FOI#12873

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December 16, 2011

12-19-11P03:02 RCVD

Mr. Daniel D. Duffy
FOI Administrator
Port Authority of NY & NJ
225 Park Avenue South
New York, NY 10003

Re: Request for Document

Dear Mr. Duffy:

I also would like to take this opportunity to request a second agreement, the current Port of New York & New Jersey agreement with APM Terminals in Port Elizabeth, NJ. This agreement, like the Global Terminal Container Services agreement, is required to be provided promptly under the FMC regulation, 46 CFR 535.310, that requires that all leases of operating rights in a facility be produced. I again am willing to pay reasonable copying costs for this document.

Thank you for your assistance in this matter.

Sincerely,
Hoppel, Mayer & Coleman

By Paul D. Coleman

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

January 18, 2012

Mr. Paul D. Coleman
Hoopel, Mayer & Coleman
1050 Connecticut Avenue, N.W., 10th Floor
Washington, DC 20036

Re: Freedom of Information Reference No. 12873

Dear Mr. Coleman:

This is a response to your December 16, 2011 request, which has been processed under the Port Authority's Freedom of Information Policy for a copy of the current agreement between the Port Authority and APM Terminal in Port Elizabeth, NJ.

Material responsive to your request and available under the Policy, which consists of 160 pages, will be forwarded to your attention upon receipt of a photocopying fee of $40 (25¢ per page). Payment should be made in cash, certified check, company check or money order payable to "The Port Authority of New York & New Jersey" and should be sent to my attention at 225 Park Avenue South, 17th Floor, New York, NY 10003.

Certain material responsive to your request is exempt from disclosure pursuant to exemption (6) of the Policy.

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

Sincerely,

Daniel D. Duffy
FOI Administrator

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

PCL Lease No. EP-248

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

MAERSK CONTAINER SERVICE COMPANY, INC.

Dated as of January 6, 2000

CONFORMED COPY CMC
Rep. Files

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Lease No. EP-248

THIS AGREEMENT OF LEASE, made as of the 6th day of January, 2000, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at One World Trade Center, New York, New York 10048; and MAERSK CONTAINER SERVICE COMPANY, INC. (hereinafter called "the Lessee"), a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940, whose representative is: Philip V. Conners.

WITNESSETH, THAT:

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

Section 1. Letting

The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at the Elizabeth-Port Authority Marine Terminal (sometimes hereinafter called "the Facility" or the "marine terminal"), in the City of Elizabeth, in the County of Union and the State of New Jersey, the following:

(a) the open area shown in stipple, the enclosed spaces shown in diagonal crosshatching, and the water area shown in diagonal hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area, enclosed spaces, and water area, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the initial premises" or "the premises", and the water area shown in diagonal hatching being hereinafter sometimes called "the initial berthing area" or "the berthing area";

(b) the open area shown in stipple, the enclosed spaces shown in diagonal crosshatching, and the water area shown in diagonal hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A-1", together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area,

enclosed spaces, and water area, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the added premises", and the water area shown in diagonal hatching being hereinafter sometimes called "the added berthing area". The parties agree that the added premises shall become part of the premises under this Agreement in whole or in contiguous portions thereof during the period from January 6, 2000 through December 31, 2003, with the addition to the leasehold of the added premises or any portion thereof to be effective upon ten (10) days' written notice given by the Port Authority to the Lessee setting forth a description of the location and configuration of the added premises or said portion thereof(any such notice being hereinafter called a "Tender Notice", the date any such Tender Notice is given being hereinafter called a "Tender Notice Date" and each date that the added premises or any portion thereof shall become a part of the premises under this Agreement being hereinafter called a "Tender Date").

(c) The initial premises and the added premises, upon its or their respective addition to the leasehold, shall hereinafter in this Agreement be collectively called and shall constitute "the premises", and the berthing area and the added berthing shall similarly be collectively called and shall constitute "the berthing area". The parties agree that the premises constitute non-residential property.

(d) Notwithstanding any other provision of this Agreement, in the event that the added premises or any portion thereof shall not have become a part of the premises under this Agreement by December 31, 2003, then, and in such event, the Lessee shall have the right to terminate this Agreement upon prior written notice given to the Port Authority within one hundred eighty (180) days' of December 31, 2003, and each party shall and does release and discharge the other of and from any claims or demands based on this Agreement or based on any breach or alleged breach hereof with respect to such termination. Termination under the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. In addition, in the event that the added premises or any portion thereof shall not have become a part of the premises under this Agreement by December 31, 2003, then, and in such event, the Port Throughput Lease Year Commencement Date (as defined in Section 42(a)(5)) shall be postponed for one day for each day following December 31, 2003 that all of the added premises have not become part of the premises under this Agreement, but in no event shall said postponement exceed 365 days following the Port Throughput Lease Year Commencement Date.

Section 2. Term

The term of the letting under this Agreement of the initial premises shall commence at 12:01 o'clock A.M. on January 6, 2000 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2029. The term of the letting under this Agreement of the added premises or any portion thereof shall commence at 12:01 o'clock A.M. on the respective date set forth in the notice referred to in Section 1(b) hereof given by the Port Authority with respect to the added premises or any such portion thereof and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2029.

Section 3. Basic Rental

The Lessee shall pay a basic rental during the term of the letting for the initial premises at the annual rate of Five Million Fifty-four Thousand Dollars and No Cents ($5,054,000.00) payable in advance in a monthly installment of Three Hundred Fifty-three Thousand Two Hundred Thirty-six Dollars and Fifty-two Cents ($353,236.52) on January 6, 2000 and thereafter in advance in equal monthly installments of Four Hundred Twenty-one Thousand One Hundred Sixty-six Dollars and Sixty-seven Cents ($421,166.67) on February 1, 2000 and on the first day of each calendar month thereafter occurring during the term of the letting. The Lessee shall pay a basic rental for the added premises at the annual rate of Nineteen Thousand Dollars and No Cents ($19,000.00) for each acre of the added premises, payable in advance in equal monthly installments of One Thousand Five Hundred Eighty-three Dollars and Thirty-four Cents ($1,583.34) for each such acre on the date that such acre becomes part of the premises and on the first day of each calendar month thereafter occurring through the expiration of the term of the letting, except that if any of said added premises shall be less or more than an acre or an exact multiple thereof and/or shall be added on a day other than the first day of a calendar month, the aforesaid basic rental for said added premises shall be prorated to reflect the actual area of said added premises and/or the date of their addition to the leasehold. Effective on the date that all of the added premises have become part of the leasehold or, if such date is not the first day of a calendar month, on the first day of the next calendar month, the Lessee shall pay a combined basic rental for the initial premises and the added premises through the expiration of the term of the letting at the annual rate of Six Million Six Hundred Fifty Thousand Dollars and No Cents ($6,650,000.00) payable in advance in equal monthly installments of Five Hundred Fifty-four Thousand One Hundred Sixty-six Dollars and Sixty-seven Cents ($554,166.67) on the first day of each calendar month occurring during such period.

JNL 6/1/00 LCB 6/27/00

Section 4. Container and Cargo Rental

(a) Except as specifically stated otherwise, for purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

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

(2) "Throughput Lease Year" shall mean as the context requires the period commencing on March 1, 2008 (which date is hereinafter called "the Throughput Lease Year Commencement Date") and ending on February 28, 2009 and each period commencing on March 1st and ending on February 28th (or 29th if a leap year) thereafter occurring during the term of the letting under this Agreement, except that the period commencing on March 1, 2029 and ending on December 31, 2029 shall be deemed a Throughput Lease Year (subject to the proration provisions of this Agreement);

(3) "Qualified Containers" shall mean cargo containers (or similar cargo conveyances ((if any)) which shall generally replace, succeed or complement present cargo containers) loaded onto or discharged from vessels berthing at the premises (whether or not stuffed or stripped at the premises, whether or not so loaded or discharged by means of container cranes, and whether or not empty or containing cargo), including without limitation any specialized cargo containers such as flat-racks (flat-racks when empty and bundled together as one unit shall be counted as one container), and shall also be deemed to mean mafis and trailers; but shall not mean containers arriving on shipboard and departing on the same ship and the same voyage if such containers are merely unloaded from the ship at the premises and reloaded in the course of a restowing operation or are merely moved from one location to another location on the same ship in the course of a shifting operation. Containers discharged from vessels berthing at the premises and loaded onto vessels berthing at the premises in the course of a transshipment operation shall be deemed to have been both discharged from such vessels and loaded onto such vessels in one discrete operation for purposes of the computation of the rental payable under this Section;

(4) "Non-container Cargo" shall mean cargo not in cargo containers loaded onto or discharged from vessels berthing at the premises;

(5) "Revenue Ton" shall mean one long ton (a weight of 2,240 pounds) or a measurement ton (40 cubic feet) as determined by the Port Authority acting in its sole discretion;

(6) "Exemption Number" shall mean the sum of two hundred eighty thousand (280,000);

Whenever reference is made to the Exemption Number, it shall mean the Exemption Number reduced by operation of the proration provisions hereof.

(7) "Tier 1 Number of Containers" shall mean from two hundred eighty thousand and one (280,001) Qualified Containers through seven hundred seventy thousand (770,000) Qualified Containers;

(8) "Tier 2 Number of Containers" shall mean the number of Qualified Containers above seven hundred seventy thousand (770,000) Qualified Containers;

(10) "ExpressRail Facility" shall mean an intermodal rail terminal located adjacent to the premises.

(b) The Lessee shall pay to the Port Authority a container throughput rental (hereinafter called "the Container Throughput Rental") for each Throughput Lease Year from the Throughput Lease Year Commencement Date through the expiration of the term of the letting under this Agreement equal to the product obtained by multiplying (1) the tier 1 throughput rental rate (hereinafter called "the Tier 1 Rental Rate") applicable for the Throughput Lease Year by the Tier 1 Number of Containers loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year; and (2) the tier 2 throughput rental rate (hereinafter called "the Tier 2 Rental Rate") applicable for the Throughput Lease Year by the Tier 2 Number of Containers loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year. The Tier 1 Rental Rates and the Tier 2 Rental Rates for each Throughput Lease Year are as set forth in the Schedule attached hereto, hereby made a part hereof and marked "Schedule A".

(c) The computation of the Container Throughput Rental for each Throughput Lease Year, or a portion of a Throughput Lease Year, shall be individual to such Throughput Lease Year, or such portion of a Throughput Lease Year, and without relation to any other Throughput Lease Year, or any other portion of any Throughput Lease Year. The time for making payment of the Container Throughput Rental, and the method of calculation thereof, shall be as set forth in paragraph (d) of this Section. The Container Throughput Rental shall be payable on a monthly basis, as set forth in paragraph (d) of this Section, based on

the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the month.

(d) The Lessee shall pay the Container Throughput Rental as follows: on the 30th day of the first month following the month in which the Throughput Lease Year Commencement Date shall occur, and on the 30th day of each and every month thereafter occurring during the Throughput Lease Year in which the Throughput Lease Year Commencement Date shall occur (or the 28th day if a February and the 29th of February if a leap year) and each subsequent Throughput Lease Year occurring during the term of the letting, including the month following the end of each such Throughput Lease Year, the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the preceding month and the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the premises from the date of the commencement of the Throughput Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the month for which the report is made, and such statement shall also include terminal statistics and measures relating to containers handled at and discharged to and from the premises as detailed and required from time to time by the Port Authority. During the period, if any, prior to the Terminal Lease Year Commencement Date, as defined in Section 43(a)(2) hereof, whenever any monthly statement shall show that the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the Throughput Lease Year for which the report is made is in excess of the Exemption Number, the Lessee shall pay to the Port Authority at the time of rendering such statement and at the time of rendering each subsequent monthly statement for such Throughput Lease Year, and the month following such Throughput Lease Year, an amount equal to the product obtained by multiplying the Tier 1 Rental Rate by the Tier 1 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made and the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made. From and after the Terminal Lease Year Commencement Date, whenever any monthly statement shall show that the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the Throughput Lease Year for which the report is made is in excess of, respectively, five hundred thousand (500,000) during the First Terminal Guarantee

Period, as defined in Section 43(a)(5) hereof, six hundred thousand (600,000) during the Second Terminal Guarantee Period, as defined in Section 43(a)(6) hereof, and seven hundred thousand (700,000) during the Third Terminal Guarantee Period, as defined in Section 43(a)(7) hereof, the Lessee shall pay to the Port Authority at the time of rendering such statement and at the time of rendering each subsequent monthly statement for such Throughput Lease Year, and the month following such Throughput Lease Year, an amount equal to the product obtained by multiplying the Tier 1 Rental Rate by the number of Qualified Containers in excess of, respectively, five hundred thousand (500,000) during the First Terminal Guarantee Period, six hundred thousand (600,000) during the Second Terminal Guarantee Period, and seven hundred thousand (700,000) during the Third Terminal Guarantee Period, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made and the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made.

(e) Upon any termination of the letting hereunder (even if stated to have the same effect as expiration), the number of Qualified Containers shall be reported and the Container Throughput Rental shall be paid on the 30th day of the first month following the month in which the effective date of such termination occurs, as follows: the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the Throughput Lease Year in which the effective date of termination falls; the payment then due on account of all Container Throughput Rental for the Throughput Lease Year in which the effective date of termination falls shall be the excess of the Container Throughput Rental for such Throughput Lease Year, computed as follows, over the total of all Container Throughput Rental payments previously made by the Lessee for such Throughput Lease Year: an amount equal to the product obtained by multiplying (1) the Tier 1 Rental Rate by the Tier 1 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year, and (2) the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year, with the Exemption Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers all being multiplied by a fraction, the numerator of which shall be the number of days from the commencement of such Throughput Lease Year to the effective date of termination and the denominator of which shall be 365. Any amount of the Container Throughput Rental determined to be

owed to the Port Authority pursuant to such calculation shall be paid by the Lessee at the time of rendering the statement.

(f) In the event that the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of basic rental, then the Exemption Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers shall be reduced proportionately to the reduction of the basic rental.

(g) The Lessee shall pay to the Port Authority a non-container cargo throughput rental (hereinafter called "the Non-container Throughput Rental") with respect to Non-container Cargo for each Lease Year to occur during the term of the letting under this Agreement equal to the product obtained by multiplying the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the Lease Year by the respective wharfage charge for such cargo set forth in the Port Authority tariff for Port Authority Marine Terminals published in FMC Schedule PA-10 (or any successor tariff) as such charges may be amended from time to time during the term of the letting. The Non-container Throughput Rental shall be payable on a monthly basis, as set forth in paragraph (h) of this Section, based on the number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the month.

(h) The Lessee shall pay the Non-container Throughput Rental as follows: on the 30th day of the month next following the first month of the first Lease Year, and on the 30th day of each and every month thereafter occurring during such first Lease Year (or the 28th day if a February and the 29th of February if a leap year) and each subsequent Lease Year occurring during the term of the letting, including the month following the end of each such Lease Year, the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the preceding month and the cumulative number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises from the commencement of the Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the month for which the report is made. The Lessee shall pay any amount of Non-container Throughput Rental due under this Section at the time of rendering said report.

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

Section 5. Funded Work Rental

(a) For all purposes of this Agreement, the following terms shall have the respective meanings provided below.

(1) "Annual Construction Period" shall mean, as the context requires, the period commencing on January 6, 2000 and ending on December 31, 2000, and each of the twelve-month periods thereafter occurring during the period from January 1, 2001 through the first anniversary of the completion of the Fifty Foot Deepening, as defined in Section 41(a)(2) hereof; provided, however, that if said first anniversary shall not occur on the last day of a calendar year, the period from the first day of the calendar year in which said first anniversary shall occur through said first anniversary shall be deemed an Annual Construction Period for all purposes of this Section.

(2) "Facility Rental Payment Period" shall mean for the Annual Facility Rental due on account of the payments made by the Port Authority to the Lessee during each Annual Construction Period on account of the cost of the Funded Work, as defined in Section 7(a)(3) hereof, the period from the day next following the end of that Annual Construction Period through December 31, 2029.

(3) "The Port Authority's Costs of the Funded Work" shall mean for each Annual Construction Period 103.5% of all payments made by the Port Authority to the Lessee during such Annual Construction Period on account of the cost of the Funded Work performed by the Lessee.

(4) "Y" shall mean, as the context requires, the number (with the decimal carried to seven places) obtained by dividing the sum of (i) the average of the weekly Index of 25 Revenue Bonds as reported in the publication "The Bond Buyer" for the one hundred eighty (180) day period immediately preceding the expiration of each Annual Construction Period and (ii) one hundred fifty (150) basis points, by the whole number twelve (12). The calculation of Y with respect to Facility Construction Rental and Annual Facility Rental payable on account of the payments made by the Port Authority during any Annual Construction Period on account of the cost of the Funded Work shall be individual to the Facility Construction Rental and Annual Facility Rental payable on account of such payments and without relation to any other rental or any other payments. For purposes of example and illustration only, the Index of 25

Revenue Bonds for the week ending November 22, 1995 was 5.89% as set forth in the table entitled "Bond Buyer Indexes" on page 32 of The Bond Buyer, Vol. 314, No. 29784, New York, N.Y. dated Monday, November 27, 1995. In the event that The Bond Buyer or its weekly Index of 25 Revenue Bonds shall be discontinued at any time during the term of the letting a comparable substitute for such Index shall be mutually agreed upon in writing by the Lessee and the Port Authority within thirty (30) days after discontinuance. In the event that the Port Authority and the Lessee shall fail to agree upon such a substitute within the time hereinabove specified then upon notice of either party such dispute shall be disposed of by arbitration in accordance with the then existing rules of the American Arbitration Association or any successor association and relating to three member arbitration panels. One half of the cost of said arbitration shall be borne by the Port Authority and the other half of said cost shall be borne by the Lessee.

(5) "Monthly Rental Factor" shall mean, as the context requires, the factor or factors derived in accordance herewith from time to time by the application of the following formula:

$$\frac{1}{\frac{1}{Y} - \frac{1}{Y(1+Y)^t}} = \text{Monthly Rental Factor}$$

Where t (a power) equals the number of calendar months (expressed in whole numbers) in any given Facility Rental Payment Period that shall occur during the term of the letting hereunder.

(b) In addition to all other rentals payable by the Lessee under this Agreement, the Lessee shall pay to the Port Authority a rental (hereinafter called "the Facility Construction Rental") equal to the result of (i) multiplying Y for each Annual Construction Period and the product obtained by multiplying the amount of each payment made by the Port Authority to the Lessee during that Annual Construction Period on account of the cost of the Funded Work by the number of days from the date of such payment to the expiration date of that Annual Construction Period and (ii) dividing the result of that calculation by 30. The Facility Construction Rental shall be payable as set forth in paragraph (c) of this Section.

(c) In addition to all other rentals payable by the Lessee under this Agreement, the Lessee shall pay to the Port Authority a rental on account of the payments made by the Port

Authority to the Lessee during each Annual Construction Period on account of the cost of the Funded Work (hereinafter called the "Annual Facility Rental") at a monthly rate equal to the product obtained by multiplying the Monthly Rental Factor calculated in connection with the Facility Rental Payment Period for such Annual Facility Rental by the sum of (i) the amount of the Facility Construction Rental payable by the Lessee pursuant to paragraph (b) of this Section for that Annual Construction Period and (ii) the Port Authority's Costs of the Funded Work as hereinbefore defined for that Annual Construction Period, which rental shall be payable during the Facility Rental Payment Period in advance on the first day thereof and on the first day of each calendar month thereafter during such period. The rental payable pursuant to this paragraph (c) shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 6. Rights of User

(a) The Lessee shall use the premises for the following purposes only, and for no other purpose whatsoever: (i) the loading and unloading predominately of cargo housed in containers, and also of non-containerized cargo, such bulk cargo as shall have the prior and continuing consent of the Port Authority, and ships' stores, supplies and gear on or from seagoing vessels and other craft permitted to be berthed in the berthing area; (ii) the receipt, handling, and storage incidental to the transportation of cargo (whether or not in cargo containers) transported or to be transported by seagoing vessels permitted to be berthed in the berthing area, and of ships' stores, supplies and gear for such vessels; (iii) the parking of motor vehicles, container chassis, and of trailers and semi-trailers owned or operated by the Lessee or by the employees of the Lessee or by persons doing business with it at the Facility for the purposes set forth in this Section; (iv) the storage and repair of cargo containers, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of the Lessee under this Agreement; and (v) the maintenance of office space solely for purposes incidental to the operations of the Lessee set forth in this Section.

(b) The Lessee shall have the right to berth in the berthing area seagoing vessels for which the Lessee acts as stevedore or terminal operator, and operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority, carrying or about to carry general cargo, and tugboats, barges, lighters and other harbor craft serving such seagoing vessels, for loading or discharge of cargo, ships' stores, supplies and gear. Such loading and discharge from seagoing vessels may be accomplished in the berthing area through the medium of barges, lighters, and other

harbor craft moored inshore or offshore. The Lessee shall have the exclusive right to collect dockage and wharf usage charges from seagoing vessels and all other craft, subject to all the terms and provisions of this Agreement. The Lessee shall not use or permit the use of the berthing area except as hereinabove provided.

Section 7. Construction by Lessee

(a)(1) The Lessee understands that construction and installation work is required with respect to its occupancy of and operations on the premises, and the Lessee agrees to and shall perform the following items of work with respect to the premises (each specific work item is hereinafter sometimes called the "specific work item"): (i) the increase of the crane rail capacity to six thousand (6,000) linear feet and structurally strengthening the foundation of six thousand (6,000) linear feet of crane rail, (ii) the reinforcement of the berth to allow for dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not in the color blue on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-2" to fifty (50) feet below mean low water, (iii) the dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not in the color blue on Exhibit A-2 to forty-five (45) feet below mean low water, (iv) the upgrade of the container yard, including the resurfacing of approximately two hundred forty (240) acres of the premises, transtainer runs, ancillary yard support, and reefer outlets, (v) the upgrade of the electric services, (vi) the dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not in the color blue on Exhibit A-2 to fifty (50) feet below mean low water, (vii) the construction of a maintenance and repair building and a roadability building, (viii) the upgrade of the gate complex, and (ix) the demolition of buildings. The items of work described in subdivisions (i) through (v) of the immediately preceding sentence shall hereinafter be collectively called the "Class A Work" and the items of work described in subdivisions (vi) through (ix) of the immediately preceding sentence shall hereinafter be collectively called the "Class B Work". The Class A Work and the Class B Work shall hereinafter be collectively called "the Lessee's Construction Work". In the event that the Fifty Foot Deepening shall not be completed by December 31, 2009, the Port Authority shall pay to the Lessee the difference between the cost of the performance of the work described in subdivision (ii) hereof to a depth of fifty feet and the cost of the performance of such work to a depth of forty-five feet.

