

## SAMPLE LEASE PROVISIONS

### A. REPAIR AND MAINTENANCE

#### **Example One:**

Tenant Maintenance and Repair. Subject to the provisions of Article 11, Tenant shall, at Tenant's sole cost and expense, keep, maintain and promptly repair or shall cause any Subtenants to keep, maintain and promptly repair the Premises and each and every part thereof, including all Improvements, fixtures, facilities, Operating Equipment (and including any portion of building systems located outside of the Premises but exclusively serving the Premises and the pile system, platform and pier on the Premises) in first class, safe, clean, neat, sanitary and lawful order, condition and repair, free of pests and vermin, excepting only reasonable wear and tear that does not negatively affect the appearance or structural integrity of the Premises. Tenant shall and shall cause and any Subtenants to make, or shall cause to be made, at their sole cost and expense, all repairs, replacements, and restorations, to the Premises, whether ordinary or extraordinary, foreseen as well as unforeseen. All major repairs shall be made in compliance with all applicable provisions of Landlord's Tenant Alteration Application Process (the "TAA Process"), a copy of which is available upon request, as the same may be amended from time to time by Landlord in its sole discretion and in accordance with the provisions of this Lease, including without limitation the provisions of this Article 7 and Section 6.1 hereof. Tenant and any Subtenants shall bear any and all costs of compliance with the requirements of this Section 7.16. Landlord shall have no obligation to make any repairs to the Premises.

#### Pier Maintenance Fund.

- (i) Tenant shall create a maintenance fund for the Pier (the "Pier Maintenance Fund") with a capital reserve to be established no later than the date recommended by the Pier Expert (as defined below) but in no event later than the date that is the fifth (5<sup>th</sup>) anniversary of the issuance of the Final Certificate of Occupancy for the Tenant Improvements (the "First Pier Maintenance Lease Year") in the amount recommended by the Pier Expert, but in no event less than \$15,000.00 (the "Initial Contribution"). Prior to the commencement of construction of any Improvements and in no event later than sixty (60) days after Commencement Date, Tenant shall have retained a marine engineer, not affiliated with Tenant with at least ten (10) years experience with pier structures comparable to the Premises, which expertise and identity shall be acceptable to Landlord in its reasonable discretion. The marine engineer, as approved and accepted by Landlord, shall be referred to herein as the "Pier Expert". As of the date hereof and provided [Entity] is still of the same reputation and financial standing at the time of delivery of the Initial Pier Capital Plan, Landlord hereby approves [Name] with [Entity] as the initial Pier Expert. Tenant shall cause the Pier Expert to prepare and to deliver to Tenant, with a copy to Landlord, a capital expenditure plan (the first such plan being referred to as the "Initial Pier Capital Plan" and each subsequent plan being referred to as the "Pier Capital Plan") no later than that date that is sixty (60) days after the completion of the Pier as determined by Landlord and Tenant, which Pier Capital Plan shall include a schedule of Structural Improvements (as hereinafter

defined) to be made to the Pier, recommendations for the ongoing maintenance and replacement of the Pier and recommendations regarding appropriate contributions to the Pier Maintenance Fund, which amounts shall be deemed to supplement the Additional Contributions (as hereinafter defined) to be made by Tenant in accordance with the schedule set forth in this Section 7.22. Each Pier Capital Plan including the Initial Pier Capital Plan shall be acceptable to the Landlord in its reasonable discretion. After the Initial Pier Capital Plan is approved, Tenant shall be bound by the recommendations therein and set forth in this Lease. The Initial Pier Capital Plan shall be a condition precedent to the commencement of any construction of any Improvements under this Lease. On the first day of each of the fifth (5<sup>th</sup>), tenth (10<sup>th</sup>) and fifteenth (15<sup>th</sup>) anniversaries of the First Pier Maintenance Lease Year (each date being a "Contribution Date"), Tenant shall make an additional contribution to the Pier Maintenance Fund in accordance with Section 7.22(a)(ii) below, (each such contribution being an "Additional Contribution"). As of the First Pier Maintenance Lease Year and throughout the Term, Tenant shall at all times retain a minimum balance ("Minimum Maintenance Balance") in the Pier Maintenance Fund, set initially at the Initial Contribution, as increased on each applicable Contribution Date by the amount of the Additional Contribution, as adjusted for inflation by any increase in the Index from the Commencement Date, or such greater amount as set forth in the Pier Capital Plan. For the purposes of this **Section 7.22**, "Structural Improvements" shall mean those capital improvements and/or repairs related to the structural integrity of the Pier, which includes, but is not limited to, the pile system, platform, pier supports, bulkheads, caps and fenders thereof, or to the extent approved by Landlord, in its reasonable discretion, other improvements and/or elements specifically excluding, without limitation, lighting, landscaping and ordinary maintenance and repairs at the Premises. Notwithstanding the creation of the Pier Maintenance Fund, the amount of funds in said Pier Maintenance Fund from time to time, and/or the availability of said funds to Tenant, Tenant shall always have the sole and exclusive responsibility and liability for the Structural Improvements to and maintenance of the Pier at its sole cost and expense.

- (ii) As of the first day of each of the fifth (5th), tenth (10th) and fifteenth (15th) anniversaries of the First Pier Maintenance Lease Year, Tenant shall make an Additional Contribution. The Additional Contribution shall be the amount derived as follows: (a) the amount required for Structural Improvements as set forth in the then current Pier Capital Plan or such higher amount to be determined based upon final design review by Landlord but in no event less than \$25,000.00, as adjusted for inflation by the change in the Consumer Price Index for all Urban Consumers, U.S. City Average, All Items (1982-1984 = 100) published by the Bureau of Labor Statistics, U.S. Department of Labor (the "Index") from the Commencement Date.

