Torres Rojas, Genara FOI#13250

From: jweiss@wilkauslander.com
Sent: Wednesday, June 13, 2012 5:09 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Jonathan
Last Name: Weiss
Company: Wilk Auslander
Mailing Address 1: 1515 Broadway
Mailing Address 2:
City: New York
State: NY
Zip Code: 10036
Email Address: jweiss@wilkauslander.com
Phone: 212 981 2312
Required copies of the records: Yes

List of specific record(s):
Lease between Brooklyn-Port Authority and Windmill Distributing Company, L. P., dba Phoenix Beverages, Inc. for Pier 7 and associated open area at the Port Authority Marine Terminal for a term commencing on or about April 2007 and ending on or about March 31, 2022.

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

July 31, 2012

Mr. Jonathan Weiss
Wilk Auslander
1515 Broadway
New York, NY 10036

Re: Freedom of Information Reference No. 13250

Dear Mr. Weiss:

This is a response to your June 13, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for a copy of the lease between the Port Authority and Windmill Distributing Company, L.P., dba Phoenix Beverages, Inc. for Pier 7 and associated open area at the PA Marine Terminal for a term commencing on or about 4/07 and ending on or about 3/31/22.

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/13250-LPA.pdf. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to Exemption (4) of the Code.

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

Very truly yours,

Daniel D. Duffy
FOI Administrator

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

Lease No. BP-310

AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

and

PHOENIX BEVERAGES MTO LLC

Dated: August 27, 2009
Lease Commencement Date: September 1, 2009

CONFORMED COPY

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THIS AGREEMENT OF LEASE (this "Agreement"), dated August 27, 2009, 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 225 Park Avenue South, New York, New York 10003; and **PHOENIX BEVERAGES MTO LLC**, a New York limited liability company (hereinafter called "the Lessee") with an office and place of business at 37-88 Review Avenue, Long Island City, New York 11101, whose representative is Greg Brayman, or such authorized person as may be designated by the Lessee to the Port Authority.

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

(a) Subject to and in accordance with the terms and conditions of this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at the Brooklyn-Port Authority Marine Terminal (sometimes hereinafter called "the Facility"), in the City of New York, in the County of Kings and the State of New York, the following: The enclosed space shown in diagonal crosshatching (hereinafter sometimes hereinafter called "the Warehouse") and the open areas shown in the diagonal hatching and in stipple on the sketch attached hereto (the "Open Area"), 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, and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Premises". The parties agree that the Premises constitute non-residential property.

(b) The Lessee acknowledges and agrees that the open area on the perimeter of the Warehouse (which perimeter open area is not shown in diagonal hatching or in stipple on Exhibit A hereto, and which is hereinafter called "the Apron Area"), is not part of the Premises under this Agreement and that the Port Authority and its agents and designees shall have full and continuous access to and use of the Apron Area at all times.

Notwithstanding the foregoing, access granted to the Port Authority, its agents and designees pursuant to the immediately preceding sentence shall be subject to reasonable security measures prescribed by the Lessee, including without limitation: (i) prescribing and limiting the means of access over and through any portion of the Premises, and (ii) escorting any persons entering the Open Area (or any other portion of the Premises). In accordance with the Rules and Regulations of the Port Authority, the Port Authority shall provide security guards with respect to any and all agents, designees and invitees the Port Authority permits to enter upon any portion of the Premises. In connection therewith, the Port Authority shall hold harmless the Lessee, its officers, attorneys, agents, 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, solely arising out of the use or access of the Apron Area by the Port Authority or by its Commissioners, officers, agents, employees, customers, vendors, or representatives, contractors, subcontractors or their employees, or by others on the Apron Area with the consent or invitation of any of the foregoing persons. Notwithstanding the foregoing, the Lessee, its officers, attorneys, agents, employees and representatives shall not be saved harmless to the extent that such liabilities, etc. are caused by their own gross negligence or intentional tortious acts.

(c) The Lessee and the Port Authority acknowledge that the internal roadway (the "Internal Roadway") is not a part of the Premises under this Agreement but the Lessee and its agents and designees shall have full, continuous and nonexclusive access to and use of the Internal Roadway at all times during the Term (as defined below), subject to reasonable security measures prescribed by the Port Authority.

(d) Nothing contained in this Agreement 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 2. Term; Lease Commencement Date

The term of the letting under this Agreement shall commence at 12:01 o'clock A.M. on September 1, 2009 (the "Lease Commencement Date") and shall expire if not sooner terminated, at 11:59 o'clock P.M on August 31, 2029 (the "Term").

Section 3. Warehouse Basic Rental

The Lessee shall pay a basic rental to the Port Authority at the annual rate of One Million Six Hundred Eighty-Five Thousand Dollars and No Cents ($1,685,000.00) for the Warehouse, payable in advance in equal monthly installments of One Hundred Forty Thousand Four Hundred Sixteen Dollars and Sixty Seven Cents ($140,416.67) commencing on June 1, 2010 (the "Warehouse Rental Commencement Date") and on the first day of each calendar month thereafter during the Term (the "Warehouse Basic Rental"), subject to any extensions for Landlord Delays (as hereinafter defined), as provided for in Section 5 hereinafter. The Warehouse Basic Rental set forth in this Section shall be adjusted during the Term under this Agreement in accordance with the provisions of paragraph (b) of Section 4 hereof.

Section 4. Warehouse Basic Rental Escalation

(a) *Definitions.* As used in this Section:

(i) "Adjustment Period" shall mean, as the context requires, the calendar month constituting the Base Period and the same calendar month in each calendar year thereafter during the Term.

(ii) "Anniversary Date" shall mean, as the context requires, the first anniversary of the Effective Date (the "First Anniversary Date") and each anniversary of such date occurring during the Term.

(iii) "Annual Index Increase" shall mean the percentage of increase in the Index on each Anniversary Date, equal to: (x) with respect to the First Anniversary Date, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period, and the denominator shall be the Index for the Base Period, and (y) with respect to each Anniversary Date thereafter, a fraction of which the numerator shall be the Index for the Adjustment Period immediately

preceding such Anniversary Date less the Index for the next preceding Adjustment Period, and the denominator shall be the Index for such next preceding Adjustment Period. For example, assuming the Effective Date is June 1, 2010, the Annual Index Increase for the Anniversary Date that is June 1, 2011 would be a fraction of which the numerator is the Index for April 2011 less the Index for April 2010 and the denominator is the Index for April 2010. As a further example, the Annual Index Increase for the Anniversary Date that is June 1, 2012 would be a fraction of which the numerator is the Index for April 2012 less the Index for April 2011 and the denominator is the Index for April 2011.

(iv) "Base Period" shall mean the calendar month immediately preceding the first full calendar month occurring before the Effective Date.

(v) "Effective Date" for this Section 4 shall mean the Warehouse Rental Commencement Date.

(vi) "Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor.

(vii) "Percentage Increase" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date.

(b) *Annual Increases.* Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date and continuing through to the day preceding the next Anniversary Date for each year thereafter, or the expiration date of the Term under this Agreement, as the case may be, the Lessee shall pay a Warehouse Basic Rental at the greater rate per annum of: (i) the sum of (x) the Warehouse Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Warehouse Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date, or (ii) the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule A" (setting the minimum amount of Warehouse Basic Rental for each one year period during the Term) opposite the respective Anniversary Date.

(c) Notwithstanding any other provision of this Agreement, the annual Warehouse Basic Rental that shall be payable pursuant to Section 3 hereof and this Section commencing with each Anniversary Date and continuing through to the day preceding the following Anniversary Date, or the expiration date of the Term, as the case may be, both dates inclusive, shall in no event exceed the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule B" (setting the maximum amount of Warehouse Basic Rental for each one year period during the Term) opposite the respective Anniversary Date. For example, assuming that the Effective Date is June 1, 2010, if the Percentage Increase for the Anniversary Date of June 2011 is shown to be four percent (4%) then the Warehouse Basic Rental payable under Section 3 hereof and this Section for the one-year period commencing June 1, 2011 shall be $1,685,000.00 plus four percent (4%) thereof or $1,752,400.00, but if (1) said increase is shown to be two percent (2%) then the Warehouse Basic Rental for that one-year period shall be $1,735,550.00 (the amount set forth on "Schedule A"), and if (2) said Percentage Increase is shown to be six percent (6%) then the Warehouse Basic Rental for that one-year period shall be $1,769,250.00 (the amount set forth on "Schedule B").

(d) For the avoidance of doubt, the Warehouse Basic Rental may never be less than the minimum amounts set forth in "Schedule A" or exceed the maximum amounts set forth in "Schedule B."

(e) All Basic Rentals shall be paid in advance on the first day of each calendar month in equal monthly installments.

(f) *Adjustments.*

(i) In the event the Index to be used in computing any adjustment referred to in paragraph (b) of this Section is not available on the effective date of such adjustment, the Lessee shall continue to pay the Warehouse Basic Rental at the annual rate then in effect subject to retroactive adjustment at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index. In the event the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) shall hereafter be converted to a different standard reference base or otherwise revised or the United States Department of Labor shall cease to publish the United States Consumer Price Index for All Urban Consumers - New

York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine.

(ii) If, after an adjustment in Warehouse Basic Rental shall have been fixed for any period, the Index used for computing such adjustment shall be changed or adjusted then the rental adjustment for that period shall be recomputed, and from and after notification of the change or adjustment, the Lessee shall make payments based upon the recomputed rental and upon demand shall pay any excess in the Warehouse Basic Rental due for such period as recomputed, over amounts theretofore actually paid on account of the Warehouse Basic Rental for such period. If such change or adjustment results in a reduction in the Warehouse Basic Rental due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the Warehouse Basic Rental as recomputed for that period and amounts of Warehouse Basic Rental actually paid.

(iii) If any adjustment in Warehouse Basic Rental referred to in paragraph (b) of this Section is effective on a day other than the first day of a calendar month, there shall be payable in advance on the effective date of rental adjustment an installment of Warehouse Basic Rental equal to 1/12th of the increment of annual Warehouse Basic Rental as increased, multiplied by a fraction, of which the numerator shall be the number of days from the effective date of the rental adjustment to the end of the calendar month in which the rental adjustment was effective and the denominator of which shall be the number of days in that calendar month.

Section 5. Open Area Basic Rental

The Lessee shall pay a basic rental to the Port Authority at the annual rate of One Hundred Ten Thousand Four Hundred Thirty One Dollars and Twenty Three Cents ($110,431.23) for the Open Area, payable in advance in equal monthly installments of Nine Thousand Two Hundred Two Dollars and Sixty Cents ($9,202.60) commencing June 1, 2010, as the same may be extended in connection with any Landlord Delays, as provided in this Section 5 (the "Open Area Rental Commencement Date," and, when taken together with the "Warehouse Rental Commencement Date," the "Rental Commencement Date") and on the first day of each calendar month thereafter during the Term (the "Open Area Basic

Rental," and, when taken together with the Warehouse Basic Rental, the "Basic Rental"); provided, however, that in the event of a Landlord Delay (as hereinafter defined in Section 20(c)), the Rental Commencement Date shall be extended by one day for each day of the Landlord Delay; provided, further, that in the event that the Lessee's Construction Work (as defined in Section 20) is completed in its entirety prior to the Rental Commencement Date notwithstanding a Landlord Delay, no extension of such Rental Commencement Date shall occur. The Open Area Basic Rental set forth in this Section shall be adjusted during the Term in accordance with the provisions of paragraph (b) of Section 6 hereof.

Section 6. Open Area Basic Rental Escalation

(a) *Definitions.* As used in this Section:

(i) "Adjustment Period" shall mean, as the context requires, the calendar month constituting the Base Period and the same calendar month in each calendar year thereafter during the Term.

(ii) "Anniversary Date" shall mean, as the context requires, the first anniversary of the Effective Date (the "First Anniversary Date") and each anniversary of such date occurring during the Term.