(2) The Port Authority shall reimburse the Lessee in the amount of Thirty Million Four Hundred Thousand Dollars and

No Cents ($30,400,000.00) (hereinafter called "the Construction Work Reimbursement Amount") on account of the performance by the Lessee of a portion of the Class A Work (which portion of the Class A Work is hereinafter called the "Reimbursed Work"). The Construction Work Reimbursement Amount shall be made available to the Lessee during a five-year period commencing upon the completion of the study being performed by the United States Army Corps of Engineers (hereinafter called "the Corps"), as authorized under the Water Resources Development Act of 1996, and entitled the "New York/New Jersey Harbor Navigation Study" (hereinafter called "the Study"). For purposes of this subparagraph, the Study shall be deemed to be completed upon the issuance of a report by the Chief Engineer of the Corps to the United States Congress reporting the results of the Study. The Lessee shall provide the Port Authority with written notice describing the work to be subject to said reimbursement prior to the performance thereof. The Construction Work Reimbursement Amount shall be applied solely to work performed in accordance with the provisions of this Section. The Port Authority shall provide the Lessee with the Construction Work Reimbursement Amount subject to and in accordance with the provisions of paragraph (q) of this Section; provided, however, that the Construction Work Reimbursement Amount shall be applied solely to the reimbursement of costs incurred as determined by the provisions of paragraph (p) of this Section.

(3) The Lessee shall have the option to obtain funding for all or any part of the cost of the Class A Work not paid for by the Port Authority under the provisions of subparagraph (2) of this paragraph and for all or any part of the cost of the Class B Work from the Port Authority and/or from a third party or parties (which portion of the Lessee's Construction Work funded by the Port Authority is hereinafter called the "Funded Work"). If the Lessee obtains any such funding from a third party or parties, the Lessee agrees that in no event shall such third party or parties obtain, directly or indirectly, in connection with such funding any security or other financial interest, lien or other rights in or to this Agreement, the Lessee's interest in the leasehold estate created hereunder or the premises hereunder or any portion thereof. Any portion of the Lessee's Construction Work which is funded by a third party or parties, or by the Lessee out of its own funds or the funds of any entity related by ownership or control to the Lessee, is hereinafter called the "Outside Work". If the Lessee elects to obtain any funding from the Port Authority under the provisions of this subparagraph, the Lessee shall provide the Port Authority with written notice describing the work to be subject to such funding prior to the performance thereof. Funding under this subparagraph shall be in the form of the reimbursement solely of the cost of work performed in accordance with the provisions of this Section (which amount of reimbursement is hereinafter called

"the Funded Work Reimbursement Amount"). The Port Authority shall provide the Lessee with the Funded Work Reimbursement Amount subject to and in accordance with the provisions of paragraph (q) of this Section; provided, however, that the Funded Work Reimbursement Amount shall be applied solely to the reimbursement of costs incurred as determined by the provisions of paragraph (p) of this Section. The Lessee shall pay the Facility Construction Rental and Facility Rental set forth in Section 5 of this Agreement with respect to the Funded Work Reimbursement Amount. Notwithstanding any other provision of this Agreement, the Funded Work Reimbursement Amount shall in no event exceed One Hundred Forty-three Million Six Hundred Thousand Dollars and No Cents ($143,600,000.00).

(4) The Lessee agrees that it will complete the Class A Work within one year of the later of the date that all of the added premises have become part of the premises under this Agreement or the date of the completion of the Forty-five Foot Deepening (as defined in Section 41(a)(1) hereof) (the later of which dates is hereinafter called "the Class A Work Completion Date"), and that it will complete the Class B Work within one year of the date of the completion of the Fifty Foot Deepening (as defined in Section 41(a)(2) hereof). The Port Authority shall not be obligated to provide any portion of the Construction Work Reimbursement Amount for any item constituting a portion of the Class A Work which has been constructed or installed subsequent to the Class A Work Completion Date. The Port Authority shall not be obligated to provide any portion of the Funded Work Reimbursement Amount for any item constituting a portion of the Class A Work which has been constructed or installed subsequent to the Class A Work Completion Date or for any item constituting a portion of the Class B Work which has been constructed or installed subsequent to one year of the date of the completion of the Fifty Foot Deepening.

(5) Notwithstanding any other provision of this Agreement, if work on the Fifty Foot Deepening has not commenced by December 31, 2009, and the Lessee elects not to exercise its termination right under Section 41(c) hereof, the Lessee shall not be required to perform the Class B Work (whether or not the Lessee has then commenced any part of the Class B Work) unless and until work has commenced on the Fifty Foot Deepening, in which case the Class B Work shall be performed by the Lessee and completed within one year of the date of completion of the Fifty Foot Deepening; provided, however, that if at the time that the Fifty Foot Deepening is completed there are fewer than ten (10) full Lease Years remaining in the term of the letting, then (i) the Lessee shall have the option not to perform the Class B Work, and (ii) the Port Authority shall have the option not to provide reimbursement or otherwise fund any of the cost of the Class B

Work regardless of whether it is performed by the Lessee at its option.

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

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

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

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

(c) Prior to the commencement of any of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval a Construction Application in the form supplied by the Port Authority, and containing such terms and conditions as the Port Authority may include, setting forth in detail by appropriate plans and specifications the work the Lessee proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each

contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Lessee shall identify each of the items constituting the Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. Without limiting the obligations of the Port Authority under paragraph (a)(3) of this Section, the Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the Lessee's Construction Work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this Section, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The Port Authority shall endeavor to complete its initial review of the Construction Application and plans and specifications within thirty (30) business days after the Port Authority's receipt of a Construction Application and plans and specifications deemed by the Port Authority to be complete, and shall endeavor to complete its review of each revision or modification thereof within twenty (20) business days of the Port Authority's receipt of a revision or modification deemed by the Port Authority to be complete; provided, that, each such Construction Application and plans and specifications and/or revision or modification thereof shall be prepared in accordance with the highest professional standards, of uniformly high quality and well coordinated with respect to all engineering and architectural disciplines. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor, and the contract such contractor is operating under, have been approved by the Port Authority. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Construction Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (j) and (k) of this Section and such performance bonds as the Port Authority may specify. All of the Lessee's Construction Work shall be

performed by the Lessee in accordance with the Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon final completion of all of the Lessee's Construction Work the Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and the Lessee shall supply the Port Authority with one (1) set of as-built drawings of the Lessee's Construction Work in such form as the Port Authority shall determine. The Lessee shall keep said drawings current during the term of the letting under this Agreement. No changes or modifications to the Lessee's Construction Work shall be made without prior Port Authority consent. Following its receipt of the Lessee's certificate, the Port Authority shall promptly inspect the Lessee's Construction Work and, unless such certification is not correct, or the Port Authority determines that the premises is unsuitable for occupancy and use by the Lessee, a certificate of final completion shall be delivered to the Lessee by the Port Authority.

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

(e) If the Lessee desires to commence construction of portions of the Lessee's Construction Work prior to the approval by the Port Authority of the complete Construction Application and plans and specifications covering all of the Lessee' Construction Work pursuant to paragraph (c) of this Section, the Lessee shall submit to the Port Authority a separate Construction Application for each portion of the Lessee's Construction Work the Lessee so desires to commence (each such portion of the Lessee's Construction Work being hereinafter designated as "Partial Approval Work") which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to such portion of the Lessee's Construction Work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's Construction Work are hereinafter referred to as "the Partial Approval Work Plans" with respect to such portion of the Lessee's Construction Work) setting forth in

detail the work to be performed in connection with each such portion of the Lessee's Construction Work. The Port Authority shall have full and complete discretion as to whether to permit the Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review the Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of the Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

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

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

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

Authority may impose in its approval of the performance of such item of Partial Approval Work.

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

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

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

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

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

(f) Without limiting the generality of any of the provisions of this Agreement, the Lessee's Construction Work (including any Partial Approval Work performed by the Lessee) shall be performed in such a manner that there will be at all times during construction a minimum of air pollution, water pollution or any other type of pollution, and a minimum of noise emanating from, arising out of, or resulting from construction. Subject to the provisions of this Agreement, the Lessee shall construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth in this paragraph, and, without limiting the generality of the foregoing, such construction shall be subject to the Port Authority's review and approval in accordance with the provisions of this Section.

(g) Without limiting the generality of paragraph (c) of this Section the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the Lessee's Construction Work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall conduct no public operations in the premises with respect to any improvements, fixtures or equipment constituting the Lessee's Construction Work or a portion thereof until the Port Authority shall have notified the Lessee in writing that the Lessee's Construction Work or such portion thereof has been completed or substantially completed to its satisfaction, which notice shall be promptly delivered to the Lessee by the Port Authority after completion of such construction work. In the event of any inconsistency between the provisions of this Agreement and those of the Construction Application referred to in paragraph (c) of this Section the provisions of this Agreement shall control.

(h) Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the premises by the Lessee and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Lessee in the premises and shall do all preventive maintenance and make all repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear and tear which does not (i) adversely affect the efficient or proper utilization of any part of the premises, or (ii) adversely affect the appearance of any part of the premises.

(i) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Lessee's Construction Work, and shall use reasonable efforts to cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein

contained shall be deemed to constitute consent to the creation of any lien or claim against the premises or any part thereof, nor to prevent the Lessee from contesting any such liens or claims in good faith. No contractor or third party shall or shall be deemed to have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

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

(i) Commercial General Liability Insurance including but not limited to coverage for Products Liability-Completed Operations and for Broad Form Property Damage and Independent Contractor coverage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section, which coverage shall not exclude claims arising out of or in connection with work performed within fifty feet of railroad property, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $25 million. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards.

(ii) Protection and Indemnity Insurance, if the Lessee's work involves the ownership, maintenance, operation, use, loading or unloading of watercraft, with a minimum combined single limit coverage for bodily injury and property damage of $25 million.

(iii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for bodily injury and property damage of $3 million.

(iv) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5 million.

(v) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S.

Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act, maritime (including coverage for Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

(k) In addition to the insurance required pursuant to the provisions of paragraph (j) of this Section, the Lessee shall procure or cause to be procured prior to the commencement of any of the Lessee's Construction Work Builder's Risk Insurance (All Risk) covering loss or damage (including any loss or damage resulting from flood or earthquake) to any structures, improvements, fixtures and equipment and furnishing and materials on the premises during said construction, whether or not attached to the land, in an amount equal to the full replacement cost. Such insurance shall name the Port Authority as an insured and such policy shall provide that the loss shall be adjusted with the Port Authority, and that the proceeds thereof shall be paid to the Port Authority and shall be made available to the Lessee for and applied strictly and solely to the payment of the cost of the repair, replacement, rebuilding or other performance of the Lessee's Construction Work.

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

(m) Unless otherwise set forth herein, each policy of insurance described in paragraphs (j) and (k) of this Section shall be subject to the applicable provisions of Section 15(e) of this Agreement.

(n) Title to and property in all improvements and fixtures placed, constructed or installed in or on the premises, including all such improvements and fixtures as shall constitute the Lessee's Construction Work, shall vest in the Port Authority upon placement, construction or installation thereof and title to and property in any and all equipment and trade fixtures removable without substantial injury to the premises placed in or installed upon the premises shall vest in the Lessee upon the installation thereof. No equipment or trade fixtures shall be removed by the Lessee prior to the expiration date of the letting under this Agreement unless replaced with substantially similar property. Without limiting any other term of this Agreement, and notwithstanding the foregoing provisions, upon notice given by the Port Authority prior to the expiration or earlier termination of the letting of the premises under this Agreement the Lessee shall remove from the premises any improvements, fixtures, trade fixtures, or equipment (provided same may be accomplished at reasonable cost to the Lessee) as the Port Authority may specify in its notice, and shall repair any damage to the premises caused by such removal.

(o) In the performance of the Lessee's Construction Work the Lessee shall not create nor permit to continue any situation or condition that may cause or be conducive to any labor troubles at the Facility which interferes with the progress of other construction work at the Facility. The determinations of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority, the Lessee shall or shall cause its contractor to rectify as soon as possible any condition specified in the notice. In the event of failure by the Lessee or any of its contractors to comply with the requirements of this paragraph (whether or not such failure is due to the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with any portion of the Lessee's Construction Work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee shall promptly reinstate the permission to the Lessee to perform the Lessee's Construction Work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(p) To the extent permitted by sound accounting practice, the sum of the following items of cost incurred by the Lessee in performing the Reimbursed Work and/or the Funded Work shall constitute the reasonable cost thereof for the purposes of this Agreement:

(1) The Lessee's payments to contractors;

(2) The Lessee's payments for supplies and materials;

(3) The Lessee's payments to persons, firms or corporations other than construction contractors or suppliers of materials, for services rendered or rights granted in connection with construction, not including services of the types mentioned in items (4), (5) and (6) of this paragraph;

(4) The Lessee's payments of premiums for performance bonds and for the insurance the Lessee is required to maintain in effect in accordance with the provisions of paragraphs (j) and (k) of this Section during the period of construction only;

(5) The Lessee's payments for engineering services in connection with the Reimbursed Work and/or the Funded Work, and during the period of the construction only;

(6) The Lessee's payments for architectural, planning and design services in connection with the Reimbursed Work and/or the Funded Work;

(7) The sum of the costs approved under items (4), (5) and (6) of this paragraph shall not exceed 20% of the sum of the costs approved under items (1), (2) and (3) of this paragraph; if in fact there is any such excess, such excess shall not be a part of the cost incurred by the Lessee in the performance of the Reimbursed Work and/or the Funded Work for the purposes of this Section.

No payment or payments on account of administrative or other overhead costs and no payment to employees of the Lessee shall be included in the cost of the Reimbursed Work and/or the Funded Work whether or not allocated to the cost of the work by the Lessee's own accounting practices. No payment to a firm or corporation wholly or partially owned by or in common ownership with the Lessee (unless the performance and the cost of the work by said firm or corporation in common ownership with the Lessee shall have been approved in advance by the Port Authority) shall be included in the cost of the Reimbursed Work and/or the Funded Work.

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

Construction Work performed by the Lessee in the preceding month showing separately the amount of Class A Work, Class B Work, Outside Work, Reimbursed Work, and Funded Work performed respectively on each specific work item during such month; the cost of each such category of work; the amount of the cost of each such category of work incurred by the Lessee during such month; the amount paid by the Lessee on account of the cost of each such category of work during such month, if any; the cumulative amount of the cost of each such category of work incurred by the Lessee on account of the Lessee's Construction Work described in the certificate from the date of the commencement of the Lessee's Construction Work; and the cumulative amount of all payments made on account of the cost of each such category of work from the date of the commencement of the Lessee's Construction Work, and such certificate shall also contain the statements set forth in subdivisions (ii) and (iii) of this paragraph both with respect to the Lessee's Construction Work described in the certificate and all of the Lessee's Construction Work previously performed by the Lessee. Each such certificate shall also contain a certification by the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of paragraph (c) of this Section certifying that all of the work described in the certificate has been performed in accordance with the final plans and specifications approved by the Port Authority covering such work. Following its receipt of such certificate the Port Authority shall remit to the Lessee an amount equal to the amount paid by the Lessee for the portion of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and less the amount of claims, if any, made against the Port Authority by subcontractors, materialmen or workmen on account of any of the Lessee's Construction Work described in the certificate. Upon final completion of all of the work on each specific work item to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof that all such work has been completed, which certificate shall certify separately the final cost of such specific work item stating separately the respective cost of any of such work constituting Outside Work, Reimbursed Work and/or Funded Work, the respective cumulative payments made by the Lessee on account of any Outside Work, Reimbursed Work and/or Funded Work, and shall also certify the items set forth above in subdivisions (ii) and (iii) of this paragraph with respect to all of the work performed on the specific work item. In addition the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of this Section shall certify that all work on the specific work item has been performed in accordance with the final plans and specifications approved by

the Port Authority covering such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee's certificate. The Port Authority shall have the right (but shall not be obliged) to conduct an interim inspection and audit in connection with the specific work item certified as completed, and shall have the rights in the conduct of such interim inspection and audit as are set forth below in this paragraph in regard to the final inspection and audit. If all of the work performed on such specific work item has been completed in accordance with the approved plans and specifications and the provisions of this Agreement and the Lessee's certificate is fully satisfactory to the Port Authority, the Port Authority shall pay to the Lessee on account of the cost of the specific work item constituting Reimbursed Work and/or Funded Work the amount equivalent to the difference between the sum obtained by adding together all prior payments made to the Lessee under the provisions of this paragraph on account of the cost of the specific work item and the final cost of such work constituting Reimbursed Work and/or Funded Work, as certified by the Lessee, less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the work constituting the specific work item. No payment made by the Port Authority on account of the cost of a specific work item as set forth above in the paragraph shall be considered final until the final determination of the cost of the Lessee's Construction Work as set forth below in this paragraph. Upon final completion of all of the Lessee's Construction Work to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall certify to the Port Authority by final written certification signed by a responsible officer of the Lessee that all of the Lessee's Construction Work has been completed, which certificate shall certify the final cost of such work for each specific work item, the respective cumulative payments made by the Lessee on account of such respective costs stating separately the payments on account of Outside Work, Reimbursed Work and/or Funded Work and shall also certify the items set forth above in subdivisions (ii) and (iii) of this paragraph with respect to all of the work. In addition, the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of this Section shall certify that all of the work has been performed in accordance with the final plans and specifications approved by the Port Authority covering such work. Promptly after examination and approval of such certificates, and such supporting documents and records as the Port Authority shall deem necessary to substantiate the certificates, the Port Authority shall finally inspect the premises and the work and promptly after such inspection the Port Authority shall notify the Lessee if all of the work has been performed in accordance with the

approved plans and specifications and the provisions of this Agreement. If all of the work has been completed in accordance with the approved plans and specifications, and the provisions of this Agreement, the Port Authority will pay to the Lessee an amount equivalent to the difference between the sum obtained by adding together all prior payments made to the Lessee under the provisions of this paragraph by the Port Authority on account of the cost of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work and the lesser of (i) the reasonable cost, as defined in paragraph (p) of this Section, of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work, or (ii) the Construction Work Reimbursement Amount (as to the Reimbursed Work) and/or the Funded Work Reimbursement Amount (as to the Funded Work). If the sum of all of the previous payments made by the Port Authority to the Lessee on account of the cost of the Lessee's Construction Work constituting Reimbursement Work and/or Funding Work exceeds the lesser of (i) the reasonable cost, as defined in paragraph (p) of this Section, of the Lessee's Construction Work constituting Reimbursement Work and/or Funding Work or (ii) the Construction Work Reimbursement Amount (as to the Reimbursed Work) and/or the Funded Work Reimbursement Amount (as to the Funded Work), the Lessee shall pay to the Port Authority the amount of such excess on demand. No payment made by the Port Authority to the Lessee pursuant to the provisions of this paragraph, including, without limitation, any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be deemed final until the cost of the Lessee's Construction Work has been finally determined by the Port Authority. Any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost shall not be deemed a final determination of the cost of the Lessee's Construction Work. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Lessee's Construction Work to examine and audit the records and other documentation of the Lessee which pertain to and will substantiate such cost. In no event whatsoever shall the cost of any portion of the Lessee's Construction Work as finally determined and computed in accordance with the provisions of paragraph (p) of this Section and in accordance with the provisions of this paragraph include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any improvements, equipment or fixtures or the performance of any work unless such are actually and completely installed in and or made to the premises nor shall cost include the costs of any equipment, fixture or improvements which are

secured by liens, mortgages, other encumbrances or conditional bills of sale.

(r) The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Reimbursed Work shall be limited in amount to the Construction Work Reimbursement Amount. The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Funded Work shall be limited in amount to the Funded Work Reimbursement Amount. No contractor or third party shall or shall be deemed to have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

(s) Upon completion of each specific work item and at the time for the Port Authority to determine the amount, if any, payable by the Port Authority to the Lessee on account of the cost of said specific work item, the Port Authority shall render a bill to the Lessee setting forth an amount equal to three and one half percent (3.5%) of the cost of any Outside Work and/or Reimbursed Work performed by the Lessee with respect to said specific work item, and the Lessee shall pay such amount to the Port Authority within fifteen (15) days of receipt of such bill. Upon completion of the Lessee's Construction Work and at the time for the Port Authority to determine the amount, if any, remaining to be paid by the Port Authority to the Lessee on account of the cost of the Lessee's Construction Work, the Port Authority shall render a bill to the Lessee setting forth an amount equal to three and one half percent (3.5%) of the cost of any Outside Work and/or Reimbursed Work performed by the Lessee with respect to the Lessee's Construction Work reduced by any amounts paid by the Lessee to the Port Authority under the provisions of the immediately preceding sentence, and the Lessee shall pay such amount to the Port Authority within fifteen (15) days of receipt of such bill.

(t) Without limiting any of the terms and conditions hereof, the Lessee understands and agrees that it shall put into effect prior to the commencement of the Lessee's Construction Work an affirmative action program and Minority Business Enterprise (MBE) program and Women-owned Business Enterprise (WBE) program in accordance with the provisions of Schedule E, attached hereto and hereby made a part hereof. The provisions of Schedule E shall be applicable to the Lessee's contractor or contractors and subcontractors at any tier of construction as well as to the Lessee, and the Lessee agrees to include the provisions of Schedule E in all of its construction contracts so as to make the provisions and undertakings set forth in Schedule

E the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. The Lessee agrees to and shall require its contractors and subcontractors to furnish to the Port Authority such data, including but not limited to compliance reports, relating to the operation and implementation of the affirmative action, MBE, and WBE programs of the Lessee and its contractor, contractors, and subcontractors at any tier of construction called for under the provisions of this paragraph and Schedule E annexed hereto as the Port Authority may request at any time and from time to time and the Lessee agrees to and shall also require that its contractors and subcontractors at any tier of construction make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions of this paragraph and Schedule E annexed hereto to effectuate the goals of affirmative action, MBE, and WBE programs. The obligations imposed on the Lessee under this paragraph and Schedule E annexed hereto shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

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

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

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

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

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

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

[There is no Section 8 in this Agreement]

Section 9. Environmental Responsibilities

(a) For purposes of the Agreement, the following terms shall have the respective meanings provided below:

(1) "Analyzed Item" and Analyzed Items" shall mean all of the pollutants which were tested for as part of the Initial Existing Condition.

(2) "Commencement Initial Existing Condition" shall mean upon the delivery by the Port Authority to the Lessee of the report and test results described in paragraph (j)(1) of this Section, the results of such report and test results setting forth the levels of the Analyzed Items in the soil and upper aquifer of the added premises, as applied by the methodology set forth in paragraph (k) below for the establishment of the level of the Analyzed Items for all portions of the added premises.

(3) "Consultant" shall have the meaning set forth therefor in paragraph (j)(1) of this Section.