- (iii) As of the twentieth (20<sup>th</sup>) anniversary of the First Pier Maintenance Lease Year, the Minimum Maintenance Balance shall be fixed at an amount equal to Fifty Thousand (\$50,000.00) Dollars, as adjusted for inflation by any increase in the Index from the Commencement Date (the "Fixed Maintenance Balance"), and on the first day of each fifth (5th) year thereafter, Tenant shall make contributions to the Pier Maintenance Fund as follows: (a) the amount required for Structural Improvements as set forth in the then current Pier Capital Plan, minus any balance of the Minimum Maintenance Balance which is then greater than the Fixed Maintenance Balance divided by (b) five (5). By way of example, if the Pier Capital Plan on the twentieth (20th) anniversary of the First Pier Maintenance Lease Year requires Structural Improvements in the amount of Three Hundred Thousand (\$300,000.00) over the course of the succeeding five (5) Lease Years, and the then Minimum Maintenance Balance is One Hundred Thousand Dollars (\$100,000.00), Tenant shall be responsible to make an annual contribution of Fifty Thousand Dollars (\$50,000.00) for each of the next five Lease Years commencing on the first day of the Lease Year immediately following the twentieth (20th) anniversary of the First Pier Maintenance Lease Year which when coupled together with the portion of the Minimum Maintenance Balance above the required Fixed Maintenance Balance (i.e.  $\$100,000.00 - \$50,000.00 = \$50,000.00$ ) will be equal to the Three Hundred Thousand (\$300,000.00) to be used for Structural Improvements over the succeeding five (5) years.
- (iv) On the Commencement Date, Tenant shall deliver to Landlord a Pledge and Security Agreement ("Pledge and Security Agreement"), in the form attached hereto as Exhibit B-7, or upon such other lender-provided form with commercially reasonable terms, which form shall be acceptable to Landlord in its reasonable discretion, pursuant to which Tenant shall grant to Landlord a first priority security interest in the Pier Maintenance Fund to be established by Tenant for the maintenance of the Pier.
- (v) The funds in the Pier Maintenance Fund may be expended only for (a) Structural Improvements identified in the Pier Capital Plan, which Pier Capital Plan shall include a schedule of Structural Improvements to be made during each of the succeeding five (5) Lease Years from the date of each such Pier Capital Plan and shall be submitted to Landlord for its review and approval in its reasonable discretion or (b) for emergencies (in which event Tenant shall be required to replenish the funds used in connection therewith). In no event shall funds be available from the Pier Maintenance Fund to Tenant except pursuant to a Pier Capital Plan or for emergency work, in either event as approved by Landlord; except that such funds may be available to Landlord solely to perform Structural Improvements and not for any other purpose upon the occurrence of an Event of Default resulting from a failure by Tenant to perform such Structural Improvements at any time during the Term of this Lease and pursuant to the Pledge and Security Agreement. In addition to the Initial Pier Capital Plan, Tenant shall submit a Pier Capital Plan to Landlord for its review and approval in its reasonable discretion at least thirty (30) days before the commencement of the

sixth (6th) anniversary of First Pier Maintenance Lease Year and on or before the first day of every fifth (5th) Lease Year thereafter. The Parties acknowledge that the work included within a Pier Capital Plan will have been deemed to have been approved by the Parties for purposes of Landlord's TAA process but will be performed pursuant to Landlord's TAA process.

Each Pier Capital Plan shall, at a minimum:

- (i) identify the Structural Improvements that should be completed during each of the succeeding five (5) Lease Years from the date of each such Pier Capital Plan;
- (ii) establish the amount of the funds necessary to complete such Structural Improvements during each of the succeeding five (5) Lease Years from the date of such Pier Capital Plan; and
- (iii) certify that the then-existing Minimum Maintenance Balance together with the contributions is sufficient to pay for such Structural Improvements. Upon the termination of this Lease, any funds in the Pier Maintenance Fund will be returned to Tenant, provided there is no Event of Default resulting from a failure by Tenant to perform such Structural Improvements as required by this Section 7.22.

Prior to the disbursement of any funds in the Pier Maintenance Fund, and prior to commencing the Structural Improvements identified in a Pier Capital Plan, Tenant shall satisfy the following terms and conditions:

- A. Tenant has secured approval of Landlord pursuant to the TAA process of its plans for (but not the identity of the Structural Improvements) and otherwise complied with the TAA process.
- B. Tenant shall have delivered to Landlord all Required Permits necessary for the Structural Improvements to be undertaken.
- C. No funds from the Pier Maintenance Fund shall be disbursed unless the following conditions are satisfied: (i) there is no Event of Default hereunder; (ii) after any disbursement, the Minimum Maintenance Balance shall remain in the Pier Maintenance Fund necessary to make Structural Improvements to the Premises for the remaining term of the then current Pier Capital Plan; (iii) Landlord shall receive a requisition from Tenant certifying that such disbursement is to pay for Structural Improvements pursuant to a Pier Capital Plan, accompanied by copies of invoices for the amount of the requisition; and (iv) to the extent that the funds to be disbursed from the Pier Maintenance Fund are less than the cost to make the Structural Improvements identified in the Pier Capital Plan, Tenant shall be responsible for any such deficiency and shall either deliver a letter of credit acceptable to Landlord in the amount of any deficiency or expend the amount of any such deficiency towards the Structural Improvements.

D. If at any time during the Term of this Lease and on the dates required herein, Tenant fails to cause a Pier Capital Plan to be prepared and delivered to Landlord, Landlord may, subject to prior written notice to Tenant and a thirty (30) day grace and cure period, either cause a Pier Capital Plan to be prepared at the expense of Tenant and charge Tenant for such expenses as Additional Rent and determine in its reasonable discretion the funds to be deposited in the Pier Maintenance Fund for Structural Improvements as set forth herein and/or Landlord may declare a default hereunder and exercise all its rights and remedies hereunder.