(iii) "Annual Index Increase" shall mean the percentage of increase in the Index on each Anniversary Date, equal to: (x) with respect to the First Anniversary Date, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period, and the denominator shall be the Index for the Base Period, and (y) with respect to each Anniversary Date thereafter, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the next preceding Adjustment Period, and the denominator shall be the Index for such next preceding Adjustment Period. For example, assuming the Effective Date is June 1, 2010, the Annual Index Increase for the Anniversary Date that is June 1, 2011 would be a fraction of which the numerator is the Index for April 2011 less the Index for April 2010 and the denominator is the Index for April 2010. As a further example, the Annual Index Increase for the Anniversary Date that is June 1, 2012 would be a fraction of which the numerator is the Index for April 2012 less

the Index for April 2011 and the denominator is the Index for April 2011.

(iv) "Base Period" shall mean the calendar month immediately preceding the first full calendar month occurring before the Effective Date.

(v) "Effective Date" shall mean for this Section 6 the Open Area Rental Commencement Date.

(v) "Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor.

(vi) "Percentage Increase" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date.

(b) *Annual Increases*. Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date and continuing through to the day preceding the next Anniversary Date for each year thereafter, or the expiration date of the Term under this Agreement, as the case may be, the Lessee shall pay a Open Area Basic Rental at the greater rate per annum of: (i) the sum of (x) the Open Area Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Open Area Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date, or (ii) the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule C" (setting the minimum amount of Open Area Basic Rental for each one year period during the Term) opposite the respective Anniversary Date.

(c) Notwithstanding any other provision of this Agreement, the annual Open Area Basic Rental that shall be payable pursuant to Section 5 hereof and this Section commencing with each Anniversary Date and continuing through to the day preceding the following Anniversary Date, or the expiration date of the Term, as the case may be, both dates inclusive, shall in no event exceed the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule D" (setting the maximum amount of Open Area Basic Rental for each one year period during the Term) opposite the respective Anniversary Date. For example, if the Percentage Increase for

the Adjustment Period of June 2011 is shown to be four percent (4%) then the Open Area Basic Rental payable under Section 3 hereof and this Section for the one-year period commencing June 1, 2011 shall be $110,431.23 plus four percent (4%) thereof or $114,848.48, but if (1) said increase is shown to be two percent (2%) then the Open Area Basic Rental for that one-year period shall be $113,744.17 (the amount set forth on "Schedule C"), and if (2) said Percentage Increase is shown to be six percent (6%) then the Open Area Basic Rental for that one-year period shall be $115,952.79 (the amount set forth on "Schedule D").

(d) For the avoidance of doubt, the Open Area Basic Rental may never be less than the minimum amounts set forth in "Schedule C" or exceed the maximum amounts set forth in "Schedule D."

(e) All Basic Rentals shall be paid in advance on the first day of each calendar month in equal monthly installments.

(f) *Adjustments.*

(i) In the event the Index to be used in computing any adjustment referred to in paragraph (b) of this Section is not available on the effective date of such adjustment, the Lessee shall continue to pay the Open Area Basic Rental at the annual rate then in effect subject to retroactive adjustment at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index. In the event the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) shall hereafter be converted to a different standard reference base or otherwise revised or the United States Department of Labor shall cease to publish the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine.

(ii) If, after an adjustment in Open Area Basic Rental shall have been fixed for any period, the Index used for computing such adjustment shall be changed or adjusted then the rental adjustment for that period shall be recomputed, and from

and after notification of the change or adjustment, the Lessee shall make payments based upon the recomputed rental and upon demand shall pay any excess in the Open Area Basic Rental due for such period as recomputed, over amounts theretofore actually paid on account of the Open Area Basic Rental for such period. If such change or adjustment results in a reduction in the Open Area Basic Rental due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the Open Area Basic Rental as recomputed for that period and amounts of Open Area Basic Rental actually paid.

(iii) If any adjustment in Open Area Basic Rental referred to in paragraph (b) of this Section is effective on a day other than the first day of a calendar month, there shall be payable in advance on the effective date of rental adjustment an installment of Open Area Basic Rental equal to 1/12th of the increment of annual Open Area Basic Rental as adjusted, multiplied by a fraction, of which the numerator shall be the number of days from the effective date of the rental adjustment to the end of the calendar month in which the rental adjustment was effective and the denominator of which shall be the number of days in that calendar month.

Section 7. Abatement

(a) If at any time during the Term, the Lessee shall become entitled to an abatement of Basic Rental, pursuant to the terms of this Agreement, such abatement shall be computed as follows: for the period from June 1, 2010 to May 31, 2011, both dates inclusive, for each square foot of usable area the use of which is denied the Lessee, at the annual rate of $1.33 for the Open Area and $6.25 for the Warehouse, the rate thereafter to be adjusted during the Term proportionately to the adjustment in Basic Rental in accordance with the provisions of paragraph (b) of Section 4 hereof.

(b) Except as provided in this Section and in Section 19(d), no abatement of Basic Rental or Additional Rental (as hereinafter defined) shall be claimed by or allowed to the Lessee.

Section 8. Rights of User

The Lessee shall use the Premises for the following purposes and in full compliance with all applicable laws, rules and regulations: (i)beverage and related food products distribution, warehousing and recycling operations (such recycling operations related solely to Lessee's business

operations and in compliance with all applicable legal requirements pertaining to Lessee; including, without limitation, receiving, loading and unloading, storing, packaging, shipping, distributing, transporting, buying, selling and dealing beverages (including alcoholic beverages) and related food products, (ii) parking, storing, and repairing trucks and other equipment which may be used for hauling or transporting the aforesaid, (iii) point-of-sale storage, (iv) receiving and storing empty beverage containers and packaging (including bottles, cans and cardboard boxes and cases) for future recycling, and post-processed materials for recycling, (v) receiving, loading and unloading goods belonging to third parties, and, with the prior consent of the Port Authority, for storing, packaging, shipping, and distributing goods belonging to third parties, except that no prior consent of the Port Authority is required for storage of food or beverages belonging to third parties, (vi) the installation and operation of a natural gas cogenerator facility in accordance with the plans and specifications for such facility delivered by Lessee to and approved by the Port Authority, and/or (vii) uses incidental to the foregoing (i) through (v). Any other use not specifically authorized in this Section 8 shall require the prior written consent of the Port Authority, in its sole and absolute discretion. Said right of Lessee to collect recycling under this Agreement shall be strictly limited to Lessee's obligations under applicable law, including but not limited to the New York Environmental Conservation Law, Section 27-1001 et seq., and the Lessee shall exert commercially reasonable efforts to ensure that the exercise of such right does not adversely impact or interfere with the Facility and/or operations conducted thereat.

Section 9. 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 (See Section 11 for Rules and Regulations). 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 10. Governmental and Other Requirements

(a) Prior to or contemporaneous with the commencement of its operations under this Agreement, at its sole cost and expense, the Lessee shall procure from all governmental authorities having jurisdiction over the operations of the Lessee hereunder, all licenses, certificates, permits and other authorizations which may be necessary for the conduct of such operations and, upon the request of the Port Authority, shall provide copies of all such items to the Port Authority. Lessee covenants that it shall ensure that all such licenses, certificates, permits and other authorizations shall remain in full force and effect through the Term.

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items 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, pursuant to Section 50 hereof. 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, subject to the provisions of Section 20(q) hereof.

(c) The Lessee shall, for the Port Authority's information, deliver to the Port Authority promptly after receipt any notice, warning, summons or other legal process for the enforcement of any enactment, ordinance, resolution or

regulation of a governmental authority of competent jurisdiction (collectively, a "Notice").

(d) 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. Even though Lessee is required to deliver a copy of the Notice to the Port Authority, the Port Authority shall have no liability or obligation with regard to such matters.

Section 11. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees, guests, invitees, agents, representatives, and others on the Premises with its consent to observe and obey) the Rules and Regulations of the Port Authority now or hereafter in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the governance 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, security, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Premises, or for the safe and efficient operation of the Facility. The Port Authority agrees that, to the extent reasonably practicable, 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 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 12. Operational Obligations of the Lessee

(a) In the performance of its obligations hereunder and in the use of the Premises, the Lessee shall conduct its operations in an orderly, lawful and proper manner, so as not to annoy, disturb or be offensive to others near the Premises or at the Facility.

(b) The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it. 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 such others on the Premises with the consent of the Lessee.

(c) 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 in a concealed location, 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 in its sole discretion; provided, however, that such garbage shall be collected and removed from the Premises a minimum of three (3) times weekly.

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

(e) The Lessee shall permit the use of and provide reasonable access to the Premises (not excluding the berthing area) from time to time upon reasonable advance notice and subject to such reasonable security measures specified by the

Lessee, for the installation, maintenance and operation of such navigation lights, at no cost to the Lessee, as the same may be required by the United States Coast Guard or other governmental authority having jurisdiction.

(f) From time to time and as often as required by the Port Authority and upon prior notice to 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, without cost to the Port Authority. The Lessee shall keep all firefighting 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 (with such employees to participate in periodic training drills).

(g) 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, within thirty (30) days, the Lessee shall 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 gross negligence or intentional tortious acts of the Port Authority.

Section 13. 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, electrical system, 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 do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Premises or elsewhere at the Facility, including without limitation, systems for the supply of heat, hot and cold water, gas, electricity and fuel, and for the furnishing of air-conditioning, telephone, telegraph, teleregister, internet, fiber optic cable, and intercommunications services including any lines, pipes, mains, wire, conduits and equipment connected with or appurtenant to all such systems.

(c) 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.

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

(e) The Lessee shall not dispose of nor permit any one to dispose of any industrial/hazardous 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, and in compliance with all applicable statutes, ordinances, laws, rules, and regulations.

(f) 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.

(g) Except as set forth in paragraphs (g)(1)-(2) of this Section, and in Section 8 of this Agreement, 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.

(g)(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 by the Port Authority unless Lessee shall request the same. 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, nonalcoholic 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.

(h) The Lessee shall not place a load upon any floor of the Premises that exceeds five hundred (500) pounds per square foot, and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this paragraph (h) 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. The Lessee shall also not overload any 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. Any repair, replacement or rebuilding required under this Section shall be conducted in accordance with the provisions of Section 20(q) hereof.

(i) 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 (as hereinafter defined).

(j) 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 operations permitted at the Premises pursuant to Section 8 of this Lease and stored in a structure normally used for the storage of such materials and made safe for the storage thereof.

(k) The Lessee shall not use or permit the use of any truss or structural supporting member of a building or roof or any part thereof at the Facility 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.

(l) 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.

(m) 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 reasonable 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 New York Board of Fire Underwriters, the New York Fire Insurance Exchange, the Fire Rating Organization of New York, 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 or by reason of any act by Lessee, 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 act, violation or failure by the Lessee.

(n) 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.

(o) 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 50 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.

(p) The Lessee may store wooden pallets in the Open Area strictly in accordance with the requirements and restrictions of the Port Authority which are disclosed to Lessee. These requirements and restrictions include but are not limited to: (i) pallets shall be stacked no greater than eight (8) feet in height; (ii) pallets shall be sheltered from public view; and

(iii) pallets shall be removed from the Premises not less than on a weekly basis.

(q) The Lessee shall not enter into any management agreement, services agreement or any other similar type of agreement for the Premises without the prior written consent of the Port Authority, which consent shall not be unreasonably withheld.

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 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 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, attorneys, agents, 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, customers, vendors, or representatives, contractors, subcontractors or their employees, or by others on the Premises with the consent or invitation 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. Notwithstanding the foregoing, the Port Authority, its Commissioners, officers, attorneys, agents, employees and representatives shall not be so indemnified by

Lessee or saved harmless to the extent that such liabilities, etc. are caused by their own gross negligence or intentional tortious acts.

(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 insured, shall maintain and pay the premiums on the following described policies of liability insurance:

Commercial General Liability Insurance including but not limited to coverage for Premises-Operations and Products Liability-Completed Operations, with a minimum combined single limit coverage for bodily injury and property damage of $5,000,000. 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.

