

**Torres Rojas, Genara**

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**From:** smyers@teamster.org  
**Sent:** Tuesday, September 23, 2014 4:35 PM  
**To:** Duffy, Daniel; American, Heavyn-Leigh  
**Cc:** Torres Rojas, Genara; Van Duyne, Sheree  
**Subject:** Freedom of Information Online Request Form

Information:

First Name: Sara  
Last Name: Myers  
Company: IBT  
Mailing Address 1: 25 Louisiana Ave NW  
Mailing Address 2:  
City: Washington  
State: DC  
Zip Code: 20001  
Email Address: [smyers@teamster.org](mailto:smyers@teamster.org)  
Phone: 202-320-6617  
Required copies of the records: Yes

List of specific record(s):

The Space Permit for East Coast Warehouse and Distribution Corp dated on or about 112012 at Port Newark. The Lease Agreement for Harbor Freight Transport Corp. dated on or about 712011 at Port Newark. The Right of Entry Agreement for International Motor Freight, Inc. dated on or about 4112011 at Port Newark. The Lease Agreements dated on or about 512011 AND 1012010 and Right of Entry Agreement dated on or about 8152010 for Kinder Morgan Bulk Terminals, Inc. at Port Newark. If possible, please provide the above electronically. If any portion of my request is denied, please provide a written explanation that includes the relevant statute and name/position of the person denying my request. Please feel free to contact me via email or phone with any questions regarding my request. Thank you for your time.

**THE PORT AUTHORITY OF NY & NJ**

FOI Administrator

October 17, 2014

Ms. Sara Myers  
IBT  
25 Louisiana Ave. NW  
Washington, DC 20001

Re: Freedom of Information Reference No. 15344

Dear Ms. Myers:

This is in response to your September 23, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code"), for copies of the "Space Permit for East Coast Warehouse and Distribution Corp dated on or about 112012 at Port Newark. The Lease Agreement for Harbor Freight Transport Corp. dated on or about 712011 at Port Newark. The Right of Entry Agreement for International Motor Freight, Inc. dated on or about 4112011 at Port Newark. The Lease Agreements dated on or about 512011 AND 1012010 and Right of Entry Agreement dated on or about 8152010 for Kinder Morgan Bulk Terminals, Inc. at Port Newark. "

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/15344-LPA.pdf>. Paper copies of the available records are available upon request.

Certain portions of the material responsive to your request are exempt from disclosure pursuant to exemption (1) and (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

: For Port Authority Use Only :  
:  
: Permit Number: MNS-345 :

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**  
225 Park Avenue South  
New York, New York 10003

**PORT NEWARK**  
**SPACE PERMIT**

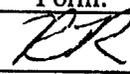
The Port Authority of New York and New Jersey (the "Port Authority") hereby grants to the Permittee hereinafter named permission to use and occupy the following described space at Port Newark in the City of Newark, County of Essex, and State of New Jersey (the "Facility"), in accordance with the Terms and Conditions hereof and the attachments annexed hereto; and the Permittee agrees to pay the fee or fees hereinafter specified and to perform all other obligations imposed upon it in the Terms and Conditions and the attachments.

1. **PERMITTEE:** East Coast Warehouse and Distribution Corp, a limited liability company of the state of Delaware
2. **PERMITTEE'S ADDRESS:** 1140 Meridan Street  
Elizabeth, NJ 07201
3. **PERMITTEE'S REPRESENTATIVE:** David Harris
4. **SPACE:** As set forth in Special Endorsement 1.
5. **PURPOSES:** As set forth in Special Endorsement 2.
6. **FEES:** As set forth in Special Endorsement 3.
7. **EFFECTIVE DATE:** January 1, 2012
8. **EXPIRATION DATE:** December 31, 2012, unless sooner revoked or terminated as herein provided.
9. **ATTACHMENTS:** Standard Endorsement 19.4, Special, and Exhibit A.

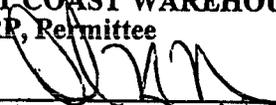
Dated: As of January 1, 2011

**THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY**

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

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
<u></u>	<u></u>
	RR

**EAST COAST WAREHOUSE AND DISTRIBUTION  
CORP, Permittee**

By   
(Name) David N. Harris  
(Please Print Clearly)  
(Title) President

**CONFORMED COPY**  


## TERMS AND CONDITIONS

### 1. Certain Definitions.

(a) **“Effective Date”** shall mean the date designated as the “Effective Date” in Item 7 on the cover page of this Permit.

(b) **“Executive Director”** shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the Executive Director by this Permit; but until further notice from the Port Authority to the Permittee it shall mean the Executive Director of the Port Authority for the time being or his duly designated representative or representatives.

(c) **“Expiration Date”** shall mean the date designated as the “Expiration Date” in Item 8 on the cover page of this Permit.

(d) **“Facility”** shall have the meaning set forth in the granting clause on the cover page of this Permit.

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

(f) **“Manager of the Facility”** 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 by this Permit; but until further notice from the Port Authority to the Permittee it shall mean the Manager (or temporary or Acting Manager) of the Facility for the time being, or his or her duly designated representative or representatives.

(g) **“Permittee’s Representative”** shall mean the individual named in Item 3 on the cover page of this Permit or such other individual as the Permittee may designate by notice in accordance with the provisions of Section 19 below, entitled “Notices”.

### 2. Effectiveness.

(a) The permission granted by this Permit shall take effect upon the Effective Date. Notwithstanding any other term or condition hereof, it may at any time be revoked by the Port Authority without cause upon thirty (30) days’ prior notice, and terminated by the Permittee without cause upon thirty (30) days’ prior notice; provided, however, that it may be revoked on twenty-four (24) hours’ notice if the Permittee fails to keep, perform and observe each and every promise, agreement, condition, term and provision contained in this Permit, including without limitation the obligation to pay fees. Further, in the event the Port Authority exercises its right to revoke or terminate this Permit for any reason other than “without cause”, the Permittee 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 revocation or termination, including without limitation any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of any space which may be used and occupied under this Permit (on failure of the Permittee to have it restored), preparing such space for use by a succeeding permittee, the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the space and putting the space in order (such as but not limited to cleaning and decorating the same). Unless sooner revoked or terminated, such permission shall expire in any event upon the Expiration Date. Revocation or termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation or termination.

(b) No exercise by the Port Authority of any right of revocation granted to it in this Section shall be deemed to be a waiver of any other rights of revocation contained in this Section or elsewhere in this Permit or a waiver of any other rights or remedies which may be available to the Port Authority under this Permit or otherwise.

3. Use of Space by Permittee.

- (a) The Space shall be used, pursuant to the permission hereby granted,
- (i) if the Permittee is a corporation, by the Permittee acting only through the medium of its officers and employees,
- (ii) if the Permittee is an unincorporated association, or a "Massachusetts" or business trust, by the Permittee acting only through the medium of its members, trustees, officers and employees,
- (iii) if the Permittee is a partnership, by the Permittee acting only through the medium of its general partners and employees, or
- (iv) if the Permittee is an individual, by the Permittee acting only personally or through the medium of his employees; or
- (v) if the Permittee is a limited liability company, by the Permittee acting only through the medium of its members, managers and employees;

and the Permittee shall not, without the written approval of the Port Authority, use the Space through the medium of any other person, corporation or legal entity. The Permittee shall not assign or transfer this Permit or the permission granted hereby, or enter into any contract requiring or permitting the doing of anything hereunder by an independent contractor, without the written approval of the Port Authority. In the event of the issuance of this Permit to more than one individual or other legal entity (or to any combination thereof), then and in that event each and every obligation or undertaking herein stated to be fulfilled or performed by the Permittee shall be the joint and several obligation of each such individual or other legal entity.

(b) The Permittee's Representative specified in Item 3 of the cover page of this Permit (or such substitute as the Permittee may hereafter designate in writing) shall have full authority to act for the Permittee in connection with this Permit and any act or things done or to be done hereunder, and to execute on the Permittee's behalf any amendments or supplements to this Permit or any extension hereof and to give and receive notices hereunder.

(c) This Permit shall not constitute the Permittee the agent or representative of the Port Authority for any purpose whatsoever.

(d) The Permittee hereby agrees that it will not carry on any business or operation in the Space or at the Facility other than as specifically provided herein without receiving the prior written consent of the Port Authority, which consent, if given, will be in the form of a Supplement hereto or a separate agreement with the Port Authority, which consent will specify whether the provisions regarding fees contained herein or any other provisions regarding fees shall apply thereto.

4. Condition of Space.

(a) The Permittee hereby acknowledges that prior to the execution of this Permit it has thoroughly examined and inspected the Space and has found the Space in good order and repair and has determined the Space to be suitable for the Permittee's operations hereunder and acknowledges and agrees that it has not relied on any representations or statements of the Port Authority, its Commissioners, officers, employees or agents as to the condition or suitability thereof for use by the Permittee for the purposes contemplated herein. The Permittee agrees to and shall take the Space in its "as is" condition and the Port Authority shall have no obligation hereunder for preparation of the Space for the Permittee's use. The Permittee agrees that no portion of the Space will be used initially or at any time during the effective period of the permission granted hereunder which is in a condition unsafe or improper for the purposes contemplated herein so that there is possibility of injury or damage to life or property and the Permittee further agrees that before any use it will immediately correct any such unsafe or improper condition.

(b) Except to the extent required for the performance of any of the obligations of the Permittee under this Permit, nothing contained in this Permit shall grant to the Permittee any rights whatsoever in the air space above the height of the structures located on the Space as of the Effective Date hereof.

(c) The parties to this Permit hereby acknowledge that the Space is non-residential real estate.

(d) Except as specifically provided in this Permit, the Port Authority shall be under no obligation to furnish any services or utilities whatsoever at or in the Space.

(e) The Port Authority shall have no responsibility to keep the Space guarded, attended or patrolled at any time. The Port Authority shall have no obligation to police the use of the Space, or to ensure that others do not use or occupy the Space, or to provide any other service whatsoever in connection therewith.

5. Payment of Fees.

(a) Unless otherwise expressly provided in this Permit, the Permittee shall pay to the Port Authority a fee for its use and occupancy of the Space. The fee specified is a monthly fee, payable in advance on the Effective Date and on the first day of each and every calendar month thereafter.

(b) Payments made hereunder shall be sent to the following address:

The Port Authority of New York & New Jersey  
P.O. Box 95000  
Philadelphia, PA 19195-1517

or made via the following wire transfer instructions:

Credit Bank:	TD Bank
	1701 Route 70 East
	Cherry Hill, NJ 08304
Bank ABA Number:	031201360
Beneficiary Account/ID #:	Exemption (1/4)
Beneficiary Name:	The Port Authority of NY & NJ
Swift Code #:	NRTHUS33XXX

or sent to such other address, or via such other wire transfer instructions, as may hereafter be substituted therefor by the Port Authority, from time to time, by notice to the Permittee.

(c) If the permission granted hereunder becomes effective on a date other than the first day of a calendar month or expires or is revoked or terminated on a date other than the last day of a calendar month, the fee payable for the part of the month during which the permission is in effect shall be computed by prorating the monthly fee on a daily basis, using the exact number of days in the month involved.

(d) Upon execution of this Permit by the Permittee, the Permittee shall pay to the Port Authority all unpaid fees and other monies due and payable under this Permit as of the date of execution.

6. Late and Service Charges.

(a) If the Permittee should fail to pay any amount required under this Permit when due to the Port Authority or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; 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 (15) (but not less than thirteen (13)) 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 Audit Findings (as defined below) shall consist of each late charge period following the date the unpaid amount should have been paid under this Permit. 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. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Permit, including without limitation the Port Authority's rights set forth in Section 2 hereof or (y) any obligations of the Permittee under this Permit. 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 Permit shall be payable instead at such legal maximum.

(b) (1) The Permittee shall permit and/or cause to be permitted in ordinary business hours during the effective period of this Permit and for one (1) year thereafter the examination and audit by the officers, employees and representatives of the Port Authority of all

the records and books of account of the Permittee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant in connection with the Permittee's use and occupancy of the Space as permitted hereunder) within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any such corporate records and books of account.

(2) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee (the "Audit Findings"), the Permittee 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 Permittee under this Permit 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 Permit 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 fees to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Permit, including, without limitation, the Port Authority's rights to revoke this Permit or (y) any obligations of the Permittee under this Permit.

7. Security Deposit.

(a) *Security Deposit.*

(1) *Required Security Amount.* As security for the Permittee's full, faithful and prompt performance of and compliance with all of its obligations under this Permit, the Permittee shall, upon its execution and delivery of this Permit, deposit with the Port Authority (and shall keep deposited throughout the Term) the sum set forth in the Special Endorsements hereto as the "Required Security Amount", either in cash, or in bonds of the United States of America, the State of New Jersey, the State of New York, or The Port Authority of New York and New Jersey, having a market value of the Required Security Amount; provided, however, that if the Required Security Amount is Twenty Thousand Dollars and No Cents (\$20,000.00) or greater, the Permittee shall be required, instead, to deliver to the Port Authority a letter of credit as provided in the following paragraph (b).

(2) *Requirements for Bonds.* Bonds qualifying for deposit hereunder shall be in bearer form, but if bonds of that issue were offered only in registered form, then the Permittee may deposit such bond or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Permittee) in a manner satisfactory to the Port Authority. The Permittee may request the Port Authority to accept a registered bond in the Permittee's name and, if acceptable to the Port Authority the Permittee shall deposit such bond together with a bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Permittee, any expenses incurred by the Port Authority in re-registering a bond to the name of the Permittee shall be borne by the Permittee.

(3) *Use of Deposit.* 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 use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Permittee. 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 deposit itself shall cure any default or breach of this Permit on the part of the Permittee. With respect to any bonds deposited by the Permittee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Permittee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights of redemption of the Permittee. The Permittee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Permittee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Permittee. Any balance remaining shall be retained in cash toward bringing the deposit to the Required Security Amount. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the Required Security Amount, the Permittee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times at the full Required Security Amount, and such additional deposits shall be subject to all the conditions of this Section.

(4) *No Encumbrance.* The Permittee agrees that it will not assign or encumber the deposit.

(5) *Interest.* The Permittee may collect or receive any interest or income earned on bonds and interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise; provided, however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(6) *Return of Deposit.* After the expiration or earlier termination of the Term, and upon condition that the Permittee shall then be in no way in default under any part of this Permit, and upon written request therefor by the Permittee, the Port Authority will return the deposit to the Permittee 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 Permittee of this Permit.

(7) *Tax Number.* For the purposes of the foregoing provisions, the Permittee hereby certifies that its federal Taxpayer Identification Number is set forth in the Special Endorsements hereto.

(b) *Letter of Credit.*

(1) *Letter of Credit in Lieu of Security Deposit.* In lieu of the security deposit required pursuant to the preceding paragraph (a), the Permittee may deliver (if the

Required Security Amount is less than Twenty Thousand Dollars and No Cents (\$20,000.00)), and *must* deliver (if the Required Security Amount is Twenty Thousand Dollars and No Cents (\$20,000.00) or greater) to the Port Authority, as security for all obligations of the Permittee under this Permit, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York and New Jersey District, in favor of the Port Authority in the amount of the Required Security Amount.

(2) *Form and Terms.* The form and terms of each letter of credit delivered under this Section, as well as the institution issuing it (which shall be an investment-grade rated bank), shall be subject to the prior and continuing approval of the Port Authority; the form of any proposed letter of credit shall be submitted to the Port Authority in advance for review and approval by its Credit, Collection and Accounts Receivable unit. 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.

(3) *Return of Any Existing Security Deposit.* Upon acceptance of such letter of credit by the Port Authority, and upon request by the Permittee made thereafter, the Port Authority will return any security deposit theretofore made under and in accordance with the provisions of the foregoing paragraph (a). The Permittee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the Term and fulfillment of the obligations of the Permittee under this Permit.

(4) *Cancellation; Drawdowns.* Upon notice of cancellation of a letter of credit, the Permittee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in the Required Security Amount or another letter of credit 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 the foregoing paragraph (a). If the Port Authority makes any drawing under a letter of credit held by the Port Authority hereunder, the Permittee, on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to the full Required Security Amount.

(5) *Failure to Provide Letter of Credit.* Following the Port Authority's acceptance of a letter of credit in lieu of the security deposit required pursuant to the foregoing paragraph (a), any failure to provide such letter of credit at any time during the Term which is 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 Permit on the part of the Permittee.

(6) *No Waiver.* No action by the Port Authority pursuant to the terms of any letter of credit, or receipt by the Port Authority of funds from any bank issuing any such letter of credit, shall be deemed to be a waiver of any default by the Permittee under the terms of this Permit, and all remedies under this Permit of the Port Authority consequent upon such default shall not be affected by the existence of, or a recourse to, any such letter of credit.

(c) *Obligations under other Agreements.*

If the Permittee is obligated by any other agreement to maintain a security deposit with the Port Authority to insure payment and performance by the Permittee of all fees, rentals,

charges and obligations which may become due and owing to the Port Authority arising from the Permittee's operations at the Facility pursuant to any such other agreement or otherwise, then all such obligations under such other agreement and any deposit pursuant thereto also shall be deemed obligations of the Permittee under this Permit and as security hereunder as well as under any such other agreement and all provisions of such other agreement with respect to such obligations and any obligations thereunder of the Port Authority as to the security deposit are hereby incorporated herein by this reference as though fully set forth herein and hereby made a part hereof. The termination, revocation, cancellation or expiration of any other agreement to which such security shall apply or any permitted assignment of such other agreement shall not affect such obligations as to such security which shall continue in full force and effect hereunder.

8. Indemnification of Port Authority.

(a) The Permittee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal costs and expenses incurred in connection with the defense of) all claims and demands of third persons, including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of any of the operations, acts or omissions of the Permittee hereunder.

(b) The Permittee represents that it is the owner of or fully authorized to use or sell any and all services, processes, machines, articles, marks, names or slogans used or sold by it in its operations under or in any way connected with this Permit. Without in any way limiting its obligations under the preceding paragraph (a) hereof, the Permittee agrees to indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents and representatives of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Permittee under or in any way connected with this Permit.

(c) If so directed, the Permittee shall at its own expense defend any suit based on any claim or demand referred to in the foregoing paragraphs (a) or (b) (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining the prior written consent of the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, its governmental nature or the provisions of any statutes respecting the Port Authority.