**Example Two:**

**MAINTENANCE AND ALTERATIONS**

1.1 Repair and Maintenance. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises, including, without limitation, all Improvements now existing or hereafter erected thereon (including, without limitation, the Initial Tenant Improvements and all Infrastructure, building systems, sidewalks and paved areas, exterior lighting, street fixtures, utility lines and facilities, drainage lines and facilities, and all other equipment and appurtenances used in the functioning of the Premises or any portion thereof), and shall keep the same in good order, condition and repair, except for (i) reasonable wear and tear, (ii) damage from a Taking or a Casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder, and (iii) damage caused by the Authority or its employees or contractors, and Tenant shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. All repairs made by Tenant shall be performed in accordance with the construction standards and requirements set forth in **Article 4**, including, without limitation, delays due to Force Majeure Events as provided in **Section 4.19**, and shall be substantially equal or better in quality and class to the then-existing quality of the Improvements being repaired and shall be made in compliance with applicable Legal Requirements.

Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Premises.

1.2 Maintenance of Qualifying Infrastructure Improvements. Tenant shall cause the Qualifying Infrastructure Improvements to be inspected no less frequently than once every five (5) years during the Term by a qualified professional engineer registered in the Commonwealth of Massachusetts and approved by the Authority in its reasonable discretion, who shall deliver a detailed report to both Tenant and the Authority not later than each fifth (5<sup>th</sup>) anniversary of the Effective Date, which report shall describe in reasonable detail the condition of the Qualifying Infrastructure Improvements (to the extent previously completed and placed in service) and any maintenance, repairs or replacements recommended to be made thereto or performed thereon in order to maintain the same in good order, condition and repair. Such report shall be signed and certified by the engineer performing the inspection. Tenant shall, at its sole cost and expense, perform all maintenance, repairs and replacements recommended in each such report within the relevant timeframe set therefor in such report, subject to the provisions of **Section 4.19** above with respect to delays caused by a Force Majeure Event. If Tenant fails to obtain an inspection report when required to do so by this Section, the Authority may obtain such a report, at Tenant's

cost, and such report shall have the same effect as a report obtained by Tenant pursuant to this Section.

### 1.3 Capital Reserve Account.

(a) Commencing on the Effective Date and continuing thereafter on each anniversary thereof until the Initial Funding Completion Date (as defined below), Tenant shall deposit One Hundred Thousand Dollars (\$100,000) into a commercial direct deposit account (the “**Capital Reserve Account**”) held by the Escrow Agent pursuant to the Capital Reserve Account Pledge and Escrow Agreement. The “**Initial Funding Completion Date**” shall be the date on which the amount held in the Capital Reserve Account (the “**Capital Reserve Account Balance**”) is equal to or greater than an amount equal to One Million Dollars (\$1,000,000), increased by the cumulative increase (but not decrease) in the Index on every tenth (10<sup>th</sup>) anniversary of the Effective Date (the “**Capital Reserve Account Minimum Balance**”).

(b) In the event that at any time after the Initial Funding Completion Date, the Capital Reserve Account Balance becomes less than the Capital Reserve Account Minimum Balance (including as a result of disbursements therefrom in accordance with this Section), Tenant shall commence replenishing the Capital Reserve Account as follows:

(i) within thirty (30) days after the date on which the Capital Reserve Account Balance first falls below the Capital Reserve Account Minimum Balance (the “**Replenishment Date**”), Tenant shall deposit into the Capital Reserve Account the lesser of (A) One Hundred Thousand Dollars (\$100,000) and (B) 1% of the gross revenue generated by the Premises for the previous Lease Year; and

(ii) thereafter, on each anniversary of the Replenishment Date, Tenant shall deposit into the Capital Reserve Account the lesser of (A) One Hundred Thousand Dollars (\$100,000) and (B) 1% of the Adjusted Revenue generated by the Premises for the previous Lease Year

Such replenishment shall continue until the Capital Reserve Account Balance is equal to or greater than the Capital Reserve Account Minimum Balance.

(c) The Capital Reserve Account shall be held and administered by the Escrow Agent pursuant to the Capital Reserve Account Pledge and Escrow Agreement. Tenant and the Authority shall be entitled to receive funds from the Capital Reserve Account only in accordance with the provisions of this **Section 7.3** and the Capital Reserve Account Pledge and Escrow Agreement. Upon the expiration of the Term of this Lease, or in the event of the early termination of this Lease by any party for any reason or cause whatsoever, and without regard to whether or not the Authority is then in default hereunder, all amounts then on deposit in the Capital Reserve Account shall be paid over by the Escrow Agent to the Authority. In addition, in the event that Final Completion of the Cypher Street Extension Improvements has not occurred by the date set forth in **Section 4.1(c)** above (as such date may be extended in accordance with the provisions of **Section 4.1(c)**), then in addition to any other rights of the Authority, upon request of the Authority the Escrow Agent shall pay over to the Authority all

amounts then on deposit in the Capital Reserve Account, in which event the Tenant's replenishment obligation under **Section 7.3(b)** above shall apply.

(d) Tenant shall have the right to request disbursements of amounts held in the Capital Reserve Account (and shall use such amounts) only for the following purposes:

(i) Major repairs to the Qualifying Infrastructure Improvements, as approved in advance in writing by the Authority; or

(ii) Capital improvements to the Qualifying Infrastructure Improvements which are required either (A) to maintain the same in the condition required by this Lease, or (B) by a change in applicable Legal Requirements first enacted or otherwise first becoming effective after the Effective Date, or (C) by a change in policy of the Authority; or

(iii) Other repairs to the Qualifying Infrastructure Improvements, provided that Tenant provides the Authority ninety (90) days prior written notice of its intent to perform such repairs using amounts available in the Capital Reserve Account.

(e) Notwithstanding the foregoing, no disbursements from the Capital Reserve Account shall be requested by Tenant unless and until the following conditions have been satisfied:

(i) Tenant has obtained the written approval of the Authority as to the repairs or other work it proposes to perform using such funds;

(ii) Tenant shall have delivered to the Authority copies of all Approvals required for the performance of the repairs or other work it proposes to perform using such funds; and

(iii) No Event of Default then exists hereunder.