(d) Each policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured and/or loss payee, as applicable (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. 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 and/or loss payee.

(c) 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 on or before the Commencement Date, and on each anniversary date thereafter. 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 thirty (30) 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 in its sole and absolute discretion, 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, and shall comply with all applicable governmental statutes, rules and regulations (See Section 10 "Governmental and Other Requirements"). Without

limiting the generality of the immediately preceding sentence or any obligations of the Lessee with respect to the Premises, the Lessee agrees that upon the commencement of the letting and during the Term it shall place and keep the Premises in good operating condition.

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the Premises or 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. Any repair, replacement or rebuilding required under this Section shall be conducted pursuant to the terms and conditions set forth in Section 20(q).

(c) Subject to the provisions of paragraph (e) of this Section and Section 20(q) of this Agreement, throughout the Term, 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 unforeseen, 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) sprinkler systems; (2) gas and electric from the meter (utility companies are responsible up to the meter); (3) 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; (4) the plumbing system, fixtures and equipment, and all finished plumbing; (5) buildings and all parts thereof; (6) signs; (7) fire extinguishers; and (8) 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 during the Term.

In the event that the Port Authority reenters, regains or resumes possession of the Premises in accordance with Section 25 of this Agreement, but not in connection with the termination of this Agreement based upon an Event of Default of Lessee (as

defined in Section 24 hereof), the following procedure will be undertaken: The Port Authority, its agent, representative or the like, will conduct, at its own expense, an inspection of the Premises (including without limitation of the then current state of cleaning, maintenance and repairs, janitorial services, painting, structural and nonstructural conditions, lighting of buildings and open areas, the condition of utilities and utilities systems, fire-fighting and fire protection equipment and systems, communications and communications systems, fuel facilities and systems, and fixtures, equipment and personal property of the Lessee) ("Condition Survey") and, to the extent the Lessee is in possession of the Premises, the Port Authority's agent or representative shall have all rights of entry to the Premises during all reasonable times as appropriate or required to perform the Condition Survey. The Condition Survey shall be conducted no later than twelve (12) months after the effective date of such termination, except in the event that the Port Authority re-lets all or a portion of the Premises, in which case the Condition Survey shall be completed as to the re-let portion of the Premises prior to such re-letting. The Port Authority will provide the Lessee with a list of any and all items that demonstrate Lessee's failure to maintain the Premises in accordance with the obligations of this Section 16 (a "Condition Survey Report," and the date upon which such list is provided to Lessee being hereinafter known as the "Report Date"). All obligations relating to the items identified by the Condition Survey Report arising out of Lessee's failure to maintain, repair, replace or rebuild, shall survive such termination or cancellation, reentry, regaining or resumption of possession. The Condition Survey Report shall solely address the Lessee's obligation with respect to the maintenance and repair of the Premises pursuant to this Section 16. In no event shall any other obligation under this Lease be affected by the Condition Survey Report, including, but in no event, limited to any environmental conditions with respect to the Premises. At the Port Authority's sole option, within ninety (90) days after the Report Date, the Port Authority shall have the following options (which may be exercised in combination thereof), (i) to require Lessee to commence or cause to be commenced all required or recommended items and actions contained in such Condition Survey Report that are necessary or required to meet Lessee's maintenance, repair or other obligations, duties or responsibilities under this Agreement and the Lessee shall diligently continue the same or cause the same to be continued to completion in accordance with the standards set forth in this Section 16; provided, however, that the Lessee shall promptly commence or cause to be commenced any and all items, actions or

work related to, affecting or involving fire safety, health, structural integrity, life safety, security or emergency response; (ii) draw against the letter of credit maintained by Lessee pursuant to Section 42 hereof to remedy such conditions and, to the extent the amount of security is insufficient to cover the costs set forth on the Condition Survey Report, Lessee shall be responsible for and shall, within five (5) days of demand of the Port Authority, remit the shortfall to the Port Authority, and further, Lessee shall replenish the letter of credit as required pursuant to Section 42 hereof; or, (iii) direct the Lessee to make direct payment to the Port Authority in an amount equal to the cost of the items set forth on the Condition Survey Report and Lessee shall be responsible for and shall, within five (5) days of demand of the Port Authority make payment to the Port Authority.

For example, if the Condition Survey Report identifies a failure on Lessee's part to maintain the roof, all such repairs and/or replacements shall be the sole and absolute responsibility of Lessee and shall, in the sole discretion of the Port Authority (i) be commenced or caused to be commenced within ninety (90) days of the Report Date by the Lessee, (ii) be paid for either a draw against the Lessee's security deposit or (iii) be paid for by a direct payment by the Lessee to the Port Authority, or any combination of (i), (ii) and (iii) thereof.

In no event shall the Condition Survey procedure set forth in this Section 16(c) be applicable in the event of a termination based on an Event of Default by Lessee under this Agreement, but instead shall only be applicable in the event of a termination pursuant to Section 25 of this Lease.

(d) Upon the expiration of this Lease, the Premises must be in as good condition as at the time of the installation or construction thereof), except for reasonable wear and tear. Further, the Lessee shall make its own periodic inspections of the Premises and subject to Section 20(q) 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 replacement. All repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(e) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely

responsible to the Port Authority for any damage caused by Lessee, its employees, agents or representatives to any and all personal property, equipment and fixtures belonging to the Port Authority located or to be located in or on the Premises and shall promptly replace or repair the same within twenty (20) days after such 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). 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 and tear excepted. Notwithstanding the foregoing, the Port Authority shall not store any personal property on the Premises except as may be permitted pursuant to this Lease.

(f) Except under circumstances as to which paragraph (b) of this Section applies, upon receipt of written notice delivered pursuant to this Agreement 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 16 of this Agreement. Furthermore, prior to the commencement by the Port Authority of any work set forth in the Lessee's written notice to the Port

Authority, the Lessee shall take precautions to protect persons or property at the Premises, 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 its reasonable, customary and documented expenses for such completed 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. Notwithstanding the foregoing, the Port Authority, its officers, attorneys, agents, employees and representatives shall not be saved harmless to the extent that such liabilities, etc. are caused by their own gross negligence or intentional tortious acts.

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 in accordance with the procedures set forth in Section 20(q) hereof. 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 insured 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:

(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, provided, that the "replacement cost" shall be the actual insurable cost to replace such property with like kind and quality. 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 York, 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). Flood coverage shall be obtained by the Lessee to the extent available under the National Flood Insurance Act of 1968 (subject to the standard policy exclusions as provided for under the National Flood Insurance Program), as amended.

(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 the Port Authority shall be the loss payee. 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 Lease Commencement Date and annually thereafter. 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 written 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 satisfactory policy in replacement; provided, however, that a policy that meets all the terms and conditions of this Agreement, including having an AM Best (its successor and/or assigns or its industry equivalent) rating of A-:VII or better, shall be deemed satisfactory to the Port Authority.

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 to the repair, replacement, or rebuilding of the Premises as provided in this Agreement. The Lessee shall not be entitled to any abatement of the rentals payable hereunder at any time by reason of such casualty. Notwithstanding the foregoing, if the Premises shall be damaged or destroyed by fire or other casualty as determined by the Port Authority in its sole and exclusive opinion, and the damage cannot be reasonably repaired within one hundred eighty (180) days from the date of the damage as determined by the Port Authority in is sole and exclusive opinion, then the Lessee may, within ninety (90) days after such casualty, give the Port Authority notice in writing of its intention to terminate this Agreement, and thereupon the Term shall expire, effective as of the date such casualty, all insurance proceeds shall be paid to and shall belong to the Port Authority, and the Lessee shall vacate the Premises and surrender the same to the Port Authority within ten (10) business days after the date of the Lessee's notice. In addition, in the event that the Premises are totally or substantially damaged or destroyed within two (2) years of the expiration of the term of the letting hereof as determined by the Port Authority in its sole and exclusive opinion, then the Lessee shall have the right to terminate the letting and this Agreement upon thirty (30) days' notice given to the Port Authority within ninety (90) days of the aforesaid casualty. 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. Notwithstanding anything herein to the contrary, in no event however, shall the provisions of this paragraph become effective or be applicable if the fire or other casualty and damage shall be the result of the carelessness, negligence or improper conduct of the Lessee or the Lessee's agents, employees, guests, licensees, invitees, subtenants, assignees or successors. In such case, the Lessee's liability for the payment of the Rental and the performance of all the covenants, conditions and terms hereof on the Lessee's part to be performed shall continue and the Lessee shall be liable to the Port Authority for the damage and loss suffered by the Port Authority.

(b) The Port Authority and the Lessee hereby stipulate that neither the provisions of Section 227 of the Real Property Law of New York 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 within such thirty (30) day period, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit at Lessee's sole cost and expense, 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 al 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 may sublet the Premises to Phoenix Beverages, Inc., Windmill Distributing Company, L.P. or Demon Logistics, LLC; provided, however, that in the event of such a subletting, (i) the Lease Guaranty (as hereinafter defined) given by Phoenix Beverages, Inc. for the benefit of the Port Authority pursuant to Section 42 hereof shall remain in full force and effect to guarantee the payment and performance of the obligations under this Agreement and under such sublease, and (ii) the entity to which the Premises is sublet must be an affiliate of the Lessee at the time of the subletting; and, provided further, that in the event of such a subletting to Phoenix Beverages, Inc., Windmill Distributing Company, L.P., or Demon Logistics, LLC, the operations of such sublessee shall relate to and comply with the uses of the Premises permitted hereunder pursuant to Section 8 hereof.

(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 Premises or any portion thereof for any purpose other than in accordance with Section 8 of this Agreement.

(e) The provisions of this Section shall not be construed so as to prohibit the Lessee from permitting its subsidiaries to operate at the Premises on its behalf, in

performing the operations expressly permitted under this Agreement and, in this connection, the Lessee represents and warrants to the Port Authority that (i) any and all usage of the Premises by any of the Lessee's subsidiaries at the Premises shall be strictly in accordance with the purposes set forth in Section 8 of this Agreement; (ii) no use of the Premises or any part thereof by any of the Lessee's subsidiaries shall entitle any of the same to any rights as a third party beneficiary of this Agreement; and (iii) that all such operations shall be conducted strictly in accordance with the terms and conditions 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 to be taken 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. 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 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; provided, however, that in the event the Port Authority terminates this Agreement pursuant to this Section 19, Lessee's obligations with respect to the Premises (or such portion(s) of the Premises so taken) shall cease as of the date of such termination and the Lessee shall be reimbursed by the Port Authority for one hundred percent (100%) of the Unamortized Investment of the Lessee in the Lessee's Construction Work (as hereinafter defined).

(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 terminate 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 less than fifty percent (50%) of the total useable area 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 including both the Warehouse and the Open Area, 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 terminate in the same manner and with the same effect as if the Term had on that date expired, and Basic Rental and Additional Rental (as hereinafter defined) shall be abated as provided in Section 7 hereof.

(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 percent (50%) or

more of the total usable area of the Premises including both the Warehouse and the Open Area, 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

(a) The Lessee understands that construction and installation work is required in order to prepare the Premises for the Lessee's use and occupancy. The Lessee agrees to and shall perform the work described on Exhibit B(which work is hereinafter called "the Lessee's Construction Work"). The Lessee's Construction Work shall be performed at the Lessee's sole cost and expense and the Port Authority shall have no obligation to make any payment to the Lessee on account of the performance of the Lessee's Construction Work. The Lessee agrees that it will spend no less than Ten Million and 00/100 Dollars ($10,000,000.00) on the performance of the Lessee's Construction Work. The Lessee agrees that it will complete the Lessee's Construction Work by September 1, 2012, as such date may be extended due to Force Majeure (hereinafter defined) or Landlord Delays.