(4) Environmental Damages" shall mean any one or more of the following: (i) the presence in, on, or under the premises of any Hazardous Substance whether such presence occurred prior to or during the term of the letting under this Agreement or resulted from any act or omission of the Lessee or others, and/or (ii) the disposal, discharge, release or threatened release of any Hazardous Substance from the premises or of any

Hazardous Substance from under the premises and/or (iii) the presence of any Hazardous Substance in, on or under other property at the Facility as a result of (a) the Lessee's use and occupancy of the premises or the performance of the Lessee's Construction Work or (b) a migration of a Hazardous Substance from the premises or from under the premises or (c) the Lessee's operations at the Facility, and/or (iv) any personal injury, including wrongful death, or property damage, arising out of or related to any Hazardous Substance described in (i), (ii) or (iii) above, and/or (v) the violation of any Environmental Requirement pertaining to any Hazardous Substance described in (i), (ii) or (iii) above, the premises and/or the activities thereon.

(5) "Environmental Requirements" shall mean in the plural and "Environmental Requirement" shall mean in the singular all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, "best management practices plans", and other voluntary programs adopted and agreements made by the Port Authority with any governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, the foregoing to include without limitation:

(i) All requirements pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist; and

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

(6) "Exhibit I" shall mean the test results and report described in and as delivered by the Port Authority to the Lessee pursuant to paragraph (j)(1) hereof as the same may be supplemented and superseded pursuant to the provisions of this Section 9.

(7) "Existing Condition" shall mean the Initial Existing Condition as superseded and supplemented in accordance with this Section by each Succeeding Existing Condition.

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

(9) "Hazardous Substances" shall mean and include in the plural and "Hazardous Substance" shall mean and include in the singular any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls ("PCBs"), chemicals known to cause cancer, endocrine disruption or reproductive toxicity, petroleum and petroleum products and other substances which have been or in the future shall be declared to be hazardous or toxic, or the removal, containment or restriction of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have been or in the future shall be restricted, prohibited, regulated or penalized by any federal, state, county, or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations adopted and publications promulgated pursuant thereto.

(10) "Initial Existing Condition" shall mean the Commencement Initial Existing Condition as superseded and supplemented in accordance with this Section by each Updated Initial Existing Condition.

(11) "Succeeding Existing Condition" shall mean upon the delivery of a report and test results described in paragraph (n) hereof, if any, the results

of such report and test results setting forth the levels of the Analyzed Items in the soil and upper aquifer of the added premises together with those portions of Exhibit I which have not been superseded, as applied by the methodology set forth in paragraph (k) below for the establishment of the level of the Analyzed Items for all portions of the added premises, provided, however , and notwithstanding the foregoing, in no event shall the level of any Analyzed Item in any Succeeding Existing Condition be above the lower of (i) the level for such Analyzed Item as set forth in the Initial Existing Condition, or (ii) the lowest level to which such Analyzed Item has been remediated to as shown in a Succeeding Existing Condition.

(12) "Updated Initial Existing Condition" shall mean upon the delivery by one party to the other of a report and test results described in paragraph (j)(2) of this Section, if any, the results of such report and test results setting forth the levels of the Analyzed Items in the soil and upper aquifer of the added premises together with those portions of Exhibit I which have not been superseded, as applied by the methodology set forth in paragraph (k) below for the establishment of the level of the Analyzed Items for all portions of the added premises, provided, however, no Updated Initial Existing Condition shall include any Hazardous Substance whose presence in, on or under the added premises was caused by or resulted from any act or omission of the Lessee or whose presence in, on or under the added premises occurred after the Tender Date of such added premises.

(b) Without limiting the generality of any of the other terms and provisions of the Agreement and except as otherwise set forth in paragraph (1)(3) of this Section, the Lessee hereby expressly agrees to assume all responsibility for and relieve the Port Authority from any and all risks of any kind whatsoever caused by, arising out of or in connection with the conditions of the premises whether any such conditions existed prior to, on or after the effective date of the letting of the premises, including without limitation all Environmental Requirements and all Environmental Damages.

(c) Without limiting the Lessee's obligations elsewhere under the Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which or at any time are in effect during the term of the letting under the Agreement, the Lessee understands

and agrees that it shall be obligated, at its cost and expense, to comply with all Environmental Requirements which are applicable to or which affect (i) the premises, (ii) the operations of the Lessee or others with the consent of the Lessee at the premises or the Lessee's operations at the Facility, (iii) the occupancy and use of the premises by the Lessee or by others with its consent or (iv) any Hazardous Substance which has migrated from or from under the premises. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of the Lessee. Without limiting the generality of the foregoing and as part of the Lessee's fulfillment of the foregoing obligations, the Lessee shall be responsible, at its cost and expense and subject to the direction of the Port Authority, for:

(1) The preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, remedial action workplan, no further action letter, remediation agreement or any other documentation or information;

(2) the obtaining of any surety bond or the giving of any other financial assurances;

(3) the obtaining from all Governmental Authorities of any approval of a negative declaration or no further action letter or other form of release or mitigation; and

(4) complying with the provisions of all Environmental Requirements becoming effective on the termination, expiration or surrender of the letting of the premises or of any portion thereof under the Agreement, or on the closure or transfer of the Lessee's operations at the premises.

(d) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in the Agreement and except as set forth in paragraph (1)(3) below, the Lessee shall, at its sole cost and expense and in accordance with and subject to the provisions of Section 20 of the Agreement, upon notice from the Port Authority, promptly take all actions to:

(1) remove, clean-up and remediate all Analyzed Items from the added premises to the extent of any increase in the level of any Analyzed Item above the Existing Condition;

(2) completely remove, clean up and remediate all Hazardous Substances in, on or under the premises and at the Facility resulting from or in connection with the Lessee's use and occupancy of the premises or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Facility by the Lessee or which have been disposed of, released, discharged or otherwise placed in, on or under the premises during the term of the letting of the premises under the Agreement or during the term of any previous agreement between the Lessee and the Port Authority covering the Lessee's use and/or occupancy of the premises or any portion thereof;

(3) clean up and remediate all Hazardous Substances in, on or under the premises or which have migrated from or from under the premises to any other property which any Governmental Authority or any Environmental Requirement or any violation thereof require to be remediated or cleaned up; and

(4) clean up and remediate all Hazardous Substances in, on or under the premises or which have migrated from or from under the premises necessary to mitigate any Environmental Damages.

(e) The obligations set forth in paragraph (d) of this Section shall include but not be limited to the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work; shall be performed in a good, safe and workmanlike manner; and shall minimize any impact on activities off the premises. The Lessee shall promptly provide the Port Authority with copies of all test results and reports generated in connection with such obligations.

(f) Without limiting the Port Authority's remedies under the Agreement or at law or in equity, the Port Authority shall have the right during and after the term of the letting of the premises under the Agreement to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Lessee of its environmental obligations under the Agreement

including without limitation all the Lessee's obligations under this Section 9. In the event that the Lessee fails to comply with or perform any of such obligations, the Port Authority at any time during or subsequent to the termination, expiration or surrender of the letting of the premises or any portion thereof may elect (but shall not be required) to perform such obligations and upon demand the Lessee shall pay to the Port Authority as additional rent its costs thereof, including all overhead costs as determined by the Port Authority. For the purposes of this paragraph, the term "costs" shall be as defined in Section 21 of the Agreement.

(g) Without limiting any other of the Lessee's obligations under the Agreement, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the General Manager of the Facility, at the cost and expense of the Lessee and at any time during or subsequent to the term of the letting of the premises under the Agreement, with such information, documentation, records, correspondence, notices, reports, test results, certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, and the Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same when and as directed by the Port Authority. The Lessee agrees that except as set forth in paragraph (1)(3) hereof any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee at the Lessee's cost and expense. Further, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the General Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority and by a Governmental Authority to the Lessee within two (2) business days that the same are made available to or received by the Lessee with respect to any Environmental Requirements.

(h) Without limiting the generality of any other provision contained in the Agreement and except as set forth in paragraph (1)(3) hereof, the Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, employees and representatives from all claims, demands, penalties, fines, liabilities (including strict liability), settlements, attorney and consultant fees, investigation and laboratory fees, cleanup and remediation costs, court costs and litigation expenses, damages, judgments, losses, costs and expenses of whatsoever kind or nature and whether known or unknown, contingent or

otherwise, just or unjust, groundless, unforeseeable or otherwise, arising or alleged to arise out of or in any way related to any Environmental Damages, or the risks and responsibilities assumed hereunder by the Lessee for the condition of the premises. If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(i) (1) Without limiting the generality of any provision of the Agreement, in the event that any Environmental Requirement sets forth more than one compliance standard, the Lessee agrees that the standard or standards to be applied in connection with any obligation it may have under the Agreement with respect to Environmental Requirements shall be that which requires or permits the lowest level of a Hazardous Substance; provided, however, in the event such lowest level of a Hazardous Substance requires or allows the imposition of any restriction of any nature whatsoever upon the use or occupancy of the premises or any other portion of the Facility or upon any operations or activities conducted or to be conducted on the premises or the Facility or upon the transfer of the premises or the Facility, then the Lessee shall remediate and clean up to such a level so that there is no such restriction placed upon the use and occupancy of the premises or the Facility or upon any operations or activities conducted or to be conducted on the premises or the Facility.

(2) The Lessee further agrees that, notwithstanding the terms and conditions of subparagraph (i)(1) above, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion and without any obligation whatsoever to the Lessee or otherwise to do so, to designate any level or levels or standard or standards of remediation or cleanup permitted or required under any Environmental Requirement, and such designation shall be binding upon the Lessee with respect to its obligations under the Agreement with respect to Environmental Requirements.

(j) (1) The current lessee of the added premises has heretofore taken water and soil samples from test borings and wells at the added premises and which samples are being tested on behalf

of said lessee by Prime Environmental Incorporated (hereinafter called the "Consultant") for Analyzed Items. When said test results of the Analyzed Items and report thereon are completed by the Consultant and provided to the Port Authority, the Port Authority shall deliver said test results and report to the Lessee and upon delivery of such tests results and report to the Lessee they shall be and become "Exhibit I" to this Agreement.

(2) Without limiting any of the rights of the Port Authority hereunder, the Port Authority shall have the right and the Lessee(subject to the provisions of Section 20 hereof)may, but neither shall have any obligation to, take soil and water samples from in, on and under the added premises, and for such soil and water samples, if any, taken by the Lessee and/or the Port Authority from the added premises during the period from the Tender Notice Date for such added premises and the ninetieth (90th) day after the Tender Date for such added premises (which period is hereinafter called the "Additional Testing Period"), upon delivery of such report and test results based upon samples taken from the added premises during the Additional Testing Period therefore to the other party and provided that such sampling and testing has been performed in accordance with paragraph (j)(3) below, such report and test results shall supersede Exhibit I or the applicable portions thereof if the test results and report are of Analyzed Items which have been previously tested and the results thereof reported in Exhibit I and the existing and new test results are from samples taken from the same well or a new well or boring which is immediately adjacent to such well or boring and shall supplement Exhibit I or the applicable portions thereof if the test results and report would not supersede any test results and reports in Exhibit I as aforesaid.

(3) All sampling of the added premises shall be performed so as to produce a fair and representative sampling and testing of the added premises and all sampling, testing and

preparation of any associated report shall be performed by a New Jersey State approved independent consultant and laboratory and shall be performed in accordance with the New Jersey Department of Environmental Protection Field Sampling Procedures Manual, May 1992, as the same may hereafter be supplemented, amended or superseded.

(k) The methodology to be used for the purpose of this Section 9 to determine for any Existing Condition the level of an Analyzed Item at any location in the added premises shall be for ground water, straight line interpolation methodology utilizing principles of hydrogeologic interpretation, and for soil, GEOPACK, an EPA geostatistical software system, and notwithstanding any other evidence to the contrary, the Existing Condition as so determined shall set forth and constitute for all purposes as between the Lessee and the Port Authority the levels of the Analyzed Items in the soil and ground water in, on and under the added premises.

(l) (1) Without limiting the generality of any other provision of the Agreement, the Lessee agrees that it has accepted the added premises with the Initial Existing Condition.

(2) It is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal and depositing (all of the foregoing being hereinafter collectively called "Disposal"), whether on or off the Facility, of any soil, dirt, sand, water or other matter (hereinafter collectively called the "Matter") excavated, disturbed or removed by the Lessee (or by any contractor or contractors of the Lessee) at or from the premises (or any other area of the Facility) at any time or times including, without limitation, any and all Disposal of said Matter in connection with the performance of the Lessee's Construction Work (as defined Section 7 of the Agreement) and any and all remediation and Disposal of said Matter and any and all other remediation, Disposal and cleanup (whether soil, upper aquifer or otherwise) necessary, required or appropriate as a result of, caused by, incidental to or triggered by such excavation, disturbance or removal of the Matter or arising therefrom, and the taking or doing of any and all other action or actions necessary, required or appropriate in connection therewith, shall be the sole and complete responsibility of the Lessee including, without limitation, all costs and expenses thereof and

any and all claims, penalties or other expenses relating thereto. The foregoing obligations of the Lessee shall obtain and apply with full force and effect irrespective of the nature or source of any contaminant, pollutant, chemical, waste or other substance or whether any of the same is an Analyzed Item or whether any of the same is at a level or levels above or below the level or levels of the Existing Condition or whether there has or has not been any increase in such level or levels. The Lessee shall perform all of the foregoing in accordance with and subject to all the terms, provisions, covenants and conditions of the Agreement.

(3) Notwithstanding anything to the contrary in the Agreement, the Lessee shall have no obligation under the Agreement with respect to the Existing Condition (other than the obligations described in subparagraph (2) of this paragraph (1) and paragraph (q) below) including, but not limited to, any obligation to remediate the Existing Condition or to pay any claim, penalty or expense with respect thereto; provided, however, if any of the levels of the Analyzed Items, or any of them, in the soil or the groundwater of or under the added premises shall increase above the Existing Condition, then the Lessee shall have such obligations with respect to such increase to the extent required by and in accordance with the terms and conditions of the Agreement.

(m) Without limiting the generality of the provisions of Section 22 of the Agreement, the Port Authority and its designees shall have the right but not the obligation to enter upon the added premises upon forty-eight (48) hours' notice to the Lessee to conduct testing and related activities from the existing wells made by the borings referred to in paragraph (j) of this Section, to make additional wells and borings and to conduct testing and related activities therefrom and to perform such activities as shall be necessary to remediate the Existing Condition including, but not limited to, conducting pumping operations from the wells made by borings referred to in paragraph (j) of this Section and this paragraph (m). In the exercise of the foregoing rights, the Port Authority and its designees shall not unreasonably interfere with the use and occupancy of the added premises by the Lessee.

(n) If after any remediation performed on the added premises, whether by the Lessee, the Port Authority or a third party, the Port Authority shall sample and test the

soil and upper aquifer of the added premises or portions thereof and shall set forth the results of such tests in a report (it being understood, however, that the Port Authority shall not have any obligation hereunder to perform such sampling and testing or to set forth the results thereof in a report), upon delivery of such report and test results to the Lessee, such report and test results shall supersede Exhibit I or the applicable portions thereof if the test results and report are of Analyzed Items which have been previously tested and the results thereof reported in Exhibit I and the existing and new test results are from samples taken from the same well or a new well or boring which is immediately adjacent to such well or boring and shall supplement Exhibit I or the applicable portions thereof if the test results and report would not supersede any test results and reports in Exhibit I as aforesaid.

(o) Without limiting the generality of the provisions of Section 16 of the Agreement, the Lessee agrees to protect and maintain the wells made by the borings referred to in paragraphs (j)and (m) of this Section and shall repair any damage thereto not caused by the activities of the Port Authority or its designees, if any, pursuant to paragraphs (j) and (m) of this Section.

(p) Without limiting the generality of any other term or provision of the Agreement, all of the obligations of the Lessee under this Section 9 shall survive the expiration or earlier termination of the letting of the premises.

Section 10. Ingress and Egress

The Lessee shall have the right of ingress and egress between the premises and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways, to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may at any time temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority and its successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising

or alleged to arise out of the closing of any way or other area whether within or outside the Facility; provided, that, a reasonably equivalent means of ingress and egress remains available. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in, along, across or through any streets, ways and walks near the premises.

Section 11. Governmental and Other Requirements

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

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items, including without limitation all Environmental Requirements, now or at any time during the occupancy of the premises by the Lessee which as a matter of law are applicable to or which affect (i) the premises, (ii) the operations of the Lessee at the premises or the Facility, (iii) the use and occupancy of the premises and/or (iv) any Hazardous Substance which has migrated from the premises. The Lessee, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the premises and perform all remediation work and clean up of Hazardous Substances required in order to fully satisfy the compliance obligations set forth in this Agreement.

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

Section 12. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises,

or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least ten (10) days before the Lessee shall be required to comply therewith.

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

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

Section 13. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the premises, the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy disturb or be offensive to others near the premises or at the Facility, and as soon as reasonably possible the Lessee shall remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or of any others on the premises with the consent of the Lessee.

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the premises and the Lessee shall remove from the premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. Said receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as are first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority for the removal of such material except with the prior consent of the Port Authority.

(c) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Facility.

(d) The Lessee shall not commit any nuisance or permit its employees or others on the premises with its consent to commit or create or continue or tend to create any nuisance in or near the Facility.

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

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

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

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading.

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

(j) The Lessee shall not do or permit to be done any act or thing on the premises or at the Facility which (i) will invalidate or conflict with any fire insurance policies covering the premises or any part thereof, or the Facility, or any part thereof, or (ii) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (iii) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the Insurance Services office of New Jersey, or of any other board or

organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, make all improvements, alterations and repairs of the premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of the Lessee to comply with the provisions of this paragraph, any rate for fire insurance, extended coverage or rental insurance on the premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

(k) From time to time and as often as required by the Port Authority, the Lessee shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment on the premises, whether furnished by the Port Authority or by the Lessee. The Lessee shall keep all fire-fighting and fire-extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be, for the use of which such equipment is designed, and shall train the appropriate number of its employees in the use of all such, equipment, including in such training periodic drills.

(l) The Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), owned or operated by the Lessee, or by a corporation, company or other organization or person associated, affiliated or connected with the Lessee or for which the Lessee acts as agent, stevedore or terminal operator, (or of others going to or from the premises on business with the Lessee) which shall have sunk, settled or become partially or wholly submerged at the Facility. In addition, the Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), which shall have sunk, settled or become partially or wholly submerged in the berthing area. The provisions of the immediately preceding sentence shall be applicable whether or not the aforesaid object is owned by the Lessee or is connected in any way with the Lessee or its occupancy of or operations at the premises, and the Port Authority shall have no obligation to raise or remove any such object unless its presence in the berthing area is the result of the sole negligence or willful act of the Port Authority.

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

Section 14. Signs

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

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

Section 15. Indemnity and Liability Insurance

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the premises by the Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others on the premises with the consent of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees on the premises or elsewhere at the Facility, or out of the acts or omissions of others on the premises with the consent of the Lessee, including claims and demands of the party, if any, from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

(b) If so directed by the Port Authority, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) in which event it shall not,

without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or its provisions of any statutes respecting suits against the Port Authority.

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

(i) Commercial General Liability Insurance including but not limited to coverage for Premises-Operations and Products Liability-Completed Operations, which coverage shall not exclude claims arising out of or in connection with operations conducted within fifty feet of railroad property, with a minimum combined single limit coverage for bodily injury and property damage of $ 5,000,000.00. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If the Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of $2,000,000.00.

(iii) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5,000,000.00.

(iv) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act, maritime (including coverage for Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

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

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

new and satisfactory policies in replacement. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

Section 16. Maintenance and Repair

(a) The Lessee shall at all times keep the premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Lessee located in or on the premises. Without limiting the generality of the immediately preceding sentence or any obligations of the Lessee with respect to the added premises, the Lessee agrees that upon the commencement of the letting it shall place the initial premises in good operating condition and shall keep such premises in good operating condition throughout the term of the letting.

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

(c) Subject to the provisions of paragraph (f) of this Section and Section 17 of this Agreement, throughout the term of the letting under this Agreement, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforseen, structural or otherwise; and without limiting the generality of the foregoing the Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said premises or the Lessee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items: (1) paving, which shall mean maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, catch basins, underground storm water pipes, and grate support systems. In addition, the Lessee shall be responsible for maintenance repairs, and damages, that are required above the structural concrete chamber of catch basins and manholes. Such repairs shall include the concrete brick collar, concrete collar, brick collar, asphalt concrete pavement, Portland cement concrete pavement, the frame and grate or manhole cover and silt bucket when and where applicable. For the purpose of manhole and catch basin repair, the top of the structural chamber shall be the top of the concrete slab that covers the vertical walls of the

underground manhole structure, and for the purpose of catch basin and manhole repair, the top of the structural chamber shall be the top of the (cast-in-place or pre-cast) vertical walls of the underground catch basin and manhole structure; (2) crane rails and rail foundations; (3) scales; (4) rail tracks on the premises; (5) lights, light poles and light pole foundations; (6) sprinkler systems; (7) gas and electric from the meter (utility companies are responsible up to the meter); (8) water pits; (9) container cranes; (10) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (11) the plumbing system, fixtures and equipment, and all finished plumbing; (12) buildings and all parts thereof; (13) special mooring devices and special loading devices, whether mechanical, electrical, hydraulic or otherwise; (14) fencing, (15) signs; (16) fire extinguishers; and (17) all painting. The Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement of the term of the letting thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the buildings or other structures on the premises or adversely affect the efficient or the proper utilization of any part of the premises or the environmental condition thereof. The Lessee shall make frequent periodic inspections of the premises and subject to Sections 7, 17 and 20 of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(d) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the premises and shall promptly replace or repair the same within twenty (20) days after such loss, theft or damage (except that if any such repair requires activity over a period of time, then the Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and the

Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at the commencement of the letting, reasonable wear not materially affecting the efficient use and functioning of the same excepted.

(e)(1) Until and unless the berthing area has been deepened as part of the Class A Work, upon sixty (60) days' notice from the Lessee that any part of the berthing area has shallowed to a depth of thirty-eight (38) feet below mean low water, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by governmental authorities having jurisdiction) to dredge such part of the berthing area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of forty (40) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(2) From and after such time that the deepening of the berthing area has been completed as part of the Class A Work, upon sixty (60) days' notice from the Lessee that any part of the berthing area has shallowed to a depth of forty-three (43) feet below mean low water, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by governmental authorities having jurisdiction) to dredge such part of the berthing area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of forty-five (45) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(3) From and after such time that the second deepening of the berthing area has been completed as part of the Class B Work, upon sixty (60) days' notice from the Lessee that any part of the berthing area has shallowed to a depth of forty-eight (48) feet below mean low water, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by

governmental authorities having jurisdiction) to dredge such part of the berthing area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of fifty (50) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(4) Notwithstanding any other provision of this Section, in the event that the Port Authority shall determine that the Estimated Cubic Yard Cost, as hereinafter defined, will exceed Eighty Dollars and No Cents ($80.00) (which amount is hereinafter called "the Base Cost"), the Port Authority shall not be obligated to perform the dredging work set forth in subparagraph (1), (2) or (3) of this paragraph unless the Lessee shall pay for any amount of the Estimated Cubic Yard Cost which shall exceed the Base Cost. "The Estimated Cubic Yard Cost" shall mean the total cost of dredging the portion of the berthing area described in the Lessee's notice given to the Port Authority under the aforesaid subparagraphs calculated in terms of the cost of such work per cubic yard of dredged material, with such estimate to include the cost of transporting and disposal of any dredged material and a Port Authority overhead charge of fifteen percent (15%) of all such other costs. In the event that the Port Authority shall determine that the Estimated Cubic Yard Cost of any such dredging will exceed the Base Cost, the Port Authority shall so notify the Lessee and the Lessee shall have the right to elect to have the dredging performed subject to its obligation to pay for any such excess cost. In the event that the Lessee shall not elect to pay such excess cost of the dredging, the Port Authority shall be relieved of its obligation to perform such dredging until such time, if ever, that it shall determine that the Estimated Cubic Yard Cost of such dredging does not exceed the Base Cost. The Base Cost shall be subject to adjustment during the term of the letting under this Agreement in accordance with the provisions of subparagraph (5) of this paragraph.