(f) Notwithstanding anything to the contrary contained herein, so long as no Event of Default then exists hereunder, Tenant shall have the right, at any time, to request disbursement of the amount by which the Capital Reserve Account Balance exceeds the Capital Reserve Account Minimum Balance and upon disbursement, such amounts shall be the sole property of Tenant to be used for any purpose in Tenant's sole discretion.

(g) Notwithstanding anything to the contrary contained herein, Tenant's maintenance, repair and replacement obligations under this Lease shall in no way be limited by the amount of funds from time to time held in the Capital Reserve Account.

(h) Except as otherwise provided in the second and third sentences of Section 7.3(c) above, the Authority shall have the right to request disbursements of amounts held in the Capital Reserve Account (and shall use such amounts) only for the payment of costs incurred in connection with the maintenance, repair or replacement of the Qualifying Infrastructure Improvements or any other Infrastructure; *provided, however* that Tenant, in the reasonable determination of the Authority, has failed to maintain the Infrastructure or any of the Qualifying

Infrastructure Improvements in the condition required by this Lease, and such failure has continued for at least one hundred twenty (120) days after Tenant's receipt of written notice from the Authority requesting the performance of such obligations.

(i) In the event the Escrow Agent is a Permitted Leasehold Mortgagee hereunder, then at such time as the Permitted Leasehold Mortgage held by Escrow Agent is released, the Parties shall agree on a mutually acceptable successor escrow agent (the "**Successor Escrow Agent**"), and written instructions shall be jointly prepared and delivered to the then-current Escrow Agent directing the delivery of the Capital Reserve Account Balance to the Successor Escrow Agent. Prior to receiving the Capital Reserve Account Balance, the Successor Escrow Agent shall enter into an agreement in substantially the same form as the Capital Reserve Account Pledge and Escrow Agreement. Upon its receipt of the Capital Reserve Account Balance, the Successor Escrow Agent shall be deemed to be the Escrow Agent for all purposes hereunder.



**B. FIXED RENT**

(a) Subject to the provisions of **Sections 5.1(c) and (d), Section 5.2, Section 5.3, and Section 5.8** below, commencing on the Effective Date, and continuing on the first day of each and every month thereafter during the Term, Tenant shall pay the Authority base rent (the “**Base Rent**”) in equal monthly installments in advance without notice, demand, setoff, reduction or recoupment, except as expressly otherwise provided in this Lease, as follows:

Lease Years 1-4:	\$1,000,000.00 per year or \$83,333.33 per month
Lease Years 5-6:	\$1,050,000.00 per year or \$87,500.00 per month
Lease Year 7:	\$1,100,000.00 per year or \$91,666.67 per month
Lease Year 8:	\$1,350,000.00 per year or \$112,500.00 per month
Lease Year 9:	\$1,450,000.00 per year or \$120,833.33 per month
Lease Year 10:	\$1,500,000.00 per year or \$125,000.00 per month
Lease Year 11:	\$1,550,000.00 per year or \$129,166.67 per month
Lease Year 12:	\$1,650,000.00 per year or \$137,500.00 per month
Lease Year 13:	\$1,700,000.00 per year or \$141,666.67 per month
Lease Year 14:	\$1,750,000.00 per year or \$145,833.33 per month
Lease Year 15:	\$1,800,000.00 per year or \$150,000.00 per month
Lease Year 16:	\$1,850,000.00 per year or \$154,166.67 per month
Lease Year 17:	\$1,900,000.00 per year or \$158,333.33 per month
Lease Year 18:	\$1,950,000.00 per year or \$162,500.00 per month
Lease Year 19:	\$2,000,000.00 per year or \$166,666.67 per month
Lease Years 20-75:	Fair Market Rent as of the first day of the 20 <sup>th</sup> Lease Year and the first day of each 20 <sup>th</sup> anniversary thereof, determined in the manner provided in <b>Sections 5.1(c) and 5.2</b> below and subject to adjustment as provided in <b>Section 5.1(d)</b> below.

(b) Lease Year. For purposes of this Lease, the first “**Lease Year**” shall commence on the Effective Date and end on the last day of the twelfth (12<sup>th</sup>) full calendar month following the Effective Date. Each successive Lease Year shall be comprised of succeeding periods of twelve (12) calendar months commencing on the day following an anniversary of the

last day of the first Lease Year, except that the last Lease Year shall end on the date on which the Term expires or this Lease is earlier terminated. Base Rent due and payable for the partial calendar month included in the first Lease Year shall be pro-rated.

(c) Fair Market Rent Adjustment. Effective as of each Fair Market Rent Adjustment Date occurring during the Term, Base Rent shall be adjusted to Fair Market Rent as of such date in accordance with the procedure described in **Section 5.2** below; *provided, however,* that in no event shall the Base Rent in any Lease Year for which Base Rent is determined pursuant to this Section be more than five percent (5%) less than, or more than twenty-five percent (25%) more than, Base Rent for the immediately preceding Lease Year. Fair Market Rent shall be determined in the manner provided in **Section 5.2** below.

(d) CPI Adjustment. Effective on the first day of the twenty-fifth (25<sup>th</sup>) Lease Year, and on the first day of every subsequent fifth (5<sup>th</sup>) Lease Year thereafter which is not a Fair Market Rent Adjustment Date, the Base Rent shall be increased by the cumulative change in the Index over the immediately previous five (5) year period (the “**CPI Adjustment**”); *provided, however,* that in no event shall the Base Rent for any Lease Year as determined pursuant to this Section be less than the Base Rent for the immediately preceding Lease Year. An example of the method by which Base Rent is to be adjusted pursuant to this **Section 5.1(d)** is set forth in **Exhibit Q** attached hereto and made a part hereof.