(b) With respect to the Lessee's Construction Work the Lessee shall procure insurance in favor of the Port Authority, and its Commissioners, officers, agents and employees against the following 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 intentional tortious acts done by the Port Authority 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 work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and

employees, for all such injuries and damages (including without limitation, direct or consequential 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 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 (including reasonable in-house and outside counsel fees) 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. Lessee shall pay to the Port Authority any Construction Application review fee or other review fee charged by the Port Authority for its cost of administration with regard to the Lessee's Construction Application. The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be reasonably directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the 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 paragraph, the

Lessee shall submit to the Port Authority, at the Port Authority's reasonable request, such additional data, detail or information as the Port Authority may find reasonably necessary. Following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, and once the Construction Application has been deemed complete by the Port Authority in its sole discretion (provided that in the exercise of such discretion, the Port Authority shall not act in an arbitrary or capricious manner), within sixty (60) days of the date it is deemed complete, 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 reasonably necessary. In the event that the Port Authority fails to give such written approval, rejection or requested revisions within the above-referenced sixty (60) day period (a "Landlord Delay"), the sole remedy of the Lessee shall be the delay of the Rental Commencement Date as provided in Section 5 hereof. 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 20 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 as-built drawings of the Lessee's Construction Work in such form and number requested by the Port Authority. The Lessee shall keep said drawings current during the Term under this Agreement. No changes or modifications to such work shall be made without prior Port

Authority consent. Following its receipt of the Lessee's certificate, the Port Authority shall inspect the work and, unless such certification is not correct, or the Port Authority reasonably determines that the premises are 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 20, 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, and the insurance required pursuant to paragraphs (j) and (k) of this Section procured.

(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 such 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 use reasonable discretion to determine 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 reasonably 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 reasonably 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 New York City, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to the Lease as herein amended.

(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 with respect to the Lessee's Construction Work or any prior approvals thereof.

(5) 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: (i) fails to comply with all of the provisions of this Agreement with respect to such work; (ii) fails to comply with the provisions of the Construction Application covering such work and the plans and specifications forming a part thereof; (iii) fails to comply with any requirements, stipulations, or provisions reasonably imposed by the Port Authority in its approval of the performance of such item of Partial Approval Work; (iv) shall be in breach of any of the provisions of this Agreement covering such work; (v) shall be in breach of any of the provisions of the Construction Application and plans and specifications covering the performance of such work; or (vi) 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 the work that 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 of 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 reasonable efforts made to minimize the effects of any air pollution, water pollution or any other type of pollution, and to minimize the 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 reasonable approval in accordance with the provisions of this Agreement.

(g) Without limiting the generality of paragraph (c) of this Section, the Port Authority shall have no liability or responsibility for the adequacy or sufficiency of the plans or specifications submitted by the Lessee to the Port Authority, nor for any improvements, fixtures and equipment depicted thereon or covered thereby, regardless of any consent or approval granted by the Port Authority thereof. 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 aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall not conduct any business at the Premises with respect to any improvements, fixtures or equipment constituting the Lessee's Construction Work until the Port Authority shall have notified the Lessee in writing that the Lessee's Construction Work has been completed or substantially completed to its reasonable satisfaction. 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; provided, however, that the Lessee shall be obligated to pay any tenant construction review fee or other review fee charged by the Port Authority for its costs of administrating the Tenant Construction Application Process.

(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 preventive maintenance and make such 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.

(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 work, and shall 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 claims in good faith.

(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 Independent Contractor coverage and coverage for premises operations and completed-operations and for Broad Form Property Damage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $5 million.

(ii) 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.

(iii) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law and in limits of not less than $1 million per accident.

(k) With the exception of the Commercial Automobile Liability, 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 and/or loss payee, where applicable, in its coverages including, without limitation, coverage for Premises-operations and completed operations, 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 Agreement. The certificates of 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 and/or loss payee. Such insurance shall contain a provision that the insurer shall not, without obtaining express written 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.

(l) Title to all improvements and fixtures placed, constructed or installed in or on the Premises as the Lessee's Construction Work shall vest in the Port Authority immediately upon placement, construction or installation thereof and title to any and all equipment and trade fixtures removable without substantial injury to the Premises placed in or installed upon the Premises as part of the Lessee's Construction Work shall remain with the Lessee. No such equipment or trade fixtures shall be removed by the Lessee prior to the termination of this Lease unless replaced with identical property of equal or greater value. Without limiting any other term of the Lease and notwithstanding the foregoing provisions, upon written notice given by the Port Authority either prior to or within sixty (60) days after 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 as the Port Authority may specify in its notice, and shall repair any damage to the Premises caused by such removal.

(m) In the performance of the Lessee's Construction Work the Lessee shall not permit any situation or condition to continue 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 determination of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority of the threat of any such labor troubles, the Lessee shall, or shall cause its contractor to, immediately rectify any condition specified in the notice. In the event of failure by the Lessee or any of its contractors to immediately 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 reinstate the permission to the Lessee to perform the 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.

(n) 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.

(o) 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 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—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 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 to

effectuate the goals of affirmative action, MBE, and WBE programs. The obligations imposed on the Lessee under this paragraph and Schedule E shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(p) 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 (p) and in this paragraph shall include each contractor and subcontractor at any tier of construction.

(q) Prior to the commencement of any repairs, replacements or alterations required to be performed by the Lessee during the Term pursuant to the terms of this Agreement other than the Lessee's Construction Work (as defined in paragraph (a) of this Section), the Lessee shall submit to the Port Authority for its approval an Alteration Application in the form supplied by the Port Authority (the "Alteration Application"), 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 anticipated repair or alteration, and shall describe in detail any systems, improvements, fixtures and equipment to be installed by the Lessee. 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 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 paragraph, 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 Alteration 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 reasonably necessary. 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 reasonably 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 Alteration 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 Agreement and such performance bonds as the Port Authority may reasonably specify. All of the Lessee's construction work shall be performed by the Lessee in accordance with the Alteration 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. The Lessee shall be obligated to pay any tenant alteration review fee or other review fee charged by the Port Authority for its costs of administrating the Alteration Application process.

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 (the "Additional Rental," and, when taken together with the Basic Rental, the "Rental")). 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; provided, however, that such election will only be made by the Port Authority in the event that the Lessee has failed to perform such work after the Port Authority has previously provided the Lessee with notice and a opportunity to cure, which determination shall be in the sole discretion of the Port Authority.

(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) Upon reasonable notice, except in emergent situations as determined by the Port Authority in its sole discretion, and subject to such reasonable security conditions as the Lessee may prescribe, the Port Authority, by its officers, employees, agents, representatives and contractors shall have the right 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, provided such entry shall not unreasonably interfere with the Lessee's access to and/or operations at the Premises (or any portion thereof).

(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 upon reasonable notice, except in emergent situations as determined by the Port Authority in its sole discretion, and subject to such reasonable security conditions as the Lessee may prescribe, 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) Except as described in Section 16(f) hereof, 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, upon reasonable notice and subject to reasonable security conditions as the Lessee may prescribe, 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. Notwithstanding the foregoing, the Port Authority shall make reasonable efforts to

prevent such entry from unreasonably interfering with the Lessee's access to and/or operations at the Premises.

(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.

Section 24. Termination

(a) Each of the following events shall be an "Event of Default" or "default" hereunder:

(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) Except as permitted under Section 18 hereof, 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, merge, consolidate dissolve; or

(6) 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 thirty (30) days; or

(7) The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Premises for over forty-five (45) days (except in connection with a casualty, in accordance with Section 16 hereof). The Lessee, after exhausting or abandoning any right of further appeal, shall be prevented for a period of sixty (60) days by action of any governmental agency from conducting its operations on the Premises, as a result of any act or omission by Lessee; or

(8) 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

(9) 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

(10) The Lessee shall fail to keep, perform and observe any other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within thirty (30) 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 thirty (30) days after receipt of notice, and continues such performance without interruption except for causes beyond its control); or

(11) Intentionally Deleted.

Upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Port Authority may by 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, which date shall not be less than forty-five (45) days after the giving of such notice.

(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 forty eight (48) 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 as a consequence of 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 25. Additional Termination Rights

In addition to all other rights under this Agreement, the Port Authority shall have the right to terminate the letting under the Agreement, without cause, effective at any time from and after August 31, 2019, on two (2) years' prior written notice to the Lessee. Termination under the provisions of this Section shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the Term.

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

(1) "Qualifying Cost" shall mean the actual cost of the Lessee's Construction Work. To the extent permitted by GAAP (as hereinafter defined in paragraph (a)(2) of this Section 25), the sum of the following items of cost incurred by the Lessee in performing the Lessee's Construction Work shall constitute the reasonable cost thereof for the purposes of this Section:

(i) The Lessee's payments to contractors for the performance of the Lessee's Construction Work;

(ii) The Lessee's payments for supplies and materials for the performance of the Lessee's Construction Work;

(iii) The Lessee's payments for all necessary permits and governmental authorizations for the performance of the Lessee's Construction Work;

(iv) 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 paragraph (j) of Section 20 hereto with respect to and during the period of construction of the Lessee's Construction Work only;

(v) The Lessee's payments for engineering services, consulting services, surveys and construction management fees in connection with the Lessee's Construction Work;

(vi) The Lessee's payments for architectural planning and design services in connection with the Lessee's Construction Work;

(vii) The sum of the costs accepted under items (iv), (v) and (vi) of this paragraph shall not exceed 20% of the sum of the costs approved under items (i) and (ii) of this paragraph. To the extent there is any such excess, such excess shall not be a part of the cost incurred by the Lessee in the performance of the Lessee's Construction Work for the purpose 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 Lessee's Construction 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 shall be included in the cost of the Lessee's Construction Work.

(2) "Unamortized Investment of the Lessee in the Lessee's Construction Work" shall mean the Qualifying Cost of the Lessee's investment as calculated on a straight-line basis according to generally accepted accounting principles, consistently applied ("GAAP", as set by the Financial Accounting Standards Board or any successor entity).

(b) In the event that the Port Authority shall terminate the Term of the letting under the provisions of Section 25 hereto, the Port Authority shall pay to the Lessee on account of the Lessee's Construction Work performed in accordance with the provisions of Section 20 hereto One Hundred Percent (100%) of the Unamortized Investment of the Lessee in the Lessee's Construction Work.

(c) Any payment required under this Section shall not be or be deemed prerequisite to the exercise of the Port Authority's right of termination under Section 25 hereto and any

such payment shall be conditioned upon the Lessee's having delivered possession of the Premises to the Port Authority. On the payment by the Port Authority of the Unamortized Investment of the Lessee in the Lessee's Construction Work, title to all equipment, fixtures and improvements in the Premises constituting any part of the Lessee's Construction Work and all interests of the Lessee therein which have not already become the property of the Port Authority shall be vested in the Port Authority.

(d) Notwithstanding any other provision of this Section, in ascertaining the amount that the Port Authority shall be obligated to pay to the Lessee under this Section, such amount shall be diminished by (i) the amount of the cost of any equipment, fixtures or improvements constituting any part of the Lessee's Construction Work that are secured by liens, mortgages, security interests, or other encumbrances and (ii) any other amounts whatsoever due from the Lessee to the Port Authority under this Agreement. In addition, the Port Authority shall have the right to perform an audit of the Qualifying Cost of the Lessee's Construction Work prior to making any payment to the Lessee under this Section. In no event whatsoever shall the Qualifying Cost of the Lessee's Construction Work include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any equipment, fixtures or improvements constituting any part of the Lessee's Construction Work unless said equipment, fixtures and/or improvements are actually installed in or made part of the Premises.

(e) The Lessee shall maintain in accordance with GAAP during the Term and for three years thereafter (the "Audit Period") records and books of account recording all transactions in any way connected with or reflecting upon any payment to be made by the Port Authority to the Lessee under this Section. Such 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. During normal business hours during the Audit Period, the officers, employees and representatives of the Port Authority shall be permitted to examine (i) such records and books of account and (ii) 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.