(d) In the event of any injury or death to any person (other than employees of the Permittee) at the Facility when caused by the Permittee's operations, acts or omissions of the Permittee hereunder, or damage to any property (other than the Permittee's property) at the Facility when caused by the Permittee's operations, acts or omissions of the Permittee hereunder, the Permittee shall immediately notify the Port Authority and promptly thereafter furnish to the Port Authority copies of all reports given to the Permittee's insurance carrier.

9. Right of Entry Reserved. The Port Authority shall have the right at any time and as often as it considers necessary, to inspect the Space and (without any obligation so to do) to enter thereon to make ordinary repairs, and in the event of emergency to take such action therein as may be required for the protection of persons or property.

10. Law Compliance.

(a) The Permittee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Permittee's operations at the Facility which may be necessary for the Permittee's operations thereat.

(b) The Permittee shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed, levied, exacted or imposed on its property or operation hereunder or on the gross receipts or income therefrom, and shall make all applications, reports and returns required in connection therewith.

(c) The Permittee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to the Permittee's operations at the Facility.

(d) The Permittee's obligations to comply with governmental requirements are provided herein for the purpose of assuring proper safeguards for the protection of persons and property at the Facility and are not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

11. Rules and Regulations. The Permittee shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the rules and regulations and procedures of the Port Authority now in effect, and such further reasonable rules and regulations and procedures which may from time to time during the effective period of this Permit, be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance of the Facility or for the safe and efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it shall give notice to the Permittee of every rule and regulation hereafter adopted by it at least five (5) days before the Permittee shall be required to comply therewith.

12. Conduct of Operations.

(a) The Permittee shall immediately comply with all orders, directives and procedures as may be issued by the Manager of the Facility covering the operations of the Permittee under this Permit at any time and from time to time. The Port Authority may, at any time and from time to time, without prior notice or cause, withdraw or modify any designations, approvals, substitutions or redesignations given by it hereunder.

(b) The Permittee shall not install any fixtures or make any alterations, additions, improvements or repairs to any property of the Port Authority except with the prior written approval of the Port Authority.

(c) Unless otherwise expressly provided, the Permittee shall not install any vending machines or similar devices in the Space or use the Space (or permit it to be used) for the sale to its employees or to the public of any of the following goods and services: beverages, food, candy, gum, ice cream or ice cream products, tobacco or tobacco products, periodicals, books, drugs, toys, games, souvenirs, jewelry, novelties, clothing, flowers, sporting or photographic goods, toilet articles, theatre tickets, shoe shines, pressing and cleaning, developing and printing of photographs and films or baggage-checking. The specificity of the foregoing enumeration of disallowed activities shall not be deemed to infer that any particular activities not so enumerated are permitted under this Permit.

(d) No signs, posters or similar devices shall be erected, displayed or maintained in view of the general public in or about the Space without the written approval of

the Manager of the Facility; and any not approved by him may be removed by the Port Authority at the expense of the Permittee. The Permittee shall not display, or permit the display of, advertising of third parties in the Space.

(e) The Permittee, its employees, invitees and those doing business with it shall have no right hereunder to park vehicles within the Facility, except in regular parking areas upon payment of regular charges therefor.

(f) The operations of the Permittee, its employees, invitees and those doing business with it shall be conducted in an orderly and proper manner and so as not to annoy, disturb or be offensive to others at the Facility. The Permittee shall provide and its employees shall wear or carry badges or other suitable means of identification which shall be subject to the approval of the Manager. The Port Authority shall have the right to object to the Permittee as to the demeanor, conduct and appearance of the Permittee's employees, invitees and those doing business with it, whereupon the Permittee will take all steps necessary to remove the cause of the objection.

(g) The Permittee shall daily remove from the Facility by means of facilities provided by it all garbage, debris and other waste material (whether solid or liquid) arising out of or in connection with the permission granted hereunder, and any such not immediately removed shall be temporarily stored in a clean and sanitary condition, in suitable garbage and waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and to be of a design safely and properly to contain whatever material may be placed therein; said receptacles being provided and maintained by the Permittee. The receptacles shall be kept covered except when filling or emptying the same. The Permittee shall exercise extreme care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall be subject in all respects to the continual approval of the Port Authority. No facilities of the Port Authority shall be used for such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

13. Care of Space.

(a) The Permittee shall at all times keep the Space in a clean and orderly condition and appearance, together with all fixtures, equipment and personal property of the Permittee and of the Port Authority located in or on the Space, including without limitation thereto the interior surface of windows and both sides of all entrance doors.

(b) The Permittee shall repair, replace, rebuild and paint all or any part of the Space or of the Facility which may be damaged or destroyed by the acts or omissions of the Permittee, its officers, members, employees, agents, representatives, contractors, customers, guests, invitees or other persons who are doing business with the Permittee who are on or at the Space or the Facility with the consent of the Permittee.

(c) The Permittee shall take good care of the Space, including therein, without limitation thereto, walls, partitions, floors, ceilings, doors and columns, and all parts thereof, and all equipment and fixtures, and shall do all preventive maintenance and make all necessary non-structural repairs, replacements, rebuilding and painting necessary to keep the Space in the condition existing on the effective date and to keep any improvements, additions and fixtures made or installed during the effective period of this Agreement in the condition they were in when made or installed except for reasonable wear which does not adversely affect the watertight

condition or structural integrity of the building or adversely affect the efficient or proper utilization or the appearance of any part of the Space.

(d) In the event the Permittee fails to commence so to make or do any repair, replacement, rebuilding or painting required by this Agreement within a period of ten (10) days after notice from the Port Authority so to do, or fails diligently to continue to completion the repair, replacement, rebuilding or Painting of all the premises required to be repaired, replaced, rebuilt or painted by the Permittee under the terms of this Agreement, the Port Authority may, at its option, and in addition to any other remedies which may be available to it, repair, replace, rebuild or paint all or any part of the Space included in the said notice, the Port Authority's cost thereof to be paid by the Permittee on demand. This option or the exercise thereof shall not be deemed to create or imply any obligation or duty to the Permittee or others.

(e) The obligation of the Permittee as set forth in paragraphs (b) and (c) above, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that if at any time because of this release the insurance carrier of any policy covering the premises or any part thereof shall increase the premiums otherwise payable for fire, extended coverage or rental coverage applicable to the premises; the Permittee shall pay to the Port Authority an amount equivalent to such increase or increases on demand; and provided, further, that if at any time this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, or if because of this release, any such insurance carrier shall cancel any such policy or shall refuse to issue or renew the same or shall refuse to issue a policy with an endorsement thereon under which this release is permitted without prejudice to the interest of the insured or shall cancel such endorsement or refuse to renew the same or shall take any other action to alter, decrease or diminish the benefits of the Port Authority under the policy, then the release shall be void and of no effect. Nothing herein shall be construed to imply an obligation on the Port Authority to carry any such insurance policy or to obtain or keep in force any such endorsement.

(f) The Port Authority shall have no duty of repair or maintenance as to the Space or any fixtures, equipment or personal property which is located in or on the Space.

(g) The Permittee shall immediately clear all drainage and supply stoppages and partial blocks, in and in connection with any plumbing fixtures, equipment and system which are a part of or are located in or on the Space. All glass in windows and doors which are a part of or are located in or on the Space and which may be broken shall be replaced by the Permittee not later than five days after breakage or at any earlier date if so directed by the Port Authority and immediately if such replacement is necessary to protect the Space, any part thereof or any other property of the Port Authority against damage, loss or theft. The Permittee shall have no obligation under this paragraph where the condition is caused by the negligence or willful misconduct of the Port Authority.

(h) The Permittee shall immediately notify the Port Authority if any portion or all of the Space or any of the said Port Authority fixtures, equipment or personal property is destroyed, damaged or in need of repair, regardless of the Permittee's responsibility therefor.

(i) Nothing herein contained shall relieve the Permittee of its obligations to secure the Port Authority's written approval before installing any fixtures in or upon or making any alterations, decorations, additions or improvements in the Space.

(j) In the event of a partial or total destruction of the Space, the Permittee shall immediately remove any and all of its property and debris from the Space or portion thereof destroyed.

14. Permittee Property.

(a) Any personal property placed or installed by the Permittee in the Space shall remain the property of the Permittee and must be removed on or before the Expiration Date or on or before the revocation or termination of the permission hereby granted, whichever shall be earlier.

(b) If the Permittee shall fail to remove its property upon the expiration, termination or revocation hereof, the Port Authority may, at its option, as agent for the Permittee and at the Permittee's risk and expense, remove such property to a public warehouse for deposit or retain the same in its own possession and after the expiration of thirty (30) days sell the same at public auction, the proceeds of which shall be applied first to the expenses of sale, second to any sums owed by the Permittee to the Port Authority, and any balance remaining shall be paid to the Permittee, or may take such other action as may be necessary or desirable. Any excess of the total cost of removal, storage and sale over the proceeds of sale shall be paid by the Permittee to the Port Authority upon demand.

15. Prohibited Acts.

(a) The Permittee 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 National Board of Fire Underwriters and the Fire Insurance Rating Organization of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the Permittee's operations hereunder. If by reason of the Permittee's failure to comply with the provisions of this Section, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Permittee shall on demand pay the Port Authority that part of all fire insurance premiums paid or payable by the Port Authority which shall have been charged because of such violation by the Permittee.

(b) The Permittee shall not do or permit to be done any act which

(i) will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon, or

(ii) 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, or

(iii) in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risks normally attendant upon the operations contemplated by this Permit, or

(iv) may cause or produce upon the Facility any unusual, noxious or objectionable smokes, gases, vapors or odors, or

(v) may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire-protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility, or

(vi) shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.

(c) For purposes of this Section, "Facility" includes all structures located thereon.

16. Specifically Prohibited Activities.

(a) The Permittee shall not dispose of nor permit anyone to dispose of any waste materials (whether liquid or solid) by means of any toilets, sanitary sewers or storm sewers at the Facility.

(b) The Permittee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on the Facility. Any Hazardous Substance disposed of, released or discharged by the Permittee (or permitted by the Permittee to be disposed of, released or discharged) on the Facility shall upon notice by the Port Authority to the Permittee be completely removed and/or remediated by the Permittee at its sole cost and expense.

(c) The Permittee shall not operate any engine or any item of automotive equipment in the Space without adequate ventilation.

(d) The Permittee shall not use any cleaning materials having a harmful or corrosive effect in the Space.

(e) The Permittee shall not fuel or defuel any equipment in the Space or elsewhere at the Facility without the prior approval of the Manager of the Facility except in accordance with Port Authority rules and regulations.

(f) The Permittee shall not start or operate any engine or any item of automotive equipment in the Space unless such space is adequately ventilated and unless such engine is equipped with a proper spark-arresting device.

(g) The Permittee shall not solicit business in the public areas of the Facility and shall not at any time use any electric amplifying devices or hand megaphones whatsoever.

17. Labor Disturbances.

(a) (1) The Permittee shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist, which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Facility or any part thereof by the Port Authority or with the operations of the lessees, licensees, permittees or other users of the Facility or with the operations of the Permittee under this Permit.

(2) The Permittee shall immediately give notice to the Port Authority (to be followed by written notice and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Permittee shall use its best efforts to resolve any such complaints, troubles, disputes or controversies.

(b) If any type of strike or other labor activity is directed against the Permittee at the Facility or against any operations pursuant to this Permit resulting in picketing or boycott for a period of at least forty-eight (48) hours, which, in the opinion of the Port Authority, adversely affects or is likely adversely to affect the operation of the Facility or the operations of other permittees, lessees or licensees thereat, whether or not the same is due to the fault of the Permittee, and whether caused by the employees of the Permittee or by others, the Port Authority may at any time during the continuance thereof, by twenty-four (24) hours' notice, revoke this Permit, effective at the time specified in the notice. Revocation shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

18. Duties under Other Agreements.

(a) Except as specifically provided herein to the contrary, the Permittee shall not, by virtue of the issue and acceptance of this Permit, be released or discharged from any liabilities or obligations whatsoever under any other Port Authority permits or agreements including but not limited to any permits to make alterations.

(b) In the event that any space or location covered by this Permit is the same as is or has been covered by another Port Authority permit or other agreement with the Permittee, then any liabilities or obligations which by the terms of such permit or agreement, or permits thereunder to make alterations, mature at the expiration or revocation or termination of said permit or agreement, shall be deemed to survive and to mature at the expiration or sooner termination or revocation of this Permit, insofar as such liabilities or obligations require the removal of property from and/or the restoration of the space or location.

19. Notices. A bill or statement may be rendered or any notice or communication which the Port Authority may desire to give the Permittee shall be deemed sufficiently rendered or given if the same be in writing and sent by registered or certified mail addressed to the Permittee at the address specified on the cover page hereof or at the latest address that the Permittee may substitute therefor by notice to the Port Authority, or left at such address, or delivered to the Permittee's Representative, and the time of rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is mailed, left or delivered as herein provided. Any notice from the Permittee to the Port Authority shall be validly given if sent by registered or certified mail addressed to the Executive Director of the Port Authority at 225 Park Avenue South, New York, New York 10003 or at such other address as the Port Authority shall hereafter designate by notice to the Permittee.

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

the negotiation and execution of this Permit or in connection with any permission to use the Space.

21. Waiver of Trial by Jury. The Permittee hereby waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Permittee in respect of the Space 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 Permit. The Permittee specifically agrees that it shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment of fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed. The foregoing reference to summary proceedings shall not be construed to mean that a landlord-tenant relationship exists between the Port Authority and the Permittee.

22. Effect of Use and Occupancy after Expiration, Revocation or Termination. Without in any way limiting any other provision of this Permit, unless otherwise notified by the Port Authority in writing, in the event the Permittee continues its use and occupancy of the Space after the expiration, revocation or termination of the effective period of the permission granted under this Permit, as such effective period of permission may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Permit or other remedies the Port Authority may have by law or otherwise, the Permittee shall pay to the Port Authority a fee for the period commencing on the day immediately following the date of such expiration or the effective date of such revocation or termination and ending on the date that the Permittee shall surrender and completely vacate the Space at a rate equal to twice the monthly fee as provided for herein then in effect. Nothing herein contained shall be deemed to give the Permittee any right to continue its use and occupancy of the Space after the expiration, revocation or termination of the effective period of the permission granted under this Permit. The Permittee acknowledges that the failure of the Permittee to surrender, vacate and yield up the Space to the Port Authority on the effective date of such expiration, revocation or termination will or may cause the Port Authority injury, damage or loss. The Permittee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Permittee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

23. No Personal Liability. No Commissioner, officer, agent or employee of the Port Authority shall be charged personally by the Permittee with any liability, or held liable to it, under any term or provision of this Permit, or because of its execution or attempted execution, or because of any breach hereof.

24. No Waiver. No failure by the Port Authority to insist upon the strict performance of any agreement, term, covenant or condition of this Permit or to exercise any right or remedy consequent upon a breach or default thereof, and no extension, supplement or amendment of this Permit during or after a breach thereof, unless expressly stated to be a waiver, and no acceptance by the Port Authority of fees, charges or other payments in whole or in part after or during the continuance of any such breach or default, shall constitute a waiver of any such breach or default of such agreement, term, covenant or condition. No agreement, term, covenant or condition of this Permit to be performed or complied with by the Permittee, and no breach or default thereof,

shall be waived, altered or modified except by a written instrument executed by the Port Authority. No waiver by the Port Authority of any default or breach on the part of the Permittee in performance of any agreement, term, covenant or condition of this Permit shall affect or alter this Permit but each and every agreement, term, covenant and condition thereof shall continue in full force and effect with respect to any other existing or subsequent breach or default thereof.

25. Construction and Application of Terms.

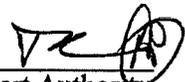
(a) The use of headings in this Permit is for convenience of reference only and in no way intended to define, limit or describe the scope or intent of any provision hereof.

(b) Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applicable to the interpretation of this Permit or any amendments, addendums or supplements hereto or any endorsements, exhibits, schedules or other attachments hereto.

(c) The provisions and obligations contained in any endorsements, exhibits, schedules or other attachments hereto shall have the same force and effect as if set forth in full herein.

(d) To the extent that any provisions of this Permit are in any instance to be construed in accordance with the laws of a state, the laws of the State of New Jersey shall apply.

26. Entire Agreement. This Permit, including the cover page, the Terms and Conditions and the attached exhibits, endorsements, schedules and other attachments, if any, constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended, except by written endorsement duly executed on behalf of the parties and attached hereto. The Permittee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing herein.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Permittee

Notwithstanding any other provision of this Permit, the permission hereby granted shall in any event terminate with the expiration or termination of the lease of Port Newark from The City of Newark to the Port Authority under the agreement between the City and the Port Authority dated October 22, 1947, as the same from time to time may have been or may be supplemented or amended. Said agreement dated October 22, 1947 has been recorded in the Office of the Register of Deeds for the County of Essex on October 30, 1947 in Book E-110 of Deeds at pages 242, et seq. No greater rights or privileges are hereby granted to the Permittee than the Port Authority has power to grant under said agreement as supplemented or amended as aforesaid.

Port Newark shall mean the land and premises in the County of Essex and State of New Jersey, which are easterly of the right of way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the said agreement between the City and the Port Authority and marked "Exhibit A", as contained within the limits of a line of crosses appearing on said exhibit and designated Boundary of terminal area in City of Newark, and lands contiguous thereto which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes.

The Port Authority has agreed by a provision in its agreement of lease with the City covering Port Newark to conform to the enactments, ordinances, resolutions and regulations of the City and of its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection, to the extent that the Port Authority finds it practicable so to do. The Permittee shall, within forty-eight (48) hours after its receipt of any notice of violation, warning notice, summons, or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation, deliver the same to the Port Authority for examination and determination of the applicability of the agreement of lease provision thereto. Unless otherwise directed in writing by the Port Authority, the Permittee shall conform to such enactments, ordinances, resolutions and regulations insofar as they relate to the operations of the Permittee at Port Newark. In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the Permittee, acting in good faith, commenced after such delivery to the Port Authority but prior to the receipt by the Permittee of a written direction from the Port Authority, such compliance shall not constitute a breach of this Permit, although the Port Authority thereafter notifies the Permittee to refrain from such compliance. Nothing herein contained shall release or discharge the Permittee from compliance with any other provision hereof respecting governmental requirements.