(5) As used in this subparagraph:

(i) "Index" shall mean the Construction Cost Index published by ENR Magazine.

(ii) "Base Period" shall mean the

calendar month of December, 1999.

(iii) "Adjustment Period" shall mean, as the context requires, the calendar month of December, 2000 and the calendar month of December in each calendar year which thereafter occurs during the term of the letting under this Agreement.

(iv) "Anniversary Date" shall mean, as the context requires, January 1, 2001 and each anniversary of such date which thereafter occurs during the term of the letting under this Agreement.

(v) "Percentage Change" shall mean the percentage of change in the Index on each Anniversary Date equal to a fraction the numerator of which shall be the difference between (aa) the Index for the Adjustment Period immediately preceding such Anniversary Date and (bb) the Index for the Adjustment Period immediately preceding the Anniversary Date which immediately precedes such Anniversary Date, and the denominator of which shall be the Index for the Adjustment Period immediately preceding the Anniversary Date which immediately precedes such Anniversary Date.

Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through the day preceding the next Anniversary Date, or the expiration date of the term of the letting under this Agreement, as the case may be, the Base Cost set forth in subparagraph 4 of this paragraph shall be adjusted by adding to or subtracting from the Base Cost, as the case may be, the product obtained by multiplying the Base Cost by the Percentage Change for such Anniversary Date. For purposes of any adjustment under this subparagraph, the Base Cost employed in the calculation described in the immediately preceding sentence shall be the Base Cost as previously adjusted under this paragraph.

In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised or ENR Magazine shall cease to publish the Index, then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in construction costs in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine. If after an adjustment in the Base Cost shall have been fixed for any period, the Index used for computing such adjustment shall be changed or adjusted, then the adjustment of the Base Cost for that period shall be recomputed accordingly.

(6) Notwithstanding any other provision of this Section, the Port Authority shall not be obligated to perform the dredging work set forth in subparagraph (1), (2) or (3) of this paragraph as to any part of the portion of the berthing area described in the Lessee's notice given to the Port Authority under the aforesaid subparagraphs as long as any vessel or other floating structure, equipment or other personal property (whether or not intended to be floating) is sunk, settled or partially or wholly submerged in such part of the berthing area. The provisions of this subparagraph shall be applicable whether or not the aforesaid object is owned by the Lessee or is connected in any way with the Lessee or its occupancy of or operations at the premises. The Port Authority shall have no obligation to raise or remove any such object unless its presence in the berthing area is the result of the sole negligence or willful act of the Port Authority.

(f) Except under circumstances as to which paragraph (b) of this Section applies, upon receipt of notice that repair or replacement of such of the following as are located in or are a part of the premises is required: (1) the structure of the wharf, fender systems (but not backing logs or bumpers), and standard mooring devices; (2) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the premises or closest meter on the premises servicing said water pit (but in no event the ships' water pits themselves); and (3) the underground sanitary systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the premises in a reasonably good condition for the operations of the Lessee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the premises to a better condition than that existing at the commencement of the letting. The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of the Lessee under any other provision of this Agreement. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable, except as expressly provided in Section 17 of this Agreement. If the Port Authority shall fail, after a reasonable period of time to perform its repair and replacement obligations under this paragraph, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay the Lessee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to the Lessee a credit against its rental obligations under this Agreement in an

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

(g) The obligation of the Lessee as set forth in paragraphs (b) and (c) of this Section in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that if at any time because of this release the insurance carrier of any policy covering the premises or any part thereof shall increase the premiums otherwise payable for fire, extended coverage or rental coverage applicable to the premises the Lessee shall pay to the Port Authority an amount equivalent to such increase or increases on demand; and provided, further, that if at any time this release shall invalidate any such policy of insurance or reduce, limit, or void the rights of the Port Authority thereunder, or if because of this release, any such insurance carrier shall cancel such endorsement or refuse to renew the same or shall take any other action to alter, decrease or diminish the

benefits of the Port Authority under the policy, then the release shall be void and of no effect.

Section 17. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the premises are damaged the Lessee shall rebuild the same with due diligence. Without in any way limiting the obligations of the Lessee set forth in the first sentence of this paragraph, with respect to all portions of the premises, the Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the term of the letting under this Agreement:

(1) All risk property damage insurance covering the full replacement cost of any property owned, leased, or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the premises, except for any personal property owned by the Port Authority. Full replacement cost shall be determined by the Port Authority. No omission on the part of the Port Authority to make such determination shall relieve the Lessee of its obligations to maintain the appropriate insurance under this paragraph. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New Jersey, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and boiler and machinery hazards and risks, and, if the Port Authority so requests, also covering nuclear property losses and contamination (if said coverage regarding nuclear property losses and contamination is or becomes available).

(2) Unless otherwise directed by the Port Authority, the property damage insurance policy required by this paragraph shall name the Port Authority and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide that loss, if any, shall be adjusted with and payable to the Port Authority. As to any insurance required by this paragraph, a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority on or before the Commencement Date. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each

such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective period hereof. If at any time the policy required by this paragraph shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

The proceeds of insurance from coverages secured in accordance with this paragraph shall be made available to the Lessee and shall be applied by the Lessee strictly and solely to the repair, replacement, or rebuilding of the premises as provided in this Agreement. The procedures for such rebuilding shall be the same as for the initial construction as set forth in Section 7. The Lessee shall not be entitled to any abatement of the rentals payable hereunder at any time by reason of such casualty.

(b) The Port Authority and the Lessee hereby stipulate that neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement.

(c) In the event of damage to or a partial or total destruction of the premises, the Lessee shall within thirty (30) days after the occurrence commence to remove from the premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to the Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of

sale, the Lessee shall pay such excess to the Port Authority on demand. Without limiting any term or provision of this Agreement, the Lessee shall indemnify and save harmless the Port Authority, its officers, agents, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise.

Section 18. Assignment and Sublease

(a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof, without the prior written consent of the Port Authority.

(b) The Lessee shall not sublet the premises or any part thereof without the prior written consent of the Port Authority.

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

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the Facility or any portion thereof for any purpose other than as provided in Section 6 of this Agreement.

Section 19. Condemnation

(a) In any action or other proceeding by any governmental agency or agencies superior to the Port Authority for the taking for a public use of any interest in all or part of the premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Lessee shall not be entitled to

assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee; provided, however, that this paragraph shall not be construed to prevent the Lessee from making a possible claim against the condemning party for an award for moving or relocation expenses, for trade fixtures and for other fixtures and improvements owned by the Lessee to the extent that such fixtures and improvements are owned by the Lessee and have been paid for by the Lessee, if such claims are then permitted by law and if such award is made separately from the award which the Port Authority will be entitled to in the condemnation proceeding, and will not reduce the amount thereof, but this provision shall not be deemed a recognition by the Port Authority of the validity of any such claims.

(b) In the event that all or any portion of the premises is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the premises so required. Such termination shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the premises so required upon the effective date of such termination in the same condition as that required for the delivery of the premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by the Lessee nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be an eviction of the Lessee or a breach of this Agreement or be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise.

(c) In the event that the taking or conveyance covers the entire premises, or in the event that the letting is terminated with respect to the entire premises pursuant to paragraph (b) of this Section, then this Agreement shall, as of the date possession is taken by such agency or agencies from the Port Authority, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the said date were the original date of expiration hereof.

(d) In the event that the taking or conveyance covers a part only of the premises, or in the event that the letting is terminated pursuant to paragraph (b) of this Section with respect to a part only of the premises, then the letting as to such part shall, as of the date possession thereof is taken by such agency or agencies, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the term of the letting had on that date expired, and the basic rental shall be abated as provided in Section 49 hereof and the Container Throughput Rental and Minimum Rental shall be abated proportionately.

(e) In the event that the taking or conveyance or the delivery by the Lessee or taking by the Port Authority pursuant to paragraph (b) of this Section covers fifty per cent (50%) or more of the total usable area of the premises including both open and enclosed space, then the Lessee and the Port Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

Section 20. Construction by the Lessee

Except as may be otherwise expressly provided in Section 7, the Lessee shall not erect any structures, make any improvements or do any other construction work on the premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures without the prior consent of the Port Authority. Except for the Lessee's personal property, in the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

Section 21. Additional Rent and Charges

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

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

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

Section 22. Rights of Entry Reserved

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and on behalf of furnishers of

utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the premises at all reasonable times to make such repairs, replacements or alterations as the Port Authority shall deem necessary or advisable and, from time to time, to construct or install over, in or under the premises new systems or parts thereof, and to use the premises for access to other parts of the Facility otherwise not conveniently accessible; provided, however that in the exercise of such rights of access, repair, alteration or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

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

(d) Nothing in this Section shall impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises or for any injury or damage to the premises or to any property of the Lessee or of any other person located therein or thereon (other than those occasioned by the acts of the Port Authority).

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

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from

the premises, the Port Authority may immediately enter and alter, renovate and redecorate the premises.

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

Section 23. Limitation of Rights and Privileges Granted

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

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

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

Section 24. Prohibited Acts

(a) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the drainage and sewerage system, water system, communications system., fuel system, electrical, fire-protection system, sprinkler system, alarm system, fire hydrants and hoses and other systems, if any, installed or located on, under, or in the premises.

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

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

(d) Except as set forth in paragraph (e) of this Section, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the premises of any vending-machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation or dispensing of food, beverages, tobacco, tobacco products, or merchandise of any kind whether or not included in the above categories, or of any equipment or devices for the furnishing to the public of service of any kind including therein, without limitation thereto, telephone pay stations.

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

(2) The Lessee shall have the right to operate a cafeteria for over-the-counter sales to employees of the Lessee of food, non-alcoholic beverages and other merchandise normally sold in such an establishment at no profit to the Lessee and either directly

by the Lessee or by an independent contractor who has received a permit from the Port Authority.

(f) The Lessee shall not overload any floor and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this paragraph (j) or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear.

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

(h) The Lessee shall not keep or store in the premises, explosives, inflammable liquids or solids or oxidized materials or use any cleaning materials having a harmful corrosive effect on any part of the premises, except for those materials normally used in the operation of a marine terminal and stored in a structure normally used for the storage of such materials and made safe for the storage thereof.

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

(j) The Lessee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on or from the premises, and shall not dispose of, release or discharge or permit anyone subject to its control or authority to dispose of, release or discharge any Hazardous Substance at the Facility. Any Hazardous Substance disposed of, released or discharged by the Lessee (or permitted by the Lessee to be disposed of, released or discharged) on or from the premises or at the Facility, shall upon notice by the Port Authority to the Lessee and subject to the provisions of Section 20 hereof, be completely removed, cleaned up and/or remediated by the Lessee. The obligations of the Lessee pursuant to this paragraph shall survive the expiration or termination of this Agreement.

Section 25. Termination

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

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in

bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if the Lessee is a corporation, by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

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

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

(5) The Lessee shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

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

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

(8) The Lessee shall voluntarily abandon, desert or vacate the premises or discontinue its operations at

the premises or at the Facility or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the premises, regardless of the fault of the Lessee; or

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

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

(11) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within twenty (20) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within twenty (20) days after receipt of notice, and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by twenty (20) days' written notice terminate the letting and the rights of the Lessee under this Agreement, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

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

Section 26. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 25 of this Agreement, have the right to re-enter the premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or other legal proceedings, or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 27. Waiver of Redemption

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

Section 28. Survival of the Obligations of the Lessee

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Section 2 hereof, subject to the provisions of Section 29 hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place. The Port Authority may maintain separate actions each

month to recover the damage or deficiency then due, or at its option and at any time may sue to recover the full deficiency (less the proper discount) for the entire unexpired term.

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

(1) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including, without limitation thereto, all sums constituting additional rental under Section 21 of this Agreement, and all sums constituting the rentals under Section 3, Section 4, Section 5 and Section 43(b) of this Agreement, accrued prior to the effective date of termination, and the cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the term or on the expiration date originally fixed or within a stated time after expiration or termination; and

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

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

(4) on account of the Lessee's obligations under this Agreement with respect to the Container Throughput Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the Tier 1 Rental Rate, the Tier 2 Rental Rate, and the Rent Guarantee Number (as said rates and number would have escalated in the Throughput Lease Years remaining in the term of letting at the time of the Termination) shall be applied respectively to the "annual number of the Tier 1 Number of Containers" and the

"annual number of the Tier 2 Number of Containers," as defined below, and the result so obtained shall be multiplied by the number of full Throughput Lease Years remaining in the term of the letting at the time of the Termination. The "annual number of the Tier 1 Number of Containers" and the "annual number of the Tier 2 Number of Containers" shall be, respectively, the Tier 1 Number of Containers and the Tier 2 Number of Containers loaded onto or discharged from vessels berthing at the premises during the last full Throughput Lease Year to occur prior to the Termination. In the event that the Termination shall be on other than the last day of a Throughput Lease Year, for purposes of calculating the rental due hereunder for the period from the day after the Termination through the end of the Throughput Lease Year in which the Termination shall occur, the Exemption Number, the Tier 1 Number of Containers, the Tier 2 Number of Containers, and the Rent Guarantee Number shall each be prorated for the period from the day after the Termination through the end of the Throughput Lease Year in which the Termination shall occur; and

(5) on account of the Lessee's obligations under this Agreement with respect to the Non-container Throughput Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the applicable charge per revenue ton prevailing at the time of Termination shall be multiplied by the "average number of revenue tons per month" as defined below and the product so obtained shall in turn be multiplied by the number of full calendar months remaining in the term of the letting at the time of Termination. The "average number of revenue tons per month" shall be calculated by dividing the total number of revenue tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the last full twelve months immediately preceding the Termination by twelve (12).

(c) Without limiting the generality of any other provision of this Section, in the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement, the Port Authority shall have the right to require the Lessee to assign to the Port Authority any then outstanding contract or contracts entered into by the Lessee for the performance of the

Lessee's Construction Work. The contract or contracts to be so assigned, if any, shall be determined by the Port Authority acting in its sole discretion and designated by written notice from the Port Authority to the Lessee. In the event that the Lessee shall assign any such contract to the Port Authority under the provisions of this paragraph, the Lessee shall be fully responsible and liable for the payment of any amounts accrued under such contract through the date that the letting shall have been terminated in accordance with a notice of termination as provided in Section 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement. The Lessee agrees that it shall include in each contract entered into by it for the performance of the Lessee's Construction Work provisions allowing the assignment of said contract to the Port Authority. Nothing contained in this paragraph shall be or be deemed an agreement by the Port Authority to accept an assignment and/or to perform any contract entered into by the Lessee for the performance of the Lessee's Construction Work or shall create or be deemed to create any rights against the Port Authority in any contractor or other third party with respect to any such contract,

Section 29. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 25 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, may occupy the premises or may relet the premises and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. Such reletting may be of part only of the premises or of the premises, and for a period of time the same as or different from the balance of the Term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 25 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, have the right to repair and to make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the premises (or portion thereof) during the balance of the Term as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port

Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance of a surrender. It is understood by the Port Authority and the Lessee that the Port Authority has no obligation to relet the premises or any portion thereof or to use or occupy the premises or any portion thereof itself, except to the extent as may be required by law.

Section 30. Remedies to Be Nonexclusive

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

Section 31. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Section 16(c) hereof regarding the condition of the premises at the expiration or termination of the letting hereunder.

(b) Unless required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the premises, all its equipment, removable fixtures and other personal property, and all property of third persons for which the Lessee is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the premises, repairing all damage caused by any removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, provided, however, that the Port Authority shall have given the Lessee twenty (20) days' notice of the Port Authority's intent to sell such property at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, the Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents,

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

Section 32. Acceptance of Surrender of Lease

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

Section 33. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port Authority or the Lessee, except as otherwise expressly provided herein, shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an office of such party, officer or representative during regular business hours; or (iii) delivered to the residence of such party, officer or representative at any time; or (iv) if directed to the Lessee, delivered to the premises at any time to the offices of the terminal manager; or (v) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office, the address of which is set forth in Page 1 of this Agreement, as their respective offices where notices and requests may be served.

(b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address.

Section 34. General

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

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

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

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

except that the Lessee may use contractors in the performance of its obligations to maintain and repair the premises and to supply watching and stevedoring services, including, coopering, clerking, checking, and extra labor functions at the Facility provided, that if separate contractors are engaged to perform any of the foregoing services nevertheless the active management, direction, administration, executive action and overhead functions involved in the operations of the Lessee shall all be performed at all times during the letting solely by the Lessee, its officers and employees, and provided, further, that the Lessee shall be fully responsible to the Port Authority for the acts and omissions of such contractors and their officers, agents, representatives, employees and persons on the premises with their consent to the same extent as if the same were the employees of the Lessee. None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the premises with its consent.

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

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

(d) The Lessee's representative, hereinbefore specified in this Agreement, (or such substitute as the Lessee may hereafter designate in writing) shall have full authority to act for

the Lessee in connection with this Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

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

(f) All payments required of the Lessee by this Agreement shall be made by mail to the Port Authority at P. O. Box 17309, Newark, New Jersey, 07194, or to such other address as may be substituted therefor.

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

(h) As used in Sections 13 and 22, the phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

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

(j) As used in this Agreement, the "Elizabeth-Port Authority Marine Terminal" shall mean the land and premises in the City of Elizabeth, in the County of Union and State of New Jersey, title to which was vested in the Port Authority by an Order Vesting Title in and Directing Delivery of Possession to The Port of New York Authority dated March 14, 1958, filed March 17, 1958 in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-7065-56, in the case of The Port of New York Authority, plaintiff, vs. Edward J. Grassman, et als., defendants, the lands title to which was so conveyed having been described fully in the Second Amended Complaint filed in the said case on May 16, 1957; and shall include lands contiguous to the lands so described, within the County of Union, which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes.

The rights of the Port Authority in the Facility are those acquired by it pursuant to the order described in the preceding sentence, together with those which may be acquired by any subsequent order or orders, deed or deeds or other instruments transferring or assigning additional adjacent property. No greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power to grant under the orders, deeds, or other instruments, as the circumstances may require.

(k) In the event that obstruction lights are now or in the future shall be installed on the premises, the Lessee agrees to furnish the Port Authority without charge, electricity for energizing such obstruction lights daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and sunrise may vary from day to day throughout the year) and for such other periods as may be directed or requested by the Control Tower of Newark Airport.

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

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

(n) So long as the Lessee shall pay all rentals provided for in this Agreement and shall observe and perform all the terms, covenants and conditions on the Lessee's part to be observed and performed under this Agreement, the Lessee may peaceably and quietly enjoy the premises, during the term of the letting, without hindrance or molestation by anyone claiming by, through or under the Port Authority, subject, nevertheless, to the terms, covenants and conditions of this Agreement, it being understood that the Port Authority's liability hereunder shall obtain only so long as it remains the owner of the premises.

(o) This Agreement and the letting hereunder are and shall be subject and subordinate to all mortgages which may now or hereafter affect the premises or the Facility, and to all renewals,

modifications, consolidations, replacements and extensions thereof, and although the provisions of this Section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Lessee, the Lessee shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this Section as the Port Authority may request.

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

(q) The Lessee recognizes that height restrictions, due primarily to the proximity of Newark Airport to the premises, now exist and that they may at any time be changed, including changes that make them more onerous and restrictive. The Lessee and all persons, firms and corporations using the premises or any part thereof with the express or implied consent of the Lessee, shall at all times obey such height restrictions as may be posted from time to time or otherwise communicated to the Lessee by the Port Authority, whether or not through the Manager of the Facility.

Section 35. Premises

(a) The Port Authority shall deliver the premises to the Lessee in its presently existing "as is" condition. The Lessee agrees to and shall take the premises in its "as is" condition and the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the premises for the Lessee's use.

(b) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the premises or the suitability thereof for the operations permitted on the premises by this Agreement. The Lessee, prior to the execution of this Agreement, has thoroughly examined the premises as existing and has found the same to be suitable and satisfactory for the operations of the Lessee contemplated and permitted under this Agreement. Without limiting any obligation of the Lessee to

commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the operations of the Lessee, so that there is possibility of injury or damage to life or property, and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

Section 36. Force Majeure

(a) Neither the Port Authority nor the Lessee shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided, however, that this paragraph shall not apply to failures by the Lessee to pay the rentals specified in Sections 3, 4 and 5 hereof and shall not apply to any other charges or money payments payable by the Lessee; and, provided, further, that this paragraph shall not prevent the Port Authority from exercising its right of termination under Sections 25, 43, and 46 hereof or the Lessee from exercising its right of termination under Section 41 hereof.

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

(c) Except as provided in Section 42(e) hereof, no abatement, diminution of reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or

future law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the state, county or city government, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 37. Brokerage

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

Section 38. Non-Liability of Individuals

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

Section 39. Services

(a) The Port Authority shall be under no obligation to supply the Lessee with any services provided by utility companies and other service providers, including but not limited to water, gas, electricity, sewer service, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service.

(b) The Lessee shall promptly pay all water-bills covering its own consumption, including but not limited to water delivered and sold by the Lessee to vessels berthing at the premises. In the event that any such water-bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute an item of additional rental, payable to the Port Authority on demand.

(c) The Lessee agrees to heat the enclosed portions of the premises to a sufficient temperature, or to bleed pipes, so that the plumbing, fire-protection and sprinkler system, if any, will not be damaged by reason of low temperatures.

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings, which, or a portion or portions of which, are included in the premises, the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, pay, in accordance with any such notice, such charge, fee, rent or assessment or such increase thereof (or the portion thereof allocated by the Port Authority to the premises or to the operations of the Lessee under this Agreement) either directly to the governmental body, authority or agency, or to the public utility or other entity, or directly to the Port Authority, as such notice may direct. All such payments shall constitute items of additional rental.