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 this Agreement (including without limitation pursuant to a notice of termination as provided in Section 24), then all of the obligations under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession. All such obligations shall remain in full force and effect for the full Term, subject to the provisions of this Section 28.

Notwithstanding the foregoing paragraph, in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 25 of this Agreement, all of the obligations under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession, subject to the provisions of Section 16(c). The Condition Survey provided for in Section 16(c) hereof shall not be deemed to release, waive, diminish, limit, or impair any of the obligations, duties, responsibilities or liabilities of the Lessee under any term, provision, covenant or condition of this Lease other than as to Premises maintenance or repair obligations. In the event of a termination of this Lease pursuant to Section 25 only, upon (i) the completion by Lessee of all repairs or actions required to

remedy the conditions set forth in the Condition Survey Report prepared in accordance with Section 16(c) to the satisfaction of the Port Authority; (ii) the completion of the Port Authority's draw against the letter of credit maintained by the Lessee pursuant to Section 42 hereof in the amount equal to the cost of remedying the conditions set forth in such Condition Survey Report and the Lessee's subsequent replenishment of the letter of credit; or (iii) the Port Authority's receipt of direct payment by the Lessee in the amount equal to the cost of remedying the conditions set forth in such Condition Survey Report, the Lessee shall be deemed to be released from any further obligations or duties to repair or maintain the Premises pursuant to Section 16 of the Agreement following such termination.

Upon any termination of this Lease, 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; provided that the Port Authority shall use reasonable efforts to mitigate its damages. 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 Basic Rental under Sections 3 - 6 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, fees, 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.

Section 29. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 25 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 a part of the Premises or of the entire Premises, and may be for any period of time (whether the same as or different from the amount remaining in the Term hereunder), 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 24 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 25 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 29 A. Remedies Under Bankruptcy and Insolvency Codes

If an order for relief is entered or if any stay of proceeding or other act becomes effective in favor of Lessee the Port Authority's interest in this Lease in any proceeding commenced by or against Lessee under the present or any future United States Bankruptcy Code or in a proceeding which is commenced by or against Lessee seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, the Port Authority shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law of this Agreement including such rights and remedies as may be necessary to adequately protect the Port Authority 's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Lessee's obligations under this Agreement. Adequate protection of the Port Authority's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Lessee's obligations under this Agreement, shall include all of the following requirements:

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

(b) that Lessee shall continue to use the Premises only in the manner permitted by this Agreement; and

(c) that if Lessee's trustee, Lessee or Lessee as debtor-in-possession assumes this Agreement and proposes to assign it (pursuant to Title 11 U.S.C. Section 365, as it may be amended) to any person who has made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided the Port Authority to assure such person's future performance under this Agreement , including the assurances referred to in Title 11 U.S.C. Section 365, as it may be amended, and such other assurances as the Port Authority may reasonably require, shall be given to the Port Authority by the trustee, Lessee or Lessee as debtor-in-possession of such offer, not later than twenty (20) days before the date that the trustee, Lessee or Lessee as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Port Authority shall thereupon have the

prior right and option, to be exercised by notice to the trustee, Lessee and Lessee as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Agreement upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person (including any higher or better offers made that may be made in such proceedings), less any brokerage fees, finders fees, procuring fees or commissions, or any similar fees or commissions which may be payable out of the consideration to be paid by such person for the assignment of this Agreement ("Brokerage Commissions"). The Port Authority shall have no obligation to pay any such Brokerage Commissions. If Lessee attempts to arrange such an assignment of this Lease, then as an element of the required adequate assurance to the Port Authority, and as a further condition to Lessee's right to make such an assignment, Lessee's agreement(s) with brokers shall, to the Port Authority's reasonable satisfaction, provide that the Port Authority shall have no obligation to pay such Brokerage Commissions if the Port Authority exercises the Port Authority's rights under this Section 29 A.

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(d) hereof regarding the condition of the Premises at the expiration or termination of the letting hereunder.

(b) 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 (or the Port Authority shall have recourse to the letter of credit provided pursuant to this Agreement). 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. Notwithstanding the foregoing, Lessee shall not indemnify nor hold harmless the Port Authority, its Commissioners, officers, agents, employees or contractors for their respective gross negligence or intentional tortious acts.

Section 32. Acceptance of Surrender of Lease

No agreement of surrender or purported acceptance of 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 officer or representative at their office 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 attention of the President, with a copy to: Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Attention Merrill B. Stone, Esq. 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 reputable overnight courier service. 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 225 Park Avenue South, New York, New York 10003, 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. Copies of all notices sent to the Lessee shall be sent to Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Attention Merrill B. Stone, Esq.

(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; or

(4) If the Lessee is a limited liability company, its obligations shall be performed and its rights shall be exercised only by its members, managers and employees;

(5) 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 95000, Philadelphia, Pennsylvania 19195-1517 or via wire transfer to TD Bank, Bank ABA Number: 031201360, Account Number: 5950011618, or to such other address as may be substituted therefor.

(g) This Agreement does not render the Lessee the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.

(h) As used in Sections 13 and 18 hereof, 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, "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 York for the time being, or his or her duly designated representative or representatives.

(k) 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.

(l) 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, without disturbance 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 obligations hereunder shall continue only so long as it remains the owner of the Premises.

(m) 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.

(n) 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 arising from Lessee's business operations or its use and occupancy of the Premises, including, but not limited to, acts or omissions of invitees, licensees, agents and representatives who are 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 which causes such damage 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.

(o) For purposes of the provisions set forth in this Agreement, the Lessee hereby certifies that its I.R.S. Employer Identification No. is 26-404360.

(p) The Lessee is not acquiring an ownership interest in the Premises under 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, as amended) 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.

(q) Neither this Agreement nor a Memorandum of Lease may be recorded of record.

(r) It is understood that the election set forth in paragraph (p) of this Section 34 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.

(s) Unless otherwise specified, whenever in this Agreement the consent of the Port Authority is required to be obtained, the giving of the consent shall be in the sole discretion of the Port Authority.

(t) This Agreement and any and all claims or controversies arising out of or relating to this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles. The parties irrevocably and unconditionally consent and submit to the exclusive jurisdiction and venue of the state and federal courts in the State of New York (in the District in which the Facility is located).

(u) Neither the Port Authority nor the Lessee shall be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by both parties, and then only to the extent specifically

set forth therein. A waiver in one specific event shall not be deemed to apply either as a waiver or bar to any right or remedy stemming from a subsequent event.

(v) The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. The deletion of language from this Agreement prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse or opposite of the deleted language.

Section 35. Premises

(a) The Port Authority shall deliver the Premises to the Lessee in its presently existing "as is" "where is" condition, without any representations or warranties of any kind whatsoever except as expressly provided in this Agreement. The Lessee agrees to and shall take the Premises in its "as is" "where 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 a likelihood 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, ice, 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. Notwithstanding, the Port Authority shall at all times remain liable for its gross negligence and/or intentional tortious acts.

Section 36. Force Majeure

(a) Neither the Port Authority nor the Lessee shall be liable for any failure, delay or interruption in performing its respective obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors), 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. Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption.

(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) No abatement, diminution or 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 and the Port Authority represent and warrant that no broker has been engaged, hired or contracted 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 and the Port Authority shall indemnify and save each other harmless of and from any and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever who allege to have acted for the Lessee or the Port Authority, as the case may be, for services in connection with the negotiation and execution of this Agreement.

Section 38. Non-Liability of Individuals

No Commissioner, director, officer, agent or employee of either party to this Agreement shall be held personally liable to the other party under any term or provision of this Agreement or because of its execution or attempted execution or because of any breach 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, internet, telegraph, cable, or electrical guard or watch service; however the Port Authority shall provide appropriate connection to such utility systems at the building perimeters.

(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 with which Lessee engages in business. 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 maintain the enclosed portions of the Premises at a sufficient temperature, or to bleed pipes, so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

(d) If during the Term of this Agreement, 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 and/or used by the Lessee at the Premises or the structures or buildings, which, or a portion or portions of which, are included in the Premises, then 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 (collectively, an "Interruption") in any water or gas service, whether supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder, provided, however, that the Lessee shall be entitled to an abatement of Rental if: (i) such Interruption shall substantially interfere with the Lessee's operations at the Premises, in the Lessee's reasonable discretion, for ten (10) or more days; and (ii) Lessee delivers written notice of an Interruption to the Port Authority. Such abatement shall be effective for the period beginning ten (10) days after Interruption and ending on the date the Interruption is resolved. Lessee agrees to cooperate with the Port Authority or other parties with regard to resolving an Interruption.

(f) Without in any way 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 located at or on the Premises.

Section 40. 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 limited liability company organized and existing under the laws of the State of New York, and that the requisite consents to enter into this Agreement under the Lessee's Operating Agreement have been obtained.

(b) The Lessee recognizes the fact that a transfer of Securities (as hereinafter defined in Section 40(f) hereof) or membership interests or membership units in the Lessee or of a substantial part thereof, entry into any management, services or similar type of agreement for operations on the Premises, or any other act or transaction involving or resulting in a change in the ownership or distribution of Lessee's Securities or with respect to the identity of the parties in control of the Lessee or the Premises, 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. Therefore, the Lessee represents and agrees for itself, its present owners and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, there shall be no transfer of any Securities in excess of twenty-five percent (25%) in the Lessee by its present owners to any other person except with respect to transfers made for estate planning purposes to immediate family members; nor shall the present owners 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; and the Lessee further represents and agrees for itself and its present owners, and any successor in interest thereof, respectively, that the direct ownership and control of the Lessee shall be and remain as represented in paragraph (a) of this Section, except as otherwise permitted herein.

(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 24 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 24 hereof.

(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 limited liability company interest, 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 an entity 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 or board of managers of said entity 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 this Section 40.

Section 41. Cross Default

Intentionally Deleted.

Section 42. Security

The Lessee and the Port Authority hereby agree that all sums deposited by the Lessee as security under this Lease BP-310 shall be held and used by the Port Authority as security for 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, Lease BP-310. Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deliver to the Port Authority, as security for the Lessee's full, faithful and prompt performance of and compliance with all of its obligations under this Agreement, a clean irrevocable letter of credit issued by a banking institution reasonably satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of $365,000.00, allowing for partial and complete draws upon presentation of a site draft. The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such letter of credit shall provide that it shall continue throughout the Term and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit. Upon notice of cancellation of a letter of credit, the Lessee agrees that unless, by a date not less than twenty (20) days prior to the scheduled expiry thereof, the letter of credit is replaced by another letter of credit reasonably satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under this Agreement. Failure to provide such a letter of credit at any time during the Term, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit shall be deemed to be a breach of this Agreement on the part of the Lessee. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Lessee, on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to its full amount. In addition to any and all other remedies available to it, the Port Authority shall have the

right, at its option, at any time and from time to time, with or without notice, to draw upon the letter of credit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee arising out of or with respect to the Lessee's obligations under this Agreement. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the letter of credit itself shall cure any default or breach of this Agreement on the part of the Lessee. After the expiration or earlier termination of the letting under this Agreement (as it may have been amended or extended or both), and upon condition that no default under this Agreement (as it may have been amended or extended or both), shall have occurred and upon written request therefor by the Lessee, the Port Authority will return the letter of credit to the Lessee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Lessee of this Agreement or any part thereof.

As further security for the Lessee's full, faithful and prompt payment and performance of and compliance with all of its obligations under this Agreement, Phoenix Beverages, Inc. shall provide a lease guaranty substantially in the form attached as "Exhibit C," attached hereto and made a part hereof (the "Lease Guaranty").

Section 43. 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 herein below 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 (0.8%) 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 therefor 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 Rental, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the Rental 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 24 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 44. Sustainable Design

The Lessee agrees that in the performance of any work that is subject to Section 20 of this Agreement entitled "Construction by the Lessee", including without limitation "the Lessee's Construction Work", it will comply with the Port Authority's policy on sustainable design as set forth in the sustainable design guidelines promulgated by the Port Authority Engineering Department from time to time.