ENDORSEMENT NO. 19.4  
Port Newark  
05/19/49

### Special Endorsements

1. (a) Subject to and in accordance with all the terms and conditions of this Permit and the Endorsements annexed thereto, the Port Authority hereby grants the Permittee permission to use and occupy the paved and fenced open area on the south side of Kellogg Street in Port Newark, totally approximately 11.08 acres, together with the fixtures, improvements and other property of the Port Authority located or to be located, as shown in diagonal cross-hatching on Exhibit A, attached hereto, and hereby made a part hereof (hereinafter the "Space"). It is hereby acknowledged that there is no existing building located on the Space.

(b) The parties acknowledge that the Space constitutes non-residential real property.

2. The Permittee may use the Space for the storage, staging, inspection, and distribution of containers and trailers.

3. (a) Subject to the provisions of this Special Endorsement, from and after the Effective Date, the Permittee shall pay to the Port Authority a Basic Fee for the Space in the amount of Eighty Thousand Four Hundred Thirty Dollars and Fifty-Five Cents (\$80,430.55) per month. The Basic Fee is calculated off a useable operating footprint of a Two Dollar per Square foot Rate.

(b) If any fee payable hereunder shall be for less than a full calendar month, then the fee payment for the portion of the month this Permit shall be in effect shall be prorated on a daily basis using the actual number of days in that said month.

(c) The Port Authority shall have the right to add or take away up to three (3) acres of property to or from the Space under this Permit. Should the Port Authority exercise this right, the Permittee shall pay fees that shall be reduced or increased by the amount paid per useable square foot of Space.

4. Upon expiration or earlier termination of the Permit, at the Port Authority's option, the Permittee shall be obligated to restore the Space to the same condition it was in on the Effective Date, ordinary wear and tear excepted.

5. (a) Notwithstanding Section 13 of the Terms and Conditions, the Permittee shall maintain and make repairs and replacements, structural or otherwise, to all improvements located on the Space, all utilities related to the Premises, and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with the Space or the Permittee's operations being conducted thereon. Such repairs and maintenance shall include, without limitation, all maintenance repair and replacement of the following items: (1) fences, (2)

guardrails, (3) outside paved and unpaved areas, (4) security booths, (5) office trailers, (6) glass of every kind, and (7) the utility, mechanical, and electrical systems.

(b) For any improvements requiring Port Authority approval and a Tenant Alteration Application ("TAA"), the Permittee shall pay the Port Authority a "Review Fee" as compensation for the Port Authority's review and oversight of any such construction work performed by the Permittee with the Port Authority's consent. The Review Fee shall be an amount equal to one percent (1%) of the actual costs of the construction work.

6. The Permittee acknowledges that the Port Authority is not responsible for providing rail services to or from the Permittee's Space under this Permit.

7. The Permittee shall adhere to the Port Authority's sustainable design guidelines.

8. (a) Upon the execution of this Permit by the Permittee and delivery thereof to the Port Authority, the Permittee shall deposit with the Port Authority a Letter of Credit, in accordance with Section 7 of the Terms and Conditions, worth Eighty Thousand Dollars and No Cents (\$80,000.00).

(b) The Permittee hereby attests that its federal taxpayer identification number is

9. OFAC Compliance. (a) *Permittee's Representation and Warranty.* The Permittee hereby represents and warrants to the Port Authority that the Permittee (x) is not a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury (including, without limitation, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other regulation relating to national security or foreign policy (including, without limitation, Executive Order 13224 of September 23, 2001, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism*), or other governmental action related to national security, the violation of which would also constitute a violation of law, such persons being referred to herein as "Blocked Persons" and such regulations, statutes, executive orders and governmental actions being referred to herein as "Blocked Persons Laws") and (y) is not engaging in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. The Permittee acknowledges that the Port Authority is entering into this Permit 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 Permit.

(b) *Permittee's Covenant.* Permittee covenants that (i) during the term of the Permit it shall not become a Blocked Person, and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of

the aforesaid covenant, the same shall constitute an event of default and, accordingly, a basis for termination of this Permit by the Port Authority, in addition to any and all other remedies provided under this Permit or at law or in equity, which does not constitute an acknowledgement by the Port Authority that such breach is capable of being cured.

(c) *Permittee's Indemnification Obligation.* The Permittee shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the Permittee's breach of any of its representations and warranties made under this Special Endorsement. Upon the request of the Port Authority, the Permittee 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) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

(d) *Survival.* The provisions of this Special Endorsement shall survive the expiration or earlier termination of the period of permission of this Permit.

10. The Permittee shall obtain insurance in accordance with the terms and limits set forth in the Insurance Schedule, attached hereto, and hereby made a part hereof.

11. In the event that any consent to assign this Permit to any third party (an "Assignee") is granted by the Port Authority, upon the terms and conditions set forth in a Consent to Assignment, the Permittee and the Assignee, as a joint and several obligation, shall pay to the Port Authority, a fee (the "Assignment Consent Fee") equal to ten percent (10%) of the net present value of the gross fees to the Port Authority under Special Endorsement 3 hereof, payable for the unexpired portion of the term of the Permit. The Assignment Consent Fee shall constitute fees due hereunder and shall be in addition to the fees due in Special Endorsement 3 hereunder.

12. The Permittee for itself and its successors and assigns, covenants that it will abide by all applicable Environmental Requirements (defined herein) while at the Space.

(a) It is expressly understood that the Permittee shall not exacerbate the environmental condition of the Space or the Facility or interfere with any environmental clean-up or remediation work being performed at the Space whether by the Port Authority or others. In the event of any release of Hazardous Substances while at the Space, the Permittee will obtain all necessary licenses, manifests, permits and approvals to perform any remediation or disposition of any Hazardous Substances required under this Permit.

(b) In the event any Hazardous Substance is discovered in the performance of the Work, the Permittee, in reporting such Hazardous Substance shall direct such report to the attention of such individual at the subject governmental authority as the Project Manager shall require in order to assure consistency in the environmental management of the Facility.

(c) Any Hazardous Substance disposed of, released or discharged by the Permittee or permitted by the Permittee to be disposed of, released or discharged at the Space or at the Facility shall be completely removed and/or remediated by the Permittee by methods and procedures satisfactory to and approved by the Port Authority and in accordance with all applicable Environmental Requirements.

(d) Nothing herein shall give rise to any obligation on the part of Permittee to remediate any environmental condition or remove any Hazardous Substances (i) existing at the Space as of the date of the Agreement and/or discovered, but not exacerbated, by Permittee in the course of performing the Work; or (ii) existing or affecting the Space after the date of this Agreement but not caused by any act or omission of the Permittee and/or its employees, agents, or invitees during the term of the Permit.

(e) "Environmental Requirement" shall mean in the singular and "Environmental Requirements" shall mean in the plural all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidance documents, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, 'best management practices plans', and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, provided such programs adopted and agreements made by the Port Authority have been provided to the Permittee by the Port Authority prior to execution of this Agreement and all applicable judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and unless otherwise agreed to by the applicable governmental entities, in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation, to the extent for which Permittee is responsible under this Agreement:

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

(ii) All requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and

(iii) The Atomic Energy Act of 1954 , 42 U.S.C. Section 2011 et. seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et. seq.; the Clean Air Act, 42 U.S.C. Section 7401 et. seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et. seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq.; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Section 2701 et. seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et. seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et. seq.; the New Jersey Spill Compensation and Control Act ("N.J. Spill Act"), N.J.S.A. 58:10-23.11 et seq., the New Jersey Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq., the Site Remediation Reform Act, N.J.S.A. 58:10C-1, et. seq., and Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; together, in each case, with any amendment thereto, and the regulations adopted, guidance documents, memoranda and publications promulgated thereunder and all substitutions thereof.

13. The Permittee will be required to queue trucks, trailers, or other such vehicles within its leasehold. Queuing on terminal roadways outside its Space is strictly prohibited.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Permittee

## INSURANCE SCHEDULE

(a) The Permittee named in the permit to which this Insurance Schedule is attached and of which it constitutes an integral part (the "Permit"), in its own name as insured and including the Port Authority as an additional insured, shall maintain and pay the premiums during the effective period of the Permit on a policy or policies of Commercial General Liability Insurance and Commercial Automobile Liability Insurance, including premises-operations and products-completed operations and covering bodily-injury liability, including death, and property damage liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the limit set forth below:

### Minimum Limits

#### Commercial General Liability Insurance

Combined single limit per occurrence for death,  
bodily injury and property damage liability: \$5,000,000.00

#### Commercial Automobile Liability Insurance

Combined single limit per occurrence for death,  
Bodily injury and property damage liability: \$2,000,000.00

#### Workers' Compensation and Employers Liability Insurance

Permittee's obligations under the applicable State  
Workers' Compensation Law for those employees of  
the Permittee employed in operations conducted  
pursuant to the Permit at or from the Facility: Statutory

In the event the Permittee maintains the foregoing insurance in limits greater than aforesaid, the Port Authority shall be included therein as an additional insured, except for the Workers' Compensation and Employers Liability Insurance policies, to the full extent of all such insurance in accordance with all terms and provisions of the Permit, including without limitation this Insurance Schedule.

(b) Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Permittee thereunder with respect to any claim or action against the Permittee by a third person shall pertain and apply with like effect with respect to any claim or action against the Permittee by the Port Authority and any claim or action against the Port Authority by the Permittee, as if the Port Authority were the named insured thereunder, but such clause or endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured. Each policy of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Permittee under this Permit.

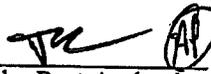
(c) All insurance coverages and policies required under this Insurance Schedule may be reviewed by the Port Authority for adequacy of terms, conditions and limits of

coverage at any time and from time to time during the period of permission under the Permit. The Port Authority may, at any such time, require additions, deletions, amendments or modifications to the above-scheduled insurance requirements, or may require such other and additional insurance, in such reasonable amounts, against such other insurable hazards, as the Port Authority may deem required and the Permittee shall promptly comply therewith.

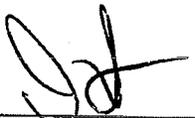
(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement that the insurer "shall not, without 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." The foregoing provisions or endorsements shall be recited in each policy or certificate to be delivered pursuant to the following paragraph (e).

(e) A certified copy of each policy or a certificate or certificates of insurance evidencing the existence thereof, or binders, shall be delivered to the Port Authority upon execution and delivery of the Permit by the Permittee to the Port Authority. In the event any binder is delivered it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate of insurance. Any renewal policy shall be evidenced by a renewal certificate of insurance delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the Permit. The aforesaid insurance shall be written by a company or companies approved by the Port Authority. If at any time any insurance policy shall be or become unsatisfactory to the Port Authority as to form or substance or if any of the carriers issuing such policy shall be or become unsatisfactory to the Port Authority, the Permittee shall promptly obtain a new and satisfactory policy in replacement. If the Port Authority at any time so requests, a certified copy of each policy shall be delivered to or made available for inspection by the Port Authority.

(f) The foregoing insurance requirements shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Permittee under the Permit. The foregoing insurance requirements shall not constitute a representation or warranty as to the adequacy of the required coverage to protect the Permittee with respect to the obligations imposed on the Permittee by the Permit or any other agreement or by law.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Permittee

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

Lease No. LPN-298

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THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

AGREEMENT OF LEASE  
*Between*

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

and

HARBOR FREIGHT TRANSPORT CORP.

Dated as of: October 1, 2011

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**HARBOR FREIGHT TRANSPORT CORP.**

**Lease No. LPN-298**

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Standard Endorsement No. L27.4 Abatement

**ATTACHMENTS**

Exhibit A	Premises
Exhibit 1	The Prior Lease -- Lease No. LPN-239
Schedule A	Table of the Minimum Limit of 2% for Rent Increases
Schedule B	Table of the Maximum Limit of 4% for Rent Increases
Schedule C	Security Deposit Language
Insurance Schedule	

Port Authority Lease No. LPN-298

AGREEMENT OF LEASE

**THIS AGREEMENT OF LEASE**, made as of the 1st day of October, 2011, 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, in the Borough of Manhattan, in the City, County and State of New York, and **HARBOR FREIGHT TRANSPORT CORP.** (hereinafter called the "**Lessee**"), a corporation organized and existing under the laws of the State of New Jersey, and having an office and place of business at 301 Craneway Street, Port Newark, New Jersey 07114, whose representative is Stephen Liberti.

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee entered into Port Authority Lease No. LPN-239, dated as of November 1, 1997, covering the letting of open area and warehouse space from Port Newark (sometimes hereinafter called the "**Facility**") (such lease, as it may have been amended, supplemented and extended, a copy of which is attached hereto as Exhibit 1 and by this reference made a part hereof, the "**Prior Lease**");

WHEREAS, the Prior Lease is stated to expire on October 31, 2012 and, in lieu of extending the Prior Lease, the parties wish to enter into a new lease that incorporates the Prior Lease: (i) consolidating it with such new lease, (ii) providing for the Lessee to continue its occupancy of the premises under the Prior Lease (the "**Prior Premises**"); and (iii) enlarging the Prior Premises with an additional parcel that is contiguous to the Prior Premises; and

WHEREAS, in entering into this Agreement, the parties intend that this Agreement and the letting hereunder shall be construed as if the Prior Lease had been extended and amended in accordance with the terms and conditions provided below;

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

**Section 1. Letting**

(a) **Premises.** 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 Facility the following described premises:

the Two Hundred Eighty-three Thousand One Hundred Forty (283,140) square feet of open area shown in diagonal hatching on the sketch hereto attached, hereby made a part hereof and marked "Exhibit A" (said open area sometimes hereinafter referred to as the "**Open Area Space**"), the One Hundred Forty Thousand Twenty-one (140,021) square feet of enclosed warehouse space shown in diagonal crosshatching (said enclosed warehouse space sometimes hereinafter referred to as the "**Enclosed Warehouse Space**") and the One Hundred Thirty Thousand Six Hundred Eighty (130,680) square feet of its associated open area shown in stipple on said Exhibit A (said open area sometimes hereinafter referred to as the "**Associated Open Area Space**;" together with the Enclosed Warehouse Space hereinafter sometimes referred to as the "**Warehouse Space**"),

together with the fixtures, improvements and other property of the Port Authority, if any, located or to be located therein or thereon, the said areas, buildings, structures, fixtures, improvements and other property of the Port Authority, said Open Area Space and Warehouse Space being hereinafter collectively called the "**Premises**". The Port Authority and the Lessee hereby acknowledge that the foregoing Premises constitute non-residential property.

The parties hereby acknowledge and agree that the Premises hereunder include the same premises let to and occupied by the Lessee pursuant to the Prior Lease. The Premises consists of the Prior Premises and additional open area adjacent to the Prior Premises (the "**Additional Land**"). Effective as of the Effective Date, all references in the Prior Lease, as incorporated herein, to the "premises" shall be deemed to mean the "Premises" as defined hereunder.

(b) **Continued Application of Prior Lease.** This Agreement shall be deemed to consolidate and incorporate the terms, provisions and conditions of the Prior Lease as if set forth in full herein, as if the premises of the Prior Lease was the same as the Premises as defined hereunder, and, except as otherwise provided herein, the terms, provisions and conditions of the Prior Lease shall apply to the letting of the Premises to the Lessee hereunder.

(c) **Continuous Possession and Occupancy.** The parties hereby acknowledge that the Lessee remains in possession of the Prior Premises continuously from the commencement of the Prior Lease through the Effective Date (as defined below), and at no time did the Lessee surrender the Prior Premises to the Port Authority.

(d) **Survival of Prior Lease Obligations.** The Lessee shall not, by virtue of this Agreement, be released or discharged from any liabilities or obligations whatsoever under the Prior Lease or any other Port Authority permits or agreements, including without limitation any permits to make alterations, all of which shall survive. Further, all the terms, provisions and conditions of the Prior Lease and such permits and agreements shall survive and continue in full force and effect, and any breach or default under the Prior Lease or under such permits and

agreements, whether prior to or after the Effective Date, shall be deemed breaches and defaults under this Agreement. Without limiting the generality of any of the foregoing, any obligations under the Prior Lease which were to mature upon the expiration or termination thereof, including any obligation to remove alterations and improvements, shall be deemed to have survived and shall mature upon the expiration or termination of this Agreement.

(e) **Condition of the Premises.** All references in the Prior Lease, as incorporated herein, to the condition of the Prior Premises at the beginning of the Term shall be deemed to mean the condition of the Premises as they existed at the beginning of the term under the Prior Lease.

## **Section 2. Term**

The term of the letting under this Agreement (as it may be terminated pursuant to the provisions of this Agreement, the "**Term**") shall commence on October 1, 2011 (the "**Effective Date**") and shall expire on September 30, 2023 (the "**Expiration Date**"), unless sooner (i) terminated in accordance with the terms and provisions of this Agreement or (ii) extended pursuant to Section 5 herein.

## **Section 3. Rental**

### (a) **Basic Rental**

#### (i) **Spaces.**

1. Open Area Space. For the period from October 1, 2011 to and including September 30, 2013, the Lessee shall pay to the Port Authority a basic rental at the rate of One Dollar and Seventy-five Cents (\$1.75) per square foot, which equals Four Hundred Ninety-five Thousand Four Hundred Ninety-five Dollars and No Cents (\$495,495.00) per annum for the Open Area Space (the "**Open Area Space Rental**"), payable in advance in equal monthly installments each in the sum of Forty-one Thousand Two Hundred Ninety-one Dollars and No Cents (\$41,291.00) on October 1, 2011 and on the first day of each calendar month thereafter during the said period.

2. Warehouse Space. For the period from October 1, 2011 to and including September 30, 2013, the Lessee shall pay to the Port Authority a basic rental at the rate of Six Dollars and Fifteen Cents (\$6.15) per square foot of the Enclosed Warehouse Space and Zero Dollars and No Cents (\$0.00) per square foot for the Associated Open Area Space, which equals Eight Hundred Sixty-one Thousand One Hundred Twenty-nine Dollars and No Cents (\$861,129.00) per annum for the Warehouse Space (the "**Warehouse Space Rental**"), payable in advance in equal monthly installments each in the sum of Seventy-one Thousand Seven Hundred Sixty-one Dollars and No Cents (\$71,761.00) on October 1, 2011 and on the first day of each calendar month thereafter during the said period.

3. Combined Space. The Open Area Space Rental together with the Warehouse Space Rental shall be called the "**Basic Rental**."

(ii) Commencing on the Second Anniversary Date (as hereinafter defined) and on each Anniversary Date (as hereinafter defined) thereafter throughout the Term, the Lessee shall pay to the Port Authority the Basic Rental at annual rates escalated in accordance with the provisions of paragraph (b), below, of this Section.

