to one-twelfth (1/12th) of the annual Impositions then in effect.

(b) If at any time the monies so deposited by Licensee shall be insufficient to pay in full the next installment of Impositions then due, Licensee shall deposit the amount of the insufficiency with Licensor to enable Licensor to pay each installment of Impositions at least thirty (30) days prior to the Due Date thereof.

(c) Licensor shall hold the deposited monies for the purpose of paying the charges for which such amounts have been deposited as they become due, and Licensor shall apply the deposited monies for such purpose not later than the Due Date for such charges.

(d) If at any time the amount of any Imposition is increased or Licensor receives information from the entity or entities imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Licensee under this Section 6.08 would be insufficient to pay such Imposition thirty (30) days prior to the Due Date thereof, the monthly deposits shall thereupon be increased and Licensee shall deposit promptly with Licensor sufficient monies for the payment of the increased Imposition. Thereafter, the monthly payments shall be adjusted so that Depository shall receive from Licensee sufficient monies to pay each Imposition at least thirty (30) days prior to the Due Date of such Imposition.

(e) For the purpose of determining whether Licensor has on hand sufficient monies to pay any particular Imposition at least thirty (30) days prior to the Due Date thereof, deposits for each category of Imposition shall be treated separately. Licensor shall not be obligated to use monies deposited for the payment of an Imposition not yet due and payable for the payment of an Imposition that is due and payable.

(f) Notwithstanding the foregoing, Licensor shall, if Licensee shall fail to make any payment or perform any obligation required under this License Agreement, use any monies deposited pursuant to this License Agreement for the payment of any License Fees.

(g) If this License Agreement shall be terminated, all deposited monies under this License Agreement then held by Licensor shall be paid to and applied by Licensor in payment of any and all sums due under this License Agreement and Licensee shall promptly pay the resulting deficiency.

(h) Any interest paid on monies deposited pursuant to this Article 6 shall be applied pursuant to the foregoing provisions against amounts thereafter becoming due and payable by Licensee.

(i) Anything in this Article 6 to the contrary notwithstanding, if the Event of Default which gave rise to Licensor having demanded that Licensee make deposits under this Section 6.08 shall have been cured by Licensee and for a period of six (6) consecutive months following such cure no Event of Default shall have occurred under this License Agreement, then, at any time after the expiration of such six (6) month period, upon the demand of Licensee, provided that Licensee is not then in Default under this License Agreement, all monies deposited under this Article 6 then held by Licensor, with interest, if any, accrued thereon, shall be returned to Licensee and Licensee shall not be required to make further deposits under this Article 6 unless and until there shall occur a subsequent Event of Default and Licensor shall make demand upon Licensee to make deposits for Impositions.

Section 6.09. If Licensor ceases to have any interest in the Licensed Premises, Licensor shall transfer to the Person who acquires such interest in the Licensed Premises, all of Licensor's rights with respect to the deposits made pursuant to Section 6.08. Upon such transfer and notice thereof to Licensee, the transferor shall be released from all liability with respect thereto, such transferee shall be deemed to have assumed from and after the date of such transfer all of Licensor's obligations with respect to such deposits and Licensee shall look solely to the transferee with respect thereto. The provisions hereof shall apply to each successive transfer of the deposits.

## ARTICLE 7

### LATE CHARGES

In the event that any payment of License Fees shall become overdue for ten (10) days beyond the Due Date thereof, or if no such date is set forth in this License Agreement, then such Due Date for purposes of this Article 7 shall be deemed to be the date upon which demand therefor is made, a late charge on the sums so overdue equal to the Involuntary Rate (computed on a 360 day year), for the period from the eleventh day following the Due Date thereof, shall become due and payable to Licensor as liquidated damages for the administrative costs and expenses incurred by Licensor by reason of Licensee's failure to make prompt payment. The late charges shall be payable by Licensee within twenty (20) days after demand. No failure by Licensor to insist upon the strict performance by Licensee of its obligations to pay late charges shall constitute a waiver by Licensor of its right to enforce the provisions of this Article 7 in any

instance thereafter occurring. The provisions of this Article 7 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24.

## ARTICLE 8

### INSURANCE, LOSS, REIMBURSEMENT, LIABILITY

Section 8.01. Prior to commencement of any activities under this License Agreement, Licensee shall provide evidence of insurance (including declaration page and appropriate endorsements) satisfactory to Licensor that meets the terms of this License Agreement, including this Section 8 and Exhibit B. Licensor reserves the right to request copies of such policies during the term of this License Agreement.

Section 8.02. Licensee shall procure and maintain throughout the Term of this License Agreement, at its expense, (i) insurance in the amounts and coverages as set forth on Exhibit B hereto, and (ii) such other insurance (in such amounts) as Licensor may reasonably require from time to time; provided such insurance is consistent with the types and amounts of coverage customarily carried by prudent owners and operators of similar properties. All of the foregoing insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall name as additional insured parties (on for CG 2010 (11/85) or its equivalent) Licensor, the Battery Park City Parks Conservancy Corporation, the State of New York, any managing agent for the Marina and such other parties as Licensor may designate from time to time ("Additional Insured Parties") as their respective interests may appear, and, except for worker's compensation coverage, shall provide that any loss shall be payable to Additional Insured Parties and any other additional insured parties as their respective interests may appear. Policies may not have limitations or exclusions for claims based on labor laws. All policies shall provide coverage on a primary, non-contributory basis. All policies will cover Operator as a primary or additional insured.

Section 8.03. All insurance required hereunder shall be placed with companies which are rated A:XI or better by Best's Insurance Guide and licensed to do business in the State of New York, and written as primary policies with annual deductibles not to exceed the amounts set forth on Exhibit B (or such other amounts as may be determined by Licensor), and with any other policies serving as excess coverage. Licensee shall deliver certificates of insurance (on the form currently designated "Acord 27," or the equivalent, rather than on the form currently designated "Acord 25-5," or the equivalent) which shall be binding on Licensee's insurance company, and, if requested by Licensor, duplicate original copies of all such policies and all endorsements thereto, prior to the Commencement Date (or, in the case of renewals, within thirty (30) days prior to the expiration of the then expiring insurance policy) together with evidence that such policies are fully paid for, and that no cancellation, material change or non-renewal thereof shall be effective except upon thirty (30) days prior written notice from the insurer to Licensor. If Licensee shall fail to procure and/or maintain the insurance required herein, Licensor may procure such insurance on Licensee's behalf and the cost thereof shall be payable as License Fees. For the avoidance of doubt, Licensee shall only be responsible for insuring those areas, equipment and improvements for which it is performing Licensee Maintenance in accordance with Section 13.04 hereof.

Section 8.04. Licensee shall procure an appropriate clause in, or endorsement on, any fire or extended coverage insurance covering the Licensed Premises, as well as personal property, fixtures and equipment located thereon or therein, pursuant to which the Licensee's insurance company waives subrogation or consents to a waiver of right of recovery against Additional Insured Parties, and Licensee hereby agrees that it will not make any claim against or seek to recover from Additional Insured Parties for any loss or damage to Licensee's property or the property of others resulting from fire or other hazards covered by such fire and extended coverage insurance. It is expressly understood and agreed that Additional Insured Parties will not carry insurance on Licensee Equipment or insurance against interruption of Licensee's business.

## ARTICLE 9

### CASUALTY

If the Licensor Facilities (not including the Licensor F & E) shall be partially damaged by fire or any other casualty and the cause of such fire or casualty is not attributable to the negligence or wrongful act or failure to act of Licensee, its servants, employees, contractors, agents, guests, invitees, assignees, sublicensees, occupants or licensees, Licensor shall repair the Licensor Facilities to the condition existing as of the date the Licensed Premises were originally delivered by the Licensor to Licensee but only to the extent of the net insurance award actually paid to Licensor. Notwithstanding the forgoing, (i) if the Licensed Premises (a) are rendered wholly unusable by reason of such fire or casualty or (b) are damaged as a result of a risk which is not covered by Licensor's insurance or (c) are damaged in whole or in part during the last year of the License Term, or (ii) if Licensor or Licensee, in its sole judgment, shall decide not to repair the Licensor Facilities, then or in any such events, Licensor or Licensee may cancel this License Agreement by notice of cancellation given within ninety (90) days after such fire or other casualty, in which event this License Agreement shall expire as of the date of such notice, and Licensee shall immediately vacate and surrender the Licensed Premises to Licensor. Licensee's liability for License Fees upon the termination of this License Agreement as hereinbefore set forth shall cease as of the day Licensee vacates the Licensed Premises as a result of the unusability of the Licensed Premises, but Licensee's obligation to pay License Fees up to the date of such vacation shall survive the termination of this License Agreement. Unless this License Agreement is terminated by Licensor or Licensee, Licensee shall restore, at its sole cost, the Licensee Improvements and shall refixture and refurnish the Licensee Improvements in a manner and to at least a condition substantially equal to that existing prior to its destruction or casualty. The parties agree that this Article 9 constitutes an express agreement governing any case of damage or destruction of the Licensed Premises by fire or other casualty, and that Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like import now or hereafter in force shall have no application in any such case.

## ARTICLE 10

### CONDEMNATION

Section 10.01. General. If all or part of the Licensed Premises shall be taken by any Governmental Authority as of result of the exercise of the power of eminent domain, this License Agreement and the Term shall continue as to the portion of the Licensed Premises remaining without abatement of the Base Fee or diminution of any of Licensee's obligations hereunder except as provided herein. Licensor or Licensee shall each have the right to terminate this License Agreement by written notice to the other party within thirty (30) days after the date of such taking or condemnation if in its reasonable opinion, a material part of the Licensed Premises is condemned or taken or if substantial alteration or reconstruction of the Licensed Premises shall be necessary as a result of such taking or condemnation. Such termination shall be effective within thirty (30) days after the date of taking or condemnation.

Section 10.02. Short-Term Taking or Condemnation. If all or any part of the Licensed Premises shall be condemned or taken for governmental occupancy for a period of less than one year, this shall not constitute grounds for termination of the License Agreement, which shall continue in full force and effect and Licensee shall continue to pay in full all License Fees, without reduction or abatement and to perform all of its other obligations under this License Agreement (except to the extent prevented from doing so by the condemning authority).

Section 10.03. Allocation of Award. Except as set forth above, Licensor shall be entitled to any and all compensation, damages, income, rent, awards or any interest therein whatsoever which may be paid in connection with a condemnation or taking ("Award"). Licensee shall have no claim against Licensor for the value of any unexpired term of this License Agreement or for periods extending beyond the Term except as set forth above (provided that Licensee shall have the right to make a claim for its actual loss including the loss of Licensee Equipment or Licensee Improvements). Licensee hereby assigns to Licensor all of its right in and to such Award.

## ARTICLE 11

### ASSIGNMENT, TRANSFER, LICENSING, ETC.

#### Section 11.01.

(a) Except as otherwise specifically provided in this Section 11.01, Licensee shall not, voluntarily or by operation of law or otherwise, without the prior written consent of Licensor, which consent may be granted or withheld by Licensor in its sole discretion:

- (i) assign or transfer its interest in this License, or any of Licensee's rights or obligations hereunder, by Licensee's action, by operation of law or otherwise (any such sale, assignment or transfer being herein referred to as an "Assignment");
- (ii) enter into an Occupancy Agreement or Occupancy Agreements with any Person for a term of more than one year (other than the Sailing School) (any such Occupancy Agreement being herein referred to as a "Major Occupancy Agreement" and the holder of any interest pursuant to a Major Occupancy Agreement, a "Major Occupant");

- (iii) assign, transfer or otherwise dispose of any direct or indirect ownership interest in Licensee, whether by transfers of stock, partnership interests, interests in a limited liability company or otherwise (such interests being collectively defined as “Interests”);
- (iv) enter into a voting trust or similar arrangement with respect to the Interests of Licensee, reclassify the Interests of Licensee, merge or consolidate Licensee with another Person (the transactions in (iii) and (iv) being collectively referred to as a “Transfer”).

(b) Notwithstanding the provisions of Section 11.01(a), an Assignment or Transfer, as applicable, shall not include:

- (i) the transfer of shares of stock or Interests by persons other than those deemed “insiders” within the meaning of the Securities Exchange Act of 1934, as amended, which transfer of Interest is effected throughout the “over-the-counter market” or through any recognized stock exchange;
- (ii) a transfer of Interests by will or intestacy;
- (iii) a transfer of Interests, which does not result in a change of control. For purposes of this Article, “control” shall be deemed to mean ownership, directly or indirectly, of more than twenty-five (25%) percent of the beneficial equity or ownership interests in Licensee, together with the power to direct or cause the direction of the decision-making, management and policies, directly or indirectly, whether through the ownership of voting securities, by contract, relation to individuals or otherwise (subject to the rights of thirty parties to veto or approve customary major decisions); or
- (iv) entering into any Occupancy Agreement that is not a Major Occupancy Agreements.

(c) In no event shall Licensee make an Assignment, a Transfer or a Major Occupancy Agreement, to any Person (1) in which an ownership interest in the aggregate of five percent (5%) or greater is held, directly or indirectly, by any individual (i) who has ever been convicted of a felony, (ii) against whom any action or proceeding is pending to enforce rights of the State of New York or any agency, department, public authority or public benefit corporation thereof (other than Licensor) arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation, or (iii) with respect to whom any notice of substantial monetary default that remains uncured has been given by the State of New York or any agency, department, public authority or any public benefit corporation thereof arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation, or (2) which is controlled directly or indirectly by a government, the effects of the activities of which (at the time thereof) are regulated or controlled pursuant to regulations of the United States Treasury Department or

executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (collectively, a “Prohibited Person”).

(d) In each instance wherein Licensee desires to effect a Transaction, Licensee shall notify Licensor not less than thirty (30) days prior to the proposed effective date of such Transaction and submit supporting information to Licensor, including, but not limited to, an affidavit of compliance with the provisions of Section 11.01(c) and the following documents and information (which documents may be unexecuted but shall, in all other respects, be in substantially final form):

- (i) in the case of an Assignment, (A) a copy of the proposed instrument(s) of assignment, containing, inter alia, the name, address and telephone number of the assignee, (B) a copy of the proposed instrument(s) of assumption of Licensee’s obligations under this License Agreement by said assignee, and (C) an affidavit of the assignee or an authorized officer, member or general partner thereof, setting forth (x) in the case of a partnership or a limited liability company, the names and addresses of all members, general partners thereof and all other partners of the assignee having an ownership interest in the assignee, (y) in the case of a corporation (other than a corporation whose common stock is traded over the New York Stock Exchange or the American Stock Exchange) the names and addresses of all persons having record ownership of stock in, and all directors and officers of, the assignee;
- (ii) in the case of a Transfer, (A) a copy of each proposed document by which such Transfer is to be accomplished, and (B) an affidavit of an authorized member, officer, or general partner of the transferee, setting forth the same information with respect to the members, partners, shareholders, officers and directors of transferee as is required with respect to assignees under Section 11.01(d)(i);
- (iii) in the case of a Major Occupancy Agreement, (A) a copy of the proposed Major Occupancy Agreement, containing, inter alia, the name, address, and telephone number of the Major Occupant, and (B) an affidavit of the Major Occupant or an authorized member, officer or general partner thereof, setting forth the same information with respect to the members, partners, shareholders, officers and directors of the Major Occupant as is required with respect to assignees under Section 11.01(d)(i); and
- (iv) in all such cases, such other documents and information as Licensor may reasonably request to permit the evaluation of such request to enter into a Transaction.

(e) Licensor shall within twenty (20) days after receipt of all the information and documentation required under this Article 11 and such other information as it may



reasonably request, notify Licensee whether it (1) grants its consent; (2) requires further information; or (3) withholds its consent. In the event Licensor denies its consent to such Transaction or determines that further information is required, the reason for such denial or determination shall be provided in writing. If Licensor requests additional information from Licensee in order to determine if such consent should be granted or if the Transaction complies with the provisions of this Article 11, Licensee shall promptly supply such information, and Licensor shall notify Licensee of its determination within ten (10) days after satisfactory submission of such additional information by Licensee. Even if Licensor has consented to the proposed Transaction, such consent and/or determination shall be conditioned upon the delivery to Licensor of executed documents substantially the same as those previously delivered to Licensor for review. Notwithstanding the foregoing, except as set forth herein, Licensor may withhold or grant its consent in Licensor's sole discretion. If Licensor fails to timely respond to Licensee's request for approval as required in this subsection (e), then Licensee shall provide Licensor with an additional twenty (20) days to respond. Licensor's failure to respond within such additional period shall constitute Licensor's approval of such proposed Transaction only if Licensee's notice contained the following language in bold and capitalized type at least 14 points in size:

**YOUR CONSENT TO THE [DESCRIBE REQUEST] SHALL BE DEEMED GIVEN IF YOU FAIL TO RESPOND TO THIS REQUEST WITHIN [SPECIFIED PERIOD] FROM THE DATE OF YOUR RECEIPT OF THIS NOTICE.**

(f) Licensee shall not enter into an Occupancy Agreement or a Major Occupancy Agreement, nor shall any Person enter into a Permitted Sub-Occupancy, except by written instrument that states that such boat slip may be used only for Permitted Boat Uses.

Section 11.02. No Transaction or Occupancy Agreement shall have any validity except upon compliance with the provisions of this Article 11.

Section 11.03. Any consent by Licensor under Section 11.01 above shall apply only to the specific agreement thereby authorized and shall not relieve Licensee from any requirement hereunder of obtaining the consent of Licensor to any further Transaction or Major Occupancy Agreement.

Section 11.04.

(i) Each and every assignee of this License, whether or not approved by Licensor and whether as assignee or as successor in interest to Licensee named herein or any subsequent assignee, shall, in the case of an assignee of the License, immediately be and become liable for the payment of all License Fees and other sums payable under this License, and for the performance of all of Licensee's obligations under this License, including such sums arising prior to the Assignment, unless otherwise approved by Licensor, which approval shall not be unreasonably withheld.

(ii) If this License is assigned, whether or not in violation of the provisions of this License, Licensor may collect the License Fees and other sums payable hereunder to the

extent arising from and after the effective date of such assignment from the assignee and enforce the obligations of Licensee hereunder against such assignee.

Section 11.05. Licensee or Major Occupants may, without Licensor's consent, but subject to the applicable provisions of this Article 11, enter into agreements (all agreements for the use and occupancy of portions of the Licensed Premises including concessions being herein referred to collectively as "Occupancy Agreements", and the occupants of boat slips pursuant to Occupancy Agreements as "Slip Occupants"; and together with all other occupants pursuant to Occupancy Agreements, "Occupants") for the rental, use or occupancy of portions of the Licensed Premises by Slip Occupants or other portions of the Licensed Premises used by Occupants, for Permitted Boat Uses (and, if approved by Licensor, other permitted uses), for a period of less than one year. An Occupant may sublicense its boat slip or other occupancy on other than a regular, customary, scheduled or daily basis, to any Person for (i) the docking of a Permitted Boat registered to such Person or such Slip Occupant that is used for Permitted Boat Uses by such Person or another Person with such Person's permission, (ii) any Licensor-approved, other permitted uses, or (iii) further sub-licensing in accordance with this Section 11.05 (any such suboccupancy agreement a "Permitted Sub-Occupancy" and a Person occupying such area pursuant to a Permitted Sub-Occupancy, a "Permitted Sub-Occupant"). Any Person granting an Occupancy Agreement or Permitted Sub-Occupancy shall promptly and diligently enforce all of its rights thereunder in accordance with the terms thereof. All Occupancy Agreements and Permitted Sub-Occupancies shall comply in all respects with the terms of this License Agreement and shall require all Slip Occupants and Permitted Sub-Occupants, as the case may be, to comply with all of the terms and conditions hereof applicable to Licensee.

Section 11.06. The fact that a violation or breach of any of the terms, provisions or conditions of this License Agreement results from or is caused by an act or omission by any Slip Occupant, Major Occupant or any other occupant of the Marina shall not relieve Licensee of Licensee's obligation to cure the same. Licensee shall take any and all reasonable steps necessary to prevent any such violation or breach.

Section 11.07. Following delivery of notice to Licensee, Licensor, during the continuance of an Event of Default by Licensee, may collect all sums due under Occupancy Agreements or Major Occupancy Agreements, and apply the net amount collected to License Fees, but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this License Agreement or the acceptance by Licensor of any Slip Occupant or Major Occupant as occupant hereunder, or a release of Licensee from performance by Licensee of its obligations under this License Agreement.

Section 11.08. To secure the prompt and full payment by Licensee of the License Fees and the faithful performance by Licensee of all the other terms and conditions herein contained, Licensee hereby collaterally assigns, transfers and sets over unto Licensor all of Licensee's right, title and interest in and to all Occupancy Agreements or Major Occupancy Agreements and hereby confers, whenever an Event of Default occurs and is continuing, upon Licensor, its agents and representatives, a right of entry in, and sufficient possession of, the Licensed Premises to permit and ensure the collection by Licensor of the rentals and other sums payable, and the performance by Licensor of Licensee's obligations, under the Occupancy Agreements or Major Occupancy Agreements. The exercise of the right of entry and qualified

possession by Licensor shall not constitute an eviction of Licensee from the Licensed Premises or any portion thereof and should said right of entry and possession be denied Licensor, its agent or representative, Licensor, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Licensee, its servants, employees, guests, invitees, or any Person whomsoever; provided, however, that Licensor may only enforce such collateral assignment upon (a) the occurrence and continuance of an Event of Default, or (b) upon the termination of this License Agreement and the Term pursuant to the terms, covenants and conditions hereof, or (c) upon the repossession of the Licensed Premises under a dispossession warrant or other re-entry or repossession by Licensor under the provisions hereof or applicable law.