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

(f) Without in any wise affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of Section 16 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), ship-filling lines and other water-using equipment and facilities.

[There is no Section 40 in this Agreement]

Section 41. Termination Rights

(a)(1) For purposes of this Agreement, the term "Forty-five Foot Deepening" shall mean the following work to be performed by the United States Corps of Engineers (hereinafter called "the Corps") or such successor or other United States agency performing the present functions of the Corps: the completion of a channel of a depth of forty-five (45) feet below mean low water in

the Kill Van Kull and the Newark Bay sufficient to allow passage of a single ship at one time to or from the Elizabeth-Port Authority Marine Terminal. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey.

(2) For purposes of this Agreement, the term "Fifty Foot Deepening" shall mean the following work to be performed by the Corps or such successor or other United States agency performing the present functions of the Corps: the completion of a channel of a depth of fifty (50) feet below mean low water in the Kill Van Kull and the Newark Bay sufficient to allow passage of a single ship at one time to or from the Elizabeth-Port Authority Marine Terminal. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey.

(b) In the event that the Forty-five Foot Deepening has not been completed by December 31, 2004, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2005, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Forty-five Foot Deepening or to perform the Forty-five Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that the Forty-five Foot Deepening is not completed by December 31, 2004 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

(c) In the event that the Fifty Foot Deepening has not been completed by December 31, 2009, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2010, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the

date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that the Fifty Foot Deepening is not completed by December 31, 2009 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

(d)(1) In the event that the study being performed by the Corps, as authorized under the Water Resources Development Act of 1996, and entitled the "New York/New Jersey Harbor Navigation Study" (hereinafter called "the Study"), shall upon completion specifically state that the Fifty Foot Deepening will not be completed by December 31, 2009, then the Lessee shall have the right to terminate the letting under this Agreement on one (1) year's prior written notice to the Port Authority; provided, that, such notice shall not be effective unless received by the Port Authority no later than one hundred eighty (180) days following completion of the Study and unless the effective date of termination under such notice shall be on or before June 30, 2002; and further provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that the Study shall state that the Fifty Foot Deepening will not be completed by December 31, 2009 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph. For purposes of this paragraph, the Study shall be deemed to be completed upon issuance of a report by the Chief Engineer of the Corps to the United States Congress reporting the results of the Study.

(2) In the event that the Lessee shall terminate the letting under this Agreement pursuant to the provisions of subparagraph (1) of this paragraph, the Port Authority shall pay to the Lessee on account of the cost of the Lessee's performance, if any, of any portion of the Class A Work that is not Reimbursed Work, the determination of which cost shall be subject to the provisions of paragraph (p) of Section 7 hereof, a sum equal to the product obtained by multiplying (i) the cost of such work paid for by the Lessee by (ii) a fraction, the numerator of which shall be the number of whole calendar months (in the term of the letting as originally set forth) subsequent to the effective date of termination, and the denominator of which shall be the total number of months in the term of the letting as originally set forth, provided, however, that any sum payable to the Lessee under this subparagraph shall be reduced by the amount of (aa) any reimbursement paid by the Port Authority to the Lessee on account of the performance of such work under the provisions of paragraphs (a)(3), (p), and (q) of Section 7 hereof as Funded Work; and (bb) any liens, mortgages, security interests or other encumbrances upon any such work; and further provided, that, any sum payable to the Lessee under this subparagraph shall be conditioned upon the Lessee's having delivered possession of the premises to the Port Authority in accordance with the provisions of this Agreement. On the payment by the Port Authority for any such work, all equipment, fixtures and improvements in the premises constituting any part of such work and all interest of the Lessee therein which have not already become the property of the Port Authority shall be and become the property of the Port Authority and the Lessee shall execute any and all instruments necessary to transfer title and any such interest.

(e) In the event that authorization from the United States Congress to perform the Fifty Foot Deepening is not obtained by December 31, 2002, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2003, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph

shall constitute its sole remedy in the event that authorization from the United States Congress to perform the Fifty Foot Deepening is not obtained by December 31, 2002 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

(f) In the event that a project cooperation agreement with respect to the Fifty Foot Deepening is not fully executed by December 31, 2005, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2006, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that a project cooperation agreement with respect to the Fifty Foot Deepening is not fully executed by December 31, 2005 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

Section 42. Port Guarantee

(a) For purposes of this Agreement, the following terms shall have the meanings set forth below:

(1) "Carrier" shall mean Maersk Inc. as agent for its disclosed principals (as such principals are defined in paragraph (h) of Section 46 hereof);

(2) "Carrier's Containers" shall mean containers carrying cargo for which a disclosed principal of Maersk Inc. is acting as common carrier;

(3) "Port" shall mean the Port of New York District (as defined in Section 44 hereof);

(4) "Port Throughput Lease Year" shall mean as the context requires the Lease Year commencing on the Port

Throughput Lease Year Commencement Date and each Lease Year thereafter occurring during the letting under this Agreement;

(5) "Port Throughput Lease Year Commencement Date" shall mean the first Lease Year following the completion of the Forty-five Foot Deepening (as defined in Section 41(a)(1) hereof); provided, however, that if the ExpressRail Facility (as defined in Section 4(a)(10) hereof) is not available to the Lessee on the date determined above, then the Port Throughput Lease Year Commencement Date shall be postponed until the day that the ExpressRail Facility is available to the Lessee; and further provided, however, that the Port Throughput Lease Year Commencement Date shall be postponed until the day that all of the added premises have become part of the premises under this Agreement.

(6) "First Port Guarantee Period" shall mean the period from the Port Throughput Lease Year Commencement Date through the day immediately preceding the first Lease Year following the completion of the Fifty Foot Deepening (as defined in Section 41(a)(2) hereof);

(7) "Second Port Guarantee Period" shall mean the period from the first day of the first Lease Year following the completion of the Fifty Foot Deepening through December 31, 2014; and

(8) "Third Port Guarantee Period" shall mean the period from January 1, 2015 through the expiration of the term of the letting under this Agreement.

(b) The Lessee agrees that the number of the Carrier's Containers transported to or from the Port shall not be less than the following: (1) three hundred sixty-five thousand (365,000) of the Carrier's Containers during each Port Throughput Lease Year to occur during the First Port Guarantee Period, (2) four hundred forty thousand (440,000) of the Carrier's Containers during each Port Throughput Lease Year to occur during the Second Port Guarantee Period, and (3) five hundred fifteen thousand (515,000) of the Carrier's Containers during each Port Throughput Lease Year to occur during the Third Port Guarantee Period.

(c) The determination of the number of the Carrier's Containers transported to or from the Port during any Port Throughput Lease Year shall be as shown in the reports made by the Carrier to the New York Shipping Association, or successor organization, for purposes of cargo assessment, with the Carrier to provide the Port Authority with a copy of any such report within five (5) days of the Carrier's making such report to the New York Shipping Association.

(d) In the event that for each of any two consecutive Port Throughput Lease Years the number of the Carrier's Containers transported to or from the Port shall be less than the number thereof required under the provisions of paragraph (b) of this Section, the basic rental payable by the Lessee under Section 3 hereof shall be increased for the Port Throughput Lease Year next following the second of the aforesaid consecutive Port Throughput Lease Years (which next following Port Throughput Lease Year is hereinafter called "the First Adjustment Year") in accordance with the provisions of the Schedule attached hereto, hereby made a part hereof and marked "Schedule B", with the calculation of the increased basic rental to be based on the number of the Carrier's Containers transported to or from the Port for the second of said two consecutive years. The basic rental payable pursuant to the provisions of the immediately preceding sentence shall be subject to adjustment for each and every Port Throughput Lease Year following the First Adjustment Year as follows: (1) if for the First Adjustment Year or any Port Throughput Lease Year following the First Adjustment Year the number of the Carrier's Containers transported to or from the Port shall be less than the number thereof required under the provisions of paragraph (b) of this Section, the basic rental for the next following Port Throughput Lease Year shall be increased or decreased or shall remain the same according to the provisions of Schedule B; and (2) if for the First Adjustment Year or any Port Throughput Lease Year following the First Adjustment Year the number of the Carrier's Containers transported to or from the Port shall be equal to or greater than the number thereof required under the provisions of paragraph (b) of this Section, the basic rental payable by the Lessee under Section 3 hereof for the next following Port Throughput Lease Year and each Port Throughput Lease Year thereafter occurring during the letting shall be decreased to the level set forth in said Section 3 until such time, if ever, that the event described in the first sentence of this paragraph shall reoccur, in which event such basic rental shall again be increased in accordance with the provisions of the first sentence of this paragraph; provided, however, that in no event shall such basic rental be decreased below the amount payable under Section 3 prior to any adjustment thereof under the provisions of this paragraph. The procedures for the increase or decrease of the basic rental payable by the Lessee under Section 3 hereof pursuant to the provisions of this paragraph shall be subject to repetition from and after the First Adjustment Year through the remainder of the term of the letting under this Agreement.

(e) In the event that for any Port Throughput Lease Year the number of the Carrier's Containers transported to or from the Port shall be less than the number thereof required under the provisions of paragraph (b) of this Section (which required number of containers for each respective Port Throughput Lease Year is hereinafter in this paragraph called the "Port Guarantee Number"), and the Lessee can demonstrate to the Port Authority that such

failure resulted from general economic conditions beyond the control of the Lessee's major customers that caused a substantial decrease in ocean shipping volumes that otherwise would reasonably have been expected to move through the Port, then upon request by the Lessee it may meet with the Port Authority to discuss the possibility of a reduction in the Port Guarantee Number for said Port Throughput Lease Year; provided, however, that any such reduction shall in no event be applicable except to said Port Throughput Lease Year. Nothing contained in this paragraph shall or shall be construed to impose an obligation on either the Port Authority or the Lessee to agree to any reduction in said Port Guarantee Number and each of the parties shall have as full discretion in discussing a proposed reduction in said Port Guarantee Number as if this paragraph had not been agreed to. The Lessee specifically acknowledges that this paragraph does not grant nor shall it be deemed to grant the Lessee any rights whatsoever to have said Port Guarantee Number reduced. The Lessee shall have the burden of proof as to any of the factual matters set forth above in this paragraph.

Section 43. Terminal Guarantee

(a) For purposes of this Agreement, the following terms shall have the meanings set forth below:

(1) "Terminal Lease Year" shall mean as the context requires the Lease Year commencing on the Terminal Lease Year Commencement Date and each Lease Year thereafter occurring during the term of the letting under this Agreement;

(2) "Terminal Lease Year Commencement Date" shall mean the later of the following: (i) March 1, 2008 or (ii) the first Lease Year following the completion of the Forty-five Foot Deepening (as defined in Section 41(a)(1) hereof); provided, however, that if the ExpressRail Facility is not available to the Lessee on the date determined above, then the Terminal Lease Year Commencement Date shall be postponed until the day that the ExpressRail Facility is available to the Lessee;

(3) "Rent Guarantee Number" shall mean the following: (i) two hundred twenty thousand (220,000) Qualified Containers for each Terminal Lease Year to occur during the First Terminal Guarantee Period, (ii) three hundred twenty thousand (320,000) Qualified Containers for each Terminal Lease Year to occur during the Second Terminal Guarantee Period, and (iii) four hundred twenty thousand (420,000) Qualified Containers for each Terminal Lease Year to occur during the Third Terminal Guarantee Period;

(4) "Terminal Guarantee Number" shall mean the following: (i) two hundred seventy thousand (270,000) Qualified Containers for each Terminal Lease Year to occur during the First Terminal Guarantee Period, (ii) three hundred thirty thousand

(330,000) Qualified Containers for each Terminal Lease Year to occur during the Second Terminal Guarantee Period, and (iii) three hundred ninety thousand (390,000) Qualified Containers for each Terminal Lease Year to occur during the Third Terminal Guarantee Period; provided, however, that empty containers shall be included in the Terminal Guarantee Number only to the extent that they are transported to or from the premises in the normal course of business.

(5) "First Terminal Guarantee Period" shall mean the period from the Terminal Lease Year Commencement Date through the day immediately preceding the first Lease Year following the completion of the Fifty Foot Deepening;

(6) "Second Terminal Guarantee Period" shall mean the period from the first day of the first Lease Year following the completion of the Fifty Foot Deepening through December 31, 2014; and

(7) "Third Terminal Guarantee Period" shall mean the period from January 1, 2015 through the expiration of the term of the letting under this Agreement.

(b) The Lessee shall pay a minimum rental (hereinafter called the "Minimum Rental") for each Terminal Lease Year in the following amounts: (1) for each Terminal Lease Year during the First Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the First Terminal Guarantee Period; (2) for each Terminal Lease Year during the Second Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the Second Terminal Guarantee Period; and (3) for each Terminal Lease Year during the Third Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the Third Terminal Guarantee Period. The Minimum Rental for each Terminal Lease Year shall be payable to the Port Authority in advance in equal monthly installments on the first day of each month to occur during such Terminal Lease Year.

(c) (1) In the event that for each of any two consecutive Terminal Lease Years to occur during the First Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than the Terminal Guarantee Number for the First Terminal Guarantee Period, the Port Authority shall have the right to terminate the letting under this Agreement of the portion of the premises shown on the sketch attached hereto, hereby made a part hereof and marked

"Exhibit A-3". Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said second consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect and the Port Authority shall have one hundred eighty (180) days from said ninety (90) period to provide notice of termination to the Lessee under this subparagraph. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the portion of the premises shown on Exhibit A-3 and the letting thereof pursuant to the provisions of Section 25 hereof. Such termination shall not affect the letting as to the balance of the premises under this Agreement and the letting as to the balance of the premises shall continue in full force and effect notwithstanding such termination.

(2) If the premises under this Agreement shall be reduced pursuant to the provisions of paragraph (c)(1) of this Section, the following adjustments shall be made effective upon the first day that the premises shall be so reduced: (i) the basic rental under Section 3 of this Agreement shall be payable at the annual rate of Three Million Eight Hundred Thousand Dollars and No Cents ($3,800,000.00) payable in advance in equal monthly installments of Three Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($316,666.67); (ii) the Exemption Number shall be one hundred sixty thousand (160,000), the Tier 1 Number of Containers shall be from one hundred sixty thousand and one (160,001) Qualified Containers through four hundred forty thousand (440,000) Qualified Containers and the Tier 2 Number of Containers shall be the number of Qualified Containers above four hundred forty thousand (440,000); (iii) the Rent Guarantee Number for each Terminal Lease Year to occur during the First Terminal Guarantee Period shall be reduced to one hundred twenty-five thousand seven hundred fifteen (125,715) Qualified Containers; (iv) the Rent Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to one hundred eighty-two thousand eight hundred fifty-eight (182,858) Qualified Containers; (v) the Rent Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers; (vi) the Terminal Guarantee Number for each Terminal Lease Year to occur during the First Terminal Guarantee Period shall be reduced to one hundred seventy-one thousand four

hundred thirty (171,430) Qualified Containers; (vii) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to two hundred five thousand seven hundred fifteen (205,715) Qualified Containers; and (viii) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers.

(3) Notwithstanding any other provision of this Section, in the event that for each of any two consecutive Terminal Lease Years to occur during the First Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than one hundred seventy-one thousand four hundred thirty (171,430) Qualified Containers, the Port Authority shall have the right to terminate the letting under this Agreement upon one (1) year's prior written notice given to the Lessee at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(d) (1) In the event that for each of any two consecutive Terminal Lease Years to occur during the Second Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than the Terminal Guarantee Number for the Second Terminal Guarantee Period, the Port Authority shall have the right to terminate the letting under this Agreement of the portion of the premises shown on Exhibit A-3 hereto. Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said second consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect and the Port Authority shall have one hundred eighty (180) days from said ninety (90) period to provide notice of termination to the Lessee under this subparagraph. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the portion of the premises shown on Exhibit A-3

and the letting thereof pursuant to the provisions of Section 25 hereof. Such termination shall not affect the letting as to the balance of the premises under this Agreement and the letting as to the balance of the premises shall continue in full force and effect notwithstanding such termination.

(2) If the premises under this Agreement shall be reduced pursuant to the provisions of paragraph (d)(1) of this Section, the following adjustments shall be made effective upon the first day that the premises shall be so reduced: (i) the basic rental under Section 3 of this Agreement shall be payable at the annual rate of Three Million Eight Hundred Thousand Dollars and No Cents ($3,800,000.00) payable in advance in equal monthly installments of Three Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($316,666.67); (ii) the Exemption Number shall be one hundred sixty thousand (160,000), the Tier 1 Number of Containers shall be from one hundred sixty thousand and one (160,001) Qualified Containers through four hundred forty thousand (440,000) Qualified Containers and the Tier 2 Number of Containers shall be the number of Qualified Containers above four hundred forty thousand (440,000); (iii) the Rent Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to one hundred eighty-two thousand eight hundred fifty-eight (182,858) Qualified Containers; (iv) the Rent Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers; (v) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to two hundred five thousand seven hundred fifteen (205,715) Qualified Containers; and (vi) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers.

(3) Notwithstanding any other provision of this Section, in the event that for each of any two consecutive Terminal Lease Years to occur during the Second Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than two hundred five thousand seven hundred fifteen (205,715) Qualified Containers, the Port Authority shall have the right to terminate the letting under this Agreement upon one (1) year's prior written notice given to the Lessee at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(e) (1) In the event that for each of any two consecutive Terminal Lease Years to occur during the Third Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than the Terminal Guarantee Number for the Third Terminal Guarantee Period, the Port Authority shall have the right to terminate the letting under this Agreement of the portion of the premises shown on Exhibit A-3 hereto. Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said second consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect and the Port Authority shall have one hundred eighty (180) days from said ninety (90) period to provide notice of termination to the Lessee under this subparagraph. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the portion of the premises shown on Exhibit A-3 and the letting thereof pursuant to the provisions of Section 25 hereof. Such termination shall not affect the letting as to the balance of the premises under this Agreement and the letting as to the balance of the premises shall continue in full force and effect notwithstanding such termination.

(2) If the premises under this Agreement shall be reduced pursuant to the provisions of paragraph (e)(1) of this Section, the following adjustments shall be made effective upon the first day that the premises shall be so reduced: (i) the basic rental under Section 3 of this Agreement shall be payable at the annual rate of Three Million Eight Hundred Thousand Dollars and No Cents ($3,800,000.00) payable in advance in equal monthly installments of Three Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($316,666.67); (ii) the Exemption Number shall be one hundred sixty thousand (160,000), the Tier 1 Number of Containers shall be from one hundred sixty thousand and one (160,001) Qualified Containers through four hundred forty thousand (440,000) Qualified Containers and the Tier 2 Number of Containers shall be the number of Qualified Containers above four hundred forty thousand (440,000); (iii) the Rent Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers; and (iv) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Third

Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers.

(3) Notwithstanding any other provision of this Section, in the event that for each of any two consecutive Terminal Lease Years to occur during the Third Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than two hundred forty thousand (240,000) Qualified Containers, the Port Authority shall have the right to terminate the letting under this Agreement upon one (1) year's prior written notice given to the Lessee at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(f) In the event that for the last Terminal Lease Year to occur during the First Terminal Guarantee Period and for the first Terminal Lease Year to occur during the Second Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less respectively than the Terminal Guarantee Number for the First Terminal Guarantee Period and the Terminal Guarantee Number for the Second Terminal Guarantee Period, the provisions of paragraph (d) shall be applicable; and in the event that for the last Terminal Lease Year to occur during the Second Terminal Guarantee Period and for the first Terminal Lease Year to occur during the Third Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less respectively than the Terminal Guarantee Number for the Second Terminal Guarantee Period and the Terminal Guarantee Number for the Third Terminal Guarantee Period, the provisions of paragraph (e) shall be applicable.

Section 44. Records

(a) The Lessee shall maintain in accordance with accepted accounting practice during the term of the letting under this Agreement and for three years thereafter records and books of account (including, without limitation, bills of lading and manifests) recording all transactions in any way connected with or reflecting upon the payment of any rental by the Lessee pursuant to Sections 3, 4, 5 or 43(b) hereof, and which records and books of account shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session, and permit, in ordinary business hours during such time, the examination

and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any of such records and books of account of any company which is owned or controlled by the Lessee, if said company performs services, similar to those performed by the Lessee, anywhere in the Port of New York District.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Lessee may maintain the records and books of account referred to in said paragraph (a) outside of the Port of New York District, subject to the following conditions:

(1) If any such records and books of account have been maintained outside of the Port of New York District, but within the continental United States, then the Port Authority in its sole discretion may (i) require such records and books of account to be produced within the Port of New York District or (ii) examine such records and books of account at the location at which they have been maintained and in such event the Lessee shall pay to the Port Authority when billed all travel costs and related expenses, as determined by the Port Authority, for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit, or

(2) If any such records and book of account have been maintained outside the continental United States then, in addition to the costs specified in subparagraph (1) of this paragraph, the Lessee shall pay to the Port Authority when billed all other costs of the examination and audit of such records and books of account including without limitation salaries, benefits, travel costs and related expenses, overhead costs and fees and charges of third party auditors retained by the Port Authority for the purpose of conducting such audit and examination.

(c) The foregoing auditing costs, expenses and amounts set forth in subparagraphs (1) and (2) of paragraph (b) of this Section shall be deemed additional rent under this Agreement payable to the Port Authority with the same force and effect as all other rents payable hereunder.

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

Section 45. Affirmative Action

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

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

(c) "Minority" as used herein shall be as defined in paragraph II (c) of Part of Schedule E.

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

compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

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

(f) Nothing in this Section shall grant or be deemed to grant to the Lessee the right to make any agreement or award for concessions or consumer services at the Facility.

Section 46. Right of Termination - Ownership and Control

(a) (1) The Lessee hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that it is a privately held corporation organized and existing under the laws of the State of Delaware, that ten thousand (10,000) shares of common stock constitute all its issued and outstanding securities, that the owner of one hundred percent (100%) of the shares is Maersk Inc., that there are no other shares issued and outstanding, and that there are no other individuals or corporations and no partnerships or other entities having a direct or indirect beneficial ownership of any portions of the Lessee.