(b) **Adjustment to Basic Rental.**

(i) As used in subparagraph (ii) of this paragraph:

(1) "**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.

(2) "**Base Period**" shall mean the calendar month of April 2011.

(3) "**Adjustment Period**" shall mean, as the context requires, the calendar month of April 2012 and the calendar month of April in each calendar year which thereafter occurs during the Term.

(4) "**Anniversary Date**" shall mean, as the context requires, October 1, 2012 (the "**First Anniversary Date**") and each anniversary of such date which thereafter occurs during the Term.

(5) "**Annual Index Increase**" shall mean the percentage of increase in the Index on each Anniversary Date, equal to: (x) with respect to the Second 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, the Annual Index Increase for the Anniversary Date that is October 1, 2013 would be a fraction of which the numerator is the Index for April 2013 less the Index for April 2012 and the denominator is the Index for April 2012).

(6) "**Percentage Increase**" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than two percent (2%), in which case the Percentage Increase shall be two percent (2%) as shown in Schedule A attached hereto and made a part hereof or (y) such Annual Index Increase is more than four (4%) percent, in which case the Percentage Increase shall be four percent (4%) as shown in Schedule B attached hereto

and made a part hereof.

(ii) Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the expiration or termination date of the Term, as the case may be, both dates inclusive, in lieu of the Basic Rental set forth in paragraph (a) of this Section, as the same may most recently have been adjusted during the Term in accordance therewith, the Lessee shall pay the Basic Rental at a rate per annum equal to the greater of :

(1) the sum obtained by adding to the Basic Rental payable immediately prior to such Anniversary Date the product obtained by multiplying such Basic Rental by one hundred percent of the Percentage Increase for such Anniversary Date; or

(2) the Basic Rental payable immediately prior to such Anniversary Date, including all amounts included therein as a result of prior adjustments thereof pursuant to the provisions of this subparagraph.

Each adjusted annual rental shall be payable in monthly installments equal to  $1/12^{\text{th}}$  of the annual Basic Rental, as adjusted, on the Anniversary Date and on the first day of each calendar month thereafter through the day preceding the next following Anniversary Date, or the expiration or termination date of the Term, as the case may be. All adjusted rental amounts shall be rounded to the nearest cent.

(iii) (1) 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 basic fee 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 in its discretion determines.

(2) If after an adjustment in the 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 Basic Rental due for such period as recomputed over amounts theretofore actually paid on account of the Basic Rental for such period. If such change

or adjustment results in a reduction in the Basic Rental due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the Basic Rental as recomputed for that period and amounts of Basic Rental actually paid.

(3) If any adjustment of the Basic Rental referred to in paragraph (ii) 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 Basic Rental equal to 1/12th of the increment of annual Basic Rental as adjusted multiplied by a fraction, the numerator of which 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.

(c) **Abatement.** Abatement of Basic Rental, if any, to which the Lessee may be entitled shall be computed in accordance with the provisions of Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof ("**SE L27.4**").

#### **Section 4. Amendments to Prior Lease Provisions**

Effective as of the Effective Date, the Prior Lease, as incorporated herein, shall hereby be amended as follows:

(a) **Use.** Article IV of the Prior Lease shall be and shall be deemed deleted and the following shall be and shall be deemed inserted in lieu thereof:

"The Lessee shall use and occupy the Premises for the following purposes only, and for no other purpose whatsoever: for the warehousing, distribution, packing and trucking operation of general, over-dimensional and distressed cargo, substantially by waterborne transportation."

(b) **Casualty.** Section 8 of the Terms and Conditions to the Prior Lease shall be and shall be deemed amended, as of the Effective Date by adding the following paragraph (e) to the end of such section:

"With respect to all portions of the Premises, the Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the term of the letting under this Agreement:

(i) All risk property damage insurance covering the full replacement cost of any property owned, leased, or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the Premises, except for any personal property owned by the Port Authority. Full replacement cost shall be determined by the Port Authority. No omission on the part of the Port Authority to make such determination shall relieve the Lessee of its obligations to

maintain the appropriate insurance under this paragraph. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New Jersey, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and boiler and machinery hazards and risks, and, if the Port Authority so requests, also covering nuclear property losses and contamination (if said coverage regarding nuclear property losses and contamination is or becomes available).

(ii) Unless otherwise directed by the Port Authority, the property damage insurance policy required by this paragraph shall name the Port Authority and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide that loss, if any, shall be adjusted with and payable to the Port Authority. As to any insurance required by this paragraph, a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority on or before the Commencement Date. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective period hereof. If at any time the policy required by this paragraph shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

The proceeds of insurance from coverages secured in accordance with this paragraph shall be made available to the Lessee and shall be applied by the Lessee strictly and solely to the repair, replacement, or rebuilding of the Premises as provided in this Agreement. The Lessee shall not be entitled to any

abatement of the rentals payable hereunder at any time by reason of such casualty.”

(c) **Assignment and Subletting.**

(i) Paragraph (b) of Section 9 of the Terms and Conditions to the Prior Lease shall be and shall be deemed deleted and the following shall be and shall be deemed inserted in lieu thereof:

“Notwithstanding paragraph (a) above, the Lessee shall have the right to sublease or assign the Lease upon written consent and approval of the Port Authority (an **“Approved Assignment”** or **“Approved Sublease,”** as applicable). If the rental under an Approved Sublease (the **“Sublease Rental”**) is greater than the Basic Rental, the Lessee shall pay to the Port Authority fifty percent (50%) of that portion of the Sublease Rental that is equal to the Sublease Rental less the Basic Rental (the **“Overage Rental”**). The Lessee shall pay the Overage Rental, if any, to the Port Authority in the same manner and simultaneously with the Lessee’s payment of the Basic Rental to the Port Authority.”

(ii) Three new paragraphs, paragraphs (e), (f) and (g), shall be and shall be deemed inserted into Section 9 of the Terms and Conditions to the Prior Lease as follows:

“(e) For any Approved Assignment, the Lessee shall pay a fee (the **“Assignment Consent Fee”**) to the Port Authority for the Port Authority’s cost of administration with regard to the Port Authority’s review, approval and consent of such Approved Assignment (the **“Consent Process”**); provided that, the Assignment Consent Fee shall not apply to the lifetime or testamentary transfer of all or any of the capital stock of the Lessee by Stephen Liberti, Sr. to his spouse, children and/or their issue, outright or in trust for their benefit, whether in a single transaction or in a series of related or unrelated transactions. The Assignment Consent Fee shall be equal to ten percent (10%) of the net present value of the gross Basic Rental payable to the Port Authority for the unexpired portion of the Term, at a discounted rate that is determined by the Port Authority during the Consent Process period, but in no event shall such rate be greater than five and one-half percent (5.5%).

(f) The transfer or issuance of any capital stock of any corporate lessee, the transfer of any membership interests of any limited liability company lessee or the transfer of a controlling interest in any partnership lessee, however accomplished, whether in a single transaction or in a series of related transactions that aggregate fifty percent (50%) or more of the outstanding shares of the capital stock and voting rights, membership interests or partnership interest in, the Lessee shall be deemed an assignment of this Lease.

(g) The Lessee further covenants and agrees not to enter into any

management agreement service agreement or any other similar type of agreement for the premises without the prior written consent of the Port Authority. Any sublease, assignment, transfer, mortgage, pledge, hypothecation, encumbrance or disposition of the premises or of the rents, revenues or any other income from the premises, or this Lease or any part hereof, or any license or other interest of the Lessee herein is not made in accordance with the provisions of this Lease shall be null and void *ab initio* and of no force and effect."

(iii) The last sentence of paragraph 12 of Supplement No. 1 to the Prior Lease shall be and shall be deemed deleted and the following shall be and shall be deemed inserted in lieu thereof:

"Notwithstanding the provisions set forth above in this paragraph, the lifetime or testamentary transfer of all or any of the capital stock of the Lessee by Stephen Liberti, Sr. to Stephen Liberti, Jr., outright or in trust for his benefit ("**Stephen Liberti, Jr.**"), whether in a single transaction or in a series of related or unrelated transactions, shall not be deemed an assignment of the lease as herein amended under the provisions of this paragraph, and such transfers shall not entitle the Port Authority to terminate the lease as herein amended under the provisions of Section 16 of the Terms and Conditions of the lease entitled "*Termination*". In addition, the lifetime or testamentary transfer of any or all of the capital stock of Lessee by Stephen Liberti, Sr. to any partnership, limited liability company, corporation or any other entity in which the beneficial interests are owned by Stephen Liberti, Jr. (and any subsequent transfer of any or all of the capital stock of Lessee by any such entity to any beneficial owner, or to a trust for the benefit of such beneficial owner, of such entity), whether in a single transaction or in a series of related or unrelated transactions, shall not be deemed an assignment of the lease as herein amended under the provisions of this paragraph, and such transfers shall not entitle the Port Authority to terminate the lease as herein amended under the provisions of Section 16 of the Terms and Conditions of the lease entitled "*Termination*"."

(d) **Insurance Schedule.**

(i) Standard Endorsement L21.1 to the Prior Lease is hereby deleted in its entirety, and the Insurance Schedule attached hereto and hereby made a part hereof is substituted in its place, effective as of the Effective Date. Any reference to Standard Endorsement L21.1 shall be and shall be deemed to reference such Insurance Schedule.

(ii) The amount of warehousemen's legal liability insurance required in Special Endorsements No. 5 to the Prior Lease shall be and shall be deemed amended to be decreased to \$1,000,000.00.

(iii) Special Endorsements No. 6 to the Prior Lease shall be and shall be deemed deleted in its entirety.

(e) **Security Deposit.** Standard Endorsement No. L23.2A in Supplement No. 3 to the Prior Lease shall be and shall be deemed deleted, and Schedule C, attached hereto and hereby made a part hereof, is substituted in its place, effective as of the Effective Date.

(f) **Standard Endorsement No. L27.4.** Standard Endorsement L27.4 attached to Supplement No. 3 to the Prior Lease shall be and shall be deemed deleted and SE L27.4 is substituted in its place.

(g) **Maintenance, Repairs and Replacements.** Special Endorsement No. 1 to the Prior Lease shall be and shall be deemed deleted and the following shall be and shall be deemed inserted in lieu thereof:

(a) "In addition to Section 7 of the Terms and Conditions of the Prior Lease and except as provided in Section 5 of Supplement No. 3 to the Prior Lease, the Port Authority shall have no obligation whatsoever under this Special Endorsement to make repairs or replacements of any structure, building, installation or fixture, or any part of any of them including, but not limited to: (1) the roof; (2) sprinkler systems (within the Premises); (3) gas and electric from the meter; (4) the electrical system, equipment and fixtures; (5) the plumbing; (6) buildings and all parts; (7) signs; (8) fire extinguishers; (9) all painting; (10) security measures (including camera, fencing, guard booths and jersey barriers) implemented on the Premises; (11) catch basins and storm sewer drains, which are to be kept fully functional, clear of obstruction and free of damage at all times; (12) any paving required on the Premises; and (13) any fencing required on the Premises. The Port Authority shall have no obligation with respect to any repairs or replacements required because of a casualty, whether or not insured or insurable, except as expressly provided in Section 8 of the said Terms and Conditions. Without limiting any obligation of the Lessee under this Agreement, the Port Authority, at any time and from time to time during the letting, may enter the Premises for the purpose of making repairs or replacements, or for the purpose of performing maintenance, whether or not the Port Authority is obligated hereunder to do the same and whether or not the Port Authority has received a notice, request or other communication from the Lessee concerning any such repair or replacement, provided that this right of the Port Authority shall not constitute or be deemed to constitute any obligation or duty on the Port Authority either to the Lessee or others to make any repairs or replacements, do any maintenance or do anything else in connection therewith. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives from and against all claims and demands of any and all third persons whatsoever, including without limitations thereto the Lessee's employees, officers, agents and representatives, for personal injuries (including death) or property damage, which may arise from the condition of the Premises or any part thereof or from failure of the Lessee to notify the Port Authority of conditions requiring repair or replacement, or from failure of the

Lessee to make timely corrections of dangerous or potentially dangerous conditions in or on the Premises. The Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, agents, employees, contractors and subcontractors, and their employees, from all liability for damage to the Lessee, consequential or otherwise, in connection with any provision of this Special Endorsement concerning repair or replacement of any portion of the Premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(b) Notwithstanding paragraph (a) above, after the completion of the Lessee's construction work, if the cost of any required repair to the roof is greater than Five Hundred Thousand Dollars and No Cents (\$500,000.00), excluding any repair that arises out of or is in any manner connected to Lessee's construction work, then the Lessee shall either (i) complete such repair as required in paragraph (a) above or (ii) terminate this Agreement by written notice to the Port Authority (the "**Roof Repair Termination Notice**") within fifteen (15) days from the date that the Lessee is notified of such cost. If the Lessee elects to terminate this Agreement pursuant to this paragraph, then this Agreement shall terminate on the date given for such termination (the "**Roof Repair Termination Date**") in the Roof Repair Termination Notice, but in no event shall the Roof Repair Termination Date be prior to Thirty (30) days after the date of the Roof Repair Termination Notice."

(h) **Condition of the Premises.** Effective as of the Effective Date, the term "premises" in Special Endorsements No. 7 to the Prior Lease shall mean the "Premises" as defined hereunder.

(i) **Construction Work.**

(i) Paragraph (a) of Special Endorsements No. 11 to the Prior Lease shall be and shall be deemed deleted and the following shall be and shall be deemed inserted in lieu thereof:

"The Lessee shall invest approximately Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00) in capital improvements to Building 301, which Building is shown in diagonal cross-hatching on Exhibit A, including the installation of solar panels on the roof of such Building 301, at the Lessee's sole cost and expense (the "**Lessee's construction work**"). The Lessee's construction work shall be completed prior to or on December 31, 2013. Any utility savings, tax benefits, or other benefits resulting from the installation of the solar facility as contemplated by this Section shall be the property of the Lessee for the duration of the Term."

(ii) Paragraph (c) of Special Endorsements No. 11 to the Prior Lease shall become subparagraph (c)(i) of Special Endorsements No. 11 and a new subparagraph, subparagraph (c)(ii), shall be and shall be deemed inserted into Special Endorsements No. 11 to the Prior Lease as follows:

“The Lessee shall pay to the Port Authority a fee as compensation for its review and oversight of the Lessee’s construction work and any other work performed by the Lessee, including, but not limited to, the Port Authority’s cost of administration with regard to the Port Authority’s review of any Construction Applications (hereinafter, the “**Review Fee**”). The Review Fee shall be an amount equal to the greater of the following: (1) one percent (1%) of the actual cost of the Lessee’s construction work or (2) the rate of the fee, if any, payable to the Port Authority for review of tenant work at the Facility under the Port Authority’s Tenant Alteration Process at the time the Lessee submits any Construction Application required under this Section. Upon final completion of all of the work under each specific contract to be performed by the Lessee as set forth in the Lessee’s approved plans and specifications, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof certifying that all such work has been completed and the final cost of such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee’s certificate. The Port Authority shall have the right (but shall not be obligated) to conduct an interim inspection and audit in connection with the work performed under the specific contract certified as completed and shall have the rights in the conduct of such interim inspection and audit as are set forth below in this paragraph with regard to the final inspection and audit. Upon receipt of the Lessee’s certification, or following the aforesaid audit by the Port Authority, the Port Authority shall render a bill to the Lessee setting forth the Review Fee for the specific contract, and the Lessee shall pay the Review Fee to the Port Authority within fifteen (15) days of receipt of said bill. No payment made by the Lessee on account of the cost under a specific contract as set forth in the immediately preceding sentence shall be considered final until the final determination of the cost of the Lessee’s construction work, as set forth below in this paragraph, has occurred. Upon final completion of all of the Lessee’s construction work, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof certifying that all such work has been completed and the final cost of such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee’s certificate. Upon receipt of the Lessee’s certification, the Port Authority shall render a bill to the Lessee setting forth the Review Fee for each specific contract for which the Lessee has not previously made payment under the provisions of this paragraph, and the Lessee shall pay the Review Fee for each such specific contract to the Port Authority within fifteen (15) days of receipt of said bill. No

payment made by the Lessee on account of the cost of the Lessee's construction work pursuant to the provisions of this paragraph, including, without limitation, any payment made by the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be considered final until the final determination of the cost of the Lessee's construction work as set forth below in this paragraph. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Lessee's construction work to examine and audit the records and other documentation of the Lessee that pertain to and will substantiate such cost."

(iii) Paragraphs (e), (o), (p) and (q) of Special Endorsements No. 11 to the Prior Lease shall be and shall be deemed deleted in their entireties effective as of the Effective Date.

(iv) The amounts and types of insurance required in subparagraphs (j)(i) and (j)(ii) of Special Endorsements No. 11 to the Prior Lease shall be and shall be deemed amended as follows: (1) "comprehensive general liability insurance" shall be "commercial general liability insurance" and shall be increased to \$5,000,000.00 in subparagraph (i); and (2) "comprehensive automobile liability insurance" shall be "commercial automobile liability insurance" and shall be increased to \$5,000,000.00 in subparagraph (ii).

(v) Special Endorsement No. 12 to the Prior Lease shall be and shall be deemed deleted, effective as of the Effective Date, and the following shall be and shall be deemed inserted in lieu thereof:

**"Sustainable Design Guidelines.** The Lessee agrees that, in the performance of all construction work, including, but not limited to, the Lessee's construction work, the Lessee 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."

(j) **Prior Lease Term.** The following phrase at the end of the first sentence of Section 2 of Supplement No. 3 to the Prior Lease shall be and shall be deemed deleted in its entirety:

"...for a term expiring at 11:59 o'clock P.M. on October 31, 2007, unless sooner terminated"

(k) **Sprinkler System Repair.** Section 6 of Supplement No. 3 to the Prior Lease shall be and shall be deemed deleted and the following shall be and shall be deemed inserted in lieu thereof:

"The Lessee shall reimburse the Port Authority for its costs and expenses (man-hours and materials) incurred on a per-incident basis in connection with the maintenance, repair or replacement of the sprinkler system on or serving the Premises (the "***Sprinkler Repair Costs***"). In addition, the Lessee shall pay to the Port Authority an administrative fee for such maintenance, repair or replacement in an amount equal to three percent (3%) of the Sprinkler Repair Costs (the "***Sprinkler Administrative Fee***"). The Lessee shall pay to the Port Authority an amount equal to the sum of the Sprinkler Repair Costs and the Sprinkler Administrative Fee within thirty (30) days of notice from the Port Authority setting forth such amount and a summary of the Items of expense."