Section 11.09. Promptly following the end of a License Year, upon Licensor's demand (including Termination) Licensee promptly shall deliver to Licensor a schedule of all Occupancy Agreements and Major Occupancy Agreements, which shall specifically include the names of all Slip Occupants or Persons using or occupying such Slip Occupant's boat slip, and the term of each Occupancy Agreement and Major Occupancy Agreement. Upon the reasonable request of Licensor, Licensee shall permit Licensor and its agents and representatives to inspect all Occupancy Agreements and Major Occupancy Agreements and to make copies thereof.

Section 11.10. Upon request by Licensor, Licensee shall deliver to Licensor copies of any Constituent Documents and any replacement, modifications or terminations thereof to the extent reflecting any Transfer, together with such other information and evidence as shall be reasonably necessary and reasonably satisfactory to Licensor to confirm compliance with the requirements of this Article 11. "Constituent Documents" shall mean Licensee's organizational documents (or, upon Assignment or Transfer, those of assignee or transferee), including (a) the operating agreement, (b) the articles of incorporation, (c) the articles of organization, (d) partnership agreements, (e) any other agreements between the members or partners of such parties that relate to the operation of the Licensed Premises, and (f) any modifications to the foregoing.

Section 11.11. All Occupancy Agreements and Major Occupancy Agreements shall provide that (a) they are subject to this License Agreement, and (b) at Licensor's option, on the termination of this License Agreement pursuant to Article 24, Slip Occupants and Major Occupants will attorn to or enter into a direct agreement with Licensor upon the same terms and conditions as are contained in this License Agreement. Notwithstanding the foregoing, provided that no Termination has occurred or is pending, Licensee may collect rent or other sums under Occupancy Agreements and Major Occupancy Agreements for more than one (1) month in advance.

## ARTICLE 12

### LICENSEE IMPROVEMENTS

#### Section 12.01.

(a) Licensee shall neither make nor cause to be made any Licensee Improvements in, on or to the Licensed Premises or any part thereof without the prior written

consent of Licensor, except that such consent shall not be required for Licensee Equipment that (i) does not otherwise require the approval of Licensor pursuant to the Marina Guidelines or this License Agreement and (ii) does not modify the mechanical, plumbing, electrical or life safety systems or services serving the Licensed Premises. When seeking such consent, upon the request of Licensor, Licensee shall furnish Licensor with detailed architectural, mechanical and engineering plans and specifications for the desired Licensee Improvements. Prior to commencement of the Licensee Improvements, Licensee shall deliver to Licensor any permit required by applicable law and for Licensee Improvements which will cost in excess of \$25,000, a copy of the executed construction contract(s) and written acknowledgements from all materialmen, contractors, artisans, laborers and any other persons furnishing any labor, services, materials, supplies or equipment to Licensee (collectively, the "Licensee Contractors") with respect to the Licensed Premises that they will look exclusively to Licensee for payment of any sums in connection therewith and that Licensor shall have no liability for such costs. Licensee's failure to obtain waivers, if any, from the Licensee Contractors shall not relieve Licensee of its obligation to remove any mechanics' liens filed in connection with the Licensee Improvements.

(b) Any construction, alteration, maintenance, repair, replacement, installation, removal or decoration undertaken by Licensee shall be: (i) completed in accordance with plans and specifications approved by Licensor; (ii) carried out in a good, workerlike and prompt manner by contractors approved by Licensor; and (iii) done in compliance with all applicable statutes, laws and requirements of the authorities with proper jurisdiction. If the Licensee Improvements result in any required alterations and/or improvements to other portions of the Project Area in order to comply with any applicable statutes, laws or requirements, then Licensee shall reimburse Licensor upon demand for all reasonable out-of-pocket costs and expenses incurred by Licensor in any such alterations and/or improvements to the Licensor Facilities.

(c) Any Licensee Improvements that are incorporated into, abut or are attached to the Licensor Facilities (such incorporation shall not include Licensee Equipment) shall become the property of Licensor upon installation and shall remain on and be surrendered with the Licensed Premises upon the expiration or sooner termination of the Term, except Licensee shall, upon demand by Licensor and at Licensee's expense, forthwith and with all due diligence remove any Licensee Equipment and other Licensee Improvements made by Licensee that are designated by Licensor to be removed, and restore the Licensed Premises in a good and workerlike manner to their original condition, reasonable wear and tear excepted.

(d) Licensee and Licensee's Contractors will obtain and keep in effect the insurance coverage that shall satisfy the requirements of Article 8 herein. Licensee shall not commence any Licensee Improvements until Licensee shall have delivered to Licensor (from all parties required to provide coverage hereunder) certificates of insurance signed by authorized insurance company personnel, or the original policies, with evidence reasonably satisfactory to Licensor that the required insurance has been obtained and is in full force and effect.

#### Section 12.02.

(a) All materials used in connection with the Licensee Improvements shall be new and first quality. Licensee shall employ an Architect for all aspects of Licensee

Improvements that require the approval of Licensor. Licensor approval shall be required for the design of (i) all elements that require Licensor approval as set forth in the Marina Guidelines and (ii) the Licensee Equipment described in Section 13.05(a).

(b) With respect to the Structures, Licensee shall, at its expense, submit to Licensor for its review and approval:

- (i) a complete schedule of pre-schematics showing Licensee's proposed design prepared by the Architect and in accordance with Marina Guidelines submission requirements for pre-Schematics (the "Pre-Schematics"), if any;
- (ii) a complete schedule of schematics showing Licensee's proposed design prepared by the Architect and in accordance with Marina Guidelines submission requirements for schematics (the "Schematics"), if any;
- (iii) a complete set of design development plans and outline specifications for the Structures, prepared by the Architect and in accordance with Marina Guidelines submission requirements for design development plans (the "Design Development Plans"). Any changes in the Design Development Plans from the Schematics shall be identified in reasonable detail. Licensor shall review the Design Development Plans to determine whether or not they conform to the Schematics; and
- (iv) after Licensor shall have notified Licensee that the Design Development Plans are approved, Licensee shall submit to Licensor final contract plans and specifications for the Structures prepared by the Architect and in accordance with such Design Development Plans. Any changes in such final contract plans and specifications from the Design Development Plans shall be identified in reasonable detail. Licensor shall review the final plans and specifications to determine whether or not they conform to the Design Development Plans. When Licensor determines that the final contract plans and specifications do so conform, Licensor shall notify Licensee to that effect. The final contract plans and specifications that have been determined to be satisfactory, as the same may be changed from time to time by Licensee, to the extent such changes are approved by Licensor as hereinafter provided, are hereinafter referred to as the "Construction Documents."

(c) With respect to each of the above submissions, Licensor shall within ten (10) Business Days after the receipt of such submission, (i) present objections to said submission, (ii) request additional materials reasonably related to the same; or (iii) approve said submission. In the event Licensor presents objections to such submission or requests additional materials, Licensee shall submit a revised submission or the requested materials within fifteen

(15) Business Days after receipt of such response by Licensor. Each review by Licensor shall be carried out within ten (10) Business Days after receipt of a satisfactorily revised submission (including any requested additional materials) by Licensee and after such review, Licensor shall (i) present objections to such submission; or (ii) approve such submission. If Licensor fails to timely respond to Licensee's request for approval, and such failure to respond continues for more than ten (10) Business Days following Licensor's receipt of a notice under Article 25 from Licensee, then Licensor's failure to respond within an additional ten (10) Business Day period shall constitute Licensor's approval of such plans and specifications only if Licensee's notice contained the following language in bold and capitalized type at least 14 points in size:

**YOUR CONSENT TO THE [DESCRIBE REQUEST] SHALL BE DEEMED GIVEN IF YOU FAIL TO RESPOND TO THIS REQUEST WITHIN [SPECIFIED PERIOD] FROM THE DATE OF YOUR RECEIPT OF THIS NOTICE.**

(d) The Construction Documents shall comply with the Requirements. The responsibility to assure such compliance shall be Licensee's. Licensor's approval of the Construction Documents shall not be, nor shall it be construed to be or relied upon as, a determination that the Construction Documents comply with the Requirements. Licensee shall not commence any Licensee Improvements unless and until Licensor shall have approved the Construction Documents and any required governmental approvals or permits have been obtained and a copy delivered to Licensor.

Section 12.03.

(a) The materials to be incorporated into the Licensor Facilities (which shall not include any materials which are part of the Licensee Equipment) at any time during the Term shall, upon purchase of same and at all times thereafter, constitute the property of Licensor, and upon construction of the Licensee Improvements that are incorporated into Licensor Facilities, title thereto shall vest in Licensor, provided, however, that (i) Licensor shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials or other Person in connection with the purchase of any such materials, (ii) Licensor shall have no obligation to pay any compensation to Licensee by reason of its acquisition of title to such materials or Licensee Improvements, (iii) Licensor shall have no obligation with respect to the storage or care of such materials or Licensee Improvements and (iv) refunds, credits or other proceeds that may be obtained in respect of such materials shall be the property of Licensee.

(b) All Construction Agreements shall include the following provision: "[contractor] [subcontractor] [materialman] hereby agrees that immediately upon the purchase by Licensee of any materials to be incorporated into the Licensor Facilities (as said terms are defined in the License Agreement pursuant to which the owner acquired a license in the property), such materials shall become the sole property of Battery Park City Authority, a public benefit corporation, notwithstanding that such materials have not been incorporated in, or made a part of, such Licensee Improvements or Licensor Facilities at the time of such purchase; provided, however, that Battery Park City Authority shall not be liable in any manner for payment or otherwise to [contractor] [subcontractor] [materialman] in connection with the

purchase of any such materials and Battery Park City Authority shall have no obligation to pay any compensation to [contractor] [subcontractor] [materialman] by reason of such materials becoming the sole property of Battery Park City Authority.”

Section 12.04. Licensee shall cause its contractors and all other workers at the Licensed Premises to work harmoniously with each other, and with the other contractors and workers in the Project Area, and Licensee shall not engage in, permit or suffer, any conduct which may disrupt such harmonious relationship.

## ARTICLE 13

### MARINA DEVELOPMENT AND OPERATION

#### Section 13.01.

(a) Licensee shall operate the Licensed Premises and use the Licensor Facilities solely as a marina facility (the “Marina”) in accordance with this License Agreement, the design and operations guidelines attached hereto as Exhibit C (the “Marina Guidelines”) and the Requirements. For the avoidance of doubt, and for this limited purpose only, in the event that this License Agreement and the Marina Guidelines conflict, the Marina Guidelines will control. Licensee shall use diligent efforts to commence operations at the Marina within ninety (90) days after the Commencement Date. Slips in the Marina shall be used solely for the docking of a Permitted Boat registered to Licensee, a Major Occupant or a Slip Occupant (including Permitted Sub-Occupants) and such boat may only be used for Permitted Boat Uses (and, if approved by Licensor, other public events, such as community arts and events). Licensee shall actively promote the Marina as a destination for all boaters. To the extent that charter boats are used, Licensee and Operator shall use commercially reasonable efforts to attract vessels that enhance the visual quality of the Marina. Licensee covenants and agrees to spend not less than twelve thousand dollars (\$12,000) in License Year 1 for marketing of the Marina, not including fees paid to parties holding a beneficial interest in Licensee or Affiliates of Licensee or the Operator, and such covenant and agreement shall continue throughout the term increasing by two thousand five hundred dollars (\$2,500) per year (the “Annual Marketing Commitment”). Upon the written request of Licensor, Licensee shall provide Licensor with reasonable evidence that it has satisfied the Annual Marketing Commitment.

(b) Licensee shall comply with the Marina Guidelines with respect to design features, green guidelines and the operation of the Marina. Licensee shall not materially deviate from the Marina Guidelines without the prior written consent of Licensor, which may be granted or withheld in Licensor’s sole discretion.

(c) Licensee shall enter into an agreement with a Person to operate a sailing school in the Marina (the “Sailing School”), which shall be open to all members of the public. Licensee’s agreement to operate a Sailing School was a material inducement to Licensor’s selection of Licensee to operate the Marina. Licensee’s selection of the Person to operate the Sailing School shall be subject to Licensor’s prior approval, provided that Licensee may terminate its agreement with such Person in accordance with the terms of their agreement and, subject to Licensor’s approval, which should not be unreasonably withheld, enter into an

agreement with another Person having at least ten (10) years' experience operating a Sailing School, specifically including programs for children, teens and adults and summer camps for children and teens. The Sailing School shall be made available to members of the general public at a reasonable cost. Licensee shall endeavor to have the Sailing School in operation within two (2) weeks of the effective date hereof. The Sailing School shall be operated in a manner consistent with the Marina Guidelines. The Sailing School shall maintain no less than twelve (12) sailing school boats at the Marina at all times during each sailing season (which runs from April through October (weather permitting)) in which the Marina is fully operational and the maximum number of sailing school boats possible during any period of maintenance, but no less than seven (7) sailing school boats during the Stub Year. Licensee shall require the operator of the Sailing School to provide Licensee with annual financial statements, certified by a CPA or the operator of the Sailing School's Chief Financial Officer, within ninety (90) days after the end of the Sailing School's fiscal year, and Licensee shall promptly deliver copies of such financial statements to Licensor within ten (10) Business Days after receipt of such statements. In addition, Licensee shall ensure that Operator provides detailed statements at the end of each sailing season including, but not limited to, the number of students, the age of each student, the number of campers per week, the age of each camper, staffing used to operate the Sailing School and the camp, and the number of scholarships and/or reduced tuitions offered for the Sailing School and any camp. If Licensee fails to cause a Sailing School to be in operation in the Marina by April 1<sup>st</sup> of any License Year, excluding the Stub Year, Licensor shall have the right, on thirty (30) days' prior written notice to Licensee, to enter into an agreement with a Person satisfactory to Licensor to operate a Sailing School at the Marina for such License Year, and, in such case, Licensor shall have the right to use such portions of the Licensed Premises designated to be used by the Sailing School based on Licensee's prior use for the operation of the Sailing School, and there shall be no abatement of License Fees payable by Licensee. Upon Licensee's request, Licensee shall have the right to permit the Sailing School to utilize the classroom located at the Licensed Premises.

(d) Licensee shall develop programs designed to bring the general public to the Marina throughout the year, to the extent practicable, and shall use its best efforts to promote such programs to the general public and community. Such public programs may include, but not be limited to, sailing clubs, adult sailing classes, summer camp programs for children in the elementary through high school level, disabled sailor programs for adults and children, and water safety classes for all ages. The programs offered to the general public by Licensee shall include low cost and free options. Notwithstanding Licensee's obligations to develop programs for the general public, Licensee shall reasonably accommodate Licensor's community programs for its public spaces to the extent such programs do not interfere with Licensee's Marina operations or its own programs for the general public. To facilitate Licensor's planning and promotion of its public spaces or programs, commencing with the second License Year, upon request from Licensor, Licensee shall provide a proposed schedule of its public programs and marketing efforts for the following twelve month period (which Licensee may modify from time to time).

#### Section 13.02.

(a) The cost of all utility services for the Marina shall be paid as provided in Article 5.



(b) All refuse shall be enclosed and sealed in closed containers which shall be removed by (i) Licensee at its cost and expense (such containers being subject to approval by Licensor) if Licensee has arranged for water-based transport or by (ii) Licensor (such containers to be as specified by Licensor) if Licensee has retained Licensor for land-based pickup for a fee separately agreed to be paid by Licensor to Licensee. If Licensee retains Licensor to remove refuse, Licensee shall be responsible for bringing the trash containers to the street by hand truck, for curbside pickup, as a location designated by Licensor. Licensee shall provide storage facilities for rubbish, dirt, refuse or any other materials so long as such storage shall not interfere with the access by the public to the Licensor Facilities, the Esplanade or any other public areas adjacent to the Licensed Premises. Licensor agrees to provide pickup of containers specified by Licensor for an annual flat rate of \$18,000 for the Stub Year, payable in the amount of \$2,571.43 on the first of each of the months May through November 2015 (although such pickup services will be provided for the entire first License Year), provided that if such refuse (which shall not include refuse from dinner cruise boats) exceeds capacity estimated by Licensor, Licensor and Licensee agree to negotiate in good faith an increase to such flat rate for the period from August 1, 2015 through the remainder of the Stub Year. Licensee acknowledges that the flat rate charged by Licensor for refuse pick-up may, upon prior written notice to Licensee, be subject to a reasonable increase from time to time.

(c) At its sole cost and expense, Licensee shall implement non-toxic pest control measures as needed to keep the Marina and surrounding areas free of pests and vermin as a result of Licensee's operations at the Marina.

(d) Licensee shall work with Licensor to prepare a security plan for the Marina with duties and responsibilities of each party to be set forth therein, in compliance with the Requirements including, without limitation, security requirements of the United States Coast Guard, which plan shall be subject to Licensor's prior approval. The security plan shall include, but not be limited to: procedures concerning deliveries to the Marina; identification systems for employees and contractors; security for vessels berthed in the Marina; security for special events; communications coordination with local, state and federal agencies; contact information for on-site and management staff; emergency preparedness (including storm preparation) and response plans; and plans for mandatory MTSA drills (quarterly) and exercises (annually) to be done at the direction of Licensor, with United States Coast Guard oversight responsibility (capitalized terms in this paragraph not defined in this License Agreement are as defined in the U.S. Coast Guard regulations). Licensee shall designate an individual (subject to Licensor's prior approval) as a "person with security responsibilities" for purposes of United States Coast Guard requirements. With respect to such security plan Licensor and Licensee have agreed that:

- (i) Licensee shall (1) provide storage space in Marina for Licensor life safety equipment (life rings, bull horns, blankets, first aid kit) and Licensor shall have the right to inspect storage areas, (2) notify the dispatcher for Licensor's designated facility security officer ("FSO") of any security related issues at Marina, including but not limited to U.S. Coast Guard or other law enforcement activity or notifications, vandalism, injury, larceny, vagrants etc., (3) provide the FSO with any revised slip/dock layouts or schematics prior to implementation of changes, (4) provide the FSO dispatcher with weekly

vessel/tenant lists, by 8 am Monday of each week, and shall update such lists as needed, by 8 am of the day following any changes, (5) provide the FSO with all Declarations of Security, including contact information for the vessel security officer, boat owners, captain as required by Coast Guard Maritime Security (“MARSEC”) level, and certification that necessary security conversation has taken place, as required by MARSEC level, (6) provide the FSO with current contact information for Marina staff and management, including work, home and mobile phone numbers and email addresses, (7) ensure that shared communications devices are tested daily, and maintained in good working order, (8) cause its staff to attend training provided by Licensor as described in clause (ii) of this Section 13.02(d) and (9) perform duties set forth in Section 13.02(d) (collectively, the “Licensee Security”); and

- (ii) Licensor shall (1) provide life safety equipment for storage in the Marina, to include life rings, bull horns, first aid kits, blankets, (2) provide communications devices (dedicated frequency radio (Motorola) and Nextel), with batteries and chargers, (3) provide enhanced patrols as the situation warrants, including for Licensor sponsored special events, by parks enforcement officers and/or contract security and provide security guards as required by the security plan and MARSEC, other threat level increases, or the requirements of law enforcement agencies, all of the foregoing being subject to Licensee’s liability as stated in Section 13.02(d) for failure to comply with the requirements stated therein and (4) provide training for Marina staff in bomb awareness and other issues as the FSO and Licensor security advise, as well as Licensor security protocols including radio/communications protocols (the “Licensor Security”).
- (iii) Licensee shall provide Licensor with the name and contact information of supervisory personnel for the Marina, who shall be available 24 hours a day, 7 days a week.

(e) Licensee shall not engage in or permit any activity that could jeopardize the designation of the Marina as a “Public Access Facility” by the United States Coast Guard. Licensee acknowledges that it is important that the North Cove Marina at Battery Park City retain its status with the U.S. Coast Guard as a “Public Access Facility” and that loss of that status would necessitate the institution of numerous and expensive security enhancements, which if required, shall be implemented as Licensee’s sole cost and expense. Permitted Boats with 150 or more passengers may use the Marina if Licensee obtains written United States Coast Guard approval, with a copy provided to Licensor, that such use would not affect the designation of the North Cove as a “Public Access Facility” and would not require additional expenditures or oversight by Licensor. Unless Licensee has previously determined that a vessel desiring to utilize the Marina would not jeopardize such designation, Licensee must inquire of the vessel prior to arrival to ensure that the vessel is not within a restricted category as such term is used by the

Captain of the Port (“COTP”). In addition, Licensee must (x) inform the COTP as to the contact information for on-site management, (y) comply with any MARSEC measures and any COTP orders requiring additional security measures, except to the extent Licensor has agreed to provide additional personnel as set forth in Section 13.02(d), and (z) report simultaneously any suspicious activities to the National Response Center. Upon any communication with COTP or the National Response Center, Licensee shall complete a written report as to the substance of such communication and shall forward same to Licensor’s designated security officer. Until further notice by Licensor, the FSO shall be Ted Wallace.