(2) The Lessee hereby represents to the Port Authority that Maersk Inc. (hereinafter called "Maersk") is a corporation organized and existing under the laws of New York and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880. The Lessee further represents to the Port Authority that Aktieselskabet Dampskibsselskabet Svendborg and Dampskibsselskabet af 1912, Aktieselskab control Maersk and have greater than fifty percent (50%) of the direct or indirect beneficial ownership of Maersk and retain voting control. The ownership interest of Maersk, as described in paragraph (a)(1) of this Section, in the Lessee is hereinafter called "the Ownership Interest." The Lessee further represents that Maersk is engaged as the exclusive United States agent on behalf of its disclosed principals, as defined in paragraph (h) of this Section, in the conduct of a worldwide waterborne ocean container shipping business (which business is hereinafter called "the Shipping Business" and which disclosed principals are hereinafter called "the Shipping Companies"). The Lessee recognizes the fact that a transfer of securities in the Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or with respect to the identity of the parties in control of the Lessee or the degree thereof, is for practical purposes a transfer or disposition of the rights obtained by the Lessee through this Agreement. The Lessee

further recognizes that because of the nature of the obligations of the Lessee hereunder, the qualifications and identity of the Lessee and its security holders are of particular concern to the Port Authority. The Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Lessee for the faithful performance of all obligations and covenants hereunder. The Lessee further recognizes and agrees that the aforesaid connection of Maersk with the Shipping Business in conjunction with its holding the Ownership Interest is a major inducement for the Port Authority's entering into this Agreement, and that it is of great importance to the Port Authority, in order to achieve the business and regional economic goals of this Agreement, that the Lessee be owned by an entity or entities having said connection with the Shipping Business in order to assure the availability of cargo to meet the foregoing business and regional economic goals of the Port Authority. The combination of an entity or entities owning the Lessee and having said connection with the Shipping Business is hereinafter called "the Shipping Entity." Therefore, the Lessee represents and agrees for itself and Maersk, and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, which approval shall be given or withheld promptly, there shall be no transfer of any securities in the Lessee by Maersk to any other person; nor shall Maersk suffer any transfer of such securities to be made; nor shall there be or be suffered to be made by the Lessee or by any owner of securities therein, any other change in the ownership of such securities or in the relative distribution thereof, or with respect to the identity of the parties in control of the Lessee or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional new securities or classification of securities or otherwise; except another entity controlled by Maersk or the disclosed principals and as to which Maersk or the disclosed principals has at least fifty percent (50%) of the direct or indirect beneficial ownership and retains voting control; and the Lessee further represents and agrees for itself and Maersk, and any successor in interest thereof, respectively, that the direct ownership and control of the Lessee shall be as set forth in paragraph (a)(1) of this Section except as shall be otherwise approved by the Port Authority pursuant to the provisions of this paragraph (a)(2). In addition, and without limiting the provisions of the immediately preceding sentence, the Lessee represents and agrees for itself and Maersk, and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, which approval shall be given or withheld promptly, (i) there shall be no change in the agency status of Maersk with respect to the Shipping Companies, and (ii) there shall be no transaction, whether involving the transfer of securities as described in the immediately preceding sentence and/or any transfer of securities or assets by or of the Lessee and/or Maersk and/or the Shipping

Companies, directly or indirectly, such that the Shipping Entity shall not be fully and completely in existence upon the completion of any such transaction. The Port Authority and the Lessee acknowledge and agree that the provisions of the immediately preceding sentence shall not apply to any internal transfer or exchange of the Shipping Business or any part thereof between the Shipping Companies or a subsidiary, affiliate or related company thereof. In addition, the provisions of said sentence shall not apply to the transfer by the Shipping Companies or any one of them of control of the direct or indirect beneficial ownership of the Shipping Business to another entity; provided, however, that Maersk shall have, in all material respects, the same agency relationship with said entity immediately subsequent to such transfer as it had with the Shipping Companies immediately prior to such transfer and the same shall continue for the term of the letting under this Agreement. The transfer of the Shipping Business as described in the immediately preceding sentence and in accordance with the provisions thereof may be repeated throughout the term of the letting without the prior written approval of the Port Authority.

(b) In the event there shall be a transfer, purchase or exchange of any assets of the Lessee, or of a subsidiary entity of the Lessee, which shall result in this Agreement and the letting hereunder becoming substantially the only asset of the Lessee, unless the Port Authority shall have given its written consent thereto, then upon the occurrence of any such event or at any time thereafter during the continuance thereof the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25(a)(11) hereof.

(c) The Lessee acknowledges the Lessee's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Lessee with the provisions contained in this Section shall be and be deemed an event of default under Section 25 of this Agreement, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of said Section 25 hereof. It is understood and agreed that the Port Authority shall not be entitled and hereby waives any rights to injunctive relief or specific performance with respect to any such default.

(d) The foregoing right of termination shall be in addition to all other rights of termination the Port Authority has under this Agreement and the failure of the Port Authority to exercise its right of termination under this Section at any time in which it may have such right shall not affect, waive or limit its right to exercise said right of termination at any subsequent time.

(e) The phrase "direct or indirect beneficial ownership" shall include without limiting the generality thereof the

direct or indirect power through contract, arrangement, understanding, relationship or otherwise to dispose of or to direct the disposal of, or to vote or to direct the voting of, any voting security of an entity.

(f) The term "security" shall include any stock, any bond which carries voting rights, or rights or options to subscribe to, purchase, convert or transfer into or otherwise acquire equity securities, or any other obligation of a corporation the holder of which has any voting rights including but not limited to the right to vote for the election of members of the board of directors of said corporation and shall include any security convertible into a voting security and any right, option or warrant to purchase a voting security.

(g) The Lessee shall promptly advise the Port Authority of any change in the representations made in paragraph (a)(1) or (2) of this Section.

(h) For purposes of this Agreement, the "disclosed principals" are Aktieselskabet Dampskibsselskabet Svendborg and Dampskibsselskabet af 1912, Aktieselskab, corporations registered in Copenhagen, Denmark, and having offices at Esplanaden 50, DK-1098 Copenhagen K, Denmark, and its or their affiliates, subsidiaries and related companies. An "affiliate", "subsidiary", or "related company" is any entity engaged in the shipping business with respect to which Aktieselskabet Dampskibsselskabet Svendborg and/or Dampskibsselskabet af 1912, Aktieselskab has at the effective date of this Agreement or thereafter at least fifty percent (50%) of the direct or indirect beneficial ownership thereof and retains voting control.

Section 47. Tax Election

(a) Attached hereto as Exhibit Y is a form of election pursuant to Section 142(b) of the Internal Revenue Code of 1986, as amended. The Lessee acknowledges that two counterparts of said form of election have been delivered to it by the Port Authority. Upon the execution of this Agreement by the Lessee and its delivery to the Port Authority, the Lessee shall execute the said two counterparts and deliver one fully executed counterpart to the Port Authority with its delivery of this Agreement, and the Lessee shall keep the second executed counterpart with its records for the balance of the entire term of the letting under this Agreement.

(b) The Lessee is not acquiring an ownership interest in the premises defined in Section 1 of this Agreement. Capital expenditures in connection with the premises have been, or are expected to be made, in whole or in part by the Port Authority from "exempt facility bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986) issued by the Port Authority from

time to time (such capital expenditures are hereinafter called "the Property"). The Lessee hereby irrevocably elects not to claim for purposes of federal, state or local taxation of income any depreciation or investment credits, for which it may be eligible with respect to the Property. The Lessee further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under this Agreement, and as a condition of any permitted sale or assignment of the interest of the Lessee under this Agreement, every successor in interest shall furnish an executed irrevocable election in the form of the immediately preceding sentence to the Port Authority. The foregoing shall not grant or be deemed to grant to the Lessee the right to sell or assign, in any manner, its interest under this Agreement.

(c) In the event the Lessee records any documents in lieu of recording this Agreement, such documents shall incorporate the substance of paragraph (b) of this Section.

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

Section 48. Guaranty

The Lessee shall cause to be executed by Maersk Inc. simultaneously with the execution and delivery by the Lessee of this Agreement to the Port Authority, a Contract of Guaranty in the form attached hereto and hereby made a part hereof, which Contract of Guaranty shall guarantee the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of this Agreement, and the Lessee shall keep and maintain said Contract of Guaranty in full force and effect. The existence of the contract of guaranty described in this Section shall not limit or alter any other remedies of the Port Authority under this Agreement, and the Port Authority may from time to time and at any time elect to pursue (or not to pursue) its rights under this contract of guaranty without thereby limiting, voiding or relinquishing any of its other rights or remedies under this Agreement.

Section 49. Abatement

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

square foot of open area constituting part of the premises the use of which is denied the Lessee, at the annual rate of $0.436. Except as provided in this Section, no abatement of rental shall be claimed by or allowed to the Lessee.

Section 50. Late Charges

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time there for by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 25 of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 51. Entire Agreement

The within Agreement consists of pages number 1 through 104, together with Schedules A ,B, E, and Exhibits A-1, A-2 and A-3 and Y. It constitutes the entire agreement between the Port

Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

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

ATTEST:

Karen J. Eastman
Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By Lillian C. Borrone
LILLIAN C. BORRONE
DIRECTOR, PORT DEPT.

(Title) _____

(seal)

ATTEST:

John N. Hopkins
Secretary

MAERSK CONTAINER SERVICE COMPANY, INC.

By _____

(Title) President

(seal)

APPROVED:
FORM
TERMS

SCHEDULE A

LEASE YEAR BEGINNING:	TIER 1 RENTAL RATE (280,001 TO 770,000)	TIER 2 RENTAL RATE (770,001 & ABOVE)
March 1, 2008	$5.67	$4.25
March 1, 2009	$12.67	$9.50
March 1, 2010	$19.00	$14.25
March 1, 2011	$19.00	$14.25
March 1, 2012	$21.00	$15.75
March 1, 2013	$21.00	$15.75
March 1, 2014	$21.00	$15.75
March 1, 2015	$23.00	$17.25
March 1, 2016	$23.00	$17.25
March 1, 2017	$23.00	$17.25
March 1, 2018	$25.00	$18.75
March 1, 2019	$25.00	$18.75
March 1, 2020	$25.00	$18.75
March 1, 2021	$27.00	$20.25
March 1, 2022	$27.00	$20.25
March 1, 2023	$27.00	$20.25
March 1, 2024	$29.00	$21.75
March 1, 2025	$29.00	$21.75
March 1, 2026	$29.00	$21.75
March 1, 2027	$31.00	$23.25
March 1, 2028	$31.00	$23.25
March 1, 2029	$31.00	$23.25

SCHEDULE B

Period	Volume Threshold	Rental Increase Per acre		New Rental Per Acre *See Note 1*
First Port Guarantee Period	365,000	0	0	$ 19,000
	355,000	10%	$ 1,900	$ 20,900
	345,000	20%	$ 3,800	$ 22,800
	335,000	30%	$ 5,700	$ 24,700
	325,000	40%	$ 7,600	$ 26,600
	315,000	50%	$ 9,500	$ 28,500
	305,000	60%	$ 11,400	$ 30,400
	295,000	70%	$ 13,300	$ 32,300
	285,000	80%	$ 15,200	$ 34,200
	275,000	90%	$ 17,100	$ 36,100
	265,000	100%	$ 19,000 *See Note 2*	$ 38,000
Second Port Guarantee Period	440,000	0	0	$ 19,000
	427,500	10%	$ 1,900	$ 20,900
	415,000	20%	$ 3,800	$ 22,800
	402,500	30%	$ 5,700	$ 24,700
	390,000	40%	$ 7,600	$ 26,600
	377,500	50%	$ 9,500	$ 28,500
	365,000	60%	$ 11,400	$ 30,400
	352,500	70%	$ 13,300	$ 32,300
	340,000	80%	$ 15,200	$ 34,200
	327,500	90%	$ 17,100	$ 36,100
	315,000	100%	$ 19,000 *See Note 3*	$ 38,000
Third Port Guarantee Period	515,000	0	0	$ 19,000
	502,500	10%	$ 1,900	$ 20,900
	490,000	20%	$ 3,800	$ 22,800
	477,500	30%	$ 5,700	$ 24,700
	465,000	40%	$ 7,600	$ 26,600
	452,500	50%	$ 9,500	$ 28,500
	440,000	60%	$ 11,400	$ 30,400
	427,500	70%	$ 13,300	$ 32,300
	415,000	80%	$ 15,200	$ 34,200
	402,500	90%	$ 17,100	$ 36,100
	390,000	100%	$ 19,000 *See Note 3*	$ 38,000

Note 1: for example (using the First Guarantee Period); if volume decreases to 355,000 then basic rental increases to $20,900 per acre; if volume decreases to 345,000 then basic rental increases to $22,800 per acre, etc.

Note 2: rent per acre will continue to increase by an additional $1,900 per acre for each additional shortfall of 10,000 containers

Note 3: rent per acre will continue to increase by an additional $1,900 per acre for each additional shortfall of 12,500 containers

SCHEDULE E

PART I

Affirmative Action Guidelines - Equal Employment Opportunity

I. The Lessee agrees to comply with and the Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter and in paragraphs (t) and (u) of Section 7 of the Agreement to which this schedule is attached (herein called "the Agreement"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

The Lessee agrees fully to comply with and shall require each bidder, contractor and subcontractor of the Lessee and each subcontractor of a contractor at any tier of construction (herein collectively referred to as "the Contractor") fully to comply with the following conditions set forth in this Schedule as to each construction trade to be used on the construction work or any portion thereof (said conditions being herein called "Bid Conditions"). The Lessee hereby agrees to commit itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions. The Lessee agrees to require the Contractor to commit itself to the said goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions by submitting a properly signed bid.

II. The Lessee agrees to and shall require the Contractor to appoint an executive of its respective company to assume the responsibility for the implementation of the requirements, terms and conditions of the following Bid Conditions:

(a) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

(1) Minority participation: 32%

(2) Female participation: 6.9%

These goals are applicable to all the Contractor's construction work performed in and for the premises.

The Contractor's specific affirmative action obligations set forth herein of minority and female employment and training shall be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make good faith efforts to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract. Compliance with the goals will be measured against the total work hours performed.

(b) The Contractor shall provide written notification to the Lessee and the Lessee agrees to provide written notification to the Manager of the Equal Opportunity Programs Unit of the Port Authority within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(c) As used in these specifications:

(1) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

(2) "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(d) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the construction work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 those provisions which include the applicable goals for minority and female participation.

(e) The Contractor shall implement the specific affirmative action standards provided in subparagraphs (1) through (16) of paragraph (h) hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the premises. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(f) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations hereunder.

(g) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period, and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

(h) The Contractor shall take specific affirmative actions to ensure equal employment opportunity ("EEO").

The evaluation of the Contractor's compliance with these provisions shall be based upon its good faith efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each phase of the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the premises are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the premises.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(4) Provide immediate written notification to the Lessee when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

(6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the Contractor's newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least every six months the Contractor's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-premises supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construciton work at the premises. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing buisness.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the premises and in other areas of a Contractor's workforce.

(11) Tests and other selection requirements shall comply with 41 CFR Part 60-3.

(12) Conduct, at least every six months, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and supplies, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least every six months, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) hereof provided that the Contractor actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

(j) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is underutilized).

(k) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

(l) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(m) The Contractor shall carry out such sanctions and penalties for violation of this clause including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by the Lessee. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.

(n) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (h) hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Lessee shall proceed accordingly.

(o) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(p) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(q) Without limiting any other obligation, term or provision under the Lease, the Contractor shall cooperate with all federal, state or local agencies established for the purpose of implementing affirmative action compliance programs and shall comply with all procedures and guidelines established or which may be established by the Port Authority.

PART II

Minority Business Enterprises/Women-Owned Business Enterprises

The Lessee agrees to and shall require the general contractor or other construction supervisor and each of the Lessee's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the construction work, pursuant to the provisions hereof and in accordance with the Agreement. For purposes hereof, Minority Business Enterprise (MBE) shall mean any business enterprise which is at least fifty-one percentum owned by or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, Women-owned Business Enterprise (WBE) shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by women and such ownership is real, substantial and continuing. A minority shall be as defined in paragraph II(c) of Part I of this Schedule E. "Meaningful participation" shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and Women-owned Business Enterprises, of which at least twelve percent (12%) are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(a) Dividing the Work to be subcontracted into smaller portions where feasible.

(b) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

(c) Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.

(d) Utilizing the list of eligible MBEs and WBEs maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.

(e) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to insure that the Lessee and Contractor will meet their obligations hereunder.

(f) Insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.

(g) Not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs, where appropriate.

For the Port Authority

Initialled:

For the Lessee

EXHIBIT Y

ELECTION

(PURSUANT TO SECTION 142 (b) OF THE
INTERNAL REVENUE CODE OF 1986)

1. MAERSK CONTAINER SERVICE COMPANY, INC. (hereinafter called "the Lessee") pursuant to an Agreement of Lease bearing Port Authority Lease No. EP-248 (hereinafter called "the Lease") made under date of January 6, 2000, between the Lessee and The Port Authority of New York and New Jersey (hereinafter called "the Port Authority"), has leased a site and the structures, improvements, additions, buildings and facilities located or to be located thereon at the Elizabeth-Port Authority Marine Terminal, all as described in the Lease (hereinafter called "the Leased Premises") to be used basically as marine terminal premises constituting a portion of a public port for a term commencing on January 6, 2000 and expiring December 31, 2029.

2. The principal office of the Port Authority is at One World Trade Center, New York, New York 10048 and its taxpayer identification number is 13-6400654W.

3. The principal office of the Lessee is at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880 and its taxpayer identification number is 22-3471729.

4. Capital expenditures in connection with the Leased Premises have been, or are expected to be made, in whole or in part by the Port Authority from "exempt facility bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986) issued by the Port Authority from time to time (such capital expenditures being hereinafter called "the Property").

5. The Lessee has not acquired and is not acquiring an ownership interest in the Property. The Lessee hereby irrevocably elects not to claim for purposes of federal, state or local taxation of income any depreciation or investment credits, for which it may be eligible with respect to the Property. The Lessee further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under the Lease, and as a condition of any permitted sale or assignment of the interest of the Lessee under the Lease, every successor in interest shall furnish an executed irrevocable election in the form of the immediately preceding sentence to the Port Authority. The foregoing shall not grant or be deemed to grant to the Lessee the right to sell or assign, in any manner, its interests under the Lease.

6. It is understood that the foregoing election shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the

Leased Premises, installed by the Lessee in or on the Leased Premises pursuant to the Lease, and which are deemed to be and remain the property of the Lessee.

ATTEST:

John A. Loeppich

Secretary
(Corporate Seal)

MAERSK CONTAINER SERVICE COMPANY, INC.

By C A Scior

(Title) President

Dated: JUNE 1, 2000

CONTRACT OF GUARANTY

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic, created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office at One World Trade Center, in the Borough of Manhattan, in the City, County and State of New York 10048, has under consideration the attached agreement of lease dated as of January 6, 2000 and bearing Port Authority file number EP-248 covering the letting of premises at the Elizabeth-Port Authority Marine Terminal (which agreement of lease is hereinafter called "the Lease") by and between the Port Authority and Maersk Container Service Company, Inc. (hereinafter called "the Lessee"), a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880, which said Lease includes, without limitation thereto, a provision for the guaranty of the obligations of the Lessee under the Lease; and

WHEREAS, Maersk Inc. (hereinafter called "the Guarantor"), a corporation organized and existing under the laws of the State of New York and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880, in order to induce the Port Authority to enter into the Lease, is willing to guarantee the payment by the Lessee of the rentals and other monetary obligations which the Lessee has under the Lease and to guarantee the performance, fulfillment and observance by the Lessee of all the other terms, provisions, covenants and conditions of the Lease on the part of the Lessee to be performed, fulfilled and observed;

NOW, THEREFORE, for and in consideration of the foregoing, the Guarantor hereby covenants and agrees with the Port Authority as follows:

1. The Guarantor hereby absolutely and unconditionally guarantees, promises and agrees that the Lessee will duly and punctually pay all rentals and other monetary obligations which it has or shall have under the Lease, and that the Lessee will faithfully and fully perform, fulfill and observe all the other terms, provisions, covenants and conditions of the Lease on the part of the Lessee to be performed, fulfilled and observed.

2. The Guarantor hereby waives and dispenses with any notice of non-payment, non-performance or non-observance or proof of notice or demand whereby to charge it therefor, and agrees that the validity of this Contract of Guaranty and the obligations of the Guarantor hereunder shall in no wise be terminated, affected or impaired by reason of any failure on the part of the Port Authority to insist upon strict performance under the Lease, or by the assertion by the Port Authority against the Lessee of any of the rights or remedies reserved to the Port Authority under the provisions of the Lease, or by the institution, prosecution, withdrawal, discontinuance or settlement of any judicial or other proceeding by the Port Authority against the Lessee.

3. The obligations of the Guarantor hereunder shall not be released or affected in any way by the Port Authority's receipt, application or release of security given for the performance and observance of the terms, conditions and provisions to be performed, observed or fulfilled under the Lease, and the receipt of such security shall not limit or alter the remedies of the Port Authority under this Contract of Guaranty and the Port Authority may from time to time and at any time elect to pursue (or not to pursue) its rights under this Contract of Guaranty without thereby limiting, voiding or relinquishing any of its rights or remedies under the Lease.

4. The liability of the Guarantor hereunder shall in no way be affected by:

(a) The release or discharge of the Lessee in any creditors', receivership, bankruptcy or other similar proceeding; or

(b) The impairment, limitation or modification of the liability of the Lessee or its estate in bankruptcy, or of any remedy for the enforcement of the liability of the Lessee under the Lease, resulting from the operation of any present or future provision of the Bankruptcy

Code or any other statute or from the decision of any court having jurisdiction over the Lessee or its estate; or

(c) The rejection or disaffirmance of the Lease in any creditors', receivership, bankruptcy or other similar proceeding; or

(d) Any disability or any defense of the Lessee.

5. This Contract of Guaranty shall remain and continue in full force and effect as to any and every renewal, modification or extension of the Lease, whether in accordance with the terms thereof or by a separate or additional document, and notwithstanding any such renewal, modification or extension, whether or not the Guarantor has specifically consented to such renewal, modification or extension. The liability of the Guarantor hereunder shall in no way be affected by the failure of the Port Authority to obtain the Guarantor's consent to any such renewal, modification or extension, notwithstanding that the Port Authority may have previously obtained such consent with respect to a prior renewal, modification or extension.

6. Acceptance of this Contract of Guaranty and reliance thereon by the Port Authority shall be evidenced by the execution of the Lease by the Port Authority without any further act or notice. If, for any reason, any part of the obligations of the Guarantor hereunder shall be held invalid or unenforceable, the balance of the said obligations shall nevertheless remain in full force and effect. Failure physically to attach a copy of the Lease to this Contract of Guaranty shall not void, alter or affect this Contract of Guaranty, or alter or amend the obligations of the Guarantor hereunder.

IN WITNESS WHEREOF, the Guarantor has caused these presents to be executed as of the 2 day of JUNE, ~~1999.~~ 2000

ATTEST:

Bo V. Lamb
Secretary

MAERSK INC.