(l) ***Termination without Cause.*** Section 7 of Supplement No. 3 to the Prior Lease shall be and shall be deemed amended, as of the Effective Date by adding the following to the end of such section:

"The Port Authority and the Lessee shall have the right to terminate the Lease without cause beginning on the sixth anniversary year of the Lease, October 1, 2017 and every anniversary year of the Lease for the remaining term of the Lease, upon one year's prior written notice."

(m) ***Schedule A.*** Schedule A attached to Supplement No. 3 to the Prior Lease shall be and shall be deemed deleted, and the Schedule A attached hereto and hereby made a part hereof is substituted in its place, effective as of the Effective Date.

(n) ***Schedule B.*** Schedule B attached to Supplement No. 3 to the Prior Lease shall be and shall be deemed deleted, and the Schedule B attached hereto and hereby made a part hereof is substituted in its place, effective as of the Effective Date.

## **Section 5. Brokerage**

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

## **Section 6. Miscellaneous**

(a) ***Relationship of the Parties.*** Notwithstanding any other term or provision hereof, this Agreement does not constitute the Lessee as the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.

(b) **Lessee's Rights Non-Exclusive.** Except as expressly provided herein with respect to the Premises, neither the execution of this Agreement by the Port Authority nor anything contained herein shall grant or be deemed to grant to the Lessee any exclusive rights or privileges.

(c) **Waiver of Trial by Jury.** The Lessee waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Lessee in respect of the Premises 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 summary proceeding or action for non-payment of rents, fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

(d) **Construction and Application of Terms.**

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

(2) Unless otherwise expressly specified, the terms, provisions and obligations contained in any Exhibits and Schedules attached hereto, whether there set out in full or as amendments of, or supplements to provisions elsewhere in the Agreement stated, shall have the same force and effect as if herein set forth in full.

(3) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

(4) The fact that certain of the terms and provisions hereunder are expressly stated to survive the expiration or termination of the letting hereunder shall not mean that those provisions hereunder which are not expressly stated to survive shall terminate or expire on the expiration or termination of the letting hereunder and do not survive such termination or expiration.

(5) The parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applicable to the interpretation of this Agreement or any amendments, addenda or supplements hereto or any Exhibits or Schedules hereto.

(d) **Non-liability of Individuals.** No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

(e) **Governing Law.** This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement, the relationship of the parties hereunder, and/or the interpretation and enforcement of the rights and obligations of the parties hereunder shall be governed by, interpreted and construed in accordance with the laws of the State of New Jersey, without regard to conflict of law principles.

(f) **Entire Agreement.** This Agreement consists of the following: Sections 1 through 6, Exhibit A, Exhibit 1, Schedule A, Schedule B and the Insurance Schedule attached hereto. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

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

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

ATTEST:

*[Signature]*  
Secretary

By: *[Signature]*

(Print Name): RICHARD M. LARRABEE  
DIRECTOR, PORT COMMERCE DEPT.

(Title): \_\_\_\_\_

(Seal)

**HARBOR FREIGHT TRANSPORT CORP.**

ATTEST:

*[Signature]*  
Secretary

By: *[Signature]*

(Print Name): Steve Licenti

(Title): President

(Corporate Seal)

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
<i>[Signature]</i>	<i>[Signature]</i>

(a) If at any time the Lessee shall become entitled to an abatement of Basic Rental under the provisions of this Agreement or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable Open Area Space the use of which is denied to the Lessee, at the annual rate of \$ 1.75\*

(2) For each square foot of usable Enclosed Warehouse Space the use of which is denied to the Lessee, at the annual rate of \$6.15\*

(3) For each square foot of Associated Open Area Space the use of which is denied to the Lessee, at the annual rate of \$0.00

(b) If no rates are filled in above then the abatement of Basic Rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the Premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total Basic Rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the Premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full Basic Rental less only an abatement thereof computed in accordance with the above.

\* through September 30, 2012, thereafter the said rates shall be increased during the term of the letting in proportion to increases in Basic Rental in accordance with the escalation provisions set forth in Section 3 of this Agreement.

Standard Endorsement No. L27.4

Abatement

All Marine Terminals

10/6/68

**Exhibit 1**  
**Prior Lease EP-239**



\_\_\_\_\_  
**For the Port Authority**

**Initialed:**



\_\_\_\_\_  
**For the Lessee**

Port Authority Lease No. L-PN-239  
Supplement No. 3

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of October 31, 2007, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and HARBOR FREIGHT TRANSPORT CORP. (hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of November 1, 1997, the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at Port Newark, in the City of Newark, County of Essex and State of New Jersey, all as more particularly described in the Lease; and

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

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

1. The term of the letting under the Lease is hereby extended for the period ending at 11:59 o'clock P.M. on October 31, 2012, unless sooner terminated, at a basic rental during the extension at the annual rate of Eight Hundred Thirty-nine Thousand Seven Hundred Twenty-two Dollars and Sixty-nine Cents (\$839,722.69) payable in advance in equal monthly installments of Sixty-nine Thousand Nine Hundred Seventy-six Dollars and Eighty-nine Cents (\$69,976.89) on November 1, 2007 and on the first day of each calendar month thereafter during the extended term of the letting. The basic rental set forth in this paragraph shall be adjusted during the extension in accordance with the provisions of subparagraph (b) of paragraph 2 hereof.

2. (a) As used in subparagraph (b) of this paragraph:

(1) "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.

(2) "Base Period" shall mean the calendar month of October 2007.

(3) "Adjustment Period" shall mean, as the context requires, the calendar month of October 2008 and the calendar month of October in each calendar year which thereafter occurs during the term of the letting under the Lease as herein amended.

(4) "Anniversary Date" shall mean, as the context requires, November 1, 2008 and each anniversary of such date which thereafter occurs during the term of the letting under the Lease as herein amended.

(5) "Percentage Increase" shall mean the percentage of increase in the Index on each Anniversary Date equal to a fraction the numerator of which shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period and the denominator of which shall be the Index for the Base Period.

(b) Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the expiration date of the extended term of the letting under the Lease as herein amended, as the case may be, both dates inclusive, in lieu of the basic rental set forth in paragraph 1 hereof the Lessee shall pay a basic rental at a rate per annum equal to the greater of:

(1) the sum obtained by adding to the basic rental set forth in paragraph 1 hereof the product obtained by multiplying such basic rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date, or

(2) the basic rental payable immediately prior to such Anniversary Date including all amounts included therein as a result of prior adjustments thereof pursuant to the provisions of this subparagraph, or

(3) the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule A" opposite the respective Anniversary Date.

Notwithstanding any other provision of the Lease as herein amended, the basic annual rental that shall be payable pursuant to paragraph 1 hereof and this paragraph commencing with each Anniversary Date and continuing through to the day preceding the

following Anniversary Date, or the expiration date of the extended term of the letting under the Lease as herein amended, 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" opposite the respective Anniversary Date. For example, if the Percentage Increase for the calendar month of October 2008 is shown to be four percent (4%) then the basic annual rental payable under paragraph 1 hereof and this paragraph for the one-year period commencing November 1, 2008 shall be \$839,722.69 plus four percent (4%) thereof or \$873,311.59, but if (1) said increase is shown to be two percent (2%) then the basic annual rental for that one-year period shall be \$864,914.37, and if (2) said increase is shown to be six percent (6%) then the basic annual rental for that one-year period shall be \$881,708.82.

(c) In the event the Index to be used in computing any adjustment referred to in subparagraph (b) of this paragraph is not available on the effective date of such adjustment, the Lessee shall continue to pay the 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.

If after an adjustment in 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 basic rental due for such period as recomputed over amounts theretofore actually paid on account of the basic rental for such period. If such change or adjustment results in a reduction in the basic rental due for any period prior to notification, the Port Authority will credit the Lessee

with the difference between the basic rental as recomputed for that period and amounts of basic rental actually paid.

If any adjustment of basic rental referred to in subparagraph (b) of this paragraph 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 basic rental equal to 1/12th of the increment of annual basic rental as adjusted multiplied by a fraction, the numerator of which 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.

3. Abatement of basic rental, if any, to which the Lessee may be entitled shall be computed in accordance with the provisions of Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof.

4. Standard Endorsement No. L23.2 annexed to the Lease shall be deemed deleted therefrom and Standard Endorsement No. L23.2A attached hereto and hereby made a part hereof shall govern the obligations of the Lessee with respect to the security to be deposited and maintained by the Lessee under the Lease as herein amended. Notwithstanding any provision contained in said Standard Endorsement No. L23.2A, the Lessee specifically agrees that the security to be deposited under said Standard Endorsement No. L23.2A and maintained thereunder throughout the extended term of the letting shall be a letter of credit under the provisions of paragraph (b) of said Standard Endorsement No. L23.2A and not cash or bonds under the provisions of paragraph (a) of said Standard Endorsement No. L23.2A. Except in the first line of said Standard Endorsement No. L23.2A, the words "this Agreement" shall be deemed deleted therefrom and the words "the Lease as herein amended" shall be deemed inserted in lieu thereof. Upon receipt of the letter of credit required under this paragraph and Standard Endorsement No. L23.2A attached hereto, the Port Authority shall return to the Lessee any security previously deposited by the Lessee under the provisions of the Lease subject to such claims that the Port Authority shall then have against the Lessee under the Lease as herein amended.

5. Special Endorsement No. 1 to the Lease shall be and be deemed deleted therefrom and the following provision shall be and be deemed inserted in lieu thereof:

1. (a) Notwithstanding the provisions of paragraph (c) of Section 7 of the Terms and Conditions of the Lease, the Lessee shall not be obligated, except as provided in paragraph (b) of said Section 7 and except as

provided hereinafter in this paragraph, to make any repairs to the sprinkler system on or serving the premises, or any repairs or replacements to the following parts of the premises up to the house trap meter: the water distribution system; the underground sanitary systems; and the underground storm drainage systems. After receipt by the Port Authority of notice from the Lessee that repair or replacement of any of the foregoing parts of the premises is needed (stating precisely the items of work required), the Port Authority shall make the same to the extent necessary to keep such part of the premises in a reasonably good condition for the operations of the Lessee under the Lease as herein amended; but the Port Authority shall not be obligated to make repairs or replacements to bring the premises to a better condition than that existing at the commencement of the letting. The Port Authority shall have no obligation whatsoever under this paragraph to make repairs or replacements of any structure, building, installation or fixture, or any part of any of them, which have been brought to or built or installed on the premises by the Lessee or its contractor, whether or not with the prior consent of the Port Authority, whether or not the same has become part of the premises under the Lease as herein amended and whether or not title thereto has vested in the Port Authority. The responsibility of the Port Authority under this paragraph shall be limited to bearing the expense of the repair or replacement and, without limitation of the foregoing, the Port Authority shall have no obligation whatsoever with respect to any repairs or replacements which are the obligation of the Lessee under other provisions of the Lease as herein amended. The Port Authority shall have no obligation with respect to any repairs or replacements which are required because of a casualty, whether or not insured or insurable, except as expressly provided in Section 8 of the said Terms and Conditions. Prior to commencement by the Port Authority of any work set forth in the Lessee's notice to the Port Authority, the Lessee (at its sole cost and expense) shall take all precautions necessary to protect persons or property at the Facility, including the immediate performance by the Lessee of such work as may be required to correct conditions which involve danger to persons or property. Without limiting any obligation of the Lessee under the Lease as herein amended, the Port Authority, at any time and from time to time during the letting, may enter the premises for the purpose of making repairs or replacements, or for the purpose of performing maintenance, whether or not the Port Authority is obligated hereunder to do the same and whether or not the Port Authority has received a notice, request or other communication from the Lessee concerning any such repair or

replacement, provided that this right of the Port Authority shall not constitute or be deemed to constitute any obligation or duty on the Port Authority either to the Lessee or others to make any repairs or replacements, do any maintenance or do anything else in connection therewith. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives from and against all claims and demands of any and all third persons whatsoever, including without limitation thereto the Lessee's employees, officers, agents and representatives, for personal injuries (including death) or property damage, which may arise from the condition of the premises or any part thereof or from 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. The Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, agents, employees, contractors and subcontractors, and their employees, from all liability for damage to the Lessee, consequential or otherwise, in connection with any provision of this paragraph concerning repair or replacement of any portion of the premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

6. Notwithstanding any provision set forth in paragraph 5 of this Agreement, and without otherwise limiting the generality thereof, the Lessee shall pay to the Port Authority an additional rent in the form of a monthly fee of Seven Hundred Seventy-five Dollars and No Cents (\$775.00) as compensation for the Port Authority's periodic inspection and testing of the sprinkler system on or serving the premises (hereinafter called "the Sprinkler System"), which fee shall be payable in the aforesaid amount on November 1, 2007 and on the first day of each calendar month thereafter occurring during the extended term of the letting. In addition, the Lessee shall reimburse the Port Authority for its costs and expenses (man-hours and materials) incurred on a per-incident basis in connection with the maintenance, repair or replacement of the Sprinkler System and shall pay any such amount to the Port Authority within thirty (30) days of notice from the Port Authority setting forth such amount and a summary of the items of expense.

7. In addition to all other rights under the Lease, the Port Authority and the Lessee shall each have the right to terminate the letting, without cause, at any time, on one year's prior written notice to the other party; provided, however, that any notice given by the Lessee in accordance with the provisions of this paragraph shall not be effective if the Lessee is under notice of default as to which any applicable period to cure has passed, or is under notice of termination, from the Port Authority, either on the date of the giving of said notice or on the intended effective date thereof. 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 the Lease as herein amended.

8. Without limiting the generality of any provision of the Lease as herein amended, in the event the Port Authority exercises its right of termination under the provisions of Section 16 of the Terms and Conditions of the Lease 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 non-use of the premises; the foregoing shall include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the premises and putting the premises in order (such as but not limited to cleaning and decorating the same).

9. 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 the Lease as herein amended, in the event that the Lessee remains in possession of the premises after the expiration or earlier termination of the term of the Lease as herein amended (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 the Lease as herein amended 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 the Lease as herein amended.

10. 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 the Lease as herein amended. 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.

11. In the event that upon conducting an examination and audit under the provisions of the Lease as herein amended (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 the Lease as herein amended 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 the Lease as herein amended 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 rentals to be paid. Nothing in this paragraph is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under the Lease as herein amended, including, without limitation, the Port Authority's rights to terminate the Lease as herein amended or (ii) any obligations of the Lessee under the Lease as herein amended.

12. The transfer of the issued and outstanding capital stock of the Lessee, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, which effects a change of control of the Lessee, shall be deemed an assignment of the Lease as herein amended. Without limiting the generality of any provision of the Lease as herein amended, any such transfer shall entitle the Port Authority to terminate the Lease as herein amended under the provisions of Section 16 of the Terms and Conditions of the Lease entitled "Termination". Notwithstanding the provisions set forth above in this paragraph,

the transfer of all or any of the capital stock of the Lessee by Stephen Liberti, Sr., to Stephen Liberti, Jr., shall not be deemed an assignment of the Lease as herein amended under the provisions of this paragraph, and such transfer shall not entitle the Port Authority to terminate the Lease as herein amended under the provisions of Section 16 of the Terms and Conditions of the Lease entitled "Termination".

13. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect including, without limitation, the provisions of Special Endorsement No. 3 to the Lease setting forth the terms under which the Lessee will pay the Annual Throughput Rental during the term of the letting as extended by this Agreement.

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

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

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

(The remainder of this page has intentionally been left blank.)

expressed in writing in the Lease or in this Agreement.

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

ATTEST:

*Karl L. ...*  
**SECRETARY**

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By *[Signature]*  
RICHARD H. LARRABEE  
(Title) DIRECTOR, PORT COMMERCE DEPT.  
(Seal)

ATTEST:

*[Signature]*  
Secretary

HARBOR FREIGHT TRANSPORT CORP.

By *[Signature]*  
(Title) President  
(Corporate Seal)

**APPROVED:**  
**FORM** | **TERMS**  
*[Signatures]*

(a) Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deposit with the Port Authority (and shall keep deposited throughout the letting under this Agreement) either the sum of One Hundred Sixty Thousand Dollars and No Cents (\$160,000.00) in cash, or bonds of the United States of America, or of the State of New Jersey, or of the State of New York, or of The Port Authority of New York and New Jersey, having a market value of that amount, 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 on its part to be fulfilled, kept, performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Lessee may deposit such bond or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Lessee) in a manner satisfactory to the Port Authority. The Lessee may request the Port Authority to accept a registered bond in the Lessee's name and if acceptable to the Port Authority the Lessee shall deposit such bond together with a bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Lessee any expenses incurred by the Port Authority in re-registering a bond to the name of the Lessee shall be borne by the Lessee. 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 use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee. 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 deposit itself shall cure any default or breach of this Agreement on the part of the Lessee. With respect to any bonds deposited by the Lessee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Lessee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights or redemption of the Lessee. The Lessee hereby waives all right to participate therein and all right to prior notice or

demand of the amount or amounts of the claims or demands of the Port Authority against the Lessee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Lessee. Any balance remaining shall be retained in cash toward bringing the deposit to the sum specified above. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the above-mentioned amount, the Lessee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times to the full amount above stated, and such additional deposits shall be subject to all the conditions of this Section. After the expiration or earlier termination of the letting under this Agreement as the said letting may have been extended, and upon condition that the Lessee shall then be in no wise in default under any part of this Agreement, as this Agreement may have been amended or extended (or both), and upon written request therefor by the Lessee, the Port Authority will return the deposit 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. The Lessee agrees that it will not assign or encumber the deposit. The Lessee may collect or receive any interest or income earned on bonds and interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise; provided however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(b) The Lessee may at any time during the term of the letting under this Agreement offer to deliver to the Port Authority, as security for all obligations of the Lessee under this Agreement, a clean irrevocable letter of credit issued by a banking institution 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 One Hundred Sixty Thousand Dollars and No Cents (\$160,000.00). 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 of the letting under this Agreement 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. Upon notice of cancellation of a letter of credit the Lessee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in accordance with paragraph (a) of this Standard Endorsement or another letter of credit 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 paragraph (a) of this Standard Endorsement. Failure to provide such a letter of credit at any time during the term of the letting, 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. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Lessee made thereafter, the Port Authority will return the security deposit, if any, theretofore made under and in accordance with the provisions of paragraph (a) of this Standard Endorsement. The Lessee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the letting and fulfillment of the obligations of the Lessee under this Agreement. 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.