(f) Licensee shall not permit the use of the Marina for any Prohibited Uses, which shall include the operation of any commercial ferry or water taxi service or other means of public transport, either to or from the Marina, whether to other marinas or docking areas, or to other vessels or barges providing dining or other entertainment facilities.

(g) Licensee shall not enter into any contract with respect to the maintenance or operation of the Marina with a term exceeding one year in duration, or, if the term is longer than one year, which agreement is not terminable on thirty (30) days’ notice, without the prior consent of Licensor. This provision shall not apply to the agreement between Licensee and Operator.

#### Section 13.03.

(a) Licensee is accepting possession of the Licensed Premises in their current “as is” condition and Licensor shall not be obligated to perform any renovations in the Licensor Facilities, except as may be set forth herein. Licensee shall be responsible for the installation and maintenance of all Licensee Improvements that are necessary for the operation of the Marina in first-class condition, in the manner contemplated by this Agreement, as well as any new docks, finger piers, cranes or davits, workboats and other moveable equipment required to operate the Marina. Such installations and equipment shall be deemed to be Licensee Equipment, together with the items noted in Section 13.04(a) below.

(b) Licensor shall provide repair and maintenance (the “Licensor Maintenance”) for (A) utilities and utility-related equipment in the north and south electrical vaults, the lower quays and the upper esplanade, (B) the lower quays and upper esplanade, (C) the north and south breakwaters and (D) all other non-floating structures or improvements (including, without limitation, piles and Licensor F & E).

(c) Licensor Maintenance shall not (and Licensee Maintenance shall) include (x) any items listed as the responsibility of Licensee in Section 13.04, (y) any dredging or depth maintenance efforts or any repairs or upgrades to the sewage ejection system and the chain mere anchoring system and (z) the repair of damage caused by Licensee or its employees, contractors, tenants, guests or invitees beyond normal wear and tear. For the avoidance of any doubt, if the lower quays need repair beyond normal wear and tear as a result of damage caused by Licensee or its employees, contractors, tenants, guests or invitees, Licensor shall provide the repair, but Licensee shall pay for such repairs.

#### Section 13.04.

(a) The Licensee shall provide repair, maintenance and cleaning services (the “Licensee Maintenance”) (A) for all Structures or other equipment provided by Licensee including equipment that may be placed in or on, but that is not incorporated into the Licensor Facilities (the “Licensee Equipment”) (e.g., storage boxes on lower quays), (B) for all Structures or facilities or equipment underwater, including the chain mere system, which is provided by the Licensor (collectively, the “Licensor F & E”) and (C) as described in Section 13.04(c). Licensee shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Licensed Premises. Licensee shall coordinate its ongoing maintenance activities with activities of Licensor and other parties engaged in the maintenance and operation of parcels adjacent to the Licensed Premises and the parties agree to reasonably cooperate with each other in an effort to avoid interfering with such maintenance and operation.

(b) Immediately upon or prior to the expiration of this License Agreement, (A) Licensee Equipment shall be removed by the Licensee, (B) all Licensor F & E in the possession of Licensee will be returned to the Licensor, and (C) all Licensee Improvements other than Licensee Equipment shall become the property of Licensor. No Structures shall be removed at the expiration of the License Agreement. Notwithstanding the foregoing, existing docks and/or docking facilities that are part of Licensor F & E may be disposed of at Licensee’s expense if such disposal is part of Licensee’s plan for Marina upgrades as described in Section 13.05. Upon such disposal the Licensor shall relinquish its ownership of such docks.

(c) Cleaning and maintenance to be provided by Licensee shall include the following:

- (i) Licensee shall take good care of and shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the Licensed Premises, Licensee Improvements and Licensor Facilities, including, without limitation, all berths, floats, wharves, docks, piers, docking facilities, lower quay, breakwaters. Such obligation shall include the removal of floating debris from the Licensed Premises a minimum of one time each week during the months of April through November. Licensor shall pressure wash the lower quays during the months of April through October as conditions warrant;
- (ii) Licensee shall paint the stanchions and bollards by December 15, 2015 and thereafter not less than once per year unless conditions warrant more frequent painting;
- (iii) Unless waterlines have been refurbished in a manner that permits their operation on a year-round basis, (x) Licensee shall shut off the water service by December 1 of each year, or earlier if weather conditions require shutoff to prevent damage to the waterlines and (y) Licensee shall not turn on the water service before April 1, or later if weather conditions require the waterlines to remain shut off to prevent damage to the waterlines. Licensee shall also blow remaining water out of the waterlines and reset the system at the start by April 15 each year.

- (iv) Licensee shall shut off and turn on the circuit breakers in the vault rooms as necessary for the safe operation of the Marina. Licensee shall insure that the sump pumps are operating as necessary.
- (v) Licensee shall repair and replace outlets on the lower quay as necessary.
- (vi) Licensee shall repair and replace light fixtures and lamps below the surface on the lower quay. Licensee shall install, if necessary, and maintain and operate navigational lights and maritime signal installations and equipment as may be required by the United States Coast Guard or other Governmental Authorities for the Licensed Premises or Licensor Facilities to the extent required for the operation or maintenance of the Marina (this shall not include b-poles on the breakwaters and lower quays).
- (vii) Licensee shall conduct an annual inspection and assessment of the chain mere system, and a written report of such annual inspection and assessment shall be provided to Licensor upon request.
- (viii) Licensee shall maintain all utility/sanitary boxes used in connection with the operation of the Marina.
- (ix) Licensee shall provide Licensor with copies of the keys to all electrical and plumbing vaults. Upon the expiration of this License, Licensee shall return all such keys to Licensor.

Section 13.05.

(a) Licensee must provide the equipment improvements to the Marina, subject to design and scope approval by the Licensor, as set forth on Exhibit G attached hereto. By November 1, 2015 Licensee shall submit to Licensor for its review and approval, which approval shall not be unreasonably withheld, a plan for site enhancement of the Marina and Licensor's property in the immediate vicinity.

(b) The Licensee Equipment listed in Section 13.05(a) is anticipated to have an aggregate cost of approximately \$450,000.00. Licensee acknowledges that a significant factor in its selection by the Licensor as operator of the Marina was its commitment to invest in the improvement of the Marina.

(c) No alterations to Licensor F & E or Licensor Facilities shall be made without the prior written consent of the Licensor.

(d) BPCA Dock Costs.

- (i) Prior to the start of the second (2<sup>nd</sup>) License Year, Licensee shall acquire and install docks at the Marina. Such docks shall be installed

in accordance with the requirements of Section 12. Following installation, the docks will become part of the Licensor Facilities.

- (ii) Prior to ordering the docks, Licensee shall present Licensor a detailed, written proposal for the fabrication and installation of the docks for Licensor's review and approval, which approval shall not be unreasonably withheld.
- (iii) Licensor shall pay up to (1) 100% of the costs to purchase and deliver the docks and (2) 60% of the installation of the docks, including all chains and ancillary equipment that anchor and connect the docks to the chain mere system and electrical, plumbing or any other connections required to ensure that the docks are usable, with a total cap on (1) and (2) of \$900,000.00 (the "BPCA Dock Costs").
- (iv) No later than thirty (30) days after receipt of an invoice and supporting documents from Licensee, Licensor shall reimburse Licensee for the BPCA Dock Costs. Beginning in the License Year in which the docks are installed, Licensee shall pay Licensor an annual fee (the "Dock Rental Fee"), due at the same time as the Base Fee, which shall equal the annual twenty (20) year straight-line amortization of the BPCA Docks Cost plus \$3,750.00 annually.

Section 13.06. Licensee has entered into an agreement with an Affiliate of International Global Yachting Ltd. (the "Operator") to operate the Marina, pursuant to an agreement dated as of even date hereof (the "Operating Agreement"). A true copy of the Operating Agreement has been delivered to Licensor, which may be amended by Licensee and Operator without the consent of Licensor as long as such amendments do not conflict with the terms of this License Agreement. Licensor consents to the retention of Operator, and Licensor shall accept performance of Licensee's obligations hereunder by Operator, as if such obligations were performed by Licensee; provided, however, that, in no event shall Licensee be relieved of its obligations under this License Agreement. Licensee shall not, without the prior written approval of Licensor in each instance, hire any other Person to manage or operate the Marina or any portion thereof or otherwise delegate the operation of the Marina or any portion thereof to any Person other than Operator. The Operating Agreement shall obligate the Operator to operate the Marina in accordance with all the terms and conditions of this License Agreement. Subject to Licensor's approval, not to be unreasonably withheld, Licensee shall have the right to replace the Operator and enter into a new Operating Agreement so long as such replacement operator has no less than ten (10) years' experience operating similar facilities.

Section 13.07. Except to the extent that such personnel and equipment are provided and maintained by Licensor pursuant to this License Agreement, Licensee shall provide and maintain personnel and equipment, including without limitation ramps; docks; floats; buoys; mooring and anchoring facilities; hoses, wires and other equipment for connections from Boats or Structures to utility boxes on the lower quays; and lighting installations and equipment (not including "b-poles" provided by Licensor), the appearance of which shall be subject to the

reasonable approval of Licensor, as are necessary for the safe and efficient operation of the Marina. All equipment shall either be stored at the Licensed Premises, or in Brookfield Place.

Section 13.08. Licensee shall operate the Marina in an environmentally sustainable manner, and shall implement management procedures to achieve such goals. Licensee shall operate the Marina in accordance with environmental best practices, as identified in the United States Environmental Protection Agency's "Best Management Practices for Marinas", a copy of which is annexed hereto as Exhibit D.

Section 13.09. In each License Year (or part thereof) occurring during the Term of this Agreement, Licensee shall spend two percent (2%) of all Revenue received during such License Year for community based programs and educational programming, which shall be advertised to and open to all members of the general public. Together with each Licensee Statement, Licensee shall submit an annual statement to Licensor describing the expenditure of such funds, the amounts funded, and a general description of the programs and educational programming provided. If the Commencement Date or Expiration Date occurs on other than January 1<sup>st</sup> or December 31<sup>st</sup>, respectively, the annual spending requirement shall be pro-rated for that portion of the License Year which falls within the Term.

Section 13.10. Licensee shall grant Licensor and Licensor's agents and contactors such access as Licensor may from time to time require to or through the Licensed Premises in order to perform inspections of and/or repairs or improvements to portions of Licensor Facilities. Licensor shall give Licensee prior notice of such entry (which notice may be oral) as shall be practicable for non-emergency entries. No notice shall be required for emergency entries, but Licensor shall advise Licensee of any emergency entry as promptly as practicable in the circumstances. Licensor shall exercise its right of entry under this Section in a commercially reasonable manner so as to minimize interference with Licensee's operations at the Marina, but Licensor shall not be obligated to perform such inspections or work on an overtime or other premium basis.

Section 13.11. Licensee shall not permit the emission or placement of any substances in the water of or adjacent to the Licensed Premises or the storage of hazardous substances (except the storage on each vessel of its own fuel) on any vessel docked in or on the Licensed Premises except as permitted by the Marina Guidelines. At the request of Licensor, Licensee shall, at Licensee's sole cost and expense, conduct testing of the waters within the Licensed Premises to determine the level of hazardous substances or other pollutants therein caused by operations in the Marina. In the event such testing indicates the presence of such substances as a result of operations in the Marina, Licensee shall take such corrective measures as are necessary to reduce the quantity of such substances to levels reasonably acceptable to Licensor.

Section 13.12. Licensee shall permit representatives of Governmental Authorities to enter the Licensed Premises for the purpose of inspection to determine compliance with the Requirements.

Section 13.13. Except in connection with a public event (such as a boat show) approved by Licensor, Licensee shall not cause or permit the obstruction of the center

portion of the Licensed Premises shown on Exhibit E attached hereto (the “View Corridor”) by any Person or thing, including, but not limited to, a boat or structure. Notwithstanding the preceding sentence, Licensee has submitted a proposed configuration of slips and boats that includes some slips and boats within the View Corridor, which is attached hereto as Exhibit E. Licensor has determined that the configuration is consistent with the View Corridor on an interim basis and approved the configuration for a period ending on October 31, 2016. Prior to October 1, 2016, Licensor shall provide Licensee with a written determination as to whether the configuration is consistent with the View Corridor. If Licensor determines in its sole discretion that the existing configuration is not consistent with the View Corridor, Licensee shall promptly submit a new proposed configuration with no boats (or only smaller boats) moored within the View Corridor and the parties will work in good faith to agree upon the new configuration prior to the start of the 2017 boating season.

Section 13.14. Licensee shall not unreasonably interfere or permit any unreasonable interference by any Person occupying a boat slip with the activities of Licensor, Slip Occupants or other occupants, tenants or subtenants of or in the Project Area.

Section 13.15. Licensee shall not cause or permit the noise level within the Marina, as measured from any location twenty-five (25) feet from the Marina, to exceed the lower of (a) a limit of Leq equals seventy (70) dBA for any one hour period and (b) the following measured octave band sound pressure levels in bands centered on the following mid frequencies:

<u>Frequency</u>	<u>Level</u>
63	80
125	75
250	71
500	68
1,000	66
2,000	64
4,000	63
8,000	62

Section 13.16. Notwithstanding the provisions of Section 13.15 above, if requested by Licensor, Licensee shall adopt a noise mitigation plan reasonably satisfactory to Licensor that is appropriate for, and sensitive to the surrounding open space and neighboring tenants.



Section 13.17. Licensee shall not permit the sale of fuel or fueling services or, except as permitted by the Marina Guidelines, the servicing or repairs of any vessels moored in or on the Licensed Premises, except that interior repairs are permitted without the use of power tools. If permitted by Licensor, repairs shall be made in a manner that does not unreasonably interfere with the operation of the Marina or the right of Licensee or any Slip Occupant or any other occupant, subtenant or tenant of or in the Project Area.

Section 13.18. Licensee shall have the right to use the Licensed Premises, the Licensor Facilities and such other areas within and adjacent to the Project Area as Licensor may reasonably approve, in each instance, for the operation of boat shows, fund raising and other special events upon terms and conditions, including permit fees, set forth in permits to be issued by Licensor or its representative. Such permits may be withheld at Licensor's reasonable discretion, taking into account other activities or events for which permits have been given in the Project Area. Licensor shall have the right to issue permits for use of the Marina to the extent such permits do not unreasonably conflict with Licensee's approved activities.

Section 13.19. Licensee shall provide and maintain such safety equipment, including without limitation firefighting and rescue equipment, as is necessary for the protection of the Marina and the vessels moored therein. Licensee shall be responsible and Licensor shall in no way be responsible for rescue operations within the Licensed Premises.

Section 13.20. In the case of any emergency, Licensee shall make the Marina and the Licensor F & E and the Licensee Equipment available upon instructions from the United States Coast Guard, the Police Department of the City of New York or Licensor.

Section 13.21. Licensee shall provide for the removal, and shall not permit the discharge into the water, of all waste materials and shall provide all necessary lines and connections between sanitary facilities on vessels moored within the Licensed Premises and sewer facilities on land.

Section 13.22. Unless required by law to do so, Licensee shall not permit soliciting, posting of signs, or distribution of advertising materials or sale of merchandise within the Marina except as permitted hereunder, in the Marina Guidelines and upon the prior written approval of Licensor. The size, content, design, maintenance, and placement of all signs (which for purposes of this Section, shall include all printed or hand-written signs, flags, banners and other like displays) shall be subject to the Marina Guidelines and compliance with all applicable Requirements.

Section 13.23. Licensee shall provide and maintain such additional installations and equipment as Licensor may reasonably determine to be necessary for the operation, maintenance or safety of the Licensed Premises.

Section 13.24. Except as approved by Licensor, Licensee shall not install seating or any temporary or permanent signage or structures, or operate any concessions (such as concessions selling food or sailing or Marina related merchandise) within or in any public areas adjacent to the Licensed Premises. Licensee shall not seek to restrict, prohibit or otherwise

interfere with public access to such areas, without obtaining the prior approval of Licensor, which shall be granted or withheld in Licensor's sole discretion.

Section 13.25. Licensee shall comply, and shall cause all Persons occupying boat slips to comply, with the Marina Guidelines at all times.

Section 13.26. Licensee shall pay all costs in connection with the repair or restoration for the public plaza adjacent to the Marina generally extending from the northern line of Liberty Street extended to the Licensed Premises to the western line of North End Avenue extended to the Licensed Premises, which may result or arise from Licensee's injury or damage to such public plaza or from any failure of Licensee to meet its obligations under this License Agreement.

Section 13.27. All of the obligations contained in this Article 13 shall be performed and observed at Licensee's sole cost and expense except for Licensor Maintenance and Licensor Security as provided in this Article.

Section 13.28. Notwithstanding any other provision of this License Agreement, this License Agreement is terminable at will (a "Termination at Will") by the Licensor in its sole and absolute discretion, at any time. A Termination at Will shall be effective ninety (90) days' after written notice is sent to Licensee, provided that such ninety (90) days' notice shall toll during any sailing season (April 1 – October 31). For example, if notice is give on March 1<sup>st</sup>, then such Termination at Will shall be effective on or around December 31<sup>st</sup>. Licensor shall only terminate during a sailing season as a result of a Termination at Will due to an Event of Default. Licensor, its employees and agents shall not be liable for damages to Licensee in the event that this License Agreement is terminated by Licensor as provided for herein; provided, however, that in the event of a Termination at Will, Licensor shall promptly reimburse Licensee for the unamortized costs of installing any docks at the Marina, unless paid for by Licensor, or other Licensee Improvements. Nothing herein is intended to curtail the immediate suspension of Marina operations in the event Licensor reasonably determines that conditions represent a threat to public health or safety.

## ARTICLE 14

### REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES

Section 14.01. Licensee, at its sole cost and expense, shall promptly comply with any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders (collectively, "Requirements") of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable Fire Rating Bureau or other body exercising similar functions: (i) affecting the Licensed Premises or any street, walkway, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same, (ii) requiring the removal of any encroachment, or (iii) affecting the construction, maintenance, use, operation, management or occupancy of the Licensed Premises or the Licensor Facilities. Licensee must so comply whether or not (i) such compliance involves or requires any

structural changes or additions in or to the Licensed Premises or the Licensor Facilities; (ii) without regard to whether or not such changes or additions are required on account of any particular use to which the Licensed Premises or the Licensor Facilities, or any part thereof, may be put; and (iii) without regard to the fact that Licensee is not the fee owner of the Licensed Premises. Such compliance is required without regard to the nature or cost of the work required to be done. Notwithstanding the foregoing, (i) Licensor shall perform any material alterations or modifications to Licensor Facilities that may be necessary to comply with Requirements and (ii) Licensee shall perform minor alternations or modifications with respect thereto and cooperate with Licensor in its performance of material alterations or modifications. Licensee also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Licensee under the provisions of this License Agreement.

Section 14.02. Licensee shall have the right to contest the validity of any Requirements or the application thereof with respect to its responsibilities under this License Agreement. During such contest, compliance with any such contested Requirements may be deferred by Licensee upon condition that, before instituting any such proceeding, Licensee shall furnish to Licensor a bond, cash or other security satisfactory to Licensor, securing compliance with the contested Requirements and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Licensee shall be commenced as soon as is reasonably possible after the issuance of any such contested Requirements or after notice (actual or constructive) to Licensee of the applicability of such Requirements to the Licensed Premises and shall be prosecuted to final adjudication with reasonable dispatch. Notwithstanding the furnishing of any bond or security, Licensee shall promptly comply with any such Requirements and/or the requirement of any casualty liability or other insurance policy if, in Licensor's sole discretion, such non-compliance would result in the loss or forfeiture of the Licensed Premises, or any part thereof or if Licensor shall be in danger of being subject to criminal or civil liability or penalty by reason of such non-compliance.

## ARTICLE 15

### LICENSOR EQUIPMENT

Subject to Section 13.04, Licensee shall keep all Licensee Equipment and all Licensor F&E in good order and repair, reasonable wear and tear excepted, and shall replace any Licensee Equipment and Licensor F&E as necessary to maintain the first-class operation and functioning of the Marina. All equipment or materials in the Licensor Facilities shall be and shall remain the property of Licensor and Licensee shall not have the right, power or authority to, and shall not, remove any such equipment or materials from the Licensor Facilities without the consent of Licensor except to the extent Licensee is permitted to dispose of such equipment or materials pursuant to Article 13. However, such consent shall not be required if such removal is necessary in connection with repairs, cleaning or other servicing performed by Licensee.

## ARTICLE 16

### DISCHARGE OF LIENS; BONDS

Section 16.01. Subject to the provisions of Section 16.02 hereof, except as otherwise expressly provided herein, Licensee shall not create or permit to be created any lien, encumbrance or charge upon the Licensed Premises or any part thereof, or the Project Area or any part thereof, the income therefrom or any assets of, or funds appropriated to, Licensor, and Licensee shall not suffer any other matter or thing whereby the estate, right and interest of Licensor in the Licensed Premises or the Licensor Facilities or any part thereof might be impaired, except that the foregoing shall not apply to Licensee Equipment.