By PV Connors

(Title) Exec Vice President

(Corporate Seal)

STATE OF New Jersey)
) ss.
COUNTY OF Morris)

On the 2nd day of June, ~~1999~~ 2000, before me, the subscriber, a notary public of State of New Jersey, personally appeared Mr. Philip Y. Connors, the Executive Vice President President of Maersk Inc., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Carmel M. Siegel
(notarial seal and stamp)

CARMEL M. SIEGEL
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 4/26/2004

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

On this 27th day of June, 1999, before me, the subscriber, a notary public of the State of New York, personally appeared LILLIAN C. BORROTT DIRECTOR, PORT DEPT., the of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

Nancy S. Gonzalez
(notarial seal and stamp)

NANCY S. GONZALEZ
NOTARY PUBLIC, STATE OF NY
QUALIFIED NEW YORK COUNTY
NO. 31-4993233
COMMISSION EXPIRES 3/09/2002

STATE OF North Carolina)ss.
COUNTY OF Mecklenburg

On this 18 day of June, ~~1999~~ 2000, before me, the subscriber, a notary public of the state of North Carolina, personally appeared Anthony A. Scioscia, the President of Maersk Container Service Company, Inc., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Monica Lawson
(notarial seal and stamp)

MY COMMISSION EXPIRES APRIL 6, 2002

Port Authority Lease No. EP-248
Supplement No. 1

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of June 18, 2002, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and APM TERMINALS NORTH AMERICA, INC. (formerly known as Maersk Container Service Company, Inc. and hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of January 6, 2000, the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at the Elizabeth-Port Authority Marine Terminal, in the County of Union, City of Elizabeth and State of New Jersey; and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

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

1. The Port Authority and the Lessee hereby agree that the Port Authority shall perform the "specific work item", as such term is defined in Section 7(a)(1) of the Lease, described in subdivision (iii) of said Section 7(a)(1) as "the dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not shown in the color blue on Exhibit A-2 to forty-five (45) feet below mean low water" (hereinafter called "the Forty-five Foot Dredging"). The Lessee shall have the right to elect to have the Port Authority perform the specific work item described in subdivision (vi) of said Section 7(a)(1) as "the dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not shown in the color blue on Exhibit A-2 to fifty (50) feet below mean low water" (hereinafter called "the Fifty Foot Dredging"). The Lessee's election to have the Port Authority perform the Fifty Foot Dredging shall be made by written notice to the Port Authority of such election. Notwithstanding any provision set forth above in this paragraph, the Port Authority shall not be obligated to perform either the Forty-five Foot Dredging or the Fifty Foot Dredging until the Lessee shall have completed the performance of the specific work item described in subdivision (ii) of said

CONFORMED COPY

Section 7(a)(1) as "the reinforcement of the berth to allow for dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not in the color blue on the sketch attached hereto, hereby made a part hereof and marked 'Exhibit A-2' to fifty (50) feet below mean low water". It is anticipated that the Forty-five Foot Dredging will be performed pursuant to a work order or orders issued under a work order dredging and disposal contract (hereinafter called "the Forty-five Foot Dredging Contract"), with the Forty-five Foot Dredging Contract to cover dredging and disposal work in addition to the Forty-five Foot Dredging. It is further anticipated that the Fifty Foot Dredging will be performed pursuant to a work order or orders issued under a work order dredging and disposal contract (hereinafter called "the Fifty Foot Dredging Contract"), with the Fifty Foot Dredging Contract to cover dredging and disposal work in addition to the Fifty Foot Dredging. Upon completion of the Forty-five Foot Dredging or the Fifty Foot Dredging, the Port Authority shall certify to the Lessee by written certification the costs to the Port Authority of said respective dredging, and the Lessee shall pay rentals to the Port Authority on account of said respective dredging as set forth in paragraph 3 hereof. The parties agree that this Agreement is being entered into solely for the purpose of facilitating the performance of certain of "the Lessee's Construction Work", as such term is defined in Section 7(a)(1) of the Lease, and except as expressly provided otherwise, nothing contained herein shall alter, expand or limit any of the rights or obligations of either party as set forth in the Lease. Without limiting the generality of the immediately preceding sentence, the parties agree that to the extent any provision of this Agreement conflicts with the provisions of the Lease, the provisions of the Lease shall control, except that the provisions of paragraph 3(a)(4) and 3(a)(8) of this Agreement shall control for purposes of this Agreement.

2. The Lessee shall provide the Port Authority with sixty (60) days' prior written notice specifying the portion (if less than all) of the Forty-five Foot Dredging or the Fifty Foot Dredging, as the case may be, to be performed by the Port Authority. The aforesaid notice covering either all or the first portion of the Forty-five Foot Dredging shall set forth the amount, if any, of "the Construction Work Reimbursement Amount", as such term is defined in Section 7(a)(2) of the Lease, to be applied to the Forty-five Foot Dredging. Upon receipt of the Lessee's aforesaid notice(s), and subject to the provisions of Section 36 of the Lease entitled "Force Majeure", the Port Authority shall proceed to deepen the berthing area to be dredged as specified in said notice (or such portion thereof as may be

necessary), either directly or through a contractor, to a depth of forty-five (45) feet below mean low water or fifty (50) feet below mean low water, as the case may be, to such sloped depths as are deemed appropriate by the Port Authority, and which shall include normal overdraft amounts. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this Agreement shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling. The Port Authority's obligation to perform the Forty-five Foot Dredging and/or the Fifty Foot Dredging shall be conditioned upon all necessary permits and governmental authorizations for the respective dredging having been obtained, including any such permits and governmental authorizations regarding the dredging, transportation or disposal of dredged material.

3. (a) For all purposes of this Agreement, the following terms shall have the respective meanings provided below.

(1) "Forty-five Foot Dredging Rental Payment Start Date" shall mean the date as of which the Port Authority shall certify to the Lessee that the Port Authority has substantially completed performance of the Forty-five Foot Dredging.

(2) "Forty-five Foot Dredging Period" shall mean the period from the commencement of the Forty-five Foot Dredging through the day preceding the Forty-five Foot Dredging Rental Payment Start Date.

(3) "Forty-five Foot Dredging Rental Payment Period" shall mean the period commencing on the Forty-five Foot Dredging Rental Payment Start Date and ending on December 31, 2029.

(4) "The Port Authority's Costs of the Forty-five Foot Dredging" shall mean 115% of all payments by the Port Authority made on account of the performance by the Port Authority of the Forty-five Foot Dredging, with said dredging to be calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations (including normal overdredge amounts) called for hereunder, and with such cost to include, but not be limited to, dredging,

transportation, processing (including amendment, separation, removal, transportation and disposal of trash and debris), disposal (including mobilization at disposal sites) of any dredged material, and work to address unanticipated site conditions; and shall also include the following items of cost prorated with respect to the Forty-five Foot Dredging: the cost of planning and engineering work with respect to the project, insurances, compliance with environmental laws (including any required testing), and obtaining necessary permits. The proration of certain of the costs of the Forty-five Foot Dredging referred to in the immediately preceding sentence shall be effected by multiplying the amount of each said item of cost to be prorated by a fraction, the numerator of which shall be the total amount of all of the items of cost set forth above in this subdivision for the Forty-five Foot Dredging that are not subject to proration and the denominator of which shall be the total amount of all of the items of cost under the Forty-five Foot Dredging Contract that are not subject to proration hereunder. Notwithstanding any provision set forth above in this subdivision, the Port Authority's Costs of the Forty-five Foot Dredging shall be reduced by the amount, if any, of the Construction Work Reimbursement Amount to be applied to the Forty-five Foot Dredging in accordance with the Lessee's notice referred to in paragraph 2 hereof, with said amount to be applied to the Forty-five Foot Dredging as the costs thereof shall first accrue, with the Port Authority's Costs of the Forty-five Foot Dredging (if any remaining) to then commence to accrue for purposes of any rentals payable under subparagraphs (b) and (c) of this paragraph.

(5) "Fifty Foot Dredging Rental Payment Start Date" shall mean the date as of which the Port Authority shall certify to the Lessee that the Port Authority has substantially completed performance of the Fifty Foot Dredging.

(6) "Fifty Foot Dredging Period" shall mean the period from the commencement of the Fifty Foot Dredging through the day preceding the Fifty Foot Dredging Rental Payment Start Date.

(7) "Fifty Foot Dredging Rental Payment Period" shall mean the period commencing on the Fifty Foot Dredging Rental Payment Start Date and ending on December 31, 2029.

(8) "The Port Authority's Costs of the Fifty Foot Dredging" shall mean 115% of all payments by the Port Authority made on account of the performance by the Port Authority of the Fifty Foot Dredging, with said dredging to be calculated from the

difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations (including normal overdredge amounts) called for hereunder, and with such cost to include, but not be limited to, dredging, transportation, processing (including amendment, separation, removal, transportation and disposal of trash and debris), disposal (including mobilization at disposal sites) of any dredged material, and work to address unanticipated site conditions; and shall also include the following items of cost prorated with respect to the Fifty Foot Dredging: the cost of planning and engineering work with respect to the project, insurances, compliance with environmental laws (including any required testing), and obtaining necessary permits. The proration of certain of the costs of the Fifty Foot Dredging referred to in the immediately preceding sentence shall be effected by multiplying the amount of each said item of cost to be prorated by a fraction, the numerator of which shall be the total amount of all of the items of cost set forth above in this subdivision for the Fifty Foot Dredging that are not subject to proration and the denominator of which shall be the total amount of all of the items of cost under the Fifty Foot Dredging Contract that are not subject to proration hereunder.

(9) "Y" shall mean, as the context requires, the number (with the decimal carried to seven places) obtained by dividing the sum of (i) the average of the weekly Index of 25 Revenue Bonds as reported in the publication "The Bond Buyer" for the respective one hundred eighty (180) day period immediately preceding the expiration of the Forty-five Foot Dredging Period and the Fifty Foot Dredging Period, as the case may be, and (ii) one hundred fifty (150) basis points, by the whole number twelve (12). For purposes of example and illustration only, the Index of 25 Revenue Bonds for June 21, 2001 was 5.52% as set forth in the table entitled "Bond Buyer Indexes" on page 37 of The Bond Buyer, Vol. 336, No. 31166, New York, N.Y. dated Friday, June 22, 2001. In the event that The Bond Buyer or its weekly Index of 25 Revenue Bonds shall be discontinued at any time prior to the time for a determination of Y for purposes of this Agreement a comparable substitute for such Index shall be mutually agreed upon in writing by the Lessee and the Port Authority within thirty (30) days after discontinuance. In the event that the Port Authority and the Lessee shall fail to agree upon such a substitute within the time hereinabove specified then upon notice of either party such dispute shall be disposed of by arbitration in accordance with the then existing rules of the American Arbitration Association or any successor association. One half of the cost of said arbitration shall be borne by the Port Authority and the other half of said cost shall be borne by the Lessee.

(10) "Monthly Rental Factor" shall mean, as the context requires, the respective factor derived in accordance herewith by the application of the following formula:

$$\frac{1}{\frac{1}{Y} - \frac{1}{Y(1+Y)^t}} = \text{Monthly Rental Factor}$$

Where t (a power) equals the number of calendar months (expressed in whole numbers) respectively in the Forty-five Foot Dredging Rental Payment Period and the Fifty Foot Dredging Rental Payment Period, as the case may be.

(b) In addition to all other rentals payable by the Lessee under the Lease as herein amended, the Lessee shall pay to the Port Authority a rental (hereinafter called "the Forty-five Foot Work Period Rental") equal to the result of (i) multiplying Y for the Forty-five Foot Dredging Period by the product obtained by multiplying the amount of each payment made by the Port Authority during the Forty-five Foot Dredging Period on account of the cost of the Forty-five Foot Dredging by the number of days from the date of such payment to the expiration date of the Forty-five Foot Dredging Period and (ii) dividing the result of that calculation by 30. The Forty-five Foot Work Period Rental shall be payable as set forth in subparagraph (c) of this paragraph.

(c)(1) In addition to all other rentals payable by the Lessee under the Lease as herein amended, the Lessee shall pay to the Port Authority a rental (hereinafter called the "Forty-five Foot Dredging Rental") at a monthly rate equal to the product obtained by multiplying the Monthly Rental Factor for the Forty-five Foot Dredging Rental Payment Period by the sum of (i) the amount of the Forty-five Foot Work Period Rental payable by the Lessee pursuant to subparagraph (b) of this paragraph and (ii) the Port Authority's Costs of the Forty-five Foot Dredging, which Forty-five Foot Dredging Rental shall be payable during the Forty-five Foot Dredging Rental Payment Period in advance on the Forty-five Foot Dredging Rental Payment Start Date and on the first day of each calendar month thereafter during the Forty-five Foot Dredging Rental Payment Period. If the Forty-five Foot Dredging Rental Payment Start Date shall occur on a day which is other than the first day of a calendar month the payment of the

Forty-five Foot Dredging Rental payable on the Forty-five Foot Dredging Rental Payment Start Date shall be a sum equal to the amount of the full monthly payment thereof for the month in which the Forty-five Foot Dredging Rental Payment Start Date shall occur, calculated in accordance with the provisions of this subparagraph, prorated on a daily basis for the period from the Forty-five Foot Dredging Rental Payment Start Date to the end of the calendar month in which the Forty-five Foot Dredging Rental Payment Start Date shall occur.

(2) If the Forty-five Foot Dredging Rental Payment Start Date shall occur before accurate and final determination of the Port Authority's Costs of the Forty-five Foot Dredging then Interim Forty-five Foot Dredging Rental shall be payable by the Lessee during the period prior to such determination at the monthly rate equal to the product obtained by multiplying the Monthly Rental Factor for the Forty-five Foot Dredging Rental Payment Period by the sum of the then calculated total of the amounts described in items (i) and (ii) of subparagraph (1) of this paragraph, payable in advance on the Forty-five Foot Dredging Rental Payment Start Date and on the first day of each calendar month thereafter until such determination has been made. If the Forty-five Foot Dredging Rental Payment Start Date shall occur on a day which is other than the first day of a calendar month the payment of Interim Forty-five Foot Dredging Rental payable on the Forty-five Foot Dredging Rental Payment Start Date shall be a sum equal to the amount of the full monthly payment thereof, as set forth in this subparagraph, prorated on a daily basis for the period from the Forty-five Foot Dredging Rental Payment Start Date to the end of the calendar month in which the Forty-five Foot Dredging Rental Payment Start Date falls. If the monthly amount of the Forty-five Foot Dredging Rental, as finally determined, is greater than the monthly rate of Interim Forty-five Foot Dredging Rental, the sum of the excess over the total amount of Interim Forty-five Foot Dredging Rental theretofore paid of the correct amount of the Forty-five Foot Dredging Rental as finally computed for the period prior to final determination of the Port Authority's Costs of the Forty-five Foot Dredging together with the then current monthly payment of the Forty-five Foot Dredging Rental shall be payable on the first day of the calendar month next ensuing after final computation and determination of the Port Authority's Costs of the Forty-five Foot Dredging. If such final computation and determination shall result in an amount of the Forty-five Foot Dredging Rental payable for the period prior to final determination which is less than the total amount of Interim Forty-five Foot Dredging Rental theretofore paid, the Lessee shall be entitled to a credit equal

to such excess against the next succeeding payments of the Forty-five Foot Dredging Rental due hereunder.

(3) Notwithstanding any other provision of the Lease as herein amended, the Forty-five Foot Dredging Rental payable pursuant to this subparagraph (c) shall not be subject to abatement or suspension or reduction for any reason whatsoever. The Forty-five Foot Dredging Rental shall be and be deemed a component of the Facility Rental payable under Section 5 of the Lease for purposes of the computation of survived damages under Section 28 of the Lease, including, without limitation, Section 28(b)(3) thereof.

(d) In addition to all other rentals payable by the Lessee under the Lease as herein amended, the Lessee shall pay to the Port Authority a rental (hereinafter called "the Fifty Foot Work Period Rental") equal to the result of (i) multiplying Y for the Fifty Foot Dredging Period by the product obtained by multiplying the amount of each payment made by the Port Authority during the Fifty Foot Dredging Period on account of the cost of the Fifty Foot Dredging by the number of days from the date of such payment to the expiration date of the Fifty Foot Dredging Period and (ii) dividing the result of that calculation by 30. The Fifty Foot Work Period Rental shall be payable as set forth in subparagraph (e) of this paragraph.

(e)(1) In addition to all other rentals payable by the Lessee under the Lease as herein amended, the Lessee shall pay to the Port Authority a rental (hereinafter called the "Fifty Foot Dredging Rental") at a monthly rate equal to the product obtained by multiplying the Monthly Rental Factor for the Fifty Foot Dredging Rental Payment Period by the sum of (i) the amount of the Fifty Foot Work Period Rental payable by the Lessee pursuant to subparagraph (d) of this paragraph and (ii) the Port Authority's Costs of the Fifty Foot Dredging, which Fifty Foot Dredging Rental shall be payable during the Fifty Foot Dredging Rental Payment Period in advance on the Fifty Foot Dredging Rental Payment Start Date and on the first day of each calendar month thereafter during the Fifty Foot Dredging Rental Payment Period. If the Fifty Foot Dredging Rental Payment Start Date shall occur on a day which is other than the first day of a calendar month the payment of the Fifty Foot Dredging Rental payable on the Fifty Foot Dredging Rental Payment Start Date shall be a sum equal to the amount of the full monthly payment thereof for the month in which the Fifty Foot Dredging Rental Payment Start Date shall occur, calculated in accordance with the provisions of this subparagraph, prorated on a daily basis for the period from the Fifty Foot Dredging Rental Payment Start Date

to the end of the calendar month in which the Fifty Foot Dredging Rental Payment Start Date shall occur.

(2) If the Fifty Foot Dredging Rental Payment Start Date shall occur before accurate and final determination of the Port Authority's Costs of the Fifty Foot Dredging then Interim Fifty Foot Dredging Rental shall be payable by the Lessee during the period prior to such determination at the monthly rate equal to the product obtained by multiplying the Monthly Rental Factor for the Fifty Foot Dredging Rental Payment Period by the sum of the then calculated total of the amounts described in items (i) and (ii) of subparagraph (1) of this paragraph, payable in advance on the Fifty Foot Dredging Rental Payment Start Date and on the first day of each calendar month thereafter until such determination has been made. If the Fifty Foot Dredging Rental Payment Start Date shall occur on a day which is other than the first day of a calendar month the payment of Interim Fifty Foot Dredging Rental payable on the Fifty Foot Dredging Rental Payment Start Date shall be a sum equal to the amount of the full monthly payment thereof, as set forth in this subparagraph, prorated on a daily basis for the period from the Fifty Foot Dredging Rental Payment Start Date to the end of the calendar month in which the Fifty Foot Dredging Rental Payment Start Date falls. If the monthly amount of the Fifty Foot Dredging Rental, as finally determined, is greater than the monthly rate of Interim Fifty Foot Dredging Rental, the sum of the excess over the total amount of Interim Fifty Foot Dredging Rental theretofore paid of the correct amount of the Fifty Foot Dredging Rental as finally computed for the period prior to final determination of the Port Authority's Costs of the Fifty Foot Dredging together with the then current monthly payment of the Fifty Foot Dredging Rental shall be payable on the first day of the calendar month next ensuing after final computation and determination of the Port Authority's Costs of the Fifty Foot Dredging. If such final computation and determination shall result in an amount of the Fifty Foot Dredging Rental payable for the period prior to final determination which is less than the total amount of Interim Fifty Foot Dredging Rental theretofore paid, the Lessee shall be entitled to a credit equal to such excess against the next succeeding payments of the Fifty Foot Dredging Rental due hereunder.

(3) Notwithstanding any other provision of the Lease as herein amended, the Fifty Foot Dredging Rental payable pursuant to this subparagraph (e) shall not be subject to abatement or suspension or reduction for any reason whatsoever. The Fifty Foot Dredging Rental shall be and be deemed a component of the Facility Rental payable under Section 5 of the Lease for

purposes of the computation of survived damages under Section 28 of the Lease, including, without limitation, Section 28(b)(3) thereof.

4. The provisions of Section 7(s) of the Lease shall not be applicable to the Forty-five Foot Dredging or the Fifty Foot Dredging if performed under this Agreement.

5. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect.

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

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

8. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and

the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Agreement.

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

ATTEST:

Linda C. Handel

ASSISTANT SECRETARY

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By _____

(Title) RICHARD M. LARRABEE DIRECTOR, PORT COMMERCE DEPT.

(Seal)

ATTEST:

John A. Lacappiche

Secretary

APM TERMINALS NORTH AMERICA, INC. (formerly known as Maersk Container Service Company, Inc.)

By _____

(Title) President

(Corporate Seal)

APPROVED:

FORM	TERMS

Form - All-Purpose Ack. N.Y. (rev 9/1/99)

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

On the 30th day of July in the year 2002, before me, the undersigned, a Notary Public in and for said state, personally appeared RICHARD M. LARRABEE DIRECTOR, PORT COMMERCE DEPT. , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Millie Dominguez
(notarial seal and stamp)

MILLIE DOMINGUEZ
Notary Public - State of New York
NO. 01DO6051706
Qualified in Bronx County
My Commission Expires 12/14/02

STATE OF North Carolina)
) ss.
COUNTY OF Mecklenburg

On the 31 day of May in the year 2002, before me, the undersigned, a Notary Public in and for said state, personally appeared Anthony Scioscia & John Lorprich personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Cynthia A. Slagle
(notarial seal and stamp)

Port Authority Lease No. EP-248
Supplement No. 2

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of March 13, 2007 by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and APM TERMINALS NORTH AMERICA, INC. (hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of January 6, 2000, the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at the Elizabeth-Port Authority Marine Terminal, in the County of Union, City of Elizabeth and State of New Jersey; and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

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

1. Effective on the date of this Agreement, the following provision shall be and be deemed inserted in Section 42 thereto:

> "(f) The Lessee agrees that it will make its best efforts to transport to or from the Port the following number of the Carrier's Containers in addition to the number of the Carrier's Containers set forth in paragraph (b) of this Section for the First Port Guarantee Period: (1) ten thousand (10,000) of the Carrier's Containers during the Port Throughput Lease Year commencing on January 1, 2008, (2) twenty thousand (20,000) of the Carrier's Containers during the Port Throughput Lease Year commencing on January 1, 2009, and (3) thirty-five thousand (35,000) of the Carrier's Containers during the Port Throughput Lease Year commencing on January 1, 2010; *provided, however*, that the provisions of paragraph (d) of this Section shall not apply in any way to the obligation set forth in this paragraph."

2. (a) Effective as of 11:59 o'clock P.M. on the "Surrender Date" (as such term is defined in subparagraph (h) of this paragraph), the Lessee has granted, bargained, sold, surrendered and yielded up and does by these presents grant,

bargain, sell, surrender and yield up to the Port Authority, its successors and assigns, forever, its leasehold interest to that part of the premises let to the Lessee constituting the "Surrendered Area" (as such term is defined in subparagraph (f) of this paragraph), and the term of years with respect thereto under the Lease as herein amended yet to come and has given, granted and surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by the Lease as herein amended with respect to the Surrendered Area all to the intent and purpose that the said term under the Lease as herein amended and the said rights, rights of renewal, licenses, privileges and options may be wholly merged, extinguished and determined on the Surrender Date with the same force and effect as if the said term were in and by the provisions of the Lease as herein amended originally fixed to expire on such date; to have and to hold the same unto the Port Authority, its successors and assigns forever.