(c) For purposes of the provisions set forth in this Standard Endorsement, the Lessee hereby certifies that its I.R.S. Employer Identification No. is

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of the Lease as herein amended or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of \$1.29\*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$5.50\*

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in the Lease as herein amended, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under the Lease as herein amended the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

\* during the period from November 1, 2007 through October 31, 2008; the rates thereafter to be adjusted during the term of the letting proportionately to the adjustment in basic rental in accordance with the provisions of paragraph 2 hereof.

**SCHEDULE A**

<b><u>ANNIVERSARY DATE</u></b>	<b><u>MINIMUM ANNUAL RENT</u></b>
November 1, 2008	\$ 864,914.37
November 1, 2009	\$ 890,861.80
November 1, 2010	\$ 917,587.66
November 1, 2011	\$ 945,115.29

**SCHEDULE B**

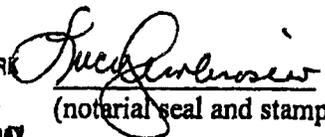
<b><u>ANNIVERSARY DATE</u></b>	<b><u>MAXIMUM ANNUAL RENT</u></b>
November 1, 2008	\$ 881,708.82
November 1, 2009	\$ 925,794.27
November 1, 2010	\$ 972,083.98
November 1, 2011	\$1,020,688.18

MLPF-10672 Ack, NJ

For the Port Authority

STATE OF )  
 )ss.  
COUNTY OF )

On this 19<sup>th</sup> day of Dec, 2008, before me, the subscriber, a notary public of New York, personally appeared **RICHARD M. LARRABEE** the **DIRECTOR, PORT COMMERCE DEPT.** of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of the Board of Commissioners.

LUCY AMBROSINO  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01AM6101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2011  
  
(notarial seal and stamp)

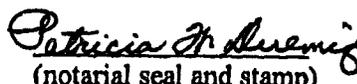
For the Lessee

STATE OF *New Jersey* )  
 )ss.  
COUNTY OF *Essex* )

On this 10<sup>th</sup> day of *September*, 2008, before me, the subscriber, a notary public of *New Jersey*, personally appeared *STEPHEN S. LIBRATI*

the President of *HARBOR FREIGHT TRANSPORT CORP.*

who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of the Board of Directors.

  
(notarial seal and stamp)

PATRICIA W. DUEMIG  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires July 26, 2013

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of June 30, 2007, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and HARBOR FREIGHT TRANSPORT CORP. (hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of November 1, 1997, the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at Port Newark, in the City of Newark, County of Essex and State of New Jersey, all as more particularly described in the Lease; and

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

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

1. In addition to the premises heretofore let to the Lessee under the Lease, the letting as to which shall continue in full force and effect, subject to and in accordance with all the terms, provisions, covenants and conditions of the Lease as amended by this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority, at Port Newark aforesaid, the open area shown in broken outline and stipple and denominated as "A-2 Lease Parcel" on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-2", together with the structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located therein or thereon, the said open area, and the said structures, fixtures, improvements and other property (all of which is sometimes hereinafter in this Agreement called "the Additional Premises") to be and become a part of the premises under the Lease at 12:01 o'clock A.M. on July 1, 2007 let to the Lessee, subject to and in accordance with all of the terms, covenants and conditions of the Lease as herein amended, for a term expiring at 11:59 o'clock P.M. on October 31, 2007, unless sooner terminated. The parties hereby acknowledge that the Additional Premises constitute non-residential property.

2. The Lessee shall use the Additional Premises solely for the purposes set forth in Article IV of the Lease, and for no other purpose or purposes whatsoever.

3. The Port Authority shall deliver the Additional Premises to the Lessee in its presently existing "as is" condition. The Lessee acknowledges that prior to the execution of this Agreement, it has thoroughly examined and inspected the Additional Premises and has found it in good order and repair and has determined it to be suitable for the Lessee's operations therein under the Lease as herein amended. The Lessee agrees to and shall take the Additional Premises in its "as is" condition and the Port Authority shall have no obligations under the Lease as herein amended for finishing work or preparation of any portion of the Additional Premises for the Lessee's use.

4. 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 suitability of the Additional Premises for the operations permitted thereon by the Lease as herein amended. Without limiting any obligation of the Lessee to commence operations under the Lease as herein amended at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the Additional Premises will be used initially or at any time during the letting thereof under the Lease as herein amended which is in a condition unsafe or improper for the conduct of the Lessee's operations therein under the Lease as herein amended so that there is possibility of injury or damage to life or property.

5. The Port Authority shall have no obligation to supply to the Lessee any services or utilities in the Additional Premises.

6. In addition to all other rentals payable under the Lease as herein amended, the Lessee shall pay a basic rental for the Additional Premises during the term of the letting as follows: (a) during the period from July 1, 2007 through the "Paving Completion Date", as such term is hereinafter defined in this paragraph, at the annual rate of Thirty-four Thousand Twenty-five Dollars and No Cents (\$34,025.00) payable in advance in equal monthly installments of Two Thousand Eight Hundred Thirty-five Dollars and Forty-two Cents (\$2,835.42) on July 1, 2007 and on the first day of each calendar month thereafter during such period; and (b) during the period from the day immediately following the Paving Completion Date through the remainder of the term of the letting of the Additional Premises,

at the annual rate of Forty-two Thousand Five Hundred Thirty-one Dollars and Twenty-five Cents (\$42,531.25) payable in advance in equal monthly installments of Three Thousand Five Hundred Forty-four Dollars and Twenty-seven Cents (\$3,544.27) on the day immediately following the Paving Completion Date and on the first day of each calendar month thereafter during such period, except that if the day immediately following the Paving Completion Date is a date other than the first day of a calendar month the basic rental payable on the day immediately following the Paving Completion Date shall be the monthly installment of Seven Hundred Eight Dollars and Eighty-five Cents (\$708.85) prorated on a daily basis for the period from the day immediately following the Paving Completion Date to the end of the calendar month in which the day immediately following the Paving Completion Date shall fall. The term "the Paving Completion Date" shall mean the date that paving work being performed by the Port Authority on the Additional Premises is completed, which date shall be set forth in a notice from the Port Authority to the Lessee upon completion of the paving work.

7. Abatement of basic rental, if any, to which the Lessee may be entitled with respect to the Additional Premises shall be computed in accordance with the provisions of Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof.

8. Without limiting the generality of any provision of the Lease as herein amended, the Lessee agrees that with respect to any insurance policies required to be maintained by it under Special Endorsement No. 5 to the Lease and Standard Endorsement No. L21.1 to the Lease, the Port Authority shall be an additional insured for purposes of both premises operations and completed-operations.

9. In addition to all other rights under the Lease as herein amended, the Port Authority shall have the right to terminate the letting of the Additional Premises, without cause, at any time, on thirty (30) days' prior written notice to the Lessee. 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 of the Additional Premises under the Lease as herein amended. Such termination shall not relieve the Lessee of any liabilities or obligations which shall have accrued on or prior to the effective date of termination or which shall mature on such date, and shall not affect the letting as to the balance of the premises under the Lease as herein amended and the letting as

to the balance of the premises shall continue in full force and effect notwithstanding such termination.

10. In the event the Port Authority exercises its right to terminate the Lease as herein amended under the provisions of Section 16 of the Terms and Conditions of the Lease 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, collecting all amounts due to the Port Authority, the restoration of all or any of the premises under the Lease as herein amended (hereinafter called "the Premises" (on failure of the Lessee to have it restored), preparing the Premises for use and occupancy by a succeeding lessee, the care and maintenance of the Premises during any period of non-use of the Premises, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the Premises and putting the Premises in order (such as but not limited to cleaning and decorating the same).

11. In the event that upon conducting an examination and audit the Port Authority determines that unpaid amounts are due to the Port Authority by the Lessee, the Lessee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount of five percent (5%) of each amount determined by the Port Authority audit findings to be unpaid. 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 the Lease as herein amended 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 to payment of any late charge(s) or other service charge(s) payable under the provisions of this paragraph with respect to such unpaid amount. Each such service charge shall be and become basic rental, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the basic rental to be paid under the Lease as herein amended. Nothing in this paragraph is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under the Lease as herein amended, including, without limitation, the Port Authority's rights to terminate the Lease as herein amended under the provisions of Section 16 of the

Terms and Conditions of the Lease entitled "Termination" or (ii) any obligations of the Lessee under the Lease as herein amended.

12. 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 the letting, in the event that the Lessee remains in possession of the Premises after the expiration or earlier termination of the term of the letting (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 the Holdover Period at the rate of twice the rate of the basic rental payable under the Lease as herein amended at the time of such expiration or earlier termination of the term of the letting. 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 the letting.

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

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

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

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

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

ATTEST:

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

*[Handwritten signature]*

By *[Handwritten signature]*  
(Title) RICHARD M. LARRABEE  
DIRECTOR, PORT COMMERCE DEPT.  
(Seal)

ATTEST:

HARBOR FREIGHT TRANSPORT CORP.

*[Handwritten signature]*  
Secretary

By *[Handwritten signature]*  
(Title) President  
(Corporate Seal)

<b>APPROVED:</b>	
<b>FORM</b>	<b>TERMS</b>
<i>[Handwritten initials]</i>	<i>[Handwritten initials]</i>

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of the Lease as herein amended or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of \$1.00\*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of Not Applicable

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in the Lease as herein amended, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under the Lease as herein amended the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

\* during the period from July 1, 2007 through the Paving Completion Date; and at the rate of \$1.25 during the period from the day immediately following the Paving Completion Date through the remainder of the term of the letting.

Standard Endorsement No. L27.4  
Abatement  
All Marine Terminals  
10/6/68

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

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

On the *15<sup>th</sup>* day of *October* in the year 2007,  
before me, the undersigned, a Notary Public in and for said state,  
personally appeared **RICHARD M. LARRABEE**, personally  
known to me or proved to me on the basis of satisfactory evidence to be  
**DIRECTOR PORT COMMERCE DEPT.** 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*  
\_\_\_\_\_  
(notarial seal and stamp)

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

STATE OF *New Jersey*)  
 ) ss.  
COUNTY OF *ESSEX* )

On the *27<sup>th</sup>* day of *AUGUST* in the year 2007,  
before me, the undersigned, a Notary Public in and for said state,  
personally appeared **STEPHEN LIBERTI**, 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.

*Patricia W. Duemig*  
\_\_\_\_\_  
(notarial seal and stamp)

PATRICIA W. DUEMIG  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires July 28, 2008

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of December 31, 1997, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and HARBOR FREIGHT TRANSPORT CORP. (hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of November 1, 1997 the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at Port Newark, in the City of Newark, County of Essex and State of New Jersey, all as more particularly described in the Lease; and

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

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

1. (a) Effective as of 11:59 o'clock P.M. on December 31, 1997 (which hour and date are hereinafter collectively called "the Surrender Date") the Lessee has granted, bargained, sold, surrendered and yielded up and does by these presents grant, bargain, sell, surrender and yield up to the Port Authority, its successors and assigns, forever, the premises let to the Lessee shown in stipple on the sketch attached hereto, hereby made a part hereof and marked "Exhibit PS-1", and the term of years with respect thereto under the Lease as herein amended yet to come (which premises are hereinafter called "the Surrendered Area") and has given, granted and surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by the Lease as herein amended with respect to the Surrendered Area all to the intent and purpose that the said term under the Lease as herein amended and the said rights, rights of renewal, licenses, privileges and options may be wholly merged, extinguished and determined on the Surrender Date with the same force and effect as if the said term were in and by the provisions of the Lease as herein amended originally fixed to expire on such date; to have and to hold the same unto the Port Authority, its successors and assigns forever.

(b) The Lessee hereby covenants on behalf of itself, its successors and assigns that (i) it has not done or suffered and will not do or suffer anything whereby the Surrendered Area, or the Lessee's leasehold therein, has been or shall be encumbered, as of the Surrender Date in any way whatsoever; (ii) the Lessee is and will remain until the Surrender Date the sole and absolute owner of the leasehold estate in the Surrendered Area and of the rights, rights of renewal, licenses, privileges and options granted by the Lease as herein amended with respect thereto and that the same are and will remain until the Surrender Date free and clear of all liens and encumbrances of whatsoever nature; and (iii) the Lessee has full right and power to make this Agreement.

(c) All promises, covenants, agreements and obligations of the Lessee with respect to the Surrendered Area under the Lease as herein amended or otherwise which under the provisions thereof would have matured upon the date originally fixed in the Lease as herein amended for the expiration of the term thereof, or upon the termination of the Lease as herein amended prior to the said date, or within a stated period after expiration or termination, shall, notwithstanding such provisions, mature upon the Surrender Date and shall survive the partial surrender provided for in this paragraph.

(d) The Lessee has released and discharged and does by these presents release and discharge the Port Authority from any and all obligations of every kind, past, present or future on the part of the Port Authority to be performed under the Lease as herein amended with respect to the Surrendered Area. The Port Authority does by these presents release and discharge the Lessee from any and all obligations on the part of the Lessee to be performed under the Lease as herein amended with respect to the Surrendered Area for that portion of the term subsequent to the Surrender Date; it being understood that nothing herein contained shall release, relieve or discharge the Lessee from any liability for rentals or for other charges that may be due or become due to the Port Authority for any period or periods prior to the Surrender Date, or for breach of any other obligation on the Lessee's part to be performed under the Lease as herein amended for or during such period or periods or maturing pursuant to subparagraph (c) of this paragraph.

(e) In consideration of the making of this Agreement by the Port Authority, the Lessee hereby agrees to terminate its occupancy of the Surrendered Area and to deliver actual physical possession of the same to the Port Authority on or before the Surrender Date in the condition required by the Lease as herein amended upon surrender. The Lessee further agrees that it will remove from the Surrendered Area prior to the Surrender Date all equipment, removable fixtures and other personal property of the Lessee or for which the Lessee is

responsible. With respect to any such property not so removed, the Port Authority may at its option as agent for the Lessee and at the risk and expense of the Lessee remove such property to a public warehouse or may retain the same in its own possession and in either event, after the expiration of thirty (30) days may sell or consent to the sale of the same at public auction; the proceeds of any such sale shall be applied first to the expenses of removal, sale and storage, and second to any sums owed by the Lessee to the Port Authority; any balance remaining shall be paid to the Lessee. The Lessee shall pay to the Port Authority any excess of the total cost of removal, storage and sale over the proceeds of sale.

(f) The parties acknowledge and agree that, notwithstanding the provisions of Standard Endorsement No. L27.4 annexed to the Lease, there shall be no abatement for the Surrendered Area or reduction in basic rental payable under the Lease as herein amended following the Surrender Date resulting from the surrender of the Surrendered Area.

2. In addition to the premises heretofore let to the Lessee under the Lease, the letting as to which shall continue in full force and effect, subject to and in accordance with all the terms, provisions, covenants and conditions of the Lease as amended by this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority, at Port Newark aforesaid, the open area shown in stipple on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-1", together with the structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located therein or thereon (all of which is sometimes hereinafter called "the additional premises") to be and become a part of the premises under the Lease at 12:01 o'clock A.M. on January 1, 1998 let to the Lessee, subject to and in accordance with all of the terms, covenants and conditions of the Lease as herein amended, for a term expiring at 11:59 o'clock P.M. on October 31, 2007, unless sooner terminated. The parties hereby acknowledge that the additional premises constitute non-residential property.

3. The Lessee shall use the additional premises solely for the purposes set forth in Article IV of the Lease, and for no other purpose or purposes whatsoever.

4. The Port Authority shall deliver the additional premises to the Lessee in its presently existing "as is" condition. The Lessee acknowledges that prior to the execution of this Agreement, it has thoroughly examined and inspected the additional premises and has found it in good order and repair and has determined it to be suitable for the Lessee's operations therein under the Lease as herein amended. The Lessee agrees to and shall take the additional premises in its "as is" condition

and the Port Authority shall have no obligations under the Lease as herein amended for finishing work or preparation of any portion of the additional premises for the Lessee's use.

5. 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 suitability of the additional premises for the operations permitted thereon by the Lease as herein amended. Without limiting any obligation of the Lessee to commence operations under the Lease as herein amended at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the additional premises will be used initially or at any time during the letting thereof under the Lease as herein amended which is in a condition unsafe or improper for the conduct of the Lessee's operations therein under the Lease as herein amended so that there is possibility of injury or damage to life or property.

6. The Port Authority shall have no obligation to supply to the Lessee any services or utilities in the additional premises.

7. The basic rental payable under the Lease as herein amended for the period commencing at 12:01 o'clock A.M. on January 1, 1998 and ending at 11:59 o'clock P.M. on October 31, 2007 for all of the premises under the Lease shall be as set forth in Special Endorsement No. 2 to the Lease as if the surrender of the Surrendered Area under the provisions of paragraph 1 hereof and the addition of the additional premises under the provisions of paragraph 2 hereof had not occurred.

8. From and after January 1, 1998, Standard Endorsement No. L27.4 annexed to the Lease shall be deemed deleted therefrom and Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof shall be substituted in lieu thereof.

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

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

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

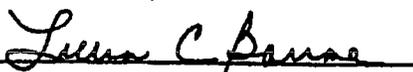
12. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port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

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

ATTEST:

  
SECRETARY

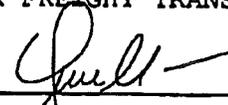
THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By   
(Title) LILLIAN C. BORRONE  
DIRECTOR, (Seal)

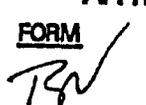
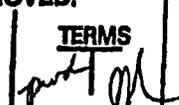
ATTEST:

  
Secretary

HARBOR FREIGHT TRANSPORT CORP.

By   
(Title) President  
(Corporate Seal)

 APPROVED:  

FORM 	TERMS 
---	--

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of the Lease as herein amended or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of \$0.40\*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$4.08\*\*

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in the Lease as herein amended, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under the Lease as herein amended the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

Standard Endorsement No. L27.4

Abatement

All Marine Terminals

10/6/68

\* for the open area shown in stipple on Exhibit A-1 ("the Additional Premises") during the period from February 1, 1998 through October 31, 1999; at the annual rate of \$0.42 for the Additional Premises during the period from November 1, 1999 through October 31, 2001; at the annual rate of \$0.45 for the Additional Premises during the period from November 1, 2001 through October 31, 2003; at the annual rate of \$0.48 for the Additional Premises during the period from November 1, 2003 through October 31, 2005; and at the annual rate of \$0.51 for the Additional Premises during the period from November 1, 2005 through October 31, 2007. The Lessee shall not be entitled to any abatement with respect to open area other than the open area constituting the Additional Premises.