Section 16.02. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by Licensor) at any time shall be filed in violation of the obligations of Licensee pursuant to Section 16.01 hereof against the Licensed Premises or any part thereof or the Project Area or any part thereof, or, if any public improvement lien created or permitted to be created by Licensee shall be filed against any assets of, or funds appropriated to, Licensor, Licensee, within sixty (60) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, except that the foregoing shall not apply to Licensee Equipment. If Licensee shall fail to cause such lien to be discharged of record within such period, then, in addition to any other right or remedy, Licensor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Licensor shall be entitled, if Licensor so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Licensor, including all reasonable costs and expenses incurred by Licensor in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Licensor's making of the payment or incurring of the costs and expenses, shall constitute License Fees and shall be paid by Licensee to Licensor within ten (10) days after demand.

Section 16.03. Nothing in this License Agreement shall be deemed or construed in any way to constitute the consent or request of Licensor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of, the Licensed Premises or the Licensor Facilities, or any part thereof, nor as giving Licensee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien against Licensor's interest in the Licensed Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Licensor, except that the foregoing shall not apply to Licensee Equipment. Notice is hereby given, and Licensee shall cause all Construction Agreements to provide that Licensor shall not be liable for any work performed or to be performed on the Licensed Premises for Licensee, any Slip Occupant or Major Occupant or for any materials furnished or to be furnished at the Licensed Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Licensor in and to the Licensed Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Licensor.

Section 16.04. Licensee shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance

upon the estate or assets of, or funds appropriated to, Licensor or of any interest of Licensor in the Licensed Premises or the Project Area, except that the foregoing shall not apply to Licensee Equipment.

Section 16.05. The provisions of this Article 16 shall survive any termination of this License Agreement.

## ARTICLE 17

### REPRESENTATIONS; POSSESSION

Section 17.01. Licensee acknowledges that it is fully familiar with the Licensed Premises, the Project Area, and the physical condition thereof. Licensee accepts the Licensed Premises in its existing condition and state of repair, and, except as otherwise expressly set forth in this License Agreement, no representations, statements, or warranties, express or implied, have been made by or on behalf of Licensor in respect of the Licensed Premises or the Project Area, the status of title thereof, and the physical condition thereof, including the subsurface condition of the waters in and adjacent to the property, the zoning or other laws, regulations, rules and orders applicable thereto, or the use that may be made of the Licensed Premises, that Licensee has relied on no such representations, statements or warranties, and that Licensor shall in no event whatsoever be liable for any latent or patent defects in the Licensed Premises or the Project Area.

Section 17.02. Licensee represents and warrants that, as of the date hereof,

(a) Licensee is a limited liability company duly organized, and in good standing under the laws of the State of Delaware and qualified to do business in the State of New York. Licensee has all requisite limited liability company power and authority to execute, deliver and perform this License Agreement, and has taken all corporate action required by law, its limited liability company operating agreement or otherwise to authorize the execution and delivery of this License Agreement and the consummation of the transaction contemplated hereby. Upon execution and delivery of this License Agreement by both parties, this License Agreement will be a valid and binding obligation of Licensee, enforceable in accordance with its terms;

(b) Licensee has delivered true and complete copies of its Constituent Documents to Licensor;

(c) Prior to execution of this License Agreement, Licensee shall deliver to Licensor a certificate duly executed by a member of Licensee on Licensee's behalf, setting forth the names and addresses of all members of Licensee. Upon the request of Licensor, or prior to any Assignment or Transfer, Licensee shall execute and deliver to Licensor an updated certificate confirming or updating the information (with such changes as may be appropriate that reflect the then current state of facts).

Section 17.03. Licensor represents and warrants that as of the date hereof that it is duly formed body corporate and politic constituting a public benefit corporation of the State of New York, that it has all requisite power and authority to execute, deliver and perform

this License Agreement, and has taken all corporate action required by law, its constituent documents or otherwise to authorize the execution and delivery of this License Agreement and the consummation of the transaction contemplated hereby, and that upon execution and delivery of this License Agreement by both parties, this License Agreement will be a valid and binding obligation of Licensee, enforceable in accordance with its terms.

Section 17.04. Licensors shall deliver possession of the Licensed Premises on the Commencement Date vacant and free of occupants and tenancies, except as expressly stated in this License Agreement.

## ARTICLE 18

### LICENSOR NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 18.01. Without limiting Section 5.07, Licensors shall not in any event whatsoever be liable for any injury or damage to Licensee or to any other Person happening on, in or about the Licensed Premises or any appurtenances thereto or arising out of any of Licensee's operations, nor for any injury or damage to the Licensed Premises, the Licensee Equipment or the Licensor Facilities, or to any property belonging to Licensee or to any other Person which may be caused by any fire, flooding or breakage, or by the use, misuse or abuse of any of the Licensee Improvements or Licensor Facilities (including, but not limited to, any of the common areas, equipment, walkways, piers, hatches, openings, installations, stairways, or other common facilities) or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the gross negligence or willful misconduct of Licensor, its officers, agents or employees; nor shall Licensor in any event be liable for the acts or failure to act of any other tenant of any premises within the Project Area, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 18.02. Licensors shall not be liable to Licensee or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Licensee or of any other Person or to the Licensed Premises or the Licensor Facilities caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind, ice, snow or similar storms or disturbances, or water, rain or snow which may fall or leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Licensed Premises, or leakage of gasoline or oil from vessels, pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work except to the extent any of the foregoing shall have resulted from the gross negligence or willful misconduct of Licensor, its officers, agents or employees acting in their capacities as officers, agents or employees.

Section 18.03. In addition to the provisions of Sections 18.01, in no event shall Licensor be liable to Licensee for any injury or damage to any property of Licensee, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to surface or subsurface materials, in or on the Licensed Premises or in the Project Area unless resulting from gross negligence or willful misconduct of Licensor, its employees, agents, contractors or representatives, it being agreed that Licensee shall assume and bear all risk of loss with respect thereto.

## ARTICLE 19

### INDEMNIFICATION OF LICENSOR AND OTHERS

Section 19.01. Licensee shall not do or permit any Slip Occupant, Major Occupant or any other Person deriving rights from Licensee or any employee, agent, servant, guest, invitee, or contractor of Licensee or of any Slip Occupant, Major Occupant or Person deriving rights from Licensee, to do any act or thing upon the Licensed Premises or the Licensor Facilities which may reasonably be likely to subject Licensor to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Requirement, and shall use its best efforts to exercise such control over the Licensed Premises so as to fully protect Licensor against any such liability. Licensee, to the fullest extent permitted by law, shall indemnify and hold Licensor, the Battery Park City Parks Conservancy and the State of New York and their agents, members, directors, officers and employees (collectively, the “Indemnitees”), harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges or expenses, including, without limitation, engineers’, architects’ and attorneys’ fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees that arise from injury to any person, or persons, including death, or any damage to property of any nature, occasioned wholly or in part by any act(s) or omission(s) of Licensee or of the directors, members, officers, employees, contractors, subcontractors, representatives, guests, invitees, or agents of Licensee, that occur on the Licensed Premises or arise out of or as a result of this License Agreement. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist in the absence of this agreement.

Section 19.02. The obligations of Licensee under this Article 19 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Licensed Premises.

Section 19.03. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Licensee has agreed to indemnify the Indemnitees in Section 19.01, then, upon demand by Licensor, Licensee shall resist or defend such claim, action or proceeding (in such Indemnitee’s name, if necessary) by such attorneys as Licensee shall select and Licensor shall approve, which approval shall not be unreasonably withheld. In such event, Licensee shall control all decisions in respect of the litigation and settlement of such claims. Notwithstanding the foregoing, Licensor may engage its own attorneys to defend it or to assist in its defense. Provided such claim, action or proceeding is not covered by insurance maintained by Licensee, Licensee shall pay the reasonable fees and disbursements of attorneys retained by Licensor. In the event such claim, action or proceeding is covered by insurance and Licensee’s insurer refuses to pay all or any portion of the reasonable fees and disbursements of any attorneys separately retained by Licensor, Licensee shall pay such reasonable fees and disbursements or such portion as shall not be paid by Licensee’s insurer. The indemnification obligations imposed upon Licensee under Section 19.01 shall not apply to any settlement separately agreed to by Licensor without Licensee’s consent, nor if Licensor retains its own attorneys and such retention will materially impair or materially diminish Licensee’s insurance coverage and Licensor has been so advised in writing by Licensee’s insurer. Licensor

shall promptly provide to Licensee copies of all legal papers, notices, summonses and complaints received by Licensor with respect to matters for which Licensor claims entitlement to indemnification hereunder

Section 19.04. The provisions of this Article 19 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

## ARTICLE 20

### RIGHT OF INSPECTION, ETC.

Section 20.01. Licensee shall permit Licensor and its agents or representatives to enter the Licensed Premises at reasonable times and upon reasonable notice, which may be oral (except that no notice is required in cases of emergency) for the purpose of (a) inspecting the same, (b) determining whether or not Licensee, the Slip Occupants or the Major Occupants are in compliance with their obligations hereunder, and (c) making any necessary repairs to the Licensed Premises and performing any work therein or thereon that may be necessary by reason of Licensee's failure to make any such repairs or perform any such work, provided that, except in any emergency, Licensor shall have given Licensee notice specifying such repairs or work and Licensee shall have failed to make such repairs or to do such work within thirty (30) days after the giving of such notice (subject to Unavoidable Delays), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Unavoidable Delays).

Section 20.02. Nothing in this Article 20 or elsewhere in this License Agreement shall imply any duty upon the part of Licensor to do any work required to be performed by Licensee hereunder and performance of any such work by Licensor shall not constitute a waiver of Licensee's default in failing to perform the same. Licensor, during the progress of any such work, may keep and store at the Licensed Premises all necessary materials, tools, supplies and equipment. Licensor shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Licensee, any Slip Occupant or other occupant of the Licensed Premises by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Licensed Premises during the course thereof and the obligations of Licensee under this License Agreement shall not be affected thereby. To the extent that Licensor undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Unavoidable Delays.

## ARTICLE 21

### LICENSOR'S RIGHT TO PERFORM LICENSEE'S COVENANTS

Section 21.01. During the occurrence and continuance of an Event of Default, Licensor, without waiving or releasing Licensee from any obligation of Licensee contained in this License Agreement, may (but shall be under no obligation to) perform such obligation on Licensee's behalf.



Section 21.02. All reasonable sums paid by Licensor and all reasonable costs and expenses incurred by Licensor in connection with its performance of any obligation pursuant to Section 21.01 hereof, together with interest thereon at the Involuntary Rate from the respective dates of Licensor's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Licensor, shall be paid by Licensee to Licensor within ten (10) days after demand. Any payment or performance by Licensor pursuant to Section 21.01 shall not be or be deemed to be a waiver or release of breach or Default of Licensee with respect thereto or of the right of Licensor to terminate this License Agreement, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Licensee shall have occurred. Licensor shall not be limited in the proof of any damages which Licensor may claim against Licensee arising out of or by reason of Licensee's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but Licensor also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the Licensed Premises.

## ARTICLE 22

### NO ABATEMENT OF LICENSE FEES

Except as may be otherwise expressly provided herein, there shall be no abatement, off-set, diminution or reduction of License Fees payable by Licensee hereunder or of the other obligations of Licensee hereunder under any circumstances.

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Subject to the provisions of law and this License Agreement, Licensee shall occupy the Licensed Premises in accordance with this License Agreement for the uses set forth in Article 13 hereof and the Marina Guidelines, and for no other use or purposes.

Section 23.02. Licensee shall not use or occupy, nor permit the Licensed Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) that Licensor, in its reasonable judgment, deems offensive by reason of odors, fumes, dust, smoke, or pollution, or for any purpose or in any way in violation of the Requirements, or which may make void or voidable any insurance then in force on the Licensed Premises. Licensee shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Licensee shall fail to take such actions, and such failure shall continue for fifteen (15) days after notice from Licensor to Licensee, or if such actions cannot be taken within such period, Licensee shall fail to commence and diligently proceed to take such actions within such period, Licensor is hereby irrevocably authorized to take all such actions in Licensee's name and on Licensee's behalf, Licensee hereby appointing Licensor as Licensee's

attorney-in-fact coupled with an interest for all such purposes. All reasonable sums paid by Licensor and all reasonable costs and expenses incurred by Licensor acting pursuant to the immediately preceding sentence (including, but not limited to, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Licensor's making of each such payment or incurring of each such cost, expense or charge until the date of receipt of repayment by Licensor, shall be paid by Licensee to Licensor within ten (10) days after demand and shall constitute License Fees under this License Agreement. Licensee's obligations under this Section 23.02 shall survive the expiration or termination of this License Agreement.

Section 23.03. Licensee shall not knowingly suffer or permit the Licensed Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Licensed Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Licensed Premises or any portion thereof.

## ARTICLE 24

### EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Without limiting Licensor's rights under Section 13.28, each of the following events shall be an "Event of Default" hereunder:

(a) if Licensee shall fail to pay any installment of License Fees, or any part thereof, when the same shall become due and payable and such failure shall continue for ten (10) days after notice from Licensor to Licensee;

(b) if Licensee has not provided any of the Licensee Equipment described in Section 13.05(a) in accordance with a Scheduled Completion Date (subject to Unavoidable Delays) and such failure shall continue for twenty-five (25) days after notice from Licensor to Licensee;

(c) if Licensee shall fail to observe or perform any of Licensee's obligations under the provisions of Section 23.02 and such failure shall continue for a period of twenty-five (25) days after notice thereof by Licensor to Licensee;

(d) if Licensee shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this License Agreement, including, without limitation, any of Licensee's obligations under the provisions of Article 12 of this License Agreement (other than the obligations referred to in the preceding Sections 24.01(b) and (c)), and such failure shall continue for a period of twenty-five (25) days after notice thereof by Licensor to Licensee specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such twenty-five (25) day period, in which case no Event of Default shall be deemed to exist as long as Licensee shall have commenced curing the same within such twenty-five (25) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion);

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

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

(g) to the extent permitted by law, if Licensee shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Licensee shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Licensee, or of all or any substantial part of its properties or of the premises or any interest therein of Licensee, or if Licensee shall take any corporate action in furtherance of any action described in Sections 24.01, (e) or (g) hereof;

(h) to the extent permitted by law, if within ninety (90) days after the commencement of any proceeding against Licensee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Licensee, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Licensee or of all or any substantial part of its properties or of the Licensed Premises or any interest therein of Licensee, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(i) if Licensee shall abandon the Licensed Premises;

(j) if (i) this License Agreement or the estate of Licensee hereunder shall be mortgaged or otherwise materially encumbered by Licensor, or there shall be an Assignment, Major Occupancy Agreement, Occupancy Agreement or Transfer without Licensor's approval to the extent required hereunder or without compliance with the provisions of this License Agreement applicable thereto and such transaction shall not be made to comply or be voided ab initio within thirty (30) days after notice thereof from Licensor to Licensee; or (ii) a Prohibited Person (or a Person which is owned, directly or indirectly, by a Prohibited Person) acquires an interest in this License or the Licensed Premises and such transaction shall not be made to comply or be voided ab initio within thirty (30) days after notice thereof from Licensor to Licensee;

(k) if a levy under execution or attachment shall be made against the Licensed Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days; or

(l) as a limited liability company, if Licensee shall at any time fail to maintain its existence in good standing, or to pay any applicable taxes when and as the same shall become

due and payable and such failure shall continue for thirty (30) days after notice thereof from Licensor or any governmental agency to Licensee.

Section 24.02. If this License Agreement shall be terminated, Licensee shall pay to Licensor all License Fees payable by Licensee under this License Agreement to the date upon which this License Agreement and the Term shall have expired and come to an end or to the date of re-entry upon the Licensed Premises by Licensor, as the case may be.

Section 24.03. No termination of this License Agreement shall relieve Licensee of its liabilities and obligations hereunder which relate to previously accrued payments, fees or indemnification costs or which expressly state that they shall survive the expiration, termination, repossession or relicensing of this Agreement.

Section 24.04. To the extent not prohibited by law, Licensee hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 24. Licensee shall execute, acknowledge and deliver any instruments which Licensor may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 24.05. Suit or suits for the recovery of damages may be brought by Licensor from time to time at Licensor's election, and nothing herein contained shall be deemed to require Licensor to await the date whereon this License Agreement or the Term would have expired had there been no Event of Default by Licensee and termination.

Section 24.06. Nothing contained in this Article 24 shall limit or prejudice the right of Licensor to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 24.

Section 24.07. No receipt of monies by Licensor from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Licensor to enforce the payment of License Fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of Licensor to recover possession of the Licensed Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Licensed Premises, Licensor may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and operation of the Licensed Premises or, at the election of Licensor, on account of Licensee's liability hereunder.

Section 24.08. Except as otherwise expressly provided herein or as prohibited by applicable law, Licensee hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Licensee, for and on behalf of itself and all persons claiming through or under tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this License Agreement in case Licensee shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Licensor or in case of any expiration or termination of this License Agreement, and Licensor and Licensee waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this License Agreement, the relationship of Licensor and Licensee, Licensee's use or occupancy of the premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry", or "re-entry", as used in this License Agreement are not restricted to their technical legal meaning.

Section 24.09. No failure by Licensor or any prior licensor to insist upon the strict performance of any covenant, agreement, term or condition of this License Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial License Fees during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this License Agreement to be performed or complied with by Licensee, and no breach thereof shall be waived, altered or modified except by a written instrument executed by Licensor. No waiver of any breach shall affect or alter this License Agreement, but each and every covenant, agreement, term and condition of this License Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 24.10. In the event of any breach or threatened breach by Licensee of any of the covenants, agreements, terms or conditions contained in this License Agreement, Licensor shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this License Agreement. To the extent permitted by law Licensee waives any requirement for the posting of bonds or other security in any such action.

Section 24.11. Each right and remedy of Licensor provided for in this License Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this License Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Licensor of any one or more of the rights or remedies provided for in this License Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Licensor of any or all other rights or remedies provided for in this License Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.12. If it is not the prevailing party, Licensee or Licensor, as applicable, shall pay to the other party all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the prevailing party in enforcing any of the covenants and provisions of this License Agreement and incurred in any action brought by

the other party on account of the provisions hereof, and all such costs, expenses, and reasonable attorney's fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by such other party against the prevailing party on or under this License Agreement. All of the sums paid or obligations incurred as aforesaid, with interest at the Involuntary Rate, shall be paid by within fifteen (15) days after demand by the prevailing party.

Section 24.13. If an order for relief is entered or if a stay of proceedings or other acts becomes effective in favor of Licensee or Licensee's interest in this License Agreement in any proceeding which is commenced by or against Licensee under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Licensor shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this License Agreement, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Licensee's obligations under this License Agreement. Adequate protection of Licensor's right, title and interest in and to the Licensed Premises, and adequate assurance of the complete and continuous future performance of Licensee's obligations under this License Agreement, shall include, without limitation, the following requirements:

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

(b) that Licensee shall pay to Licensor, on the first day of each month occurring subsequent to the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Licensed Premises diminished in value during the immediately preceding monthly period, but in no event an amount which is less than the aggregate License Fees payable for such monthly period;

(c) that Licensee shall continue to use the Licensed Premises in the manner required by this License Agreement;

(d) that Licensor shall be permitted to supervise the performance of Licensee's obligations under this License Agreement;

(e) that Licensee shall hire, at its sole cost and expense such security personnel as may be necessary to ensure the adequate protection and security of the Licensed Premises;

(f) that Licensee shall pay to Licensor 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 Licensed Premises and adequate assurance of the complete and continuous future performance of Licensee's obligations under this License Agreement, a security deposit as may be required by law or ordered by the court;

(g) that Licensee has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Licensor that sufficient funds will be available to fulfill the obligations of Licensee under this License Agreement;

(h) that Licensor be granted a security interest acceptable to Licensor in property of Licensee, other than property of any of Licensee's officers, directors, shareholders, employees or partners, to secure the performance of Licensee's obligations under this License Agreement; and

(i) that if Licensee's trustee, Licensee or Licensee as debtor-in-possession assumes this License Agreement and proposes to assign the same (pursuant to Title 11 U.S.C. § 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this License Agreement on terms acceptable to the trustee, Licensee or Licensee as debtor-in-possession, then notice of such proposed assignment, setting forth (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 Licensor to assure such Person's future performance under the License Agreement, including, without limitation, the assurances referred to in Title 11 U.S.C § 365(b)(3) (as the same may be amended), shall be given to Licensor by the trustee, Licensee or Licensee as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Licensee or Licensee as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the trustee, Licensee or Licensee as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Licensor shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this License Agreement 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 out of the consideration to be paid by such Person for the assignment of this License Agreement.

Section 24.14. The provisions of Sections 24.02, 24.03, 24.04, 24.05, 24.06, 24.07, 24.08, 24.09, 24.10, 24.11, 24.12 and 24.13 shall survive any termination of this License Agreement.