Section 45. Port Authority Costs Following Termination

Without limiting the generality of any provision of this Agreement, in the event the Port Authority exercises its right of termination under the provisions of Section 24 of this Agreement entitled "Termination", the Lessee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably incurred by the Port Authority in connection with such termination, including without limitation any re-entry, regaining or resumption of possession, the collection of all amounts due to the Port Authority, the restoration of the Premises (on failure of the Lessee to have it restored), the preparation of the Premises for use and occupancy by a succeeding lessee, the care and maintenance of the Premises during any period of nonuse of the Premises; the foregoing shall

include, without limitation, personnel costs and reasonable legal fees and expenses (including but not limited to the cost to the Port Authority of in house legal services and/or the legal services of outside counsel), repairing and altering the Premises and putting the Premises in working order.

Section 46. Double Rent For Holdover

Unless otherwise notified by the Port Authority in writing at least ninety (90) days prior to the expiration or earlier termination of the Term of this Agreement, in the event that the Lessee remains in possession of the Premises after the expiration or earlier termination of the Term of this Agreement (which period subsequent to expiration or termination is hereinafter called "the Holdover Period"), in addition to any damages to which the Port Authority may be entitled or other remedies that the Port Authority may have by law, the Lessee shall pay to the Port Authority a rental for and during the Holdover Period at the rate of twice the rate of the Basic Rental payable under this Agreement at the time of such expiration or earlier termination. Nothing herein contained shall be deemed to give the Lessee any right to remain in possession of the Premises after the expiration or earlier termination of the Term of this Agreement.

Section 47. Audit Fee

In the event that upon conducting an examination and audit under the provisions of this Agreement (and as it may be hereinafter amended), the Port Authority determines that unpaid amounts are due to the Port Authority by the Lessee (the "Audit Findings"), the Lessee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Lessee under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Agreement with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the Rental to be paid. 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 to terminate this Agreement or (ii) any obligations of the Lessee under this Agreement.

Section 48. Waiver of Jury Trial

The Lessee hereby waives its right to trial by jury in any action that may hereafter be instituted by the Port Authority against the Lessee in respect of the letting and/or in any action that may be brought by the Port Authority to recover fees, damages, or other sums due and owing under this Agreement. The Lessee specifically agrees that it shall not interpose any claims as counterclaims in any action for non payment of rent or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

Section 49. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute the agreement of the parties.

Section 50. Environmental Responsibilities

(a) As used in this Agreement, the following terms shall have the meanings set forth below:

(1) "Environmental Damage" and "Environmental Damages" shall mean any one or more of the following: (i) the presence on, about, under or migrating from the Premises of any Hazardous Substance (a) whose presence occurred during the "Term" or (b) resulting from any act or omission of any person or entity during the Term, and/or (ii) the disposal, release or threatened release of any Hazardous Substance on, about, under or migrating from the Premises during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, and/or (iii) the presence of any Hazardous Substance on, about or under other property at the Facility or elsewhere as a result of the ownership, use or occupancy of the Premises or a migration of a Hazardous Substance from the Premises during the Term or thereafter if the Hazardous Substance first came to be present on, about or under the Premises during the Term, (iv) any personal injury, including wrongful death, property damage

and/or natural resource damage arising out of or related to any such Hazardous Substance, and/or (v) the violation of any Environmental Requirements pertaining to any such Hazardous Substance, the Premises and/or the activities thereon.

(2) "Environmental Requirement" and "Environmental Requirements" shall mean all applicable present and future laws, statutes, enactments, resolutions, regulations, rules, treaties, ordinances, codes, licenses, guidance documents, permits, orders, approvals, plans, authorizations, concessions, franchises, requirements, and similar items of all Governmental Authorities having the force and effect of law and all applicable judicial, administrative and regulatory decrees, common law standards, judgments and orders relating to the protection of human health or the environment, the foregoing to include, without limitation:

(ii) All legally binding requirements pertaining to reporting, licensing, permitting, investigation, remediation and mitigation of the emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land surface or subsurface strata, the sewer or septic system, or relating to the manufacture, processing, distribution, generation, use, treatment, storage, disposal, transport or handling of Hazardous Substances;

(iii) All legally binding requirements pertaining to the protection of the health and safety of employees or the public; and

(iv) All legally binding requirements pertaining to the protection of natural resources, species or ecological amenities.

(3) "Hazardous Substance" and "Hazardous Substances" shall mean and include, without limitation, any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, special nuclear byproduct material, asbestos in any form, asbestos containing material, any chemicals, materials, waste or other substance that are listed, designated, classified, determined to be or defined as or included in the definition of "hazardous substances," "hazardous

wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "pollutants," "contaminants," "toxic substances," "toxic pollutants," or "hazardous constituents" under or pursuant to any Environmental Requirement and inclusive of any mixture or solution thereof, urea formaldehyde foam insulation, polychlorinated byphenyls ("PCBs"), chemicals known to cause cancer or reproductive toxicity, petroleum, petroleum products and petroleum based derivatives, and other substances which have been or in the future shall be declared to be hazardous or toxic, or the regulation or removal 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 Environmental Requirement. When an Environmental Requirement defines any of the foregoing terms more broadly than another, the broader definition shall apply.

(4) "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 this Agreement.

(b) Without limiting the generality of any of the other terms and provisions of this Agreement, the Lessee hereby agrees that it is responsible for and assumes responsibility for any Environmental Requirements and Environmental Damages arising out of or pertaining to the Premises that arise on or after the commencement of the Term, to the extent that the Lessee is responsible for the same under this Section 50. The Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, agents and employees from and against all Environmental Damages and Environmental Requirements for which the Lessee is responsible under this Agreement (including, without limitation, all losses, damages, judgments, fines, penalties, payments in lieu of penalties, settlements, and legal expenses (for both in house counsel and outside counsel) incurred by the Port Authority in connection therewith. If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing indemnified matters, and in handling such suit 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

(c) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall at its sole cost and expense, upon notice from the Port Authority, promptly take all actions to remove and remediate: (1) any Hazardous Substance present on, about, under or migrating from the Premises whose presence first occurred during the Term or resulted from any act or omission of the Lessee or others during the Term, (2) any Hazardous Substance disposed of or released on the Premises during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, and (3) any Hazardous Substance present on, about or under the Premises, other property at the Facility or elsewhere whose presence resulted from the Lessee's use and occupancy of the Premises or which migrated from the Premises to such other property during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, which any Governmental Authority or any Environmental Requirements require to be removed and/or remediated, or which, in the reasonable opinion of the Port Authority, are necessary to mitigate Environmental Damages. Such removal and remediation 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, mitigation, containment, operation, maintenance, monitoring or restoration work to the extent required pursuant to any Environmental Requirements. In performing any remediation as required under this subparagraph (c), Lessee shall employ the most stringent applicable cleanup standards required pursuant to applicable Environmental Requirements that will not involve the use of any restriction on the possible use of the Premises or such other property (except as otherwise may be approved by the Port Authority, in its reasonable discretion) and which will not require the use of any institutional or engineering controls. The Lessee agrees that with respect to any of its obligations set forth above in this paragraph it will not make any claim against the Port Authority and/or the City of New York and/or the State of New York for contribution under any Environmental Requirement. Any actions required under this

paragraph shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the Premises. All wells shall be flush mounted. The Lessee shall promptly provide to the Port Authority all copies of test results and reports generated in connection with such actions. Promptly upon completion of such investigation and remediation, the Lessee shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property.

(d) Without limiting any other of the Lessee's obligations under this Agreement, the Lessee shall provide the Manager of the Facility at the cost and expense of the Lessee with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall reasonably request in connection with any Environmental Requirements or Environmental Damages, and as may be necessary for the preparation of any application, registration, statement, certification, notice, non-applicability affidavit, communication, negative declaration, clean-up plan or other information, documentation or communication required by the Environmental Requirements. Lessee shall promptly swear to, sign or otherwise fully execute the same. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee and at the Lessee's cost and expense. Further, unless directed otherwise by the Port Authority, the Lessee agrees to provide the 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 at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Lessee at the time the same are provided to the Lessee with respect to any Environmental Requirements.

(e) Notwithstanding any other provision in this Agreement to the contrary, Lessee shall not be responsible for the remediation of any "Pre-Existing Environmental Condition" (as hereinafter defined), provided, however, that:

(1) Lessee shall be responsible for a Pre-Existing Environmental Condition to the extent of (i) any violation by the Lessee or the Lessee's Representative, as hereinafter defined, of any Environmental Requirements pertaining to any Hazardous Substance that Lessee or Lessee's Representative is responsible for complying with

pursuant to the terms of this Agreement; (ii) any failure by the Lessee or the Lessee's Representative to observe and comply with any written Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including without limitation, those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities (which agreements have been provided by the Port Authority to the Lessee or are subsequently provided to Lessee in the future), or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Facility and submitted to the Lessee, to the extent that the Lessee's acts or omissions exacerbate, disturb or increase any such Hazardous Substances and thereby trigger a requirement under any Environmental Requirements to remediate such Hazardous Substances; and/or (iii) any negligence by the Lessee or the Lessee's Representative with respect to any such Hazardous Substance; and

(2) to the extent that any excavation or construction work by or on behalf of the Lessee or the Lessee's Representative on the Premises impacts or disturbs any Pre-Existing Environmental Condition, any remediation, dewatering, disposal costs or otherwise related to such impact on or disturbance of a Pre-Existing Environmental Condition shall be the Lessee's sole responsibility, at its sole cost and expense.

"Lessee's Representative" shall mean its managers, members, officers, employees, agents, representatives, contractors, customers, guests, invitees, or other persons who are doing business with the Lessee, are on the Premises with the Lessee's consent or with Lessee's knowledge or are on the Premises without Lessee's consent due to Lessee's failure to undertake adequate security measures.

A "Pre-Existing Environmental Condition" shall mean (x) any Hazardous Substances that were present on, about, under or migrating from the Premises prior to the commencement of the Term under this Agreement as set forth in the environmental reports referenced on "Exhibit D," attached hereto and made a part hereof; or (y) any Hazardous Substances present on, about, or migrating from the Premises which are discovered subsequent to the commencement of the Term of this Agreement and are not listed in Exhibit D, but only provided

that either (a) the Lessee and Port Authority mutually agree that such Hazardous Substance existed prior to commencement of the Term of this Agreement or (b) Lessee proves pursuant to Subsection 50(h) herein that such Hazardous Substance(s) in fact existed on, about, under or migrated onto the Premises prior to the commencement of the Term of this Agreement.

(f) Without limiting the Port Authority's remedies that it may have under this Agreement or at law or in equity, the Port Authority shall have the right during the Term and subsequent to the termination or expiration thereof to such equitable relief, including restraining injunctions and declaratory judgments, as may be required to enforce compliance by the Lessee with its environmental obligations under this Section 50. In the event the Lessee fails to comply with or perform any of its obligations hereunder, the Port Authority at any time during the Term of this Agreement and subsequent to the termination or expiration thereof may elect (but shall not be required) to perform such obligations and the Lessee shall pay to the Port Authority upon demand all of its costs thereof, provided that, except in emergency situations, the Port Authority has first given written notice to the Lessee citing this subsection (f) and the Lessee has not corrected such condition within thirty (30) days or such additional time in the Port Authority's opinion may be necessary for reasons of technical and practicable feasibility or otherwise not within the Lessee's control.