\*\* for the covered area shown in diagonal crosshatching on Exhibit A and the office area shown in diagonal hatching on Exhibit A and designated by the letter "B" ("the Warehouse Area") during the period from November 1, 1997 through January 31, 1998; at the annual rate of 3.415 for the Warehouse Area during the period from February 1, 1998 through October 31, 1999; at the annual rate of \$3.62 for the Warehouse Area during the period from November 1, 1999 through October 31, 2001; at the annual rate of \$3.84 for the Warehouse Area during the period from November 1, 2001 through October 31, 2003; at the annual rate of \$4.08 for the Warehouse Area during the period from November 1, 2003 through October 31, 2005; and at the annual rate of \$4.33 for the Warehouse Area during the period from November 1, 2005 through October 31, 2007. The Lessee shall not be entitled to any abatement with respect to covered area other than the covered area constituting the Warehouse Area.

Standard Endorsement No. L27.4

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

On this 5<sup>th</sup> day of March, 1998, before me, the subscriber, a notary public of the State of New York, personally appeared Gillian C. Barrone the Port Commerce Dept. Director of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

Marie M. Edwards  
(notarial seal and stamp)

MARIE M. EDWARDS, NOTARY  
Public, State of New York  
No. 24-4859693  
Qualified in Kings County 1/6/2000  
Commission Expires \_\_\_\_\_

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

On this 28<sup>th</sup> day of JANUARY, 1998, before me, the subscriber, a notary public of THE STATE OF NEW JERSEY, personally appeared STEPHEN S. LIBERTI the President of Harbor Freight Transport Corp., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Patricia W. Duemig  
(notarial seal and stamp)

PATRICIA W. DUEMIG  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires July 26, 1998

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

HARBOR FREIGHT TRANSPORT CORP.

Dated as of November 1, 1997

---

MLPF 4473.1M

THIS AGREEMENT OF LEASE, made as of the 1st. day of November, 1997, 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 York and New Jersey with the consent of the Congress of the United States of America, and having an office and place of business at One World Trade Center, New York, New York 10048, and

HARBOR FREIGHT TRANSPORT CORP.,

a New Jersey corporation (hereinafter called "the Lessee"), with an office and place of business at 301 Craneway Street, Port Newark, Newark, New Jersey 07114

whose representative is: Stephen S. Liberti

WITNESSETH, THAT:

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

ARTICLE I. The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at Port Newark

(sometimes hereinafter called "the Facility") in the City of Newark

County of Essex, State of New Jersey, the following described premises:

The enclosed spaces constituting Building No. 301 shown in diagonal crosshatching, diagonal hatching and in the color red, and the open areas shown in stipple and in stipple and the color blue on the sketch attached hereto, 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 therein or thereon, the said areas, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential property.

ARTICLE II. The letting shall commence at 12:01 o'clock A.M. on November 1, 1997

and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on October 31, 2007.

~~and the letting shall continue from month to month thereafter as a periodical tenancy.~~

ARTICLE III. The Lessee shall pay a basic rental ~~at the monthly rate of \$~~ payable in

~~advance in full in the sum of \$~~ on ~~the first day of each calendar month thereafter during the tenancy.~~ and in the sum of

~~\$~~ on the first day of each calendar month thereafter during the tenancy.

\*as set forth in Special Endorsement No. 2 to this Agreement.

ARTICLE IV. The Lessee shall use and occupy the premises for the following purposes only, and for no other purpose whatsoever:

For the receipt, temporary storage, packing and consolidation, and distribution of such non-hazardous commodities for the account of such persons, firms and corporations as shall have the prior and continuing consent of the Port Authority.

ARTICLE V. The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 30) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

TITLE	NUMBER	DATE
Services	Standard Endorsement No. L5.1	10/6/75
Port Newark	" " No. L19.4	10/6/73
Insurance	" " No. L21.1	3/25/82
Security	" " No. L23.2	9/15/84
Siding Rights	" " No. L24.4	4/4/65
Abatement	" " No. L27.4	10/6/68
Special Endorsements		
Space Plan - Exhibit A		
Schedule naming Rules, Regulations, Rates and Charges applying at Port Authority Marine Terminals - Exhibit R		

ARTICLE VI. The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of 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 by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

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

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ATTEST:

*D. J. Smith*  
SECRETARY

By *Lillian C. Borrome*

Title LILLIAN C. BORROME  
UNIVERSITY PORT DEPT

HARBOR FREIGHT TRANSPORT CORP.

By *Quell*

Title President  
(Corporate Seal)

ATTEST:

*Migra Sanchez*  
Secretary

APPROVED:	
FORM <i>[Signature]</i>	TERMS <i>[Signature]</i>

**TERMS AND CONDITIONS****SECTION 1. *Ingress and Egress***

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

**SECTION 2. *Governmental and Other Requirements***

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

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

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

**SECTION 3. *Rules and Regulations***

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Lessee thereof by either 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 said 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 4. *Method of Operation*

(a) In the performance of its obligations hereunder and in the use of the premises the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the premises or at the Facility and within twenty four hours 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 others on the premises with the consent of the Lessee.

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the premises and the Lessee shall remove from the premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. The 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 first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof.

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

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

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the premises or the Facility or any part thereof.

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

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

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the premises or any part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on 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 National Fire Protection Association and, if the premises are located in New York, of the Insurance Services Office of New York, or, if the premises are located in New Jersey, of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on

the premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, make any and all structural and non-structural improvements, alterations or 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 any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

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

#### SECTION 5. *Signs*

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

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

#### SECTION 6. *Indemnity*

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

#### SECTION 7. *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.

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

(c) With respect to all parts of the premises, including, but without limitation thereto, such of the following as are or may be during the term of the letting located in or on the premises: fences, the exterior and interior of the building walls, the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and un-

paved areas, glass of every kind, and the utility, mechanical, electrical and other systems, the Lessee shall take the same good care of the premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the premises or adversely affect the efficient or the proper utilization of any part of the premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (the exterior of the building, areas of joint or common use and areas visible to the general public to be painted in colors which have been approved by the Port Authority), and, except under circumstances as set forth in paragraph (a) of Section 8 of these Terms and Conditions, the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the premises, all of which shall be in quality equal to the original in materials and workmanship and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) The obligation of the Lessee as set forth in paragraphs (b) and (c) of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

#### SECTION 8. Casualty

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the premises with its consent) so as to render it untenable in whole or substantial part, then

(1) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence, and the rental hereunder shall be abated as provided in this Agreement, for the period from the occurrence of the damage to the completion of the repairs or rebuilding, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(2) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage, or if one or more of the structures or buildings which are a part of the premises or the entire premises require rebuilding, then the Port Authority shall have options: (i) to proceed with due diligence to repair or to rebuild as necessary or (ii) to terminate the letting as to the damaged structure or structures, building or buildings or portion thereof only; or (iii) to cancel this Agreement and terminate the letting as to the entire premises; and the rental payable under this Agreement shall be abated, as provided in this Agreement, either, as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination, for the area or areas involved.

(b) "Substantial part" shall mean for the purpose of this Section at least twenty-

five per cent (25%) of the usable floor space in the structure or building or part thereof comprising the premises, or, if there is more than one structure or building on the premises, at least twenty-five per cent (25%) of the aggregate usable floor space comprising the premises in all of the structures and buildings covered by insurance.

(c) The parties hereby stipulate that if the premises are in New Jersey neither the provisions of Titles 46:0-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the premises are in New York, 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.

(d) In the event of damage to or a partial or total destruction of the premises, the Lessee shall within five days of the occurrence commence to remove all of its damaged property and all debris thereof from the premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, 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 upon demand.

**SECTION 9. 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.

(b) The Lessee shall not sublet the premises or any part thereof.

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of subdivisions (a) or (b) of this Section or if the premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right to this Agreement or 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 subdivisions (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 herein.

(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 as provided in Article IV of this Agreement.

**SECTION 10. Condemnation**

(a) In any action or other proceeding by any governmental agency or agencies 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.

(b) In the event that all or any portion of the premises is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the premises so required. Such termina-

tion shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the premises so required upon the effective date of such termination in the same condition as that required for the delivery of the premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by the Lessee nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be an eviction of the Lessee or a breach of this Agreement or be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise.

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

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

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

#### SECTION 11. *Construction by the Lessee*

Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any other construction work on the premises or alter, modify, or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made with or without such consent and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, or within sixty (60) days after expiration or earlier termination of the term of the letting, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

#### SECTION 12. *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 the basic rental as set forth in Article III hereof.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof, shall likewise be *prima facie* evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" in this Agreement 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 pay; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) 3% of the sum of the foregoing.

### SECTION 13. *Rights of Entry Reserved*

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed 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 to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(d) Nothing in this Section shall 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 nor for any injury or damage to the premises nor to any property of the Lessee or of any other person located in 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

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of the premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same and during such three-month period the Port Authority may place and maintain on the premises, the usual "To Let" signs, which signs the Lessee shall permit to remain without molestation.

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the premises, the Port Authority may immediately enter and alter, renovate and redecorate the premises.

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

#### SECTION 14. *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 of the facility or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted.

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a 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.

#### SECTION 15. *Prohibited Acts*

(a) Unless otherwise expressly permitted so to do, 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, dispensing or sale of food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any equipment or device for the furnishing to the public of service of any kind, including therein, without limitation thereto, telephone pay-stations.

(b) The Port Authority, by itself or by contractors, lessees, or permittees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the premises, provided, however, that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machines installed except at the sole discretion of the Port Authority.

#### SECTION 16. *Termination*

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

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness

under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

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

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

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

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

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

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

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

(9) Any lien shall be filed against the premises because of any act or omission of the Lessee and shall not be discharged within twenty (20) days; or

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

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

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

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

#### SECTION 17. *Right of Re-entry*

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 16 of these Terms and Conditions, 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 any 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 18. *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 19. *Survival of the Obligations of the Lessee*

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 16 of these Terms and Conditions, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 17 of these Terms and Conditions, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Article II hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) on account of the Lessee's rental obligations, shall be the sum of the following:

(1) The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of a 30-day month; and

(2) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the demised premises,

for legal expenses, boiler insurance premiums, if any, putting the premises in order including without limitation, cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

**SECTION 20. *Reletting by the Port Authority***

The Port Authority, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon any re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions, may occupy the premises or may relet the premises and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. Such reletting may be of part only of the premises or of the premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions 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 said premises or portion thereof during the balance of the term of the letting 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 expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

**SECTION 21. *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 the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

**SECTION 22. *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 same condition as at the commencement of the letting, reasonable wear arising from use of the premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such 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, 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. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

**SECTION 23. *Acceptance of Surrender of Lease***

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representa-

tives 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, by any of the officers, agents or employees of the Port Authority, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

**SECTION 24. Notices**

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing (which shall include a telegram when delivered to the telegraph company), and all such notices and requests shall be telegraphed or personally delivered to the party or to the duly designated officer or representative of such party or delivered to an office or residence of such party, officer or representative during regular business hours; or delivered to the residence of such party, officer or representative or delivered to the premises, or forwarded to him or to the party at the office or residence address by registered mail. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office, the address of which is set forth on the first page of this Agreement, as their respective offices where notices and requests may be served.

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

**SECTION 25. 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 obligation 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;

(4) 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 Article IV on page 2 of this Agreement, the rights of user thereby granted to the Lessee with respect to the premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

(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 these Terms and Conditions and in the endorsements, if any, attached hereto 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 at the office of the Treasurer of the Port Authority, One World Trade Center, New York, New York 10048, or to such other officer or address as may be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly prorated.

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

(h) 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, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, 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.

#### **SECTION 26. Premises**

(a) 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 and has found them to be in good order and repair and determined them to be suitable for the Lessee's operations hereunder. Without limiting any obligation of the Lessee to commence operations hereunder 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 Lessee's operations hereunder so that there is possibility of injury or damage to life or property and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

(c) If permission is given to the Lessee to enter into the possession of the premises or to occupy space other than the premises prior to the date specified in Article II as the commencement of the term of the letting, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the premises, the date of such possession shall be the date of commencement of the term hereunder.

**SECTION 27. Postponement**

If the Port Authority shall not give possession of the premises on the date fixed in Article II for the commencement of the term, by reason of the fact that the premises or any part thereof are in the course of construction, repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the term shall in any wise affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any wise to extend the term beyond the date stated in Article II for expiration. However, the rent shall not commence until possession of the premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Article II for commencement of the term then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof.

**SECTION 28. Force Majeure**

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its 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.) 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 laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, 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 29. Brokerage**

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

**SECTION 30. Non-liability of Individuals**

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

(a) The Port Authority agrees to grant (if requested so to do by the Lessee), to suppliers of water, gas, electricity and telephone service operating in the vicinity a right of way or rights of way under the Facility from the streets outside of the Facility to the premises for the sole purpose of supplying such service or services to the Lessee. No such right of way shall include the right to use any system, equipment or portion thereof constructed or owned by or leased to the Port Authority.

(b) The Lessee shall promptly pay all water bills covering its own consumption. Such payment shall include any factor which may have been included by the appropriate governmental authority as a sewer-rent or other charge for the use of a sewer system. In the event that any such water bill 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 at any time so made shall constitute an additional item of rental, payable to the Port Authority upon demand. Where sewage is contained in tanks periodically cleaned by a contractor paid by the Port Authority the Lessee shall pay such portion of the contract charge as may be reasonably determined by the Port Authority, on demand.

(c) Unless the Port Authority has expressly undertaken to heat the enclosed portions of the premises, if any, the Lessee agrees to heat the enclosed portions of the premises to a sufficient temperature so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings which, or a portion or portions of which, are included in the premises, (including but not limited to any sewer-rent or other charge for the use of a sewer system or systems), 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 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 directly to the Port Authority, as such notice may direct. All payments to be made by the Lessee hereunder shall constitute items of additional rental.

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

(f) In the event any one or more structures within or attached to the premises but not accessible directly from the enclosed portion of the premises is or are in use as a valve-room or valve-rooms for a sprinkler system, the same shall not be deemed a portion of the premises hereunder, and the Lessee shall afford access thereto through and across the premises at all times as required by the Port Authority for itself or its contractors, with or without tools, equipment, parts and supplies.

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Services

All Facilities

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(4) As-used in this Agreement:

(1) "Facility", "Port Newark" or "marine terminal" shall mean the land and premises in the City of Newark, in the County of Essex and State of New Jersey, which are easterly of the right of way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the Basic Lease and marked "Exhibit A" as contained within the limits of a line of crosses appearing on the said Exhibit A and marked (by means of the legend) "Boundary of Terminal Area in City of Newark", and lands contiguous thereto (but only those lying within the County of Essex) which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes.

(2) "Basic Lease" shall mean that agreement respecting marine and air terminals entered into with the Port Authority by the City of Newark (New Jersey) under date of October 22, 1947, and recorded in the Office of the Register of the County of Essex on October 30, 1947, in Book E-110 of Deeds, on pages 242 et seq., as the same has been or may be from time to time supplemented and amended.

(3) "Letting" shall include any extension of the letting under this Agreement, whether made by agreement or by operation of law.

(4) "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) of the Port Authority Marine Terminals - New Jersey for the time being, or his duly designated representative or representatives.

(b) The letting shall in any event terminate simultaneously with the termination or expiration of the Basic Lease. The rights of the Port Authority in the premises are those granted to it by the Basic Lease and no greater rights are granted or intended to be granted to the Lessee than the Port Authority has power thereunder to grant.

(c) No designation in this Agreement of any area as a street, avenue, highway or roadway, or by any other comparable characterization, whether or not by name, shall be or be deemed to be an admission, recognition or acknowledgment of any public or private rights in the area so designated, or as a dedication for or 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.

(d) Since the Port Authority has agreed by a provision in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of the City and its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation, to the extent that the Port Authority finds it practicable so to do, the Lessee agrees except in cases where the Port Authority either notifies the Lessee that it need not comply therewith or directs it not to comply therewith, to comply with all such enactments, ordinances, resolutions and regulations which would be applicable to its operations at the marine terminal or to any of the premises leased to it for its exclusive use if the Port Authority were a private corporation, and, subject to the provisions of this Agreement concerning construction by the Lessee, to make all non-structural improvements and alterations of or to the premises required at any time hereafter by any such enactment, ordinance, resolution or regulation, and all structural improvements or alterations of or to the premises that may be required at any time hereafter by any such enactment, ordinance, resolution or regulation because of the operations of the Lessee on the premises or its use and occupancy thereof. The Lessee

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Port Newark  
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shall for the information of the Port Authority, deliver to the Port Authority within three (3) days (Saturdays, Sundays, and holidays included) after receipt of any notice, warning, summons or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation, a true copy of the same. In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the Lessee, acting in good faith, commenced after such delivery to the Port Authority but prior to the receipt by the Lessee of a written direction from the Port Authority not to comply, (and thereafter discontinued) such compliance shall not constitute a breach of this Agreement, although the Port Authority thereafter directs the Lessee not to comply. Nothing herein contained shall release or discharge the Lessee from compliance with any other provision of this Agreement respecting governmental requirements.

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

(f) If by the provisions of Article IV or by other express provision in this Agreement the Lessee is authorized to use the premises to store for distribution items of merchandise or other materials (whether for the account of the Lessee or of others, as may be specifically provided elsewhere in this Agreement) such storage shall be substantially for merchandise and materials waterborne to the Facility or intended to be waterborne from the Facility, except that as specifically authorized from time to time by the Port Authority, the Lessee may store non-waterborne items, the handling of which is necessary as an incident to its business at the premises. "Waterborne to (or from) the Facility" shall mean and include all shipments consigned to or from the Facility which reach or leave the Port of New York by water carrier.

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(a) The Lessee in its name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, shall cover the operations of the Lessee under this Agreement, and shall be effective throughout the term of the letting.