## ARTICLE 25

### NOTICES

Section 25.01. Whenever it is provided in this License Agreement that a notice, demand, request, consent, approval or other communication shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request, consent, approval, or other communication with respect hereto or the Licensed Premises, each such notice, demand, request, consent, approval, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) if by Licensor, by delivery or by mailing the same to Licensee by nationally recognized overnight delivery service providing evidence of delivery, or by registered or certified mail, postage prepaid, return receipt requested, addressed to Licensee at 250 Vesey Street, 15<sup>th</sup> Floor, New York, New York 10281, Attention: Senior Vice President, Operations,

with copies to 250 Vesey Street, 15<sup>th</sup> Floor, New York, New York 10281, Attention: General Counsel, and Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, Attention: Joshua Mermelstein, or to such other address(es) and attorneys as Licensee may from time to time designate by notice given to Licensor as aforesaid; and

(b) If by Licensee, by delivering or by mailing the same to Licensor by nationally recognized overnight delivery service providing evidence of delivery, or by registered or certified mail, postage prepaid, return receipt requested, addressed to Licensor at 200 Liberty Street, 24<sup>th</sup> Floor, New York, New York 10281, Attention: President, or to such other address as Licensor may from time to time designate by notice given to Licensee as aforesaid (with a copy, given in the manner provided above, addressed to the attention of Licensor's General Counsel, at the address set forth above or at such other address as Licensor may from time to time designate by notice to Licensee as aforesaid).

Section 25.02. Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received). The inability to deliver because of changed address of which no notice was given, or the rejection or refusal to accept any notice, shall be deemed to be the receipt of the notice, as of the date of such inability to deliver, rejection or refusal to accept.

## ARTICLE 26

### EASEMENTS

Section 26.01. Licensor hereby grants to Licensee, its successors and assigns, for the Term, a non-exclusive easement through, over, under, across and in certain property owned by Licensor including the breakwalls, the vault rooms, the lower quays, the utilities and other property of Licensor adjacent to or in the vicinity of the Licensed Premises (the "Easement"), which Easement shall be appurtenant to the Licensed Premises and shall be for the following limited purposes only:

(a) to repair, replace and maintain, as applicable, and to use the Licensor Facilities in accordance with and as required by the terms of this License Agreement;

(b) for ingress and egress to and from the Licensed Premises and Licensee Improvements for the use, enjoyment and operation of the Licensed Premises and Licensee Improvements in accordance with the terms of this License Agreement, except that such ingress and egress (i) shall not be available for vehicular parking and (ii) shall only be available for vehicular access subject to the prior approval of Licensor;

(c) to maintain such utility lines, equipment and connections as may be approved by Licensor and are necessary to provide electricity, water, cable television service and



other utilities and services to the Licensed Premises and Licensee Improvements to the extent Licensee is required to provide such maintenance in accordance with this License Agreement;

(d) to install and maintain additional equipment and apparatus as may be approved by Licensor (which is in addition to the Licensor Facilities existing as of the date of this License Agreement) for the mooring of vessels in the Licensed Premises and Licensee Improvements.

Subject to the foregoing Easement, Licensor and Licensee recognize that the breakwalls and the lower quays shall be fully accessible to the public at all times, unless closure is permitted by Licensor as provided in Section 13.18.

## ARTICLE 27

### SUBORDINATION; ATTORNMENT

Section 27.01. Licensor's interest in this License Agreement, as this License Agreement may be modified, amended or supplemented, shall not be subject or subordinate to any liens or encumbrances hereafter affecting Licensee's interest in this License Agreement.

Section 27.02. If New York City exercises its option to acquire the Project Area, this License Agreement is hereby terminated, and Licensee will attorn to the then holder of Licensor's interest in the Licensed Premises and recognize such holder as Licensee's Licensor under this License Agreement. Licensee shall execute and deliver, at any time and from time to time, upon the request of the Licensor, any further instrument that may be reasonably necessary or appropriate to evidence such attornment.

## ARTICLE 28

### CONSENTS AND APPROVALS

Section 28.01. All consents and approvals that may be given under this License Agreement shall, as a condition of their effectiveness, and except where otherwise expressly provided in this License, 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 License Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not 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.

Section 28.02. If, pursuant to the terms of this License Agreement, any consent or approval by Licensor or Licensee 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.

Section 28.03. Whenever the consent or approval of Licensor is required within a specifically provided period of time in accordance with this License Agreement, then Licensee shall place on the envelope containing the request for such consent or approval the words “URGENT-IMMEDIATE RESPONSE CONTRACTUALLY REQUIRED” in capitalized letters large enough to be clearly distinct.

Section 28.04. If, pursuant to the terms of this License Agreement, any consent or approval by Licensor or Licensee is not to be unreasonably withheld, such consent or approval shall, in addition, not be unreasonably delayed.

Section 28.05. 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 License Agreement. Nothing contained herein shall relieve Licensee of the obligation to pay License Fees, or reimburse a party for expenses where such reimbursement is required under this License Agreement.

## ARTICLE 29

### SURRENDER AT END OF TERM

Section 29.01. On the last day of the Term or upon any earlier termination of this License Agreement, or upon a re-entry by Licensor upon the Licensed Premises pursuant to Article 24 hereof, Licensee shall well and truly surrender and deliver up to Licensor the Licensed Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, (i) existing at the date hereof, (ii) created by or consented to by Licensor, or (iii) which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date, and which Licensor shall have consented and agreed, in writing, may extend beyond the Expiration Date, without in any case any payment or allowance whatever by Licensor. Licensee hereby waives any notice now or hereafter required by law with respect to vacating the Licensed Premises on any such termination date.

Section 29.02. On the last day of the Term or upon any earlier termination of this License Agreement, or upon a re-entry by Licensor upon the Licensed Premises pursuant to Article 24 hereof, Licensee shall deliver to Licensor Licensee’s executed counterparts of all Occupancy Agreements and any service and maintenance contracts then affecting the Licensed Premises, true and complete maintenance records for the Licensed Premises, all original licenses and permits then pertaining to the Licensed Premises, and all warranties and guarantees then in effect which Licensee has received in connection with any work or services performed or Equipment installed in the Licensee Improvements, together with a duly executed assignment thereof to Licensor, all financial reports, books and records required by Article 34 hereof and any and all other documents of every kind and nature whatsoever relating to the Licensed Premises.

Section 29.03. Any personal property of Licensee or of any Slip Occupant or other Person deriving rights from Licensee which shall remain on the Licensed Premises after the earlier or (i) the Expiration Date, or (ii) twenty (20) days after the earlier termination of this License Agreement and after the removal of Licensee or such Slip Occupant or other Person

from the Licensed Premises, may, at the option of Licensor, be deemed to have been abandoned and either may be retained by Licensor as its property or be disposed of, without accountability, in such manner as Licensor may see fit. Licensor shall not be responsible for any loss or damage occurring to any such property.

Section 29.04. The provisions of this Article 29 shall survive any termination of this License Agreement.

## ARTICLE 30

### ENTIRE AGREEMENT

This License Agreement, together with the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between Licensor and Licensee relative to the Licensed Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

## ARTICLE 31

### QUIET ENJOYMENT

Licensor covenants that, so long as this License Agreement remains in full force and effect, Licensee shall and may (subject, however, to the exceptions, reservations, terms and conditions of this License Agreement) peaceably and quietly have, hold and enjoy the Licensed Premises for the Term hereby granted without molestation or disturbance by or from Licensor or any Person claiming through Licensor and free of any encumbrance created or suffered by Licensor, except those encumbrances, liens or defects of title created or suffered by Licensee.

## ARTICLE 32

### HOLDOVER

Section 32.01. If Licensee holds over in possession of the Licensed Premises after the expiration or sooner termination of the Term of this License, such holding over shall not be deemed to extend the Term or renew this License, but such holding over thereafter shall continue upon the covenants and conditions herein set forth except that the charge for use and occupancy of such holding over for each calendar month or part thereof (even if such part shall be a part of a calendar month) shall be the sum of:

(a) 1/12 of the Base License Fee set forth in Article 3 of this License, times 1.5, plus

(b) 1/12 of all other items of Percentage Payments which would have been payable for the period of such holding over, times 1.5, plus

(c) 1/12 of any other License Fees which additional fees would have been payable pursuant to this License for such period had this License not expired.

Section 32.02. Licensee shall pay any sums which are due and payable hereunder promptly upon demand, in full, without set-off or deduction. Neither the billing nor the collection of use and occupancy in the above amount shall be deemed a waiver of any right of Licensor to collect damages for Licensee's failure to vacate the Licensed Premises after the expiration or sooner termination of this License Agreement. The provisions of this Article shall survive the expiration or sooner termination of this License Agreement.

### ARTICLE 33

#### INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this License Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License Agreement shall be valid and be enforced to the fullest extent permitted by law.

### ARTICLE 34

#### BOOKS AND RECORDS

Section 34.01. Licensee shall keep and maintain at all times full and correct records and books of account of the operations of the Licensed Premises in accordance with such generally accepted accounting standards and accurately shall record and preserve for a period of six (6) years the records of its operations upon the Licensed Premises (including its financial statements certified by a CPA or Licensee's Chief Financial Officer). If upon the expiration of such six-year period, Licensor is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Licensee shall preserve these until one (1) year after the final adjudication, settlement or other disposition of any such contest, and these records shall be kept and maintained at an office in New York City. Within fifteen (15) days after request by Licensor, Licensee shall make said records and books of account available from time to time for inspection by Licensor and Licensor's designee during reasonable business hours at a location designated by Licensee in New York City. At any time at which Licensee shall make said records and books of account available for inspection, it may inform Licensor of its belief that the public disclosure of the information contained therein or any part thereof would cause substantial injury to the competitive position of Licensee's enterprise and request that to the extent permitted by law Licensor attempt to avoid such disclosure. In the event Licensee makes such request, Licensor shall use its best efforts to avoid such disclosure (but shall incur no liability to Licensee if Licensor reasonably believes it is complying with any provision of applicable law requiring such disclosure).

## ARTICLE 35

### CERTIFICATES BY LICENSOR AND LICENSEE

Section 35.01. Licensee agrees at any time and from time to time upon not less than twenty (20) days' prior notice by Licensor to execute, acknowledge and deliver to Licensor or any other party specified by Licensor a statement in writing certifying that this License Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which the License Fees payable by Licensee hereunder have been paid and stating whether or not to the best knowledge of the signer of such certificate Licensor is in default in performance of any covenant, agreement or condition contained in this License Agreement, and, if so, specifying each such default of which the signer may have knowledge, and such other information reasonably requested by Licensor that is within Licensee's knowledge.

Section 35.02. Licensor agrees at any time and from time to time upon not less than twenty (20) days' prior notice by Licensee to execute, acknowledge and deliver to Licensee, a statement in writing certifying that this License Agreement is unmodified and in full force and effect (or if there shall have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which the License Fees payable by Licensee hereunder have been paid and stating whether or not to the best knowledge of the signer of such certificate Licensee is in default in the performance of any covenant, agreement or condition contained in this License Agreement, and, if so, specifying each such default of which the signer may have knowledge, and such other information reasonably requested by Licensee that is within Licensor's knowledge.

## ARTICLE 36

### NO DISCRIMINATION; DIVERSITY

Section 36.01. Licensee, in any Transaction or Occupancy Agreement, or in its use, operation or occupancy of the Licensed Premises and employment and conditions of employment in connection therewith, or in connection with the erection, maintenance, repair, restoration, alteration or replacement of, or addition to, any Licensee Improvements or Licensor Facilities shall (a) not discriminate nor permit discrimination against any person by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and (b) comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect prohibiting such discrimination or pertaining to equal employment opportunities.

Section 36.02. Licensee shall be bound by and shall include the following paragraphs (a) through (e) of this Section 36.02, (i) in all Construction Agreements providing for improvements to Licensor Facilities and (ii) in all service and management agreements and agreements for the purchase of goods and services and any other agreements relating to the operation of the Licensed Premises which provide for aggregate payments in excess of \$15,000, in such manner that these provisions shall be binding upon the parties with whom such

agreements are entered into (any party being bound by such provisions shall be referred to in this Section as "Contractor"):

(a) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status, shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect prohibiting such discrimination or pertaining to equal employment opportunities and shall undertake programs of affirmative action to ensure that employees and applicants for employment are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, payoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) Contractor shall request each employment agency, labor union and authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish it with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and that such agency, union or representative will cooperate in the implementation of contractor's obligations hereunder.

(c) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of contractor that all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status.

(d) Contractor shall comply with all of the provisions of the Civil Rights Law of the State of New York and Sections 291-299 of the Executive Law of the State of New York, shall upon reasonable notice furnish all information and reports deemed reasonably necessary by Licensor and shall permit access to its relevant books, records and accounts for the purpose of monitoring compliance with the Civil Rights Law and such sections of the Executive Law.

(e) Contractor shall include in all agreements with subcontractors the foregoing provisions of Sections (a) through (c) in such a manner that said provisions shall be binding upon the subcontractor and enforceable by Contractor, Licensee and Licensor. Contractor shall take such action as may be necessary to enforce the foregoing provisions. Contractor shall promptly notify Licensee and Licensor of any litigation commenced by or against it arising out of the application or enforcement of these provisions, and Licensee and Licensor may intervene in any such litigation.

Section 36.03. Licensee has reviewed and participated in the development of the Diversity Agreement, a copy of which is annexed hereto as Exhibit F. Licensee shall, and shall cause each of its agents, contractors and subcontractors to promptly and diligently carry out its obligations under such Diversity Agreement in accordance with the terms thereof.

## ARTICLE 37

### EXECUTIVE ORDER COMPLIANCE

Section 37.01. Licensee represents, warrants and covenants that neither Licensee or any Person holding an Interest in Licensee, or any Affiliates of Licensee (collectively, "Related Parties") currently are, or at any time during the term of the License will be, in violation of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Executive Order 13224 (the "Executive Order"), or any other law, statute, regulation, or Executive Order of the President of the United States relating to terrorism or money laundering (collectively, the "Terrorism Laws").

Section 37.02. Licensee represents, warrants and covenants that neither Licensee nor any Related Parties currently are, or at any time during the term will be (i) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or any similar list maintained by OFAC, as such list may be updated from time to time, (ii) a person or entity with whom Licensor is prohibited from leasing to or otherwise doing business with pursuant to any Terrorism Laws or any other trade embargo, executive sanction or other provision of any law, statute, regulation or Executive Order of the President of the United States; (iii) listed in the Annex to the Executive Order or be otherwise subject to the provisions of the Executive Order; or (iv) owned by directly or indirectly or have any funds or assets which are owned directly or indirectly by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., and the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq.

Section 37.03. Licensee shall, upon ten (10) days written request, provide Licensor with a certification or such other information as Licensor may reasonably request to evidence Licensee's compliance with the provisions of this Article. Licensee acknowledges that Licensee's failure to comply with the provisions of this Article shall be deemed a material default under this License. Licensee shall not permit any or all of the Licensed Premises to be used by a person or entity which would be prohibited from leasing the Licensed Premises pursuant to the provisions of this Article.

Section 37.04. The provisions of this Article 37 shall survive any termination of this License Agreement.

## ARTICLE 38

### MISCELLANEOUS

Section 38.01. The captions of this License Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this License Agreement or in any way affect this License Agreement.

Section 38.02. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this License Agreement or as supplemental thereto or amendatory thereof.

Section 38.03. The use herein of the neuter pronoun in any reference to Licensor or Licensee shall be deemed to include any individual Licensor or Licensee, and the use herein of the words “successors and assigns” or “successors or assigns” of Licensor or Licensee shall be deemed to include the heirs, legal representatives and assigns of any individual Licensor or Licensee.

Section 38.04. If more than one entity is named as or becomes Licensee hereunder, Licensor may require the signatures of all such entities in connection with any notice to be given or action to be taken by Licensee hereunder except to the extent that any such entity shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Licensor of notice of its revocation. Each entity named as Licensee shall be fully liable for all of Licensee’s obligations hereunder. Any notice by Licensor to any entity named as Licensee shall be sufficient and shall have the same force and effect as though given to all parties named as Licensee. If all such parties designate in writing one entity to receive copies of all notices, Licensor agrees to send copies of all notices to that entity.

Section 38.05. The liability of Licensor or of any person who has at any time acted as Licensor hereunder for damages or otherwise shall be limited to Licensor’s interest in the Licensed Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Licensed Premises, any awards payable in connection with any condemnation of the Licensed Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Licensed Premises. Neither Licensor nor any such Person nor any of the members, directors, officers, employees, agents or servants of either shall have any liability (personal or otherwise) hereunder beyond Licensor’s interest in the Licensed Premises, and no other property or assets of Licensor or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Licensee’s remedies hereunder. The exculpation of personal liability set forth in this Section 38.05 is intended to be absolute, unconditional and without exception of any kind, and shall survive the expiration or earlier termination of this License Agreement.

Section 38.06. Each of the parties represents to the other that it has not dealt with any broker, finder or like entity in connection with this License Agreement transaction. If any claim is made by any Person who shall claim to have acted or dealt with Licensee or Licensor in connection with this transaction, Licensee or Licensor, as the case may be, will pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party hereto against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses, including, without limitation, reasonable attorneys’ fees and disbursements incurred by such other party in defending itself against claims made against it for any such brokerage commission, fee or other compensation.



Section 38.07. This License Agreement may not be changed, modified or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification or termination is sought.

Section 38.08. This License Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 38.09. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Licensor and Licensee and their respective successors and (except as otherwise provided herein) assigns.

Section 38.10. All references in this License Agreement to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this License Agreement.

Section 38.11. Upon the Expiration Date, Licensee shall, at Licensor's request, grant to Licensor a non-exclusive license, without recourse, representation or warranty of any kind, in respect of Licensee's right, title and interest in and to all plans and drawings required to be furnished by Licensee to Licensor under this License Agreement, including, without limitation, the Schematics, the Design Development Plans and the Construction Documents, and in any and all other plans, drawings, specifications or models in Licensee's possession that have been prepared in connection with improvements to Licensor Facilities in connection with the equipment described in Section 13.05(a) Licensee shall deliver all such documents and models in Licensee's possession to Licensor promptly upon the Expiration Date. Licensor's obligation under this Section 38.11 shall survive the Expiration Date. The license in each of the foregoing shall be limited to the use of the foregoing solely in connection with Licensor's ownership, operation and maintenance of the Licensed Premises.

Section 38.12. All references in this License Agreement to "licensed professional engineer", "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 38.13. All plans, drawings, documents or information regarding Licensor Facilities or any other facilities in the Project Area furnished by Licensor to Licensee shall be kept confidential by Licensee and Licensee shall execute Licensor's form of confidentiality agreement with respect thereto at Licensor's request. Licensee shall return such plans, drawings, documents or information at Licensor's request and shall keep any knowledge derived from same confidential. Licensee's obligation under this Section 38.13 shall survive the Expiration Date.

Section 38.14. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Licensor and Licensee, nor to make Licensor in any way responsible for the debts or losses of Licensee.

Section 38.15. This License Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of

the parties or signatories hereto may execute this License Agreement by signing any of such counterparts.

Section 38.16. Licensors and Licensees each agree to take such further actions, and execute and deliver such additional documents as may be reasonably requested by the other to effectuate the intent of this License Agreement and the provisions hereof.

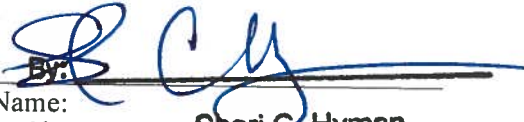
Section 38.17. Notwithstanding anything to the contrary contained in this Agreement, no direct or indirect shareholder, partner, member, principal, affiliate, employee, officer, trustee, director, agent or other representative of Licensee and/or any of its Affiliates shall have any personal liability for, nor be joined as a party to, any action with respect to payment, performance or discharge of any covenants, obligations or undertakings of Licensee under this License Agreement. Licensors for itself and its successors and assigns hereby irrevocably waives any and all right to sue for, seek or demand any such damages, money judgment, deficiency judgment or personal judgment against such parties or by reason of or in connection with this License Agreement.

Section 38.18. Licensors shall not have the right to recover any punitive damages or lost profits in any action or proceeding commenced against Licensee in connection with this License Agreement.

Section 38.19. Except as expressly stated hereunder, Licensors and Licensees shall, and shall direct those of its directors, officers, partners, members, employees, attorneys, accountants, consultants and advisors who have access to the terms of this License Agreement, to keep confidential and not disclose any of the terms of this License Agreement without the express consent of the other party to this License Agreement, unless such disclosure is required by a taxing authority or financial reporting requirement under applicable law or regulations, by an order, judgment or decree of a court or other governmental authority of competent jurisdiction or as otherwise required by applicable law or regulation (in each such case the disclosing party shall use reasonable efforts to notify the other parties hereto prior to any such disclosure); provided, however, that such party may disclose the terms of this License Agreement to its direct or indirect partners, members, shareholders, fiduciaries or other investors and their respective directors, officers, partners, members, shareholders, fiduciaries, employees, attorneys and accountants, provided such parties agree to abide by the confidentiality provisions of this Section 38.19. The requirements of this Section 38.19 do not include any information that (a) is or becomes generally available to the public through no action or omission that constitutes a breach of the terms and conditions hereof by a party to this License Agreement or any of its Affiliates or (b) is or becomes available to a party to this License Agreement on a nonconfidential basis from a source that to the best of such party's knowledge is not prohibited from disclosing such information to the party by a contractual, legal, fiduciary or other confidentiality obligation. The parties expressly acknowledge that Licensors are subject to the requirements of the New York State Freedom of Information Law. The provisions of this Section 38.19 shall survive any termination of this License Agreement for a period of one (1) year.