(a) The term “**Fair Market Rent**” shall mean the annual fair market rental value for the Premises that would be agreed upon between a landlord and a tenant of quality, size, and financial capability equal to that of Tenant executing a ground lease or leases with respect to the Premises as then developed for a term co-terminus with the time period for which such Fair Market Rent is to be effective and otherwise upon the terms set forth in this Lease. Subject to the provisions of the immediately preceding sentence, in determining such Fair Market Rent, all factors typically taken into account by real estate appraisers in determining the fair market value of ground leased real property such as location, size of ground leased parcel, and the uses permitted under the applicable ground lease, shall be considered.

(b) The Fair Market Rent as of each Fair Market Rent Adjustment Date shall be determined as provided in this Section. Not less than six (6) months prior to each Fair Market Rent Adjustment Date, the Authority shall deliver to Tenant its determination of Fair Market Rent as of the upcoming Fair Market Rent Adjustment Date. In the event that the Authority and Tenant do not agree on the Fair Market Rent within two (2) months after the Authority delivers its determination of Fair Market Rent as set forth above, the determination of Fair Market Rent shall be made pursuant to **Section 17.1** hereof; *provided, however,* that in the event that the difference between the Authority’s determination of Fair Market Rent and Tenant’s determination of Fair Market Rent is not more than five percent (5%) of the higher number, then the Parties agree to accept the average of those determinations as the Fair Market Rent. If Tenant fails to object in writing to the Authority’s determination of Fair Market Rent within said two (2) month period, then Tenant shall be deemed to have accepted the Authority’s determination, which shall be the Fair Market Rent as of the upcoming Fair Market Rent Adjustment Date.

### C. PERCENTAGE RENT

. Tenant shall pay to the Authority, as percentage rent (“**Percentage Rent**”), the following amounts:

Lease Years 1-6:	No Percentage Rent shall be due;
Lease Years 7-10:	2% of all Adjusted Revenue in excess of Seven Million Dollars (\$7,000,000) per Lease Year (\$583,333.33 per month);
Lease Years 11-30:	3% of all Adjusted Revenue in excess of Seven Million Dollars (\$7,000,000) per Lease Year (\$583,333.33 per month); and
Lease Years 31-75:	4% of all Adjusted Revenue in excess of Seven Million Dollars (\$7,000,000) per Lease Year (\$583,333.33 per month) but not in excess of Ten Million Dollars (\$10,000,000) per Lease Year (\$833,333.33 per month); plus 5% of all Adjusted Revenue in excess of Ten Million Dollars (\$10,000,000) per Lease Year (\$833,333.33 per month).

Percentage Rent shall be payable hereunder monthly in arrears on the last day of each calendar month, or portion thereof, included within the Term of this Lease, with adjustments, if any, for the Lease Year to be made in the manner provided in **Section 5.11** below.

### D. TRANSACTION RENT

#### 1.4 Transaction Rent.

a. Tenant shall pay to the Authority, as Additional Rent, (“**Transaction Rent**”) an amount equal to:

(i) Seven and One-Half Percent (7.5%) of the amount by which Sale Proceeds exceed the total of (A) the actual amount of customary closing costs and brokerage commissions paid by Tenant in connection with such Sale, provided that each such amount is not in excess of that typically charged for such services in comparable arm’s-length transactions, and (B) the amount of Transaction Rent paid to the Authority pursuant to this **Section 5.5(a)** in connection with the most recently preceding Sale or Refinancing Transaction, and (C) to the extent not previously deducted from Sale Proceeds for the purpose of calculating Transaction Rent in connection with a previous Sale pursuant to this **Section 5.5(a)** or **Section 5.5(b)** and not previously deducted from

Net Refinancing Proceeds for the purpose of calculating Transaction Rent in connection with a previous Refinancing Transaction and not previously offset against Base Rent as part of an Annual Qualifying Infrastructure Improvements Amortization Offset pursuant to **Section 5.3** above, (1) Approved Development Costs as finally approved by the Authority pursuant to **Section 4.29** above, and (2) capital invested by Tenant in the Premises and expended on improvements to the Premises which have a useful life of more than five years (as reasonably determined by the Authority), as detailed in the annual statements previously delivered by Tenant to the Authority in accordance with the provisions of **Section 5.11.3** and as approved in advance of such Sale by the Authority (which approval shall not be unreasonably withheld, conditioned or delayed). All Transaction Rent due and payable pursuant to this clause (i) shall be paid to the Authority in full simultaneously with the occurrence of the closing of the applicable Sale and the first release of any proceeds thereof to or on behalf of Tenant, and shall not be subject to reduction by reason of any amount due from Tenant to any other Person (including, without limitation, a Permitted Leasehold Mortgagee) whether in connection with such Sale or otherwise; and

(ii) Seven and One-Half Percent (7.5%) of the amount by which Net Refinancing Proceeds exceed the total of (A) the actual amount of customary closing costs and brokerage commissions paid by Tenant in connection with such Refinancing Transaction, provided that each such amount is not in excess of that typically charged for such services in comparable arm's-length transactions, and (B) the amount of Transaction Rent paid to the Authority pursuant to this clause (ii) in connection with the most recently preceding Refinancing Transaction, and (C) to the extent not previously deducted from Sale Proceeds for the purpose of calculating Transaction Rent in connection with a previous Sale pursuant to this **Section 5.5(a)** or **Section 5.5(b)** and not previously deducted from Net Refinancing Proceeds for the purpose of calculating Transaction Rent in connection with a previous Refinancing Transaction and not previously offset against Base Rent as part of an Annual Qualifying Infrastructure Improvements Amortization Offset pursuant to **Section 5.3** above, (1) the amount of capital invested by Tenant in the Premises and expended on improvements to the Premises which have a useful life of more than five years (as reasonably determined by the Authority), as detailed in the annual statements previously delivered by Tenant to the Authority in accordance with the provisions of **Section 5.11.3** and as approved in advance of such Refinancing Transaction by the Authority (which approval shall not be unreasonably withheld, conditioned or delayed). All Transaction Rent due and payable pursuant to this clause (ii) shall be paid to the Authority in full simultaneously with the occurrence of the closing of the applicable Refinancing Transaction and the first release of any proceeds thereof to or on behalf of Tenant, and shall not be subject to reduction by reason of any amount due from Tenant to any other Person (including, without limitation, a Permitted Leasehold Mortgagee) whether in connection with such Refinancing Transaction or otherwise.