(b) The Lessee hereby covenants on behalf of itself, its successors and assigns that (i) it has not done or suffered and will not do or suffer anything whereby the Surrendered Area, or the Lessee's leasehold therein, shall be encumbered, as of the Surrender Date, in any way whatsoever; (ii) the Lessee is and will remain until the Surrender Date the sole and absolute owner of the leasehold estate in the Surrendered Area and of the rights, rights of renewal, licenses, privileges and options granted by the Lease as herein amended with respect thereto and that the same will be, as of the Surrender Date free and clear of all liens and encumbrances of whatsoever nature created by the Lessee; and (iii) the Lessee has full right and power to make this Agreement. The Port Authority hereby represents and warrants that (1) it is and will remain, as of the Surrender Date, the lessor under the Lease and there are no liens or encumbrances created by the Port Authority on the fee title to the real property covered by the Lease that could result in a foreclosure upon the real property or any portion thereof or any other interference with the rights of the Lessee to exclusive possession of the premises under the Lease and (2) it has full right and power to execute, deliver and perform this Agreement, and such execution, delivery and performance are in accordance with, and not in violation of, the Lease. The preceding representations and warranties by the Port Authority and the Lessee shall be deemed repeated as of the Surrender Date.

(c) Subject to subparagraphs (d)and (e)of this paragraph, all promises, covenants, agreements and obligations of the Port Authority and the Lessee with respect to the Surrendered

Area under the Lease as herein amended or otherwise which under the provisions thereof would have matured upon the date originally fixed in the Lease as herein amended for the expiration of the term thereof, or upon the termination of the Lease as herein amended prior to the said date, or within a stated period after expiration or termination, shall, notwithstanding such provisions, mature upon the Surrender Date and as to latent defects shall survive the partial surrender provided for in this paragraph.

(d) As of the Surrender Date, the Lessee shall release and shall discharge and does by these presents release and discharge the Port Authority from any and all obligations on the part of the Port Authority to be performed under the Lease as herein amended with respect to the Surrendered Area for that portion of the term subsequent to the Surrender Date. As of the Surrender Date, the Port Authority shall release and shall discharge and does by these presents release and discharge the Lessee from any and all obligations on the part of the Lessee to be performed under the Lease as herein amended with respect to the Surrendered Area for that portion of the term subsequent to the Surrender Date; it being understood that nothing herein contained shall release, relieve or discharge the Lessee from any liability for rentals or for other charges under the Lease that may be due or become due to the Port Authority and accrued for any period or periods prior to the Surrender Date, or for breach of any other obligation on the Lessee's part to be performed under the Lease as herein amended for or during such period or periods or maturing pursuant to subparagraph (c) of this paragraph. The release of the Port Authority and of the Lessee set forth in this subparagraph (d) shall not be applicable to matters relating to the environmental condition of the Surrendered Area accruing on or prior to the Surrender Date.

(e) In consideration of the making of this Agreement by the Port Authority, the Lessee hereby agrees to terminate its occupancy of the Surrendered Area and to deliver actual physical possession of the same to the Port Authority on or before the Surrender Date in the condition required by the Lease as herein amended upon surrender. Notwithstanding anything to the contrary contained in the Lease or in this Agreement (i) the Lessee shall not be obligated to remove any property (including, without limitation, any fencing, light poles or lighting fixtures) therefrom or to do any work thereat, (ii) on or prior to the Surrender Date, the Port Authority shall (at its sole cost and expense) (1) construct a fence to separate the Surrender Area from the remaining property constituting the leasehold, and ensuring that the entire leasehold is contiguously

fenced (the leasehold under the Lease, less the Surrendered Area, being hereinafter called the "Leased Area"), which fence shall be in compliance with all laws applicable to the Lessee's operations at the Leased Area and, until the foregoing fence has been constructed and is in place, the Port Authority shall provide reasonable and adequate security arrangements (including security personnel as required by law) for the Surrender Area and the Leased Area contiguous with the Surrender Area after the Surrender Date and (2) to the extent necessary for the Port Authority to perform the work described in clause (1) above and/or to prevent interference with the utilities and facilities servicing the Leased Area, relocate to a reasonably acceptable comparable area within the Leased Area any and all utilities and facilities (including, without limitation, all pipes, conduits, wires, electrical equipment and similar property) located in the Surrender Area and serving any portion of the Leased Area(the work specified in clauses (1) and (2) above being called, the "Work"), (iii) the Work shall be done in a good and workmanlike manner and in compliance with all applicable laws, and such fence and relocated utilities and facilities shall be reasonably comparable in quality, function and usefulness as those currently existing at the Surrender Area, (iv) the Work shall be reasonably acceptable for the purpose intended and (v) until the completion of the Work, the Port Authority shall not interfere with the Lessee's continued use and enjoyment of such fence, utilities and facilities. The Port Authority's obligations set forth above shall not be subject to the release and discharge in subparagraph (d)of this paragraph.

(f) The term "Surrendered Area" shall mean all of the premises shown in "Exhibit PS-1" attached hereto.

(g) The Port Authority and the Lessee agree that from and after the Surrender Date, the basic rental payable under the Lease shall be reduced by prorating the basic rental as set forth in Section 3 of the Lease to reflect the actual area of said reduced premises.

(h) The term "Surrender Date" shall mean the date set forth in written notice given by the Port Authority to the Lessee as the date that the Surrendered Area is required in connection with the performance of work by the Port Authority Notwithstanding the foregoing, the Surrender Date (i) shall not be less than 30 days after the date of such notice and shall, in any event, occur no later than May 31, 2008 and (ii) shall be subject to the completion of the Work, as specified in this Agreement.

3. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect.

4. The Lessee, on one hand, and the Port Authority, on the other hand, represent and warrant to the other that the representing party dealt with no broker or similar entity or person in the negotiation of this Agreement. The Lessee on one hand, and the Port Authority, on the other hand, shall indemnify and save harmless the other of and from all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation or execution of this Agreement, which claims are based upon dealings with the indemnifying party.

5. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof. No board member, officer, agent or employee of the Lessee shall be charged personally by the Port Authority with any liability, or held liable to the Port Authority under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

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

7. This Agreement may be executed in counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

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

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By _____

(Title) Director, Port Commerce Dept

(Seal)

WITNESS:

APM TERMINALS NORTH AMERICA, INC.

_____

By _____

(Title) _____

APPROVED
TERMS OV
FORM DB

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

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

_____

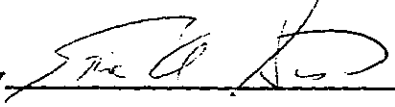
By _____

(Title) _____

(Seal)

WITNESS:

APM TERMINALS NORTH AMERICA, INC.

By 

(Title) President

Form - All-Purpose Ack. N.Y. (rev 9/1/99)

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

On the 14Th day of March in the year 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard H. Lanabee, Director Port Commerce, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

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

STATE OF)
) ss.
COUNTY OF)

On the day of in the year 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

THIRD SUPPLEMENTAL AGREEMENT

This Third Supplemental Agreement (this "Agreement") is made as of the 24th day of July, 2008, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the "Port Authority") and APM TERMINALS NORTH AMERICA, INC. ("Lessee").

Recitals:

A. The Port Authority and Lessee entered into a certain Agreement of Lease dated January 6, 2000 (the "Original Lease"), pursuant to which Lessee leased from the Port Authority certain premises located within the Elizabeth-Port Authority Marine Terminal situated in Union County, Elizabeth, New Jersey, as such premises is more particularly described in the Original Lease.

B. The Original Lease has been modified and supplemented pursuant to that certain Supplemental Agreement No. 1 dated June 18, 2002 (the "First Supplement") and that certain Supplemental Agreement No. 2 dated March 14, 2007 (the "Second Supplement"), both between the Port Authority and Lessee. The Original Lease, as modified and supplemented by the First Supplement and the Second Supplement, is referred to herein as the "Lease."

C. The Port Authority and Lessee desire to further modify and supplement the Lease in accordance with a certain Settlement Agreement dated July 24th, 2008, between the Port Authority and Lessee (the "Settlement Agreement").

Agreement:

NOW THEREFORE, in consideration of the mutual agreements set forth below and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Port Authority and Lessee hereby agree as follows:

1. Effective Date; Defined Terms. This Agreement shall only become effective on the date (the "Effective Date") specified in the Settlement Agreement. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meaning ascribed to such terms in the Lease.

2. Class A Work.

(a) Completion of Class A Work. The Port Authority and Lessee hereby acknowledge and agree that the portion of the Class A Work described on Exhibit A attached hereto and made a part hereof (the "Completed Class A Work") is complete and shall be deemed to have been completed prior to the Class A Work Completion Date. Lessee shall have no further obligations under the Lease with respect to the Completed Class A Work. The Port Authority shall deliver to Lessee, within ten (10) days after the Effective Date, a certificate of final completion pursuant to the Lease with respect to the Completed Class A Work.

(b) Remaining Class A Work. The Port Authority and Lessee hereby acknowledge and agree that described on Exhibit B attached hereto and made a part hereof is the remaining Class A Work under the Lease (the "Remaining Class A Work"). The Port Authority shall have no right to exercise any remedies pursuant to the Lease, at law or in equity, as applicable, as a result of the failure of the Remaining Class A Work to be completed on or before the Class A Work Completion Date.

3. Class A Work Completion Date.

(a) Extension of Completion Date. The Class A Work Completion Date shall be amended to occur on the earlier of: (i) the first anniversary of the full completion of the Panama Canal Expansion Project (as defined below) as announced by the Panama Canal Authority; or (ii) December 31, 2017, (the "New Class A Work Completion Date"). Notwithstanding the forgoing, the New Class A Work Completion Date shall not occur any earlier than December 31, 2013. For purposes of this provision the Panama Canal Expansion Project is defined as the canal expansion project approved by Panamanian referendum on October 26, 2006, and which consists of the addition of two new sets of locks and the widening and deepening of existing navigational channels in Gatun Lake and the deepening of Culebra Cut.

(b) Letter of Credit. (i) In the event that Lessee has not completed the Remaining Class A Work on or before the New Class A Work Completion Date, Lessee shall, within five (5) business days after the New Class A Work Completion Date, post an irrevocable letter of credit, in the form attached hereto as Exhibit C, in an amount equal to $73 million. Lessee shall increase the amount of the letter of credit by three percent (3%) on or prior to each anniversary of the date of the letter of credit and the Port Authority shall reasonably cooperate with Lessee in connection therewith (including, without limitation, returning the existing letter of credit in exchange for a new letter of credit in such higher amount).

(ii) At any time after the New Class A Work Completion Date, the Port Authority may at its option perform the Remaining Class A Work and may draw on the letter of credit an amount reasonably necessary to fund such work, which amount shall be used by the Port Authority solely for purposes of completing the Remaining Class A Work with any excess funds being refunded to Lessee. If the Port Authority exercises its option to draw on the letter of credit under this clause, Lessee's obligation to complete the Remaining Class A Work shall be extinguished and the letter of credit will be terminated as per subparagraph (b)(iii). In the event Lessee has not completed the Remaining Class A Work on or prior to the New Class A Work Completion date, drawing on the letter of credit shall be the Port Authority's sole remedy for any such failure and the Port Authority shall have no right to exercise any other remedies pursuant to the Lease, at law or in equity, as applicable.

(iii) The letter of credit shall be terminated on the earlier of the completion of the Remaining Class A Work (by either party), the Port Authority's drawdown on the entire outstanding amount of the letter of credit, or the expiration of the Lease.

(c) If Lessee has not completed the Remaining Class A Work on or before the New Class A Work Completion Date and has not posted the letter of credit required by paragraph (b) above within five (5) business days thereafter, the Port Authority shall have the option to terminate the Lease within ten (10) business days after the end of such five (5) business day period.

4. Second Surrendered Area.

(a) Second Surrendered Area and Second Surrender Date. (i) As of 11:59 p.m. on the Second Surrender Date (as defined below), Lessee shall surrender and yield up to the Port Authority, its successors and assigns, forever, all of its right, title and interest in and to the Second Surrendered Area (as defined below) and the term of years with respect thereto under the Lease shall terminate with the same force and effect as if such date were the original expiration date under the Lease. The "Second Surrendered Area" shall mean (i) the 2.5 acres of the premises depicted on Exhibit D attached hereto and made a part hereof; and (ii) further land necessary for the Port Authority's expansion of McLester Street as may be reasonably agreed to by Lessee upon the request of the Port Authority. The "Second Surrender Date" shall mean any date from the date hereof up to and including December 31, 2009.

(b) Effect on Rent. The Port Authority and Lessee agree that on and following the Second Surrender Date, the basic rental payable under the Lease shall be reduced by prorating the basic rental as set forth in Section 3 of the Lease to reflect the actual area of the premises less the Second Surrendered Area.

(c) Maturity of Obligations With Respect to Second Surrendered Area. Subject to subsections (d) and (e) below and Section 5 of this Agreement, all promises, covenants, agreements and obligations of the Port Authority and Lessee contained in the Lease with respect to the Second Surrendered Area or otherwise which, under the provisions of the Lease, would have matured upon the date originally identified in the Lease as the expiration date of the term or upon the earlier termination of the Lease or within a stated period after such expiration or termination shall mature as to the Second Surrendered Area upon the Second Surrender Date.

(d) Release and Discharge. As of the Second Surrender Date, Lessee shall release and discharge the Port Authority from any and all obligations on the part of the Port Authority to be performed under the Lease with respect to the Second Surrendered Area for that portion of the term of the Lease occurring after the Second Surrender Date. As of the Second Surrender Date, the Port Authority shall release and discharge Lessee from any and all obligations on the part of Lessee to be performed under the Lease with respect to the Second Surrendered Area for that portion of the term of the Lease occurring after the Second Surrender Date. Notwithstanding the foregoing, the release of the Port Authority and Lessee set forth in this subsection (d) shall not be applicable to matters relating to the environmental condition of the Second Surrendered Area accruing on or prior to the Second Surrender Date.

(e) Delivery of Second Surrendered Area. In consideration of the making of this Agreement by the Port Authority, Lessee hereby agrees to terminate its occupancy of the Second Surrendered Area and to deliver actual physical possession of the same to the Port Authority on or before the Second Surrender Date in the condition required by the Lease upon surrender of the premises at expiration of the Lease term. Notwithstanding anything to the contrary contained in the Lease (i) Lessee shall not be obligated to remove any property (including, without limitation, any fencing, light poles or lighting fixtures) from the Second Surrendered Area or perform any work thereat in connection with the surrender, (ii) on or prior to the Second Surrender Date, the Port Authority shall construct a fence to separate the Second Surrendered Area from the remaining premises under the Lease, which fence shall be in compliance with all laws applicable to such premises and Lessee's operations thereat, (iii) the Port Authority shall relocate to a reasonably acceptable area servicing the premises under the Lease all utilities and facilities (including, without limitation, all pipes, conduits, wires, electrical equipment and similar property) located within the Second Surrendered Area during fence construction in order to prevent interference with the service of such utilities and facilities to such premises, (iv) the construction of the fence and any relocation of utilities and facilities shall be done in a good and workmanlike manner and in compliance with all applicable laws and upon completion of such work, such fence and relocated utilities and facilities shall be reasonably comparable in quality, functionality and usefulness as those in existence at the Second Surrendered Area on the date hereof. The Port Authority's obligations under this Section 4(e) shall not be subject to the release and discharge by Lessee set forth in Section 4(d) above.

(f) Representations and Warranties Regarding Second Surrendered Area. Lessee hereby covenants on behalf of itself, its successors and assigns that (i) it has not done or suffered and will not do or suffer anything whereby the Second Surrendered Area, or Lessee's leasehold therein, shall be encumbered as of the Second Surrender Date, and (ii) Lessee is and will remain, until the Second Surrender Date, the sole and absolute owner of the leasehold estate in the Second Surrendered Area and of the rights, rights of renewal, licenses, privileges and options granted by the Lease with respect thereto and that its leasehold estate will be, as of the Second Surrender Date, free and clear of all liens and encumbrances of whatsoever nature created by Lessee. The Port Authority hereby represents and warrants that it is and will remain, as of the Second Surrender Date, the lessor under the Lease and that there are no liens or encumbrances of whatsoever nature created by the Port Authority on the fee title to the real property covered by the Lease that could result in a foreclosure upon the real property or any portion thereof or any other interference with the rights of Lessee to exclusive possession of the premises under the Lease. The preceding representations and warranties shall be deemed repeated as of the Second Surrender Date.

(g) Temporary Use. If requested by the Port Authority, Lessee shall also make reasonable efforts to temporarily permit an additional portion of the premises demised under the Lease to be used by the Port Authority for construction support purposes in connection with the McLester Street widening. The rent payable under the Lease shall be reasonably prorated to reflect such use of these additional acres for the duration of such use. Notwithstanding anything in the Lease to the contrary, Lessee shall have no obligations or responsibilities with respect to any portion of the premises that are being used under this provision for the duration of such use. The Port Authority will return such premises to Lessee

within 15 days after completion of the McLester Street widening in the same condition the premises were in when such use commenced. Such use shall be subject to reasonable conditions specified by Lessee.

5. McLester Street Project. In connection with the contemplated project to widen McLester Street located in Elizabeth, New Jersey and the construction of a new gate at the premises under the Lease, the Port Authority shall use reasonable efforts to prevent any obstruction or hindrance of vehicular ingress and egress to and from such premises, and shall provide an equitable adjustment to the rent due by Lessee in the event any obstruction occurs.

6. Traffic Planning. Lessee and the Port Authority agree to cooperate fully with each other in connection with traffic planning and modeling efforts. Such cooperation shall include, without limitation, reasonable sharing of information and providing specific input and recommendations to enhance traffic flow for all port users.

7. Representations and Warranties. Lessee hereby represents and warrants that it has the full right and power to execute, deliver and perform this Agreement and such execution, delivery and performance are in accordance with, and not in violation of, the Lease. The Port Authority hereby represents and warrants that it has the full right and power to execute, deliver and perform this Agreement and such execution, delivery and performance are in accordance with, and not in violation of, the Lease and that there are no uncured defaults on the part of Lessee under the Lease.

8. Class B Work. With the exception of the dredging to 50 feet mlw at the 1300 feet of berths 94-96 ("Berth 94-96 Dredging") and the approved submission of a tenant alteration application to the Port Authority in the near future to convert Building 5130 to a maintenance and repair facility, the Port Authority and Lessee hereby acknowledge and agree that Lessee has timely completed its obligations to perform the Class B Work described in the Lease, and that Lessee has no further obligations under the Lease with respect to the Class B Work. For the avoidance of doubt the parties confirm that the Berth 94-96 Dredging will be performed in accordance with the First Supplement to this Agreement.

9. Amendment of Lease. Except as otherwise expressly modified in this Agreement, the Lease and all terms, covenants, agreements and conditions contained therein shall remain in full force and effect.

10. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be considered originals and together shall constitute one and the same instrument.

11. Governing Law. This Agreement shall be governed by the laws of the State of New York, without regard to its internal choice of law principles.

12. Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the 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 Agreement shall be valid and be enforceable to the fullest extent permitted by law.

13. Captions and Headings. The captions or section headings contained in this Agreement are for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

14. Entire Agreement. This Agreement, together with the Lease (which it supplements) and the Settlement Agreement, constitute the entire agreement between the Port Authority and Lessee on the subject matter and may not be changed, modified, discharged or extended except by an instrument in writing, duly executed on behalf of both the Port Authority and Lessee.

[Signature Page Follows]

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

THE PORT AUTHORITY:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Name:
Title:

LESSEE:

APM TERMINALS NORTH AMERICA, INC.

By: _____
Name: JOE NIELSON
Title: VICE PRESIDENT

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

THE PORT AUTHORITY:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Name: Richard M. Larrabee
Title: Director, Port Commerce Dept.

LESSEE:

APM TERMINALS NORTH AMERICA, INC.

By: _____
Name:
Title:

APPROVED:
FORM | TERMS

EXHIBIT A

Completed Class A Work

1. The work described in Section 7(a)(1)(iii), (iv) and (v) of the Lease.

2. The work described in Section 7(a)(1)(i) of the Lease except as described on Exhibit B attached to this Agreement.

3. The work described in Section 7(a)(1)(ii) of the Lease except as described on Exhibit B attached to this Agreement.

EXHIBIT B

Remaining Class A Work

1. That portion of the work described in Section 7(a)(1)(i) of the Lease consisting of 2,500 feet crane rail alongside Berths 94-98.

2. That portion of the work described in Section 7(a)(1)(ii) of the Lease consisting of the reinforcement of 1,300 feet of berth running from Berth 94 through half of Berth 96.

EXHIBIT C

Form of Letter of Credit

The Port Authority of New York & New Jersey
225 Park Avenue South, 12th Floor
New York, NY 10003

Date_____

Attn: CREDIT MANAGER

CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____(C)_____

At the request of _____(A)_____, we _____(B)_____ hereby open this CLEAN IRREVOCABLE LETTER OF CREDIT NO. _____(C)_____ pursuant to Section 3(b) of the Third Supplemental Agreement to Lease Agreement No. EP-248 in your favor up to an aggregate of _____(D)_____ U.S. Dollars, available by your draft(s) on us at sight.

We warrant to you that all your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us at _____(E)_____ on or before the expiration date set forth below or future expiration date as indicated below. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement thereto, or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under _____(B)_____ Letter of Credit No. ___(C)____ dated _____". Partial drawings under this Letter of Credit are permitted.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on _____(F)_____. This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended without amendment for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing not less than sixty (60) days before such date that we elect not to extend the Letter of Credit for such additional period, such notice to be sent by registered or certified mail to you at the address herein. Upon receipt by you of such notice you may draw on us at sight for the balance remaining in this Letter of Credit within the then applicable expiration date, no statement required.

The Letter of Credit shall upon expiry be returned to _____(B)_____for cancellation but shall be considered null and void whether or not it is so returned.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

_____
BANK OFFICER/REPRESENTATIVE

LEGEND:
A – INSERT APPLICANT NAME, I.E. TENANT OR LESSEE NAME
B – INSERT NAME OF ISSUING BANK
C – INSERT L/C IDENTIFICATION NUMBER
D – INSERT DOLLAR VALUE OF INSTRUMENT
E – INSERT EXACT ADDRESS OF LOCAL BANK BRANCH
F – INSERT EXPIRATION DATE-ONE YEAR FROM ISSUE DATE

*** Please instruct your Bank to have the Letter of Credit issued in the above format in "Draft" form and fax to Michael Mayurnik, Credit Manger, at (212) 435-5846 for approval **PRIOR** to issuance in "Original" form or email a Word file to MMayurni@panynj.gov. **If the draft is not reviewed in advance, the Letter of Credit can be rejected.** If you are in need of further assistance, Mr. Mayurnik can be reached at (212) 435-5838. ****

EXHIBIT D

Second Surrendered Area

[See Attached]