IN WITNESS WHEREOF, Licensor and Licensee have executed this License Agreement as of the day and year first above written.

BATTERY PARK CITY AUTHORITY,  
d/b/a The Hugh L. Carey Battery Park City  
Authority

By:   
Name: Shari C. Hyman  
Title: President / COO

BOP NORTH COVE MARINA LLC


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

IN WITNESS WHEREOF, Licensor and Licensee have executed this License Agreement as of the day and year first above written.

BATTERY PARK CITY AUTHORITY,  
d/b/a The Hugh L. Carey Battery Park City  
Authority

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

BOP NORTH COVE MARINA LLC

By:  \_\_\_\_\_  
Name: **David T. Cheikin**  
Title: **Senior Vice President, Leasing  
New York Region**

**EXHIBIT A**

**DESCRIPTION OF THE LICENSED PREMISES**

The Marina is located on the east bank of the Hudson River in Lower Manhattan, to the west of the World Financial Center, and adjacent to the World Financial Center Plaza, at the approximate mid-point of the Esplanade.

The Marina, built in the late 1980s, includes approximately 159,479 square feet of water area, related improvements, including certain utilities, floating structures, and an underwater chain mere anchoring system. The Marina is constructed of break walls to the west and concrete skirting along the north, south, and east sides that, together, enclose the approximately four-acre cove. The break wall on the west does not fully extend to the river bottom, which allows turbulence to pass beneath it and into the harbor. This break wall has a fendering system located at the cove opening to the river. The depth of the harbor varies from 20 feet to the west to 12 feet at the eastern edge at mean tide, with an average rise and fall of 4.5 feet.

Lower quays on the north, east, and south sides of the Marina provide access from the plaza above to the boats docked below. The plaza is not included in the License Agreement. The upper plaza level of the Marina is ringed on three sides by a railing that also serves as a handrail to the steps that lead to the lower quays. For the avoidance of doubt, the "Licensed Premises" does not include the plaza or the upper or lower quays.

Electric service is delivered to the north and south sides of the Marina via two utility vaults, one on the north side and one on the south side of the Marina. The south vault feeds the berths on the south side of the Marina. This vault is 165 feet south of the water and has a 480/277V Con Edison electrical feed into two shunt type breakers. These breakers feed into two 500 kVA transformers each that convert the power to 208/120V. There are five breaker panels: four panels that feed the four south berths and a fifth panel that acts as the south vault house panel. The power is distributed to the berths via an underground utility trench. Licensor is currently evaluating potential options for relocating the south vault to a new above-ground structure. The north vault is 60' north of the water and has a Con Edison feed of 208/120V with the same distribution as the south vault.

There are three inch water lines that run along the north and south sides of the cove. These lines run through a trench to each berth area and into a berth box with a one-inch supply connection. There is a defunct sanitary ejection system that exists on both the north and south sides of the Marina, and each utility vault has a storm water triplex pumping station intended to collect and remove storm water in unusually high tides. Telecommunication ports are available at all berths.

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

In addition to the requirements of Section 8, required insurance coverages and limits are specified below.

<b>Type of Insurance</b>	<b>Limit</b>	<b>Details of Policy</b>
<b>General Liability</b>	1 million per occurrence/2 million in the aggregate	Such insurance shall be written on an occurrence basis and a per location or per-project basis against claims for liability arising from bodily injury and property damage, with coverage for premises, operations, product-completed operations, personal injury and advertising injury, liability assumed under an insured contract, underground explosion and collapse, if applicable, broad form property damage, and loss of use. Such insurance shall not have a watercraft exclusion or liquor liability exclusion.
<b>Marine Operator Legal Liability</b>	1 million per occurrence/2 million in the aggregate	Such insurance shall cover all operations by or on behalf of Licensee and Operator and anyone directly or indirectly employed by Licensee or Operator or by anyone for whose acts Licensee or Operator may be liable. Such insurance shall be written on an occurrence basis and a per-location or per-project basis against claims for liability arising from bodily injury and property damage, with coverage for premises, operations, product-completed operations, personal injury and advertising injury, liability assumed under an insured contract, underground explosion and collapse, if applicable, broad form property damage, and loss of use.
<b>Auto Liability</b>	At least 1 million per accident	
<b>Workers Comp</b>	Statutory Limits	Licensee or Operator shall maintain workers' compensation, employer's liability insurance, Jones Act Insurance and Long Shoremens' Compensation Act Insurance. Limits on such insurance shall not be less than statutory amounts.
<b>Employer's Liability</b>	\$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease for each employee, and \$1,000,000 bodily injury and disease aggregate.	
<b>Umbrella</b>	Limits not less than 10 million	Such insurance shall be maintained on an occurrence basis in excess of the commercial general liability, business automobile liability, employer's liability, and marina operator legal liability insurances (collectively the "Underlying Policies") that is at least as broad as each and every one of the Underlying Policies.
<b>Property Insurance</b>	Coverage in an amount not less than the full replacement value of the North Cove Marina and the Structures	

## EXHIBIT C

### NORTH COVE MARINA GUIDELINES

#### A. PURPOSE

The North Cove Marina is intended to be designed and operated in a manner that enhances its character, as well as the attractiveness of the Battery Park City public amenities in its immediate vicinity – the Esplanade and the Waterfront Plaza. In light of those goals, Licensee shall provide for the design, operation, and maintenance of a first-class marina that incorporates these guidelines.

#### B. USES

##### 1. Required Uses

- a. The North Cove Marina must be operated in a manner that provides a diversity of uses and vessels. (See “Permitted Uses and Vessels” and “Encouraged Uses,” below.)
- b. The North Cove Marina must include a sailing school, intended to be available to the general public at a reasonable cost. Except as otherwise set forth in this Agreement, Licensor requires a sailing school of approximately the same size or larger as the existing school. A one-story barge is currently docked in the North Cove Marina and is owned by the existing sailing school. Licensee may choose to provide a barge for classrooms and/or service facilities, subject to the conditions contained herein.

##### 2. Permitted Uses and Vessels

###### a. Permitted Vessels include:

1. Recreational vessels (wind, human, and motor powered) – up to a length of 175 ft., with a keel depth not to exceed 16 ft.
2. Custom yachts and recreational trawlers – motor & sailing up to a length of 175 ft.
3. Sport fishing boats – up to a length of 175 ft.
4. Crew boats under 50 passengers – up to a length of 175 ft., with a muffler required.
5. Historic vessels – up to a length of 175 ft.
6. Sailing yachts – up to a length of 175 ft., with a keel depth not to exceed 16 ft.

7. Motor sailers – up to a length of 175 ft.
8. Commercial boats – up to a length of 175 ft.
9. Workboats, but only if in good condition and secure.
10. Federal, State, and local agency vessels.

b. Permitted Vessels should not overwhelm the Required Uses.

### 3. Encouraged Uses

To enhance the public awareness and enjoyment of the North Cove Marina as a part of Battery Park City's waterfront parks, Licensee is encouraged to develop programs intended to bring the general public to the waterfront, such as boat shows, waterfront festivals, or other programs. Licensor requests that such programs not be limited to the regular boating season, but held throughout the year to the extent practicable.

Additionally, Licensee shall, at no or a reasonable cost, encourage community involvement, provide educational opportunities for children and teenagers, and promote the involvement of New Yorkers in the waterfront.

### 4. Prohibited Uses

Prohibited uses and vehicles include:

- a. Transportation uses such as water taxis and ferries.
- b. Gambling, vessels used for the purpose of gambling outside of the North Cove Marina, or vessels for the purpose of providing transportation directly to casino or other gambling destinations, or to other modes of transportation serving such destinations.
- c. Jet skis and other motorized personal watercraft.
- d. Boats used for parasailing, speed boat rides or providing transportation to such boats or staging areas with respect thereto.
- e. Swimming and water sports.
- f. Any activity that could jeopardize the designation of the North Cove Marina as a "Public Access Facility" by the United States Coast Guard.
- g. Use of upland areas (including the upper plaza) unless specifically approved in advance and in writing by Licensor.



- h. Although the terms of leases with vessel owners and Licensee are at the discretion of Licensee, subject to limitations contained in the License Agreement, no boats will be allowed to remain in the North Cove Marina during the winter months (December – March) unless appropriate measures are taken for winterization.

## C. DESIGN FEATURES

### 1. Docking Facilities

Licensors intend to relinquish the existing docking facilities to Licensee. Those facilities or the configuration of such facilities or their replacement facilities need not be maintained as they currently exist. However, if existing facilities are retained, Licensee will be required to repair and upgrade such facilities, as needed, at its own expense. If the existing docking facilities are not used, Licensee will be responsible for demolition or disposal costs related to such facilities. The existing docking facilities, with necessary repairs or upgrades, should be regarded as a minimum standard for the North Cove Marina.

Replacement or additional docking facilities must be approved in advance and in writing by Licensor and constructed on the outside of natural wood, white painted wood, stainless steel, or glass.

All floating docks, finger piers, barges, and vessels must be anchored to the existing chain mere system. No new piles are allowed.

### 2. Lighting

Additional or replacement lighting may be installed on the piers subject to the written approval of Licensor. Lighting is to be tasteful and restrained. Such lighting must be designed to avoid causing glare or visual discomfort to patrons of the surrounding public open spaces and must be of equal quality to lighting found within the adjacent parks.

### 3. Signage

All signage must be submitted to Licensor for advance written approval as to design and location. As with lighting, signage is to be tasteful and restrained. Signage must be of a consistent design for all uses in the North Cove Marina, including consistent typeface, size, and graphic design. Standing signs such as signs on a post and base, A-frame signs, or sandwich boards are not permitted.

### 4. Handrails

New handrails or chains adjacent to the dock areas should be of a consistent design and integrated with existing, permanent handrails. Any new openings or adjustments to the permanent bulkhead handrails must be approved in advance and in writing by Licensor.

5. Perimeter Walls

No painting of the perimeter walls is allowed. No new wiring, piping or pumps, or signage shall be installed on the surface of the walls.

6. Fuel and Repair Facilities

There are no fueling and repair facilities in the North Cove Marina. Fuel tanks, pumping stations or on-site repair facilities are not permitted.

D. OPERATIONS GUIDELINES

1. General Operation

- a. Licensee shall, at its sole cost and expense, operate and maintain the North Cove Marina in good and safe condition, and in accordance with industry standards. Such maintenance shall include, but not be limited to, trash and recycling collection and removal, pest control, and security.
- b. Licensee shall comply with all applicable laws, rules, and regulations of all departments, agencies, boards, or commissions of the United States of America, the State of New York, and the City of New York relating to: (a) air and water pollution, sewage or waste disposal, sanitation, health, fire, and safety; (b) security regulations, as promulgated by the United States Coast Guard; (c) navigation and other boat or marine operation rules, including, without limitation, the United States Coast Guard Rules of the Road, the Federal Motorboat Act of 1940 as amended, and the Navigation Law of the State of New York; and (d) heating or electrical connections, plumbing or other attachments in the Marina.
- c. Each person responsible for a boat (a "Boat Owner") occupying a boat slip (a "Slip") or otherwise using the North Cove Marina shall be required to comply with these Guidelines.
- d. Licensee will be responsible for obtaining all licenses, permits, and other governmental approvals necessary to operate the North Cove Marina and perform any required/allowed maintenance or construction work.
- e. Licensee will be responsible for managing the navigation of boats into and out of the North Cove Marina and coordinating with Hudson River traffic. Licensee is responsible for all boats that it permits to enter the North Cove Marina. No boats will be permitted to enter or leave the North Cove Marina unless a dock master designated by Licensee is present. The North Cove Marina is presently being controlled by hand held VHF radios with visual confirmation, and there is currently no provision or plan for a certified navigation station at the entrance to the North Cove Marina. Licensee must seek written approval from Licensor if such a station is desired. The design of such station will also be subject to the written approval of Licensor.

- f. Only vessels that are in a safe and seaworthy condition (i.e., “ship shape”) will be permitted in the North Cove Marina; provided that Licensee shall not be expected or required to conduct more than a visual inspection of the visible exterior of a vessel.
- g. Licensee shall not permit the landing of any helicopter or other aircraft in the North Cove Marina or any areas in the vicinity of the North Cove Marina or on any vessel in the North Cove Marina.
- h. No boat shall enter or leave the North Cove Marina between the hours of 1:00 a.m. and 8:00 a.m. Licensor may impose further restrictions on movement in and out of the North Cove Marina as required, in Licensor’s sole judgment.
- i. No fueling services shall be provided in the North Cove Marina.
- j. No anchors are to be used in the North Cove Marina.
- k. Licensee may choose to provide a one-story barge for service, classrooms or office space (not exceeding a height of 10 feet above water and an area not in excess of 650 gross square feet measured at its largest section). The design of such barge, including modifications to the parameters above with adequate justification, will be subject to the written approval of Licensor. Service of alcohol on such barges and the existing sailing school barge is permitted as an accessory use to sailing school or sailing club activities solely in compliance with applicable laws. Outdoor eating and drinking on such barges shall be subject to such rules as to hours and capacity as Licensor shall approve in writing.
- l. Except with the prior written approval of Licensor, no alcohol may be served or consumed on the lower quays or break walls.
- m. No at-grade parking is provided. A number of buildings in the vicinity of the North Cove Marina have parking facilities, but arrangements for parking facilities must be made directly with the owner or managing agent for such buildings. Licensor has no agreement with any of its tenants to provide parking spaces for the North Cove Marina.
- n. Except with the prior written approval of Licensor, no soliciting, posting of advertising signs, distribution of advertising materials or sale of merchandise is permitted in the North Cove Marina.
- o. The utility vault rooms may not be used for the storage of any materials or equipment, except installed equipment that is part of the utility systems or necessary for protection of such utility equipment, such as sump pumps. Utility vault rooms must be secured at all times, and a safety barrier must be used at such times as the hatches to such rooms are opened.

- p. At the request of Licensor, Licensee shall permit access to the North Cove Marina for the launching and landing of non-motorized personal watercraft that can be carried by one or two persons to the lower quay. If such a request is made by Licensor, it will not be required that trailers for such personal watercraft be accommodated.

## 2. Enjoyment of the North Cove Marina

- a. Licensee shall not cause or permit any action or condition that would be hazardous to or would unreasonably interfere with the rights, peace or enjoyment of any person in the North Cove Marina or Battery Park City. Objectionable noise, exhaust, and impacts from vessel lights on the surrounding neighborhood are not permitted.
- b. Except while boarding, no motors may be operated or loud music played while boats are docked. Unreasonable noise is not permitted. Licensee shall not permit the level of noise on any boat to exceed the decibel levels set forth in the License Agreement or such lower level that Licensor may from time to time designate as posing a risk of unreasonable disturbance or interference with other Boat Owners or persons in the North Cove Marina or Battery Park City. Licensee shall insure that Boat Owners use their best efforts to eliminate all exterior noise within two minutes of entering or leaving the North Cove Marina. Equipment and operations under the control of Licensee must not exceed the decibel levels described above. Control of noise in the North Cove Marina is a matter of great concern to Licensor. If in the good faith judgment of Licensor, Licensee is not making sufficient efforts to control noise as set forth in these Guidelines, Licensee may prohibit boats entering or leaving the North Cove Marina between the hours of 10:00 p.m. and 1:00 a.m. for such period as Licensor deems reasonable given the circumstances of such failure by Licensee.
- c. Pets shall be kept on a leash when not on a boat and shall not disturb the peace of any person in the Marina or Battery Park City.
- d. The placement of any structure on a boat that is not normally on boats of similar size, quality and use shall not be permitted. Hanging of laundry on the decks of boats is not permitted.

## 3. Sustainable Operation Program

Licensor's policy for all projects in Battery Park City is to implement financially feasible, technologically sound strategies in: (i) energy efficiency; (ii) water conservation and site management; (iii) conservation of materials and resources; and (iv) efficient operation and maintenance. It is expected that Licensee will operate the Marina in accordance with environmental best practices, as identified in the United States Environmental Protection Agency's "Best Management Practices for Marinas," attached to the RFP as Exhibit B.

In furtherance of this policy, Licensee shall consider incorporating the following into its operations:

- a. Using premium efficiency motors.
- b. Using mechanical equipment that is “right-sized” for Licensee’s needs.
- c. Using on-site, non-polluting, source renewable technologies to reduce pollutants in the atmosphere, operating costs, and environmental impacts.
- d. Encouraging wind-powered vessels.
- e. Using energy-efficient lighting and electrical equipment.
- f. Employing water-efficient designs.
- g. Using photovoltaic energy.
- h. Purchasing power from energy providers that utilize water, wind, solar, and fuel cell sources to generate power.
- i. Developing waste reduction & recycling policies and incorporate them into dockage agreements.
- j. Using wood certified by the Forest Stewardship Council where wood is used on gangways, decks and for other Marina purposes.

4. Security and Safety

- a. Licensee shall determine security requirements for the Marina (“Security Plans”), and any security provided at the Marina is the responsibility of the Licensee, at its sole cost and expense.
- b. Security Plans must comply with U.S. Coast Guard and other governmental entities, and must be approved in writing by Licensor.
- c. Vehicular access for authorized deliveries will be limited to the intersection of Vesey Street and North End Avenue, and will be subject to oversight from Licensor’s security staff. Deliveries to the Marina from this vehicular access location must be by hand truck, and are subject to additional restrictions by Licensor, unless a special permit is obtained in advance from Licensor.
- d. Licensee shall provide supervisory personnel at the Marina for a minimum of 12 hours-per-day during the sailing season and while any boats are docked at the Marina, except that, in the event of a heightened level of security stated by Licensor, the U.S. Coast Guard or other governmental authority having jurisdiction over the Marina, Licensee shall provide such personnel for additional times, including additional personnel if necessary, as required by such entities. During those times when

Licensee does not have supervisory personnel present at the Marina, Licensee will still have supervisory personnel in the Battery Park City area.

- e. Open fires, outdoor grills, fireworks, flares, kerosene heating and cooking equipment (except propane cooking equipment) and any flammable or otherwise hazardous materials or equipment shall not be stored or used on any boat or in the Marina. Fuel for each boat and its tenders may be stored in United States Coast Guard approved containers on the boat. In addition, equipment required for emergency situations (e.g., signal flares) may be stored in the boat and its tenders, provided such equipment is stored and used in accordance with United States Coast Guard regulations.
- f. Licensee shall take reasonable efforts to insure that Boat Owners shall keep on their boats all safety, extinguishment, and other equipment required by the United States Coast Guard. Licensor shall have the right to inspect each boat to determine compliance with the foregoing requirements. If, in the sole judgment of Licensor, any boat is judged to be a fire hazard, such boat will be required to leave the Marina or Licensee shall promptly cause the hazardous condition of such boat to be corrected in a manner determined by Licensor to be adequate.
- g. If any boat is not secured in its Slip, Licensor shall have the right to so secure the boat and to assess a fee against Licensee. If a boat should sink while in the Marina, Licensee shall within one week commence action necessary to raise the boat at Licensee's sole expense. If such action has not been commenced within such one week period, Licensor may commence action to remove the boat from the Marina and charge Licensee for all expenses incurred in connection with such removal.
- h. In the case of an emergency, Licensee and all Boat Owners shall strictly follow the instructions of the United States Coast Guard, New York City Police Department, Licensor or its representative, and other governmental authorities.
- i. Licensee shall be responsible for ensuring that all Boat Owners practice safe boating practices, including maintaining safe speeds entering and leaving the Marina.

##### 5. Garbage and Cleaning

- a. Licensee shall keep the Marina clean and neat at all times. If the Marina is not kept to a standard of cleanliness satisfactory to Licensor, Licensor may clean the Marina, and Licensee will be charged for the cost of such cleaning.
- b. Toxic cleaning agents are prohibited from use at the Marina. Additionally, all cleaning agents that might adversely affect the pier's finishes are prohibited.
- c. Licensee shall not cause or permit to accumulate in the water or elsewhere in the Marina or any areas adjacent to the Licensed Premises (as defined in the License Agreement) any rubbish, dirt, refuse or any other materials.