(b) The provisions of the preceding subsection (a)(i) shall be applied to the Sale of an Equity Interest in Tenant (whether such Sale is accomplished by the Sale of an Equity Interest in Tenant directly or the Sale of an Equity Interest in a Person which owns (directly or indirectly) an Equity Interest in Tenant) in the following manner (with the term “**Applicable Percentage**” meaning the percentage ownership interest in Tenant represented by the Equity Interest which is the subject of such Sale):

(i) Subject to the provisions of clause (iv) below, no Transaction Rent shall be due or payable in connection with the Sale of an Equity Interest in Tenant by one owner (directly or indirectly) of such an Equity Interest to another then-current owner (directly or indirectly) of an Equity Interest in Tenant (or to an Affiliate of such a then-current owner), regardless of the Applicable Percentage represented by the Equity Interest so sold;

(ii) Subject to the provisions of clause (iv) below, no Transaction Rent shall be due in connection with the Sale of an Equity Interest in Tenant to any Person which at the time of such Sale is not then the owner (directly or indirectly) of an Equity Interest in Tenant or an Affiliate of such an owner, if the aggregate of the Applicable Percentages of all Equity Interests in Tenant acquired by such Person (or any Affiliate of such Person) within a 12-month period does not exceed three percent (3%);

(iii) In the event of a Sale of an Equity Interest in Tenant having an Applicable Percentage of more than three percent (3%) to a Person which at the time of such Sale is not then the owner (directly or indirectly) of an Equity Interest in Tenant (or an Affiliate of such a then-current owner), Transaction Rent shall be due and payable in connection with such Sale at the time and in the manner provided in **Section 5.5(a)** above, and the amount of such Transaction Rent shall be equal to Seven and One-Half Percent (7.5%) of the amount by which Sale Proceeds exceed the total of (A) the actual amount of customary closing costs and brokerage commissions paid by the seller of such Equity Interest in connection with such Sale, provided that each such amount is not in excess of that typically charged for such services in comparable arm’s-length transactions, (B) the Applicable Percentage of the amount of Transaction Rent paid to the Authority pursuant to **Section 5.5(a)** above in connection with the most recently preceding Sale or Refinancing Transaction, and (C) to the extent not previously deducted from Sale Proceeds for the purpose of calculating Transaction Rent in connection with a previous Sale and not previously deducted from Net Refinancing Proceeds for the purpose of calculating Transaction Rent in connection with a previous Refinancing Transaction and not previously offset against Base Rent as part of an Annual Qualifying Infrastructure Improvements Amortization Offset pursuant to **Section 5.3** above, the Applicable Percentage of: (1) Approved Development Costs as finally approved by the Authority pursuant to **Section 4.29** above, and (2) capital invested by Tenant in the Premises and expended on improvements to the Premises which have a useful life of

more than five years (as reasonably determined by the Authority), as detailed in the annual statements previously delivered by Tenant to the Authority in accordance with the provisions of **Section 5.11.3** and approved in advance of such Sale by the Authority (which approval shall not be unreasonably withheld, conditioned or delayed); and

(iv) The Applicable Percentage of all Equity Interests in Tenant acquired by a Person or any Affiliate of such a Person within a 12-month period shall be aggregated for purposes of determining whether Transaction Rent is due and payable hereunder with respect to any Sale involving such Person or any such Affiliate. Notwithstanding the provisions of clause (ii) above, if and to the extent to which such aggregate Applicable Percentage exceeds three percent (3%) within any 12-month period, Transaction Rent shall be due and payable in connection with the Sale which causes such Applicable Percentage to exceed three percent (3%) and in connection with all subsequent sales occurring within such 12-month period, which Transaction Rent shall be calculated in the manner provided in **Section 5.5(b)(iii)** above. Notwithstanding the provisions of clause (i) above, the entire aggregate Applicable Percentage of Equity Interests in Tenant acquired by a Person (or an Affiliate of such a Person) within the first twelve (12) months following the first Sale to such Person (or any Affiliate of such a Person), which Person or Affiliate at the time of such Sale was not then the owner (directly or indirectly) of an Equity Interest in Tenant, shall be subject to Transaction Rent notwithstanding the fact that at the time of one or more such Sales such Person or Affiliate had become the owner (directly or indirectly) of an Equity Interest in Tenant.

All Transaction Rent due and payable pursuant to this **Section 5.5(b)** shall be paid to the Authority in full simultaneously with the occurrence of the closing of the applicable Sale and the first release of any proceeds thereof to or on behalf of the seller, and shall not be subject to reduction by reason of any amount due from the seller or Tenant to any other Person (including, without limitation, a Permitted Leasehold Mortgagee) whether in connection with such Sale or otherwise.

(c) Tenant shall pay Transaction Rent to the Authority without notice, demand, setoff, reduction or recoupment, except as expressly otherwise provided in this Lease. Examples of the method by which Transaction Rent is to be calculated for purposes of this Lease pursuant to **Section 5.5(a)** are set forth in **Exhibit P** attached hereto and made a part hereof.