(g) Notwithstanding any other provision in this Agreement to the contrary, and without limiting the generality of subparagraph (e) of this Section, Lessee's obligations, undertakings and responsibilities under this paragraph shall not apply to any Environmental Damage involving any Hazardous Substance which migrated or shall migrate onto the Premises during the Term (hereinafter called the "Migrated Hazardous Substance"), except that Lessee shall be responsible for clean-up, remediation or other response action, or indemnification or other action under this Section with respect to such Migrated Hazardous Substance to the extent that any such action with respect to such Migrated Hazardous Substance becomes necessary due to: (1) any violation by the Lessee or the Lessee's Representative of any Environmental Requirements pertaining to such Migrated Hazardous Substance that Lessee or Lessee's Representative is responsible for complying with pursuant to the terms of this Agreement; (2) any failure by the Lessee or the Lessee's Representative to observe and comply with any written Port Authority requirements, directives and procedures regarding

any Hazardous Substance on, about or under the Premises, including without limitation, those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities (which agreements have been provided by the Port Authority to the Lessee or are subsequently provided to Lessee in the future), or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Facility and submitted to the Lessee to the extent that the Lessee's acts or omissions exacerbate, disturb or increase any such Hazardous Substances and thereby trigger a requirement under any Environmental Requirements to remediate such Hazardous Substances; and/or (3) any negligence of the Lessee or the Lessee's Representative with respect to such Migrated Hazardous Substance. To the extent that any excavation or construction work by or on behalf of the Lessee or the Lessee's Representative on the Premises impacts or disturbs any Migrated Hazardous Substance, any remediation, dewatering, disposal costs or otherwise related to such impact on or disturbance of a Migrated Hazardous Substance shall be the Lessee's sole responsibility, at its sole cost and expense.

(h) The Lessee agrees that in any legal action or proceeding in which the Port Authority and the Lessee are opposing parties the Lessee shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (1) whether the presence of any Hazardous Substance on, about, under or migrating from the Premises occurred prior or subsequent to the commencement of the Term; (2) whether any Hazardous Substance disposed of or released from the Premises or which migrated from the Premises came to be present on, about or under the Premises prior or subsequent to the commencement of the Term; and (3) whether the Lessee exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated during the Term. For purposes of this Section, "burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(i) Without limiting the generality of any other term or provision of this Agreement, the obligations of the Lessee under this Section 50 shall survive the expiration or termination of this Agreement.

(j) In addition to the Port Authority's existing rights of entry under this Agreement, the Lessee shall permit the Port

Authority and the Port Authority's agents, consultants and contractors (the "Port Authority's Representatives"), access to the Premises for the purpose of performing various inspections, tests and remediation activities as deemed necessary by the Port Authority with regard to the historic underground storage tank Pre-Existing Condition located on the Premises at such hours as the Lessee, the Port Authority and the Port Authority's Representatives may mutually agree upon. The Port Authority agrees not to materially interfere with the use and/or operations of the Lessee.

Section 51. Pier Apron and Berthing Rights

(a) The Lessee shall have no right to berth vessels in the water area on the sides of Pier 7 except in accordance with and subject to the Port Authority's tariff, as incorporated into FMC Schedule PA-10, or any successor tariff, as the same may be amended from time to time during the Term, including, without limitation, payment to the Port Authority with respect to each vessel of dockage and wharfage charges as set forth therein from time to time.

(b) The Lessee understands that the Port Authority shall permit the berthing of other vessels in the water area on the sides of Pier 7. The Lessee shall and does hereby agree to grant to the Port Authority and its designees, upon reasonable prior notice, the right to enter the Open Area at all times and a right of access for pedestrians and vehicles over and through the Open Area twenty four (24) hours a day, seven (7) days a week for the purpose of loading and unloading such vessels and otherwise for the purpose of obtaining access to such vessels. Notwithstanding the foregoing, access granted to the Port Authority and its designees pursuant to the immediately preceding sentence shall be subject to reasonable security measures prescribed by the Lessee and enforced by the Port Authority, including without limitation: (i) prescribing and limiting the means of access over and through the Open Area (or any other portion of the Premises), and (ii) requiring the Port Authority to provide escorts to any persons entering the Open Area (or any other portion of the Premises). In connection with the foregoing, the Port Authority shall indemnify and hold harmless the Lessee, its officers, attorneys, agents, 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 access of the Apron Area by the Port Authority or by its Commissioners,

officers, agents, employees, customers, vendors, or representatives, contractors, subcontractors or their employees, or by others on the Open Area (or any other portion of the Premises) with the consent or invitation of any of the foregoing persons. Notwithstanding the foregoing, the Lessee, its officers, attorneys, agents, employees and representatives shall not be so indemnified by the Port Authority or saved harmless to the extent that such liabilities, etc. are caused by their own gross negligence or intentional tortious acts.

Section 52. Entire Agreement

This Agreement, together with all schedules and exhibits hereto, 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.

Section 53. OFAC Representations

Lessee hereby represents and warrants to the Port Authority that the Lessee is not, and shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order on Terrorist Financing Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit or Support Terrorism), or other governmental action and is not engaging, and shall not engage, in any dealings or transactions or be otherwise associated with such persons or entities. Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any breach of the foregoing representations and warranties by Lessee, the Port Authority shall have the right, in addition to any and all other remedies provided under this Agreement or at law or in equity, to immediately terminate this Agreement upon written notice to Lessee. In the event of any such termination by the Port

Authority, Lessee shall, immediately on receipt such termination notice, have no further right to access the Premises and shall turnover to the Port Authority all books and records in Lessee's possession or control with respect to the Premises and its services under this Agreement. Termination on the aforedescribed basis shall be deemed a termination for cause.

Section 54. Estoppel Certificate.

Lessee agrees periodically to furnish within ten (10) days after so requested by the Port Authority a certificate signed by Lessee certifying (a) that this Lease is in full force and effect and unmodified (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) as to the Lease Commencement Date and the date through which Base Rental and Additional Rental have been paid, (c) that Lessee has accepted possession of the Premises, (d) that except as stated in the certificate no Rental has been paid more than thirty (30) days in advance of its due date, (e) that the address for notices to be sent to Lessee is as set forth in this Lease (or has been changed by notice duly given and is as set forth in the certificate), (f) that except as stated in the certificate, Lessee, as of the date of such certificate, has no charge, lien, or claim of offset against rent due or to become due, (g) that except as stated in the certificate, the Port Authority is not then in default under this Lease, (h) that there are no renewal or extension options in favor of Lessee, and (i) as to such other matters as may be reasonably requested by the Port Authority.

Signatures on following page

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

ATTEST:

Deputy Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By _____
RICHARD M. LARRABEE

(Title) DIRECTOR, PORT COMMERCE DEPT.

(Seal)

ATTEST:

Secretary

PHOENIX BEVERAGES MTO LLC

By _____

(Title) President

(Corporate Seal)

APPROVED:
FORM
TERMS

FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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

On the 27th day of August in the year 2009, 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.

LUCY AMBROSINO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01AM6101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV. 3, 2011

Lucy Ambrosino
(notarial seal and stamp)

FOR PHOENIX BEVERAGES MTO LLC

STATE OF New York)
) ss.
COUNTY OF Queens)

On the 14th day of August in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared Gregory Brayman, 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.

RICHARD KAPP
Notary Public, State of New York
01KA6036212
Qualified In Westchester County
My Commission Expires January 18, 2010

Richard Kapp
(notarial seal and stamp)

SCHEDULE A

For the one-year period commencing on each of the following anniversary dates:

June 1, 2011	$1,735,550.00
June 1, 2012	$1,787,606.50
June 1, 2013	$1,841,245.00
June 1, 2014	$1,896,482.34
June 1, 2015	$1,953,376.82
June 1, 2016	$2,011,978.12
June 1, 2017	$2,072,337.46
June 1, 2018	$2,134,507.59
June 1, 2019	$2,198,542.81
June 1, 2020	$2,264,499.10
June 1, 2021	$2,332,434.07
June 1, 2022	$2,402,407.09
June 1, 2023	$2,474,479.31
June 1, 2024	$2,548,713.69
June 1, 2025	$2,625,175.10
June 1, 2026	$2,703,930.35
June 1, 2027	$2,785,048.26
June 1, 2028	$2,868,599.71
June 1, 2029	$2,954,657.70

SCHEDULE B

For the one-year period commencing on each of the following anniversary dates:

June 1, 2011	$1,769,250.00
June 1, 2012	$1,857,712.50
June 1, 2013	$1,950,598.13
June 1, 2014	$2,048,128.03
June 1, 2015	$2,150,534.43
June 1, 2016	$2,258,061.15
June 1, 2017	$2,370,964.21
June 1, 2018	$2,489,512.42
June 1, 2019	$2,613,988.04
June 1, 2020	$2,744,687.45
June 1, 2021	$2,881,921.82
June 1, 2022	$3,026,017.91
June 1, 2023	$3,177,318.80
June 1, 2024	$3,336,184.75
June 1, 2025	$3,502,993.98
June 1, 2026	$3,678,143.68
June 1, 2027	$3,862,050.87
June 1, 2028	$4,055,153.41
June 1, 2029	$4,257,911.08

SCHEDULE C

For the one-year period commencing on each of the following anniversary dates:

June 1, 2011	$113,744.17
June 1, 2012	$117,156.49
June 1, 2013	$120,671.19
June 1, 2014	$124,291.32
June 1, 2015	$128,020.06
June 1, 2016	$131,860.66
June 1, 2017	$135,816.48
June 1, 2018	$139,890.98
June 1, 2019	$144,087.71
June 1, 2020	$148,410.34
June 1, 2021	$152,862.65
June 1, 2022	$157,448.53
June 1, 2023	$162,171.98
June 1, 2024	$167,037.14
June 1, 2025	$172,048.26
June 1, 2026	$177,209.71
June 1, 2027	$182,526.00
June 1, 2028	$188,001.78
June 1, 2029	$193,641.83

SCHEDULE D

For the one-year period commencing on each of the following anniversary dates:

June 1, 2011	$115,952.79
June 1, 2012	$121,750.43
June 1, 2013	$127,837.95
June 1, 2014	$134,229.85
June 1, 2015	$140,941.34
June 1, 2016	$147,988.41
June 1, 2017	$155,387.83
June 1, 2018	$163,157.22
June 1, 2019	$171,315.08
June 1, 2020	$179,880.84
June 1, 2021	$188,874.88
June 1, 2022	$198,318.62
June 1, 2023	$208,234.55
June 1, 2024	$218,646.28
June 1, 2025	$229,578.60
June 1, 2026	$241,057.53
June 1, 2027	$253,110.40
June 1, 2028	$265,765.92
June 1, 2029	$279,054.22

SCHEDULE E

AFFIRMATIVE ACTION-EQUAL OPPORTUNITY---MINORITY BUSINESS ENTERPRISES ---WOMEN-OWNED BUSINESS ENTERPRISES REQUIREMENTS

Part I. Affirmative Action Guidelines - Equal Employment Opportunity

I. As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E and in Section 20(o) of Port Authority Agreement No. BP-310 (herein called the "Lease") with Phoenix Beverages MTO, LLC (herein and in the Lease called the "Lessee"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

The Lessee as well as 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") must fully comply with the following conditions set forth herein 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 commits 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 shall likewise 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 and the Contractor shall each appoint an executive of its 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

Minority, except laborers	30%
Minority, laborers	40%

(2) Female participation

Female, except laborers	6.9%
Female, laborers	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 required herein of minority and female employment and training must 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 shall provide written notification to the Manager of the Office of Business and Job Opportunity 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 must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training subject to the availability of employment opportunities. Trainees must 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 number 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 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 decision including specific review of these items with on-premises supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction 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 business.

(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 areas of a Contractor's workforce.

(11) Tests and other selecting 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 suppliers, 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 Contractors' 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 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 actions steps, at lease 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. mechanical 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 is 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

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself 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 of this Schedule E. 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.

Certification of MBEs and WBEs hereunder shall be made by the Office of Business and Job Opportunity of the Port Authority. If the Contractor wishes to utilize a firm not already certified by the Port Authority, it shall submit to the Port Authority a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the Port Authority. All such requests shall be in writing

addressed to the Office of Business and Job Opportunity, the Port Authority of New York and New Jersey, One World Trade Center, 63 East, New York, New York 10048 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing the Director in charge of the Office of Business and Job Opportunity of the Port Authority. The determination of the Port Authority shall be final and binding.