- d. For each boat occupying a Slip, Licensee shall require the Boat Owner to maintain such boat in a clean condition so that all portions of each such boat visible to persons using or occupying the Marina or in the areas adjacent thereto are clean, neat, and free of refuse, laundry, and other similar matter.
- e. The placement, discharge or deposit in the water of the Marina, the waters of the port of the City of New York, or in or on Marina property of any drift, debris, refuse or other materials is not permitted.
- f. The use of on board toilets while any boat or floating structure is docked at the Marina is not permitted unless equipped with marine sanitation devices approved by the United States Coast Guard.
- g. The storage or deposit of any personal property (except for boats) or other material in the water or on the walkways, docks, utility vaults or other areas in the Marina is not permitted with the exception of one lockbox on the south side and one on the north side painted in a color approved in writing by Licensor. Any unauthorized property in such areas shall be subject to immediate removal by Licensor at Licensee's expense.
- h. All refuse shall be enclosed and sealed in plastic bags or other containers specified by (i) Licensee for pickup via water-based transport or (ii) Licensor for land-based pickup by the Licensor or its representative. Licensor or its representative will provide land-based trash removal services for a fee by separate arrangement with Licensee. Trash receptacles on the Esplanade or in other Battery Park City parks may not be used for refuse generated by the Marina, its occupants or its events.
- i. No repairs to any boat in the Marina are permitted without Licensor's prior written consent provided, however, that emergency repairs may be made so long as Licensee: (i) notifies Licensor of the necessity of making such emergency repairs; (ii) obtains written permission from Licensor for such emergency repairs; and (iii) causes such emergency repairs to be performed in an expeditious and timely manner. If permitted by Licensor, all repairs done in the Marina must be performed in a manner that is clean, does not produce dust, and does not create a level of noise that exceeds the standards set forth in the License Agreement. All repairs must be made in a manner that will not unreasonably interfere with the operation of the Marina or the rights or enjoyment of any other persons in the Marina or Battery Park City. Painting and varnishing shall be restricted to hand sanding and hand painting on any boat (the lower quays or break walls are not to be used as workspaces) and shall be subject to the written approval of Licensor in its sole discretion.
- j. No sewage disposal or pumpout is permitted at the Marina unless required repairs or upgrades to the sewage disposal system are made pursuant to the License Agreement.

**EXHIBIT D**  
**BEST PRACTICES**  
**(See Attached)**



EXHIBIT B



**Best Management Practices for Marinas**

**February 2012**

**U.S. Environmental Protection Agency Region 2**

**Pollution Prevention Team**

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## **Introduction**

This document highlights a limited number of practices that EPA believes can greatly improve the environmental performance of marinas in reducing pollution through the more efficient use of materials, energy, water and land. It complements the work of EPA's Enforcement and Compliance program in Region 2 EPA (New York, New Jersey Puerto Rico and the U.S. Virgin Islands) and also the efforts of the New York State Department of Environmental Conservation (NYSDEC).

The Pollution Prevention Team of EPA Region 2 compiled the information contained in this guide from a number of reference documents prepared by NYSDEC and the New York Sea Grant Extension Program. The following people spent valuable time reviewing and commenting on this document, providing input that helped make it a more useful informational resource for marina facility owners and managers:

- Christina Falk, Bureau of Water Permits, New York State Department of Environmental Conservation
- Philip Greco, Division of Environmental Compliance and Assistance, EPA Region 2
- Jay Tanski, New York Sea Grant Program
- Lawrence R. Wilson, Region 3 New York State Department of Environmental Conservation

In depth information on techniques, resources and equipment to reduce pollution at marina facilities may be found in a variety of sources listed in the references section of this guide. We strongly suggest that these references be consulted to help ensure your facility's compliance with state and federal regulations.

These BMPs are not designed to replace or overrule local, state, or federal regulatory requirements applicable to marina operations. You must consult with the appropriate regulatory agencies in your area to ensure compliance with all applicable laws and regulations.

## **1. Fuel Management**

### **Storage**

Keep all information about registered underground storage tanks, subsequent updates from your state environmental agency, and maintenance records in file in a central location.

Regularly inspect above ground fuel storage tanks (ASTs) and associated piping for leaks. All ASTs should have a secondary containment area that contains spills and allows leaks to be more easily detected. Secondary containment for ASTs must be impermeable to the materials being stored. Methods include berms, dikes, liners, vaults, and double-walled tanks. To keep out rain and reduce evaporation losses and moisture condensation, paint ASTs a reflective color, install them in an east-west direction, install a low-pressure valve on top of the tank, and cover the structure. A roof structure covering a tank will help conserve gasoline, which would have escaped by evaporation without the shade cover.

If an AST has remained out of service for more a year or more, many states require owners to maintain and monitor the tank, declare the tank inactive, or remove it. If the tank is declared inactive, remove all substances from the AST system (including pipes) and completely clean the inside. Secure tanks by bolting and locking all valves, as well as capping all gauge openings and fill lines. Clearly label tanks with the date and the words "Out of Service." Samples may be required when removing tanks to determine if any contamination has occurred. Most States require out-of-service tanks to be inspected and meet leak detection requirements before they are put back into service.

### **Fuel Tank Disposal**

Use, recondition or recycle all usable fuel before disposing of the tank.

Store tanks awaiting disposal away from ignition sources like heat or sparks.

Clearly label tanks "Waste Gasoline" or "Waste Diesel."

### **Fuel Station Operation**

To the extent possible, locate fuel docks in protected areas to reduce potential for accidents due to passing boat traffic, and design them so that spill containment equipment can be easily deployed to surround a spill and any boats that may be tied to the fuel dock.

Store spill containment and control materials in a clearly marked and easily accessible location, attached or adjacent to the fuel dock. A rule of thumb is that you should have an oil absorbent boom three times as long as the length of the longest vessel that will be using the facility.

Keep oil absorbent pads and pillows available at the fuel dock for staff and customers to mop up drips and small spills.

Provide a stable platform for fueling personal watercraft, if your facility services significant numbers of them.

Routinely inspect and repair fuel transfer equipment, such as hoses and pipes.

Place plastic or nonferrous drip trays lined with oil absorbent materials beneath fuel connections.

Train fuel dock staff to handle and dispense fuel properly. Fuel dock staff should be trained to:

- Fill tanks slowly and carefully.
- Prevent overfilling of gas tanks by listening to or keeping a hand at the air vent, if possible; a pronounced flow of air is emitted when the tank is nearly full.
- Remember that fuel expands in warm weather and to leave at least 5% of space in a fuel tank to allow for that expansion.
- Attach a container or absorbent pad to the external vent fitting to collect overflow, as a precautionary measure. Several products attach to the boat with suction cups.

- Keep an absorbent pad or pillow ready to catch spills, drips, or overflow.
- Put a drip pan under portable fuel tanks. If possible, fill portable fuel tanks ashore.
- Prevent spills as well as respond to spills promptly if they do occur.
- Give information and direction to customers.

## 2. Facility Cleaning and Maintenance

Use cleaning products which may have less of an impact on the environment because they are less toxic and contain lower concentrations of volatile organic compounds (VOCs), ozone depleting chemicals (ODCs), and/or carcinogens.

EPA's Design for the Environment (DfE) works in partnership with industry, environmental groups, and academia to reduce risk to people and the environment by finding ways to prevent pollution. The DfE program has evaluated and allowed more than 2,500 products including all purpose cleaners, biological-based products such as bilge maintainers and a variety of other products that could be used at marina facilities to carry the DfE logo. For further information go to: <http://www.epa.gov/dfe/>

Read product labels. Avoid cleaning products with:

Alcohol	formaldehyde	perchloroethylene
Ammonia	glycols	Petroleum distillates
Bleach	hydrochloric acid	Phenol
Butyl cellosolve	Hydrofluoric acid	Phosphoric acid
Cresol	lye	Propellants
Dye	naphthalene	Sulfuric acid
Ethanol	PDCBs (paradichlorobenzenes)	TCE (trichloroethylene)

Depending on the cleaning job, always try cleaning with water and a coarse cloth first. Clean more often with fresh water only. If you must use a cleaner, use the product sparingly. Consider non-toxic alternatives for cleaning products. Even non-toxic substances can cause temporary harm to the environment and should therefore be used sparingly. Some non-toxic alternatives to typical cleaning products are:

ALL PURPOSE CLEANER	Mix one cup white vinegar with two gallons water.
AIR FRESHENER	Leave out an open box of baking soda.
AMMONIA-BASED CLEANERS	Vinegar, salt, and water.
BRASS CLEANER	Worcestershire sauce. Or paste made with equal amounts of salt, vinegar, and water.
COPPER CLEANER	Lemon juice and water. Or paste of lemon juice, salt, and flour.
CHLORINE BLEACH	Baking soda and water. Or borax.
CHROME CLEANER/POLISH	Apple cider vinegar to clean; baby oil to polish.
DISINFECTANTS	One half a cup borax in one gallon of water.
DRAIN OPENER	Dissemble and use a plumber's snake. Or flush with boiling water mixed with one quarter cup baking soda and one quarter cup vinegar.
FIBERGLASS STAIN REMOVER	Baking soda paste.
FLOOR CLEANER	One-cup vinegar plus two gallons of water.
STAINLESS STEEL CLEANER	Baking soda or mineral oil for polishing, vinegar to remove spots.
TOILET BOWL CLEANER	Use toilet brush and baking soda.
WOOD POLISH	Olive or almond oil (interior walls only)
WINDOW CLEANER	Mix two tablespoons vinegar in one quart of water or rub glass with newspaper.

Sources: Buller (1995) and MA Department of Environmental Management, Environmental Hazards Management Institute.

### Floor Drains Area

Permanently seal floor drains with concrete if they do not connect to a sewer or holding tank. If the floor drain in a maintenance shop discharges to a dry well, the owner is required to report to the Underground Injection Control (UIC) program in Region 2 EPA at [r2\\_uic@epa.gov](mailto:r2_uic@epa.gov).

Avoid or minimize the use of any ammoniated, petroleum or chlorinated solvent-based cleaning agents.

Sweep or vacuum floors often and immediately before floor washing.

Clean up fluid spills quickly with absorbent material. The absorbent must be disposed of properly.

Cover floor drains if there is a spill. There are inexpensive covers available for this purpose.

### Air Compressors

Air compressor blow down water commonly contains lubricating oil or other potential pollutants. These hydrocarbons can contaminate surface and groundwater when improperly managed.

Evaluate the need for installing a dehumidifying system in the air compressor which would reduce the moisture content of the compressed air and therefore the volume of wastewater

generated. This practice may also prolong the life of the compressor by reducing loss of lubrication and rusting.

Visually inspect the exterior of air compressor equipment for the presence of oil leaks on a regular basis.

Establish a preventative maintenance program that includes, but is not limited to, a schedule for cleaning parts, a schedule for replacing oil, and a schedule for replacing filters for the air compressor equipment, as recommended in the manufacturer's specifications.

Remove or retain any floating layer of oil prior to discharge.

Investigate the purchase of an oil-free air compressor that would eliminate oil from the blow down water.

### **3. Boat Maintenance**

#### **Pressure Washing**

Avoid in-water bottom cleaning or hull scraping or any process that occurs underwater to remove antifouling paint from the boat hull. While this is a popular practice for racing sailboats prior to a race to reduce drag, it makes it impossible to capture and treat what's cleaned from the boat bottom.

Pressure wash waste water should not be discharged directly to surface waters or the ground without a permit from your state environmental agency (the New York State Department of Environmental Conservation permits the use of an infiltration pad for wash water without a permit). To the extent possible, marina facilities should try to collect the wash water, treat it and either dispose of it at a sewage treatment plant (through discharge to a sanitary sewer or by hauling using a licensed hauler) or recycle it. Discharge to the sanitary sewer requires local water pollution control authority approval.

Where feasible, wastewater from the washing operation may be collected and reused through a closed loop pressure wash treatment system. Minimize the use of detergents, caustic cleaners and other additives when pressure washing.

Minimize the amount of pressurized water used when boats are power washed. For example, wash the hull above the waterline by hand.

#### **Winterizing**

Use propylene glycol antifreeze (usually pink) which is less toxic than ethylene glycol (usually green) to winterize all systems except "closed" or freshwater cooling systems. Even though propylene glycol is considered less toxic, it is still not permissible to discharge this chemical.

Inspect and clean bilges prior to extended vessel storage. Clean all water, oil, or foreign materials from the bilge using absorbent material.

#### **4. Stormwater Non-structural Practices**

Perform as much boat repair and maintenance as practicable inside work buildings.

Where an inside workspace is not available, perform abrasive blasting and sanding within spray booths or tarp enclosures.

Where buildings or enclosed areas are not available, provide clearly designated land areas as far from the water's edge as possible for debris-producing maintenance. Collect as much maintenance debris on tarps, filter fabric, or paved surface.

Use vacuum sanders to collect dust and chips while removing paint from hulls.

Establish a list of "yard rules" that do-it-yourselfers and contractors must follow when performing debris-producing boat maintenance.

Clean hull maintenance areas immediately after any maintenance is done to remove debris, and dispose of collected material properly.

Capture pollutants out of runoff water with permeable tarps, screens, and filter cloths.

Sweep or vacuum around hull maintenance areas, parking lots, and driveways frequently, where appropriate.

Store all potential pollutants such as pesticides, used oil containers, detergents, etc. under cover.

#### **5. Stormwater Structural Best Management Practices**

Over land or via storm sewer systems, polluted runoff is discharged, often untreated, directly into local water bodies. When left uncontrolled, this water pollution can result in the destruction of fish, wildlife, and aquatic life habitats, a loss in aesthetic value, and threats to public health due to contaminated food, drinking water supplies, and recreational waterways.

The National Pollutant Discharge Elimination System (NPDES) Stormwater Program is a comprehensive two-phased national program for addressing the non-agricultural sources of stormwater discharges which may adversely affect the quality of our nation's waters.\* The program uses the permitting mechanism to require the implementation of controls designed to prevent harmful pollutants from being washed by stormwater runoff into local water bodies.

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\* More detailed information about industrial stormwater permit compliance and associated BMPs may be found in the References Section



The regulated entities must obtain coverage under a NPDES stormwater permit and implement stormwater pollution prevention plans (SWPPPs) that effectively reduce or prevent the discharge of pollutants into receiving waters. Some suggested measures for marinas include the following:

- Plant a vegetated filter strip or buffer between impervious areas and the marina basin. A vegetated filter strip is a densely vegetated strip of land engineered to accept runoff from upstream development as overland sheet flow. Designed properly, a filter strip can provide a recreational amenity for your customers and enhance the appeal of your facility.
- Minimize impervious areas on the marina site by paving only where absolutely necessary. Use porous pavement for parking lots and lightly traveled access roads, or other penetrable materials such as gravel or crushed concrete.
- Direct roof runoff to drywells or position downspouts so that they drain to vegetated areas. Avoid draining to concrete or asphalt.
- Explore the feasibility of using new techniques and innovative products to capture, pre-treat, and filter the first flush of stormwater runoff before it can reach your basin.
- Use catch basins with deep sumps where stormwater flows to the marina basin in large pulses.
- Install oil/grit separators to capture pollutants in runoff. Water from parking lots and other areas likely to have hydrocarbons should be directed through oil/grit separators before entering any other management structure (Note: this practice requires a lot of maintenance).
- Maintain catch basins regularly. Typical maintenance of catch basins includes trash removal if a screen or other debris-capturing device is used, and removal of sediment by a hired contractor or on-site wet-vacuum system. At a minimum, catch basins should be cleaned at the beginning and end of each boating season.
- Add filters to storm drains that are located near work areas to screen solid materials out of runoff.
- Place absorbent materials in drain inlets to capture oil and grease.

## **6. Minimize Dredging Impacts.**

Dredging has the potential to reduce fish spawning and juvenile fish survival. Areas dredged may suffer destruction of spawning habitat, destruction of fish eggs, and mortality of fish within the dredging area due to removal of bottom substrates and resulting high levels of suspended silt. Currents can move silt particles suspended during dredging away from the site and deposit them in spawning or juvenile fish habitats some distance away.

Do not dredge during critical migration or spawning periods of important species of fish and wildlife.

Avoid colonial waterbird nesting areas and historic waterfowl staging and concentration areas.

Employ dredging methods that have minimal detrimental environmental consequences such as hydraulic dredging.

Use turbidity curtains to contain suspended sediments in areas with mud or silt bottoms.

## **7. Recycling and Waste Management**

### **Recycling**

Provide clearly marked, conveniently located recycling containers for customers and staff to use, particularly for plastic, glass and metal food/beverage containers and other recyclables generated at your facility.

Do not put trash or recycling containers on docks, as waste can easily blow into the water.

Purchase products made with recycled contents to close the recycling loop (i.e., create a market for the materials you recycle). Buy recycled printing and writing paper, towels, tissue, re-refined motor oil and antifreeze.

Educate employees about separation requirements and your recycling program.

Encourage boaters to exchange excess paints, thinners, and varnishes rather than dispose. Provide a bulletin board where boaters can post notices if they have or need a particular substance, or establish a paint and maintenance chemical swap area for customers.

Use reusable or recyclable boat covers for boat storage. Recycle used plastic boat covers.

Consider cooperating with other nearby businesses to simplify recycling and reduce costs. Your municipal recycling coordinator may be able to help you find or establish a cooperative business-recycling program.

### **Waste Management Practices**

Place covered trash receptacles in convenient locations away from the water for use by marina patrons.

If practical, secure trash receptacles at night to prevent "midnight dumping," since marina operators are responsible for the content of dumpsters.

Train employees to pick up stray trash as a daily practice.

### **Fish Waste**

Recommended general practices regarding the handling of fish waste:

Prohibit disposal of fish waste in the marina basin. Post signs displaying the rules.

Do not permit fish cleaning on docks and floats.

Install a fish cleaning station at your marina.

Clearly identify the fish cleaning stations with signs that list the rules and regulations for their use.

Direct rinse water from fish cleaning areas to a sand filter or sanitary sewer. It should be free of solids.

Use one of the following disposal methods:

- Compost fish waste where appropriate and use compost on landscaping.
- Encourage boaters to freeze fish parts and reuse them as bait or chum on the next fishing trip. Use grinder to make chum out of fish carcasses. Freeze and sell chum at marina store.
- If composting or freezing is not an option, encourage boaters to double-bag their fish parts and home-compost or discard in their regular trash.

Encourage boaters to clean fish offshore where the fish are caught and discard of the fish in unrestricted waters, unless there are length limits for the type of fish caught.\*

### **Pet Waste**

Provide a dog walking area that is identifiable by signs.

Require customers to clean up after their pets. Provide bags for boaters to scoop up waste and dispose of in trash.

Specify pet waste rules in marina slip contract.

Encourage cat owners to maintain a litter box on their boat.

## **8. Land Use**

### **Use Upland and Inland Areas**

Locate buildings, workshops, and waste storage facilities in upland areas, as distant from fragile shore side ecosystems as possible. Upland areas also provide a measure of protection against floods.

Locate parking and vessel storage areas away from the water.

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\* See Appendix for guidance specific to New York State's Fish Carcass Law

Conduct boat repair activities and winter storage inland. Hydraulic trailers can facilitate moving boats to inland storage locations.

Locate new septic systems at least 100 feet from the water's edge in soils with a depth to the seasonal high water table of at least four feet.

### **Expand Upward**

Where local regulations allow, rather than adding wet slips, expand storage capacity by adding dry-stack storage.

Boatels provide the following environmental benefits:

- Dry-stacked boats do not accumulate marine growth. Consequently, toxic antifouling paints are unnecessary and the associated need to wash, scrape, and paint is eliminated.
- Dry-stacked boats are less likely to accumulate water in their bilges. Therefore, they are less likely to discharge oily bilge water.

Control stormwater runoff from dry-stack areas as well as from any expanded parking areas.

Keep forklifts well tuned to prevent grease or oil from dripping onto staging areas or into the water.

## **9. Energy Efficiency**

### **Energy Efficiency**

Use energy efficient products where possible at your marina. Consult the EnergyStar products list at <http://www.energystar.gov/> to identify products that use less energy to operate and save on utility bills. Once you identify products that you may wish to purchase, use the store locator provided on the EnergyStar website. Also consider using the Database for State Incentives for Renewables and Efficiency (DSIRE) at <http://www.dsireusa.org/> for information on state, local, utility and federal incentives and policies that promote renewable energy and energy efficiency.

## **10. Water Efficiency**

Promote the WaterSense program at your facility. The program seeks to help consumers make smart water choices that save money and maintain high environmental standards without compromising performance. Products and services that have earned the WaterSense label have been certified to be at least 20 percent more efficient without sacrificing performance. More information about WaterSense may be found at: <http://www.epa.gov/WaterSense/>.

Simple conservation steps include:

- Fix leaks and drips.

- Install “low-flow” faucets, toilets, and showerheads.
- Equip all freshwater hoses with automatic shutoff nozzles.
- Water plants only when necessary. Indicators include wilting shrubs and grass that lies flat and shows footprints. Water in the cooler early morning or early evening to avoid stressing plants and to minimize water evaporation.
- Select plants suited to the existing conditions (i.e., soil, moisture, and sunlight) so that they will require little care in terms of water, fertilizer, and pesticides.
- Water deeply and infrequently rather than lightly and often. Deep watering promotes stronger root systems that enable plants to draw on subsurface water during hot spells and droughts.
- Cluster plants with similar water requirements. This practice will ease your maintenance burden, conserve water, and benefit the plants.
- Replace lawn areas with wildflowers, groundcover, shrubs, and trees.
- Direct downspouts into covered containers. Use the collected water on your landscaped areas.