(d) Upon the first to occur of (i) the occurrence of a Sale or Refinancing Transaction, if such Sale or Refinancing Transaction requires the payment of Transaction Rent pursuant to **Section 5.5(a)** or **Section 5.5(b)** above, or (ii) thirty (30) days after the occurrence of any Sale or Refinancing Transaction, if such Sale or Refinancing Transaction does not result in the obligation to pay Transaction Rent, Tenant shall deliver a statement in reasonable detail to the Authority and certified as correct by a duly authorized officer of Tenant, setting forth the amount of Transaction Rent (if any) then due and the calculation thereof. Such statement shall include an itemization of the following (to the extent applicable):

(1) Sale Proceeds or Refinancing Proceeds, as the case may be, used in calculating any Transaction Rent;

(2) the original principal balance of Approved Debt secured by a Permitted Leasehold Mortgage (if any) immediately preceding the completion of such Sale or Refinancing Transaction;

(3) the outstanding principal balance of Approved Debt secured by a Permitted Leasehold Mortgage (if any) immediately preceding the completion of such Sale or Refinancing Transaction;

(4) the outstanding principal balances of Approved Debt secured by a Permitted Leasehold Mortgage (if any) immediately following the completion of such Sale or Refinancing Transaction;

(5) the portion of such Sale Proceeds or Refinancing Proceeds used to repay any remaining outstanding principal balance of Approved Debt secured by a Permitted Leasehold Mortgage (if any); and

(6) accrued and unpaid Rent repaid from such proceeds.

(e) Notwithstanding the foregoing, in no event shall any Transaction Rent be due and payable for any Refinancing Transaction which occurs (i) during the first ten (10) Lease Years, or (ii) in connection with the initial development of the portion of the Land located at and known as 300-370 West First Street for non-residential purposes. In addition, to the extent that Tenant engages in a Refinancing Transaction for the purpose of obtaining funds to be used for the redevelopment of a portion of the Premises, the amount of such funds to be devoted to such use (as approved in advance in writing by the Authority) shall be deducted from Net Refinancing Proceeds for purposes of calculating the Transaction Rent due to the Authority in connection with such Refinancing Transaction.

## D. AUDIT RIGHTS/BOOKS AND RECORDS

### Audit Right and Inspection of Records/Reports.

- (a) Inspection and Audit Right. Tenant agrees to keep records as are required to be maintained under this Lease on the Premises or at another location within the metropolitan Boston area. Tenant's books and records relating to its operations under this Lease (including without limitation, the books and records required to be maintained under Section 12.2(b)) shall be available for inspection by Landlord or its duly authorized representative upon 72 hours advance written notice and during normal business hours (9:00 a.m. to 5:00 p.m.). Landlord shall have the right, upon such notice and during such business hours to cause an audit to be made of such books and records in order to determine Tenant's compliance with the provisions of this Lease governing amounts owed, paid or payable to Landlord and compliance with the remaining terms and conditions of this Lease. Landlord agrees to conduct any such audit in a manner to minimize the disruption to Tenant's business operations. Tenant agrees to reasonably accommodate Landlord's representatives by providing adequate workspace (including electrical outlets and phone access), allowing photocopying of any records and documents, and allowing the interviewing of such employees as the representative deems necessary to conduct and support the audit.

If Tenant maintains the books, accounts and records in another location outside the metropolitan Boston area, Tenant shall make these documents available at its local office or a site (e.g. the Logan Office Center) upon reasonable notice from Landlord. If the necessary books, records and original source documents are not in or cannot be provided for examination at Tenant's local office in the metropolitan Boston area, and if agreed to in advance by the Director of Internal Audit for Landlord, the audit can be conducted outside the metropolitan Boston area at Tenant's headquarters or other appropriate location, in which event Tenant shall reimburse Landlord for reasonable air and ground transportation, mileage, food, lodging and other miscellaneous costs associated with the audit. After the audit is completed, Landlord will send Tenant an invoice for costs so incurred and such costs shall be payable as Additional Rent hereunder.

Landlord shall use reasonable efforts to keep information obtained from any such inspection or audit confidential, except to the extent Landlord is required to disclose the same by law or court order, which determination shall be based on Landlord's sole discretion. The inspection and audit rights set forth in this **Section 12.2(a)** shall include the right to photocopy those accounts, books, records and data as Landlord determines in its reasonable discretion to be necessary or convenient in connection with its review or audit thereof. If Tenant's books and records have been generated from computerized data, Tenant agrees to provide Landlord or its representative with extracts of the data files in a computer readable format on data disks, E-mail with attached files or other suitable alternative computer data exchange formats. Tenant shall not charge Landlord for the reasonable use of Tenant's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and/or printing any records or transaction stored in magnetic, optical, microform or other media. Tenant shall provide all records and retrievals requested with fourteen (14) calendar days. Tenant agrees that it shall



include the requirements of this **Section 12.2(a)** in each Sublease and shall use commercially reasonable efforts to cause each Subtenant to comply with the foregoing terms in a manner that will allow Tenant to comply with foregoing terms.

- (b) Books and Records. Tenant agrees and shall use commercially reasonable efforts to cause each Subtenant to maintain in a true and accurate manner and in accordance with GAAP such accounts, books, records and data as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of Restaurant Gross Revenues and Office Premises Additional Rent in accordance with GAAP and with generally accepted auditing standards. Such records shall include, but not be limited to: general ledgers, subsidiary books of record, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes, point of sale records, bank deposits slips, bank statements, tax report files with federal, state, county, city or other agencies, discount or rebate agreements, and records of refunds and contractual agreements with other tenants of Landlord or other third parties relating to this Lease. Such books and records shall contain records of all of Tenant's and each Subtenant's pertinent activity under this Lease in a form consistent with good accounting practice (which may include, without limitation, electronic media compatible with the computers available to Landlord, computer generated hard copies or legible microfiche or microfilm copies).

Tenant agrees and shall use commercially reasonable efforts to cause each Subtenant to retain and keep all documents and records described herein for not less than three (3) years after each full Lease Year from the Commencement Date. Retention shall extend three (3) years after the expiration or termination of this Lease or the date on which Tenant and its Subtenants cease to operate on the Premises, whichever is later, or in the event of litigation or claims arising out of or relating to this Lease until such litigation or claims are completely resolved of and all time limits for appeal have expired.