The Port Authority has compiled a list of the firms that the Port Authority has determined satisfy the criteria for MBE and WBE certification. This list may be supplemented and revised from time to time by the Port Authority. Such list shall be made available to the Contractor upon request. The Port Authority makes no representation as the financial responsibility or such, firms, their technical competence to perform, or any other performance-related qualifications.

Only MBE's and WBE's certified by the Port Authority will count toward the MBE and WBE goals.

Please note that only sixty percent (60%) of expenditures to MBE or WBE suppliers will count towards meeting the MBE and WBE goals. However, expenditures to MBE or WBE manufacturer's (i.e. suppliers that produce goods from raw materials or substantially alter them before resale) are counted dollar for dollar.

For the Port Authority

Initialled:

For the Lessee

EXHIBIT A

See attached

EXHIBIT B

The Lessee's Construction Work shall include the following:

- Renovation of the existing three-story office area in Pier 7, including the upgrade of the walls, floors, utilities and restroom facilities.
- Construction of a co-generation plant for electricity, heat and cool air to serve the Pier 7 premises.
- Construction of temperature controlled rooms within the Pier 7 warehouse area.
- Insulation of the warehouse area including the construction of demising walls.
- Sealing of the warehouse area floor.
- Asbestos removal.
- Install mechanical piping for all Heating/Cooling processes and install air handlers in order to deliver tempered air.
- Electrical Upgrades throughout the building, including panels, conduits and related items.
- Repair of lavatory, carport, and forklift area other ancillary areas within warehouse footprint.
- Replacement and/or overhaul of man doors and overhead doors.
- Installation of "IT" services into and throughout the building.
- Overall repairs to the exterior of building, siding, front area, loading dock, etc.
- Repair and replacement of warehouse lighting.
- Installation of warehouse exhaust ventilation systems.

EXHIBIT C

See Attached

LEASE GUARANTY

THIS LEASE GUARANTY (this "Guaranty") dated August _____, 2009, is made by **Phoenix Beverages, Inc.**, a New York corporation (the "Guarantor"), with an address of 37-88 Review Avenue, Long Island City, New York 11101, in favor of **The Port Authority of New York and New Jersey** (the "Port Authority"), with an address of 225 Park Avenue South, New York, New York 10003.

Recitals

A. As of even date herewith, the Port Authority as landlord, and Phoenix Beverages MTO LLC, a New York limited liability company ("Tenant"), as tenant, are entering into an Agreement of Lease (Lease No. BP-310) (attached hereto as "Exhibit A") with respect to property located at Pier 7 of the Brooklyn-Port Authority Marine Terminal (the "Premises"). The Agreement of Lease, as the same may have been amended, modified and supplemented from time to time, is hereinafter referred to as the "Lease."

B. The Guarantor is an affiliate of Tenant.

C. The Guarantor has agreed, in order to induce the Port Authority to enter into the Lease with Tenant, to guarantee the payment of all monetary obligations of the Tenant stated in the Lease and the performance by Tenant of all of the terms, conditions, covenants and provisions of the Lease on its part to be performed, observed and fulfilled.

D. The Guarantor has duly authorized the execution, delivery and performance of this Guaranty.

E. It has been determined that it is in the best interest of the Guarantor to execute this Guaranty, as the Guarantor will benefit economically from the entry into the Lease between the Port Authority and Tenant.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Port Authority to enter into the Lease, the Guarantor hereby covenants and agrees as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees to the Port Authority the full and

prompt payment when due of rental and any and all other sums and charges payable by Tenant under the Lease and hereby unconditionally and irrevocably guarantees the full, faithful and timely performance and observance of all the covenants, terms, conditions, and agreements required to be performed and observed by Tenant under the Lease (collectively, "Obligations").

2. Guarantor hereby covenants and agrees that if default shall at any time be made by Tenant in the payment of any such rental or other sums or charges payable by Tenant under the Lease or in the performance of any of the covenants, terms, conditions or agreements contained in the Lease, Guarantor will forthwith pay such rental or other sums or charges to such party as the Port Authority shall direct, and any arrears thereof, and will forthwith faithfully perform and fulfill all of such covenants, terms, conditions and agreements, and will forthwith pay as the Port Authority shall direct, all damages and all costs and expenses that may arise in consequence of any default by Tenant under the Lease (including, without limitation, all reasonable attorneys' fees incurred by the Port Authority or caused by any such default and/or by the enforcement of this Guaranty).

3. This Guaranty is an absolute and unconditional guaranty of full payment (and not of collection) and of performance. Guarantor's liability hereunder is direct and may be enforced without the Port Authority being required to resort to any other right or remedy, and this Guaranty shall be enforceable against Guarantor, without the necessity for any suit or proceedings on the Port Authority's part of any kind or nature whatsoever against Tenant, and without the necessity of any demand or notice of non-payment, non-performance or non-observance or the continuance of any such default or of any notice of acceptance of this Guaranty or of the intention of the Port Authority to act in reliance hereon or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives. In addition, Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired by reason of the assertion or the failure to assert by the Port Authority against Tenant of any of the rights or remedies reserved to the Port Authority pursuant to the provisions of the Lease.

Guarantor waives; (a) notice of acceptance of this Guaranty; (b) notice of the creation or release or satisfaction of any of the Obligations; (c) notice of release of any collateral; (d) notice of the creation, or release or satisfaction, of any Obligations of any other Guarantor; (e) presentment; (f) demand for payment; (g) protest; (h) notice of dishonor; (i) notice of nonpayment of any of the Tenant's Obligations; (j) notice of amendment or any change in the terms of any of the documents given in connection with the Lease or any other documents relating to the Obligations or any other present or future agreement relating directly or indirectly thereto; (k) demand for performance or observance of and enforcement of any provisions of, or any pursuit or exhaustion of, any rights or remedies against the Tenant or any other guarantor or obligor who becomes liable in any manner for any of the Obligations, and any requirements of diligence or promptness on the part of the Port Authority in connection therewith; and (l) all defenses based on suretyship or impairment of collateral and any defenses which Tenant may assert on the Obligations, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations and accord and satisfaction.

4. This Guaranty shall be a continuing Guaranty, and (whether or not Guarantor shall have notice or knowledge of any of the following) the liability and obligation of Guarantor hereunder shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way impaired by (a) any amendment or modification of, or supplement to, or extension or renewal of, the Lease or any assignment or transfer thereof (whether or not Guarantor specifically consented to such renewal, amendment, extension or modification); (b) any exercise or non-exercise of any right, power, remedy or privilege under or in respect of the Lease or this Guaranty or any waiver, consent or approval by the Port Authority with respect to any of the covenants, terms, conditions or agreements contained in the Lease or any indulgences, forbearances or extensions of time for performance or observance allowed to Tenant from time to time and for any length of time; (c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding relating to Tenant, or its properties; (d) any

limitation on the liability or obligation of Tenant under the Lease or its estate in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the federal bankruptcy law or any other statute or from the decision of any court; (e) any sublease or transfer by Tenant or any assignment, mortgage or pledge of its interest under the Lease; or (f) any termination of the Lease prior to the expiration of its Term (as defined in the Lease).

5. All of the Port Authority's rights and remedies under the Lease and under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any the others. No termination of the Lease or taking or recovering of the Premises demised thereby shall deprive the Port Authority of any of its rights and remedies against Guarantor under this Guaranty. This Guaranty shall apply to the Obligations pursuant to any extension, renewal, amendment, modification and supplement of or to the Lease as well as to the Obligations thereunder during the original Term thereof in accordance with the original provisions thereof.

6. The Obligations will be paid strictly in accordance with the terms of the Lease, regardless of the value, genuineness, validity, regularity or enforceability of the Obligations, and of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Port Authority with respect thereto. The liability of the Guarantor to the extent herein set forth shall be absolute and unconditional, not subject to any reduction, limitation, impairment, termination, defense, offset, counterclaim or recoupment whatsoever (all of which are hereby expressly waived by the Guarantor) whether by reason of any claim of any character whatsoever, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, or by reason of any liability at any time to the Guarantor or otherwise, whether based upon any obligations or any other agreements or otherwise, howsoever arising, whether out of action or inaction or otherwise and whether resulting from default, intentional misconduct, gross negligence or otherwise, and without limiting the foregoing regardless of: (a) any lack of validity or enforceability of the Lease or of any agreement or instrument relating thereto; (b) any change in the time, manner or place of payment of, or in

any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to Obligations, or any other amendment or waiver of or consent to any departure from the Lease or any other agreement relating to any Obligations; (c) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Tenant in respect of the obligations of the Guarantor in respect hereof; (d) the absence of any action on the part of the Port Authority to obtain payment for the Obligations from the Tenant; (e) any insolvency, bankruptcy, reorganization or dissolution, or any proceeding of the Tenant or the Guarantor; or (f) the absence of notice or any delay in any action to enforce any Obligations or to exercise any right or remedy against the Guarantor or the Tenant, whether hereunder, under any Obligations or under any agreement or any indulgence, compromise or extension granted.

7. Guarantor further agrees that, to the extent that the Tenant or the Guarantor makes a payment or payments to the Port Authority, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to the Tenant or Guarantor or their respective estate, trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, this Guaranty and the advances or part thereof which have been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the date of such initial payment, reduction or satisfaction occurred.

8. Guarantor agrees to indemnify and hold harmless the Port Authority for any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Port Authority in enforcing any rights under this Guaranty.

9. Guarantor represents and warrants to the Port Authority that the execution and delivery of this Guaranty has been duly authorized by all of the shareholders and the directors of Guarantor.

10. This Guaranty shall be legally binding upon Guarantor and its successors and assigns and shall inure to the benefit of the Port Authority and its successors and

assigns. Reference herein to Tenant shall be deemed to include Tenant and its successors and assigns.

11. This Guaranty and any and all claims or controversies arising out of or relating to this Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles. The parties irrevocably and unconditionally consent and submit to the exclusive jurisdiction and venue of the state and federal courts in the State of New York (in the District in which the Premises is located).

12. Guarantor will not enter into any amendment to this Guaranty, and no such amendment will be effective in any event, without the prior written consent thereto by the Port Authority. Guarantor will from time to time during the Term (as defined in the Lease), promptly following request of the Port Authority, confirm in writing that this Guaranty remains in full force and effect in accordance with its terms.

13. GUARANTOR HEREBY WAIVES TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE ARISING HEREUNDER.

14. Acceptance of this 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. Failure to attach a copy of the Lease to this Guaranty shall not void, alter or affect this Guaranty, or alter or amend the obligations of Guarantor hereunder.

15. As of the date hereof and immediately after giving effect to this Guaranty, the Guarantor (a) owns and will own assets the fair value of which, on a going concern basis, are (i) greater than the total amount of liabilities (including disputed, unliquidated and contingent liabilities) of the Guarantor and (ii) greater than the amount that will be required to pay the probable amount of Guarantor's debts as they become absolute and matured; (b) has capital that is not unreasonably small in relation to its business as presently conducted or will be conducted after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts or liabilities beyond its abilities to pay such debts and liabilities as they become due.

Signatures on following page

IN WITNESS WHEREOF, Guarantor, intending to be legally bound hereby, has caused this Guaranty to be executed by its duly authorized officer this ___ day of _____, 2009.

ATTEST

_____

PHOENIX BEVERAGES, INC.

By:_____
Name: Rodney Brayman
Title: President

EXHIBIT D

Environmental Reports Setting Forth Pre-Existing Conditions

1. Phase I Environmental Site Assessment prepared by HDR/LMS for Piers 7 through 12 in October 2006;

2. Phase 2 Environmental Site Assessment prepared by HDR for Piers 7 through 12 in April 2008;

3. Phase I Environmental Site Assessment prepared for the Pier 11 Lease Area by HDR in July 2009; and

4. Phase 2 Environmental Site Assessment prepare for Pier 11 by HDR in May 2009.