## 11. Green Products

EPA has developed a Greener Products portal that identifies a number of environmentally friendly products that can be used at marinas and other business establishments. Information about a variety of products for cleaning, office equipment, building, appliances, etc. can be found at the following website: <http://www.epa.gov/greenerproducts/>

## 12. Landscaping

EPA's GreenScapes program provides cost-efficient and environmentally friendly solutions for landscaping. Designed to help preserve natural resources and prevent waste and pollution, GreenScapes encourages more holistic decisions regarding waste generation and disposal and the associated impacts on land, water, air, and energy use. More information about GreenScapes may be found at: <http://www.epa.gov/greenscapes/>

Use native plants for landscaping. Plants that are native to the region and climate compete well with weeds and other pests. They also require less fertilizer and pest control than non-native plants. Native plants can be purchased at your local nursery.

Avoid planting invasive species. Invasive species multiply rapidly and take over areas very quickly. Your local Soil and Water Conservation District or Cooperative Extension Service should also be able to provide you with information on invasive species specific to your area.

Save water by watering in the early morning or late afternoon. Oscillating sprinklers can lose up to 50% of water to evaporation on hot days.

Plant a vegetated filter strip or buffer between impervious areas and the marina basin.

Minimize fertilizer use. The excess nutrients from unused fertilizer will run off into the marina basin and potentially cause an algal bloom.

Compost leaves, branches, grass trimmings, and other organic matter. Use the mature compost to nourish your soil. Alternatively, chip branches and leaves and use as mulch to discourage weeds and to conserve moisture.

Recycle "gray water." Gray water is water used once for dishwashing or in a washing machine, but is not overly contaminated. It can be filtered and used to water landscaped areas. However, regulations vary, so be sure to check local ordinances for permit requirements and written approval before pursuing this option.

Pull weeds by hand to reduce reliance on herbicides.

Do not use pesticides outdoors just before a rainfall or on a windy day.

Apply insecticides during the evening when honeybees and other beneficial insects are less active.

Do not apply pesticides near water, e.g., shore, wells, streams, ponds, bird baths, swimming pools, etc.

### **13. Boater Education**

Post signage in the boat yard describing environmentally preferable practices.\* Train employees about clean boating practices. Let them know what information is available to distribute to customers.

The NJ Marine Sciences Consortium and New York Sea Grant have developed a series of fact sheets for boaters on topics such as petroleum control, vessel cleaning and maintenance, vessel sewage and waste management practices, available at:

<http://www.njcleanmarina.org/guidebk.htm> and  
<http://www.seagrant.sunysb.edu/marinabmp/section7/factsheets.htm>.

Consider the following:

- Hosting an environmental workshop for marina members.
- Including environmental information in facility newsletters.
- Including environmental boating practices in slip contracts.
- Providing a list of "yard rules" to your customers who do their own boat maintenance and include them in your contracts.

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\* See Appendix for suggested boater signage

## **14. Emergency Planning**

Contact local emergency response providers or local U.S. Coast Guard Marine Safety Office to obtain basic information about how to handle emergencies and/or for training opportunities.

List and describe actions to be taken during an emergency and, based on likely threats, what equipment should be deployed.

Develop an action checklist for severe weather. Preparations to reduce environmental risks include securing all dumpsters, removing or securing all objects which could potentially blow or wash away, and securing waterside sewage pumpouts and/or dump stations.

Develop a site plan of the facility, showing valves, pipes, tanks, structures, roads, hydrants, docks, power and fuel shutoffs, hazardous material storage locations, telephones, and location of emergency response materials.

Describe the type, amount, and location of hazardous and potentially hazardous materials stored on-site.

Review the emergency response plan with employees, and train them on proper use of containment material. Identify which staff member will take what action in the event of an emergency.

Include a list of emergency phone numbers for: local fire and police; facility owner; local harbormaster; neighboring marinas that have emergency response equipment; and spill response contractors. Inform local fire department and harbormaster of your emergency response plan.

Update the emergency response plan as necessary.

## Appendix

### New York State's Fish Carcass Disposal Law

Under New York State's Fish Carcass Disposal Law, it is illegal to discard any fish carcass, or parts thereof, into the freshwaters of the state within 100 feet of shore or upon any public or private lands contiguous to and within 100 feet of such water, except:

- On private lands by owners of such lands.
- If properly disposing into suitable garbage or refuse collection systems or by burial.
- Where incidental cleaning of fish for consumption is permitted. However, resulting waste may not be disposed of within 100 feet of any public launching or docking site unless into a suitable refuse collection system. Live fish and fish which must be returned to the water because of size limits, open seasons and creel limits are not subject to the fish carcass disposal law.



## Suggested Boater Signage

### Environmental Policy

It is the policy of this marina to protect the health of our patrons, staff, and the environment by minimizing the discharge of pollutants to the water and air.

### Vessel Maintenance Area

- All major repairs (e.g., stripping, fiberglassing) must be performed in the Vessel Maintenance Area
- All blasting and spray painting must be performed within the enclosed booth or under tarps
- Keep all bottom paint chips and run off from entering surface waters. Use tarps, filter fabrics or closed loop pressure wash treatment systems for bottom paint removal operations.
- Use vacuum sander
- Use high-volume low-pressure spray paint guns
- Use drip pans with all liquids
- Reuse solvents
- Store waste solvents, rags, and paints in covered containers

## **Keep Fuel Out of the Water**

- Do Not Top Off Tank
- Listen and Anticipate When Tank is Full
- Wipe up Spills Immediately

## **Do Not Discharge Sewage**

- Please use our clean, comfortable restrooms while you are in port
- Nutrients and pathogens in sewage impair water quality

## Think Before You Throw

The following items may not be placed in this dumpster:

- Oil
- Antifreeze
- Paint or varnish
- Solvents
- Pesticides
- Lead batteries
- Transmission fluid
- Distress flares
- Loose polystyrene peanuts
- Hazardous waste

## Marine Sanctuary

This marina provides food and shelter  
for young fish

- Prevent oil spills!
- Keep bilge clean!
- Use oil absorption pads!

Help by recycling or properly disposing of used oil,  
antifreeze, solvents, cleaners, plastics, and other wastes.

## **No Fish Scraps**

Please do not discard fish scraps  
within the marina basin

- Use our fish cleaning station
- Bag the scraps and dispose of in dumpster  
or at home

## References

### General

EPAShipshape Shores and Waters: A Handbook for Marina Operators and Recreational Boaters, January 2003

<http://www.epa.gov/owow/NPS/marinashdbk2003.pdf>

EPA Industrial Stormwater Fact Sheet Series  
Sector Q: Water Transportation Facilities with Vehicle Maintenance Shops and/or Equipment  
Cleaning Operations

[http://www.epa.gov/npdes/pubs/sector\\_q\\_watertransportation.pdf](http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf)

### New Jersey

NJDEP, New Jersey Clean Marina Program at: <http://www.nj.gov/dep/njcleanmarina/>.

### New York

NYSDEC, Environmental Compliance, Pollution Prevention, and Self-Assessment Guide for the Marina Industry, March 2003

[http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/marinaman.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/marinaman.pdf)

NYSDEC, Stormwater Pollution Prevention Plan (SWPPP) Checklist for Marinas, Dec 2010

[http://www.dec.ny.gov/docs/water\\_pdf/msgpchecklst.pdf](http://www.dec.ny.gov/docs/water_pdf/msgpchecklst.pdf)

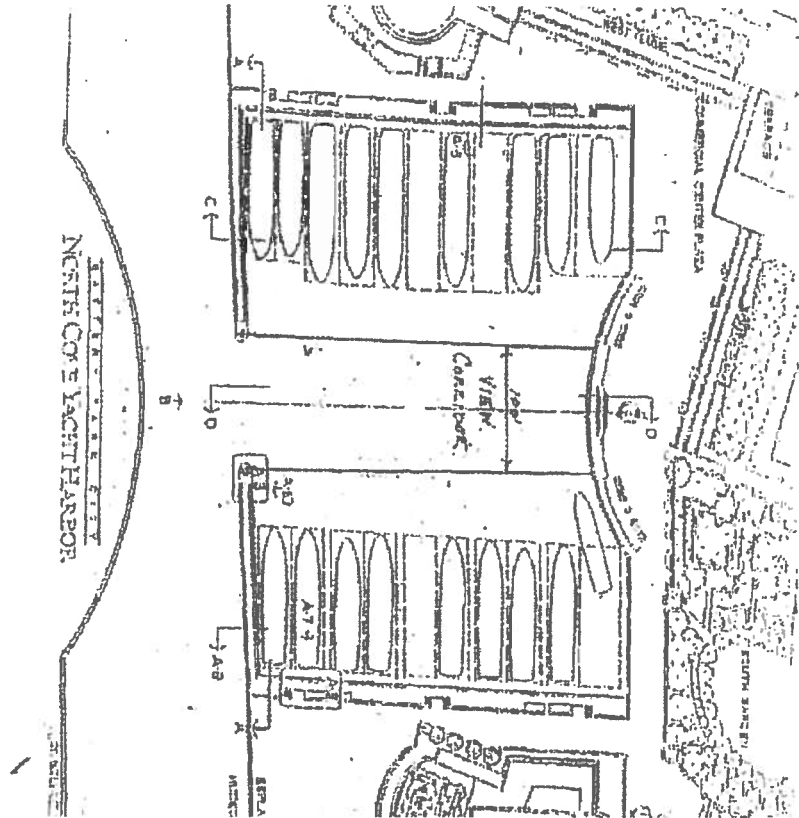
NY SeaGrant Extension Program, Marina Environmental Best Management Practices Web Site

<http://www.seagrant.sunysb.edu/marinabmp/>

NY SeaGrant Extension Program, Stormwater Runoff Best Management Practices For Marinas:  
A Guide for Operators

<http://www.seagrant.sunysb.edu/cprocesses/pdfs/BMPsForMarinas.htm>

**EXHIBIT E**  
**VIEW CORRIDOR**



**EXHIBIT F**

**DIVERSITY AGREEMENT**

This Diversity Agreement (this "Agreement") is entered into as of this **6th** day of May, 2015, by and between the Battery Park City Authority, d/b/a The Hugh L. Carey Battery Park City Authority, a public benefit corporation under the laws of the State of New York ("BPCA") and BOP North Cove Marina LLC, a Delaware limited liability company, in its capacity as Licensee of the North Cove Marina ("BOP"), in order to give minority and women-owned businesses opportunity for meaningful participation in contracts entered into in connection with the operation and maintenance of the North Cove Marina pursuant to that certain License Agreement dated as of the date hereof, by and between BOP and BPCA (as the same may hereafter be amended or modified from time to time, the "License Agreement").

1. Definitions

The following terms shall have the meanings set forth below for the purposes of this Agreement. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the License Agreement:

(a) "BOP." BOP North Cove Marina LLC, and such of its affiliates as may enter into Contracts related to the North Cove Marina.

(b) "Diversity Program." The program for diversity for MBE and WBE and for equal employment opportunities set forth in this Agreement.

(c) "Contractor." The other party or parties to all agreements related to the North Cove Marina entered into by BOP.

(d) "Contracts." All agreements related to the North Cove Marina entered into by BOP.

(e) "Minority Group Member." A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (i) Black persons having origins in any of the Black African racial groups;
- (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

- (iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(f) “Minority-owned Business Enterprise” (“MBE”). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more Minority Group Members;
- (ii) an enterprise in which such minority ownership is real, substantial and continuing;
- (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated.

(g) “Subcontract.” An agreement providing for a total expenditure in excess of \$25,000 for any portion of the operation or maintenance of the North Cove Marina between a Contractor or consultant and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a Contractor’s obligation is undertaken or assumed.

(h) “Subcontractor.” Any party or parties to an agreement with a Contractor that is related to the North Cove Marina.

(i) “Women-owned Business Enterprise” (“WBE”). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in the State of New York and which is independently owned and operated.



(j) For purposes of this Agreement, Operator shall not be deemed to be a "Contractor" or "Subcontractor" and Operator's agreement with BOP shall not be deemed a Contract or Subcontract.

2. Minority Business Enterprise (MBE) Participation and Women's Business Enterprise (WBE) Participation

(a) BOP shall, and shall cause its Contractors to, provide meaningful participation by MBEs and WBEs in Contracts and Subcontracts for the operation and maintenance of the North Cove Marina. BOP shall be deemed to have achieved this goal when the aggregate dollar value of Contracts and Subcontracts with MBEs and WBEs shall equal twenty percent (20%) in the aggregate of the total dollar value of Contracts for the operation or maintenance of the North Cove Marina (the "Participation Plan"). In achieving such participation, BOP is required to make good faith efforts, or shall cause its Contractors to make good faith efforts, to (i) conduct a thorough and diligent search for qualified MBEs and WBEs, and (ii) afford an opportunity to submit proposals by those MBEs and WBEs found qualified. BOP shall, and shall cause its Contractors to, meet with BPCA on a periodic basis as reasonably required by BPCA to review the operation and status of the Participation Plan and identify measures to be taken by BOP to ensure that the MBE and WBE participation goals are met.

(b) The total dollar value of the operation and maintenance of the North Cove Marina performed by MBEs and WBEs, for purposes of determining compliance with the Participation Plan, shall be calculated as follows:

- (i) if an MBE and WBE is not the Contractor, the dollar value subcontracted by the Contractor to MBEs and WBEs; or
- (ii) if an MBE or WBE is the Contractor or Subcontractor, the entire dollar value contracted or subcontracted to said MBE or WBE.

3. Workforce Participation

(a) BOP shall, and shall cause its Contractors and Subcontractors to, achieve the goal of participation of, in the aggregate, 30% Minority Group Members and women in the workforce for each trade or services utilized in the operation or maintenance of the North Cove Marina.

(b) The participation for Minority Group Members and women employees must be substantially uniform throughout North Cove Marina.

(c) BOP shall not, and shall cause its Contractors not to, participate in the transfer of Minority Group Member employees or women employees from employer to employer or from project to project for the sole purpose of satisfying the participation goals above set forth.

(d) In achieving such participation, BOP is required to make good faith efforts, or shall cause its Contractors to make good faith efforts, to find and employ qualified Minority

Group Members and women supervisory personnel and journeymen.

(e) BOP shall meet and, if so requested by BPCA, shall cause its Contractors to meet, with BPCA, and such other persons as BPCA may invite, on a periodic basis as required by BPCA, to discuss issues relating to Minority Group Members and women workforce participation. At such meetings, Contractor shall report on the names of its Subcontractors then engaged in the operation or maintenance of the North Cove Marina or which within 60 days are scheduled to be engaged in the operation or maintenance of the North Cove Marina, on the nature of the work of Contractor and Subcontractors, on the anticipated hiring needs of Contractors and Subcontractors, and such information requested by BOP that will then promote the employment of Minority Group Members and women. Contractor shall use its best efforts to obtain the above information and shall, upon BOP's request, cause its Subcontractors to attend said meetings and provide the above information.

4. Compliance Reports; Records.

(a) BOP shall provide BPCA with Monthly MBE/WBE and Workforce Utilization Reports, by the last calendar day of each month, in the form of Attachments 1 and 2 hereto; the first occurrence of such submission by BOP shall take place immediately.

(b) BOP shall maintain complete and accurate written records of its efforts to identify and contract with MBEs and WBEs as described above. BOP shall also maintain complete and accurate written records of all Contracts awarded for the operation or maintenance of the North Cove Marina, which records shall contain, without limitation, the dollar value of such awards and a description of the scope of the work awarded. Such records and other records deemed necessary by BPCA to document compliance with the Diversity Program including, but not limited to, copies of cancelled checks indicating payments to MBEs/WBEs, shall be furnished to BPCA at such times as BPCA may reasonably request.

5. Required Language and Good Faith Efforts.

(a) BOP will include the following language in all of its Contracts and Subcontracts: Contractor/Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing equal employment opportunity programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active good faith efforts to employ and utilize minority group members and women in its work force.

(b) BOP and its Contractors and Subcontractors shall state in all solicitations or advertisements for employees that, in the performance of the Contract/Subcontract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(c) For purposes of providing meaningful participation by MBEs/WBEs and achieving the goals established herein, BOP and its Contractors/Subcontractors should reference

the directory of New York State Certified MBEs/WBEs found at the following internet address:  
<http://www.esd.ny.gov/mwbe.html>

Additionally, BOP and its Contractors/Subcontractors are encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MBEs/WBEs on the operation or maintenance of the North Cove Marina.

(d) Where MBE/WBE goals have been established herein, BOP and its Contractors must document "good faith efforts", pursuant to 5 NYCRR §142.8, to provide meaningful participation by MBEs/WBEs as Subcontractors or suppliers in the performance of the operation or maintenance of the North Cove Marina.

6. Remedies. BPCA's sole remedies under this Agreement shall be as follows: if BOP fails to achieve either of the goals established in Sections 2 or 3 of this Agreement and such failure is a result of the failure to exercise good faith efforts to achieve such goal (as described in Sections 2 or 3, as applicable), then BPCA's sole remedies shall be to apply to a court of competent jurisdiction for such declaratory and equitable relief as may be available to BPCA to secure the performance by BOP of its obligations hereunder, provided that such equitable relief shall not include enjoining or restraining the performance of any Contract or Subcontract which BOP has previously entered into. For the avoidance of doubt, no remedies shall be available to BPCA hereunder so long as BOP and/or its Contractor can reasonably demonstrate that it has exercised good faith efforts to achieve the goals established in Sections 2 and 3 of this Agreement.

7. Miscellaneous.

(a) All notices or other communications hereunder shall be in writing and shall be given in accordance with the terms of the License Agreement.

(b) This Agreement contains the sole and entire understanding and agreement of the parties with respect to its subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.

(c) Nothing herein contained shall be understood or construed to create or grant any third party benefits, rights or property interests (including any contractor, subcontractor or consultant) unless the person claiming such rights is expressly identified herein and the rights claimed are expressly set forth herein.

(d) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

**[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Diversity Agreement to be duly executed as of the date first above written.

**BOP:**

**BOP NORTH COVE MARINA LLC**, a  
Delaware limited liability company

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

Name:  
Title:

**BPCA:**

**BATTERY PARK CITY AUTHORITY**,  
d/b/a The Hugh L. Carey Battery Park City  
Authority, a public benefit corporation under  
the laws of the State of New York

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

Name: Shari C. Hyman  
Title: President / COO

IN WITNESS WHEREOF, the parties hereto have caused this Diversity Agreement to be duly executed as of the date first above written.

**BOP:**

**BOP NORTH COVE MARINA LLC**, a  
Delaware limited liability company

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

Name: David T. Cheikin  
Title: Senior Vice President, Leasing  
New York Region

**BPCA:**

**BATTERY PARK CITY AUTHORITY**,  
d/b/a The Hugh L. Carey Battery Park City  
Authority, a public benefit corporation under  
the laws of the State of New York

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

Name:  
Title:

Attachments

(annexed hereto)

Attachment 1: MBE/WBE Monthly Utilization Report

Attachment 2: Monthly Workforce Utilization Report

**MONTHLY UTILIZATION COMPLIANCE REPORTS**

Name of Prime/Sub-contractor: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Phone #: ( ) \_\_\_\_\_ Fax #: ( ) \_\_\_\_\_  
 Tracking Report for the Month of \_\_\_\_\_ Year \_\_\_\_\_ Contract #:

Name of Vendor/Subcontractor Address/Phone-Fax/Contact Person	WBE MBE	Total Amount Contracted to Date	Total Amount Billed to Date	Total Amount Paid to Date	Total % to Date

Please note on or before the seventh day following each month of the Term of this Agreement, contractor shall submit this report regarding MBE/WBE utilization during the preceding month. This report shall be signed and verified by an officer of Contractor and must be accompanied by copies of supporting documents, including but not limited to cancelled checks, both front and back, as well as any invoices for MBE/WBE firms listed therein.



## Hugh L. Carey Battery Park City Authority WORK FORCE EMPLOYMENT UTILIZATION REPORT

Name of Contractor \_\_\_\_\_ Reporting Period \_\_\_\_\_

Type of Report:  Contract Specific Work Force  Total Work Force  Check if NOT-FOR-PROFIT

Federal Id/Payee Id No.: _____  Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor  Contract Amount: \$ _____	Contract No.: _____ Location of Work: _____  Product/Service Provided: _____  Expected EEO Participation: Minority _____ % Women _____ %  Contract Start Date: _____ Percent of Job Completed: _____
--	--

Federal Occupational Category	Number of Employees										Total Percent Minority Employees	Total Percent Female Employees
	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian of Pacific Islander		Native American/Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Official/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
<b>TOTALS</b>												

Company Officials Name _____	Title _____
Company Official's Signature _____	Date _____
Address _____	Telephone Number (____) _____

## EXHIBIT G

### Licensee Equipment Improvements

Infrastructure Investment: Licensee's infrastructure investment shall be primarily focused on the repair and maintenance of all ladders, underwater infrastructure, fendering and other immediate repairs to the mechanical, electrical and plumbing services that are available to the boats and the crew within the Marina. Additionally, to make the Marina more attractive to the local and transient maritime community, Licensee intends to install the infrastructure to provide Wi-Fi internet service within the Marina.

Site Enhancement Investment: Licensee's site enhancement investment shall focus on general enhancement of the Marina, including, but not limited to, annual painting of the Marina walls, plantings, maintaining railings, lighting and sustainability. Licensee shall submit a plan for Licensor's review and approval, which approval shall not be unreasonably withheld, by November 1, 2015

Licensee expects the investments set forth above to cost at least \$450,000 and to be completed within twelve (12) months of the date hereof.