Tenant agrees to include the requirements of this Section 12.2 (b) in each Sublease and shall use commercially reasonable efforts to cause each Subtenant to comply with the foregoing terms.

- (c) Adjustment of Overpayment/Underpayment. As a result of an audit described in this Section 12.2, if it is established that the amount of Restaurant Percentage Rent, and the corresponding Rent Participation, or Office Premises Additional Rent was understated, or the amount of any expense(s) and/or adjustments was overstated, so that Landlord shall have been paid less than it was entitled to receive under this Lease, Tenant shall pay to Landlord the difference between the amount that should have been paid, plus interest at the Default Rate on such understated amount from the date due to Landlord. Such payment shall be made within thirty (30) days of receipt of written notice from Landlord. If the amount underpaid exceeds by three percent (3%) or more the amount that should have been paid, or if the audit reveals that Tenant's or its Subtenants records are in such a state that the revenue due Landlord cannot be properly determined, the entire reasonable third party expense of said audit and any costs of collection incurred by Landlord shall be borne by Tenant.

If the audit establishes that Tenant has overpaid Landlord, then such overpayment shall, at Landlord's option, provided Tenant is not then in default be credited to Tenant within sixty (60) days of the approval of such credit by Landlord's representative or, if such overpayment is established after the expiration of the Term, then Tenant shall be reimbursed within sixty (60) days of the approval of such reimbursement by Landlord's representative.

The provisions of this Section 12.2 shall survive the termination or expiration of this Lease.

#### **D. NOISE/TRUCK TRAFFIC LEASE PROVISIONS**

##### **Example One: (Commercial Subtenant)**

Restaurant Subtenant acknowledges that the Premises are a mixed-use complex located in the vicinity of working maritime industrial area and Boston-Logan International Airport and, in addition to the Permitted Uses, additional uses in the area of the Premises may include aviation traffic, vehicle parking, vessel berthing, commercial fishing, maritime industrial activities, non-profit/community uses, daycare, health club, maritime industrial support space, passage of LNG tankers, and telecommunications. Restaurant Subtenant further acknowledges that there are noises, odors and other factors normally associated with the foregoing activities which may impact Tenant's use and enjoyment of the Premises. Restaurant Subtenant acknowledges and agrees that the Premises may only be used in accordance with the Permitted Uses under this Lease. In recognition of the foregoing, Restaurant Subtenant agrees to (a) defend, indemnify and hold Landlord harmless from and against all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorneys' and consultation fees) which may be imposed upon, incurred by or asserted against Landlord arising by reason of, or in connection with any of the impacts described in this Section 13.3; (b) not sue (and will not encourage or assist others to sue) or commence any action, claim, counterclaim or cross-claim, or otherwise seek affirmative relief from Landlord arising out of any of the impacts described in this Section 13.3 and (c) release Landlord from any claim, demand, lawsuit or cause of action in law or equity arising out of any of or related to any of the impacts described in this Section 13.3. If any action or proceeding is brought against Landlord, Restaurant Subtenant and any successors or assigns will resist or defend such action or proceeding at Restaurant Subtenant's sole cost and expense with counsel reasonably satisfactory to Landlord and will pay any judgment entered against Landlord.

## **Example Two: (Residential Subtenant)**

To be added to the Apartments Lease Addendum

Ground Lease and Waterways Notification: In accordance with the requirements of (i) the Apartments/Garage Ground Lease between the Massachusetts Port Authority ("Massport"), as landlord, and Owner, as tenant dated as of December 29 2003, and (ii) Waterways License No. 9709 dated December 29, 2003 issued by the Massachusetts Department of Environmental Protection, recorded with the Suffolk Registry of Deeds in Book 33563, Page 55, Tenant is hereby notified that:

- (i) the Community is in close proximity to water-dependent industrial facilities and associated truck access routes, including those routes located on Northern Avenue, "D" Street, Congress Street, and the Massport Haul Road, which will continue to operate in accordance with their normal business practices. These water-dependent industrial facilities include, without limitation, all aspects of the fishing industry (landing of catch, fish processing, movement of seafood and ice by vessel and truck), a cargo port including containerized cargo and bulk cargo, and a cruise ship port. The operation of these water-dependent facilities may generate noise from trucking and the operation of cranes and other material handling equipment. Such operation may also generate odors from the products handled and emissions from machinery and trucks. These activities may occur at any hour. These activities occur upon the piers and related backlands of South Boston (including without limitation the Fish Pier across the street, the Conley Container Terminal, the Black Falcon Cruise Terminal, the North Jetty/Massport Marine Terminal and other facilities in the South Boston Marine Industrial Park, and along the Reserved Channel). Truck traffic to and from those locations are directed to Northern Avenue and D Street in order to access the Haul Road and the interstate highway system.
- (ii) the Community is located approximately 1% miles from Logan International Airport (the "Airport") operated by Massport, and in the flight path of aircraft taking off from Runway 27. The frequency and intensity of use of Runway 27 depend on wind, weather, and other airport operational requirements that vary over the course of the year, but which typically average 15% to 18 % of all jet takeoffs per year. Occasionally, wind and other operational requirements result in Runway 27 being used for departures for extended periods of time. The Airport operates 24 hours per day/365 days per year without an absolute nighttime curfew. Airplane operations, particularly takeoffs, generate noise, vibrations and emissions. Greater details about these conditions can be found at [www.massport.com](http://www.massport.com). (the specific website, subject to change is: [http://www.massport.com/loganlairpo\\_noise.html](http://www.massport.com/loganlairpo_noise.html)).

The Community has been designed in anticipation of these adjacent conditions, but no representation is made that truck traffic, noise, odors, and emissions will not be experienced by Tenant.