**SCHEDULE**

<u>Policy</u>	<u>Minimum Limit</u>
(1) Comprehensive general liability insurance (to include contractual liability endorsement).	
(i) Bodily-injury liability:	
For injury or wrongful death to one person:	\$ <u>2,000,000.00</u>
For injury or wrongful death to more than one person in any one occurrence:	\$ <u>2,000,000.00</u>
(ii) Property-damage liability:	
For all damages arising out of injury to or destruction of property in any one occurrence:	\$ <u>2,000,000.00</u>
(iii) Products liability:	\$ _____
(2) Automotive liability insurance.	
(i) Bodily-injury liability:	
For injury or wrongful death to one person:	\$ <u>2,000,000.00</u>
For injury or wrongful death to more than one person in any one occurrence:	\$ <u>2,000,000.00</u>
(ii) Property-damage liability:	
For all damages arising out of injury to or destruction of property in any one occurrence:	\$ <u>2,000,000.00</u>
(3) Plate and mirror glass insurance, covering all plate and mirror glass in the premises, and the lettering, signs, or decorations, if any, on such plate and mirror glass.	\$ _____
(4) Boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	\$ _____
(5) "Additional Interest" policy of boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	\$ _____
(6) Garagekeepers' legal liability:	\$ _____

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(b) The Port Authority shall be named as an additional insured in any policy of liability insurance required by this Endorsement, unless the Port Authority shall, at any time during the term of the letting under this Agreement, direct otherwise in writing, in which case the Lessee shall cause the Port Authority not to be so named.

(c) In any policy of insurance on property other than that of the Lessee required by this Endorsement, the Port Authority shall be named as the owner except that as to property as to which the Port Authority is itself a lessee, the Port Authority shall be named as the lessee and the owner shall be named as the owner. Each shall be endorsed substantially as follows:

"Loss, if any, under this policy, as to the interest of the owner and as to the interest of The Port Authority of New York and New Jersey, shall be adjusted solely with the Port Authority and all proceeds under this policy shall be paid solely to the Port Authority."

(d) Any "Additional Interest" policy of boiler and machinery insurance required by this Endorsement shall provide protection under Sections 1 and 2 only of the Insuring Agreements of the form of policy approved for use as of the date hereof by the Insurance Rating Board, New York, New York.

(e) As to any insurance required by this Endorsement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority within ten (10) days after the execution of this Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A 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 term of the letting under this Agreement, as the same may be from time to time extended. If at any time any of the policies shall be or become unsatisfactory to the Port Authority as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

(f) Each policy of insurance required by this Endorsement 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.

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3/25/82

(a) Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deposit with the Port Authority (and shall keep deposited throughout the letting under this Agreement) either the sum of Ten Thousand Dollars and No Cents (\$10,000.00)

in cash, or bonds of the United States of America, or of the State of New Jersey, or of the State of New York, or of The Port Authority of New York and New Jersey, having a market value of that amount, 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 on its part to be fulfilled, kept, performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Lessee may deposit such bond or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Lessee) in a manner satisfactory to the Port Authority. The Lessee may request the Port Authority to accept a registered bond in the Lessee's name and if acceptable to the Port Authority the Lessee shall deposit such bond together with a bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Lessee any expenses incurred by the Port Authority in re-registering a bond to the name of the Lessee shall be borne by the Lessee. 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 use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee. 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 deposit itself shall cure any default or breach of this Agreement on the part of the Lessee. With respect to any bonds deposited by the Lessee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Lessee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights or redemption

STANDARD ENDORSEMENT NO. L23.2 (Page 1)  
Security or Letter of Credit  
All Facilities  
9/15/84

of the Lessee. The Lessee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Lessee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Lessee. Any balance remaining shall be retained in cash toward bringing the deposit to the sum specified above. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the above-mentioned amount, the Lessee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times to the full amount above stated, and such additional deposits shall be subject to all the conditions of this Section. After the expiration or earlier termination of the letting under this Agreement as the said letting may have been extended, and upon condition that the Lessee shall then be in no wise in default under any part of this Agreement, as this Agreement may have been amended or extended (or both), and upon written request therefor by the Lessee, the Port Authority will return the deposit 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. The Lessee agrees that it will not assign or encumber the deposit. The Lessee may collect or receive any interest or income earned on bonds and interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise; provided however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts.

STANDARD ENDORSEMENT NO. L23.2 (Page 2)  
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The Lessee may at any time during the term of the letting under this Agreement offer to deliver to the Port Authority, as security for all obligations of the Lessee under this Agreement, a clean irrevocable letter of credit issued by a banking institution 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 Ten Thousand Dollars and No Cents (\$10,000.00).

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 of the letting under this Agreement 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. Upon notice of cancellation of a letter of credit the Lessee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in accordance with paragraph (a) of this Standard Endorsement or another letter of credit 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 paragraph (a) of this Standard Endorsement. Failure to provide such a letter of credit at any time during the term of the letting, 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. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Lessee made thereafter, the Port Authority will return the security deposit, if any, theretofore made under and in accordance with the provisions of paragraph (a) of this Standard Endorsement. The Lessee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the letting and fulfillment of the obligations of the Lessee under this Agreement. 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.

(c) For purposes of the provisions set forth in this Standard Endorsement, the Lessee hereby certifies that its I.R.S. Employer Identification No. is Exemption (1/4)\_

STANDARD ENDORSEMENT NO. L23.2 (Page 3)  
Security or Letter of Credit  
All Facilities  
6/12/87

(a) The Lessee shall have the right (to be exercised in common with others now or in the future having rights of passage by rail) to the non-exclusive use of such of the existing railroad tracks located on the Facility (and which shall not be leased for exclusive use to others) as may be necessary for ingress and egress of railroad cars to and from the premises, subject to the following limitations and conditions:

(1) the foregoing right of use shall be subject at all times to the prior right of use by or on behalf of the United States;

(2) the foregoing right of use shall be exercised in a manner which will not hamper, interfere with or prevent the reasonable use of the tracks by others for the passage of railroad cars and locomotives;

(3) the Lessee shall not cause or permit the tracks to be obstructed, (except for the portion of track on or adjacent to the premises and that portion only for reasonable loading and unloading periods) and shall comply with all rules and regulations of the Port Authority relating to the use of railroad tracks which are now in effect or which may hereafter be promulgated for the safe and efficient use of the Facility, and shall comply further with the directions of the Manager of the Facility relating to the use of railroad tracks;

(4) the Port Authority shall have the right to remove or to relocate any track or tracks so long as means of ingress and egress for railroad cars as above described remains available;

(5) the Port Authority shall not be liable for any inconvenience, delay or loss to the Lessee by reason of interruption of use by the Lessee of any or all such railroad tracks occasioned by causes or circumstances over which the Port Authority shall not have control;

(6) the Port Authority shall not be responsible for maintenance of the switches and track used exclusively for serving the Lessee;

(7) the Lessee shall bear and promptly pay all charges made by railroads for switching or other services required for such use of railroad tracks by or for the Lessee; and

(8) the rights of user granted hereby shall be subject to any existing or future agreements between the Port Authority and railroads relating to the furnishing of service by railroads at the Facility as the said agreements may from time to time be modified or amended. In the event that the Lessee requires service from any railroad the Lessee hereby agrees to enter into such agreement or agreements covering the furnishing of such service as may be prescribed by the railroad or railroads furnishing the same.

(b) The Port Authority for its benefit and the benefit of others reserves the full and free right to use any railroad tracks located on the premises for the passage and re-passage of railroad cars and locomotives and reserves the right to enter upon the premises to maintain and repair such tracks.

(c) If this is part of a lease of premises at either Port Newark or the Elizabeth-Port Authority Marine Terminal, "Facility" as used in this Standard Endorsement shall mean and include both.

Standard Endorsement No. L 24.4  
Siding Rights  
All Marine Facilities  
4/4/65

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of this agreement or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of \$ 0.64\*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$ 4.08\*\*

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevator shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

Standard Endorsement No. L 27.4

Abatement

All Marine Terminals

10/6/68

\* for the open area shown in stipple and the color blue on Exhibit A ("the Street Area") during the period from February 1, 1998 through October 31, 1999; at the annual rate of \$0.68 for the Street Area during the period from November 1, 1999 through October 31, 2001; at the annual rate of \$0.72 for the Street Area during the period from November 1, 2001 through October 31, 2003; at the annual rate of \$0.76 for the Street Area during the period from November 1, 2003 through October 31, 2005; and at the annual rate of \$0.81 for the Street Area during the period from November 1, 2005 through October 31, 2007. The Lessee shall not be entitled to any abatement with respect to open area other than the open area constituting the Street Area.

\*\* for the covered area shown in diagonal crosshatching on Exhibit A and the office area shown in diagonal hatching on Exhibit A and designated by the letter "B" ("the Warehouse Area") during the period from November 1, 1997 through January 31, 1998; at the annual rate of 3.415 for the Warehouse Area during the period from February 1, 1998 through October 31, 1999; at the annual rate of \$3.62 for the Warehouse Area during the period from November 1, 1999 through October 31, 2001; at the annual rate of \$3.84 for the Warehouse Area during the period from November 1, 2001 through October 31, 2003; at the annual rate of \$4.08 for the Warehouse Area during the period from November 1, 2003 through October 31, 2005; and at the annual rate of \$4.33 for the Warehouse Area during the period from November 1, 2005 through October 31, 2007. The Lessee shall not be entitled to any abatement with respect to covered area other than the covered area constituting the Warehouse Area.

Standard Endorsement No. L27.4

## SPECIAL ENDORSEMENTS

rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the City of Newark, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

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

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

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

(6) In the event that in the opinion of the Port Authority the Lessee at any time during the performance of any portion of any item of Partial Approval Work under the approval

## SPECIAL ENDORSEMENTS

granted by the Port Authority pursuant to this paragraph shall fail to comply with all of the provisions of this Agreement with respect to such work or shall fail to comply with the provisions of the Construction Application covering such work and the plans and specifications forming a part thereof, or shall fail to comply with any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the performance of such item of Partial Approval Work, or if in the Port Authority's opinion the Lessee shall be in breach of any of the provisions of this Agreement covering such work or shall be in breach of any of the provisions of the Construction Application and plans and specifications covering the performance of such work, or shall be in breach of any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the work, the Port Authority shall have the right to cause the Lessee to cease all or such part of such item of the Partial Approval Work as is being performed in violation of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, the Lessee shall promptly cease performance of the portion of the Partial Approval Work specified. The Lessee shall thereupon submit to the Port Authority for its written approval the Lessee's proposal for making modifications, corrections or changes in or to the item of Partial Approval Work that has been or is to be performed so that the same will comply with the provisions of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval covering such work. The Lessee shall not commence construction of the portion of the Partial Approval Work that has been halted until it has received written approval of the proposed modifications, corrections or changes.

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

## SPECIAL ENDORSEMENTS

specifications covering such work, or any of the conditions of the Port Authority's approval of such work.

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

(g) Without limiting the generality of paragraph (c) of this Special Endorsement the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's construction work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall conduct no public operations in the premises with respect to any improvements, fixtures or equipment constituting the Lessee's construction work 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 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 Special Endorsement the provisions of this Agreement shall control.

(h) Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the premises by the Lessee and all other improvements, additions, fixtures, finishes, decorations and

## SPECIAL ENDORSEMENTS

equipment made or installed by the Lessee in the premises and shall do all preventive maintenance and make all repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear which does not adversely affect the efficient or proper utilization of any part of the premises.

(i) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the 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) Comprehensive General Liability Insurance, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Special Endorsement, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of \$2 million.

(ii) Comprehensive 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 \$2 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 Workers' Compensation and Employers' Liability Insurance policy each policy of insurance described in paragraph (j) of this Special Endorsement shall include the Port Authority as an additional insured, and no such policy shall contain any care, custody or control

## SPECIAL ENDORSEMENTS

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 subparagraph (i) of paragraph (j) of this Special Endorsement. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured. Such insurance shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(1) Unless otherwise set forth herein, each policy of insurance described in paragraphs (j) of this Special Endorsement shall be subject to the applicable provisions of Standard Endorsement No. L21.1 to this Agreement.

(m) Title to and property in all improvements and fixtures placed, constructed or installed in or on the premises, including all such improvements and fixtures as shall constitute the Lessee's construction work, shall vest in the Port Authority upon placement, construction or installation thereof and title to and property in any and all equipment and trade fixtures removable without substantial injury to the premises placed in or installed upon the premises shall vest in the Lessee upon the installation thereof. No equipment or trade fixtures shall be removed by the Lessee prior to the expiration date of the letting under this Agreement unless replaced with identical property of equal or greater value. Without limiting any other term of this Agreement, and notwithstanding the foregoing provisions, upon 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.

## SPECIAL ENDORSEMENTS

(n) 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 determinations of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority, the Lessee shall or shall cause its contractor to 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.

(o) Upon performance by the Lessee of the Lessee's construction work in accordance with the provisions of this Special Endorsement, the Port Authority will pay to the Lessee a sum (which sum is hereinafter called "the Construction Work Reimbursement Amount") equal to the lesser of: (1) the reasonable cost, as hereinafter defined, of the Lessee's construction work, or (2) One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00). To the extent permitted by sound accounting practice, and subject to the terms and conditions of paragraph (p) of this Special Endorsement, the sum of the following items of cost incurred by the Lessee in performing the Lessee's construction work shall constitute the cost thereof for the purposes of this Agreement:

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

## SPECIAL ENDORSEMENTS

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

(5) The Lessee's payments for engineering services in connection with the Lessee's construction work, and during the period of the construction only;

(6) The Lessee's payments for architectural, planning and design services in connection with the Lessee's construction work;

(7) The sum of the costs approved under items (4), (5) and (6) of this paragraph shall not exceed 20% of the sum of the costs approved under items (1), (2) and (3) of this paragraph; if in fact there is any such excess, such excess shall not be a part of the cost incurred by the Lessee in the performance of the Lessee's construction work for the purposes of this Special Endorsement.

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 Lessee's construction 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.

(p) On or about the tenth day of the first calendar month following the commencement of the Lessee's construction work the Lessee shall certify to the Port Authority by written certification subscribed by a responsible officer of the Lessee: (i) the amount of the Lessee's construction work performed by the Lessee in the preceding month, the cost of the work described in the certificate, the amount of such cost incurred by the Lessee during such month, and the amount paid by the Lessee on account of such cost, if any; (ii) that except for the amount, if any, stated in such certificate to be due for services and materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due on account of the purchase of any equipment or fixtures described in the certificate or for labor, wages, materials, supplies or services in connection with any work described therein which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen statutory or similar lien or

## SPECIAL ENDORSEMENTS

alleged lien upon such work or upon the premises or any part thereof, or upon the Lessee's leasehold interest therein, nor are any of the equipment, or fixtures described in such certificate secured by any liens, mortgages, security interests or other encumbrances. Nothing contained herein shall be deemed or construed as a submission by the Port Authority to the application to itself of any such lien; and (iii) that the work for which the amount set forth in the certificate is due has been performed in accordance with the Lessee's approved plans and specifications and the provisions of this Agreement. Such certificate shall also contain a certification by the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of paragraph (c) of this Special Endorsement certifying that all of the work described in the certificate has been performed in accordance with the final plans and specifications approved by the Port Authority and in accordance with the provisions of this Agreement. Following its receipt of the Lessee's certificate, the Port Authority shall remit to the Lessee an amount equal to the cost incurred by the Lessee for the portion of the Lessee's construction work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and also less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the work described in the certificate. On or about the tenth day of each month thereafter during the period of the performance of the Lessee's construction work the Lessee shall deliver a similar certificate to the Port Authority signed by a responsible officer of the Lessee which certificate shall certify the amount of the Lessee's construction work performed by the Lessee in the preceding month, the cost of the work described in the certificate performed by the Lessee in the preceding month, the amount of such cost incurred by the Lessee during such month, the amount paid by the lessee on account of such cost, the cumulative amount of such cost incurred by the Lessee on account of the work described in the certificate from the date of the commencement of the work, and the cumulative amount of all payments made on account of such cost from the date of the commencement of the work, and such certificate shall also contain the statements set forth in subdivisions (ii) and (iii) of this paragraph (p) both with respect to the work described in the certificate and all work previously performed by the Lessee. Each such certificate shall also contain a certification by the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of paragraph (c) of this Special Endorsement certifying that all of the work described in the certificate has been performed in accordance with the final plans and specifications approved by the Port Authority and in accordance with the provisions of this Agreement. Following its

## SPECIAL ENDORSEMENTS

receipt of such certificate the Port Authority shall remit to the Lessee an amount equal to the cost incurred by the Lessee for the portion of the Lessee's construction work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and less the amount of claims, if any, made against the Port Authority by subcontractors, materialmen or workmen on account of any of the work described in the certificate. Upon final completion of all of the Lessee's construction work to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall submit to the Port Authority a final certification signed by a responsible officer thereof that all work has been completed, which certificate shall certify separately the final cost of all of the Lessee's construction work performed by the Lessee, the cumulative payments made by the Lessee on account of such costs, and shall also certify the items set forth in subdivisions (ii) and (iii) of this paragraph (p) with respect to all of the work. In addition, the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of this Special Endorsement shall certify that all of the work has been performed in accordance with the final plans and specifications for the work approved by the Port Authority and in accordance with the provisions of this Agreement. After examination and approval of such certificate, and such supporting documents and records as the Port Authority shall deem necessary to substantiate the certificate, the Port Authority shall finally inspect the premises and the work and after such inspection the Port Authority shall notify the Lessee if all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement. If all of the work has been completed in accordance with the approved plans and specifications, and the provisions of this Agreement, the Port Authority will pay to the Lessee on account of the cost of the Lessee's construction work the difference between the sum obtained by adding together all prior payments made by the Port Authority to the Lessee on account of the cost of the Lessee's construction work and the Construction Work Reimbursement Amount. If the sum of all of the previous payments made by the Port Authority to the Lessee on account of the cost of the Lessee's construction work exceeds the Construction Work Reimbursement Amount, the Lessee shall pay to the Port Authority the amount of such excess on demand. No payment made by the Port Authority to the Lessee pursuant to the provisions of this Special Endorsement, including, without limitation, any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be deemed final until the cost of the Lessee's construction work has been finally determined by the Port Authority. Any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of

SPECIAL ENDORSEMENTS

cost shall not be deemed a final determination of the cost of the Lessee's construction work. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Lessee's construction work to examine and audit the records and other documentation of the Lessee which pertain to and will substantiate such cost. In no event whatsoever shall the cost of any portion of the Lessee's construction work as finally determined and computed in accordance with the provisions of paragraph (o) of this Special Endorsement and in accordance with the provisions of this paragraph include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any improvements, equipment or fixtures or the performance of any work unless such are actually and completely installed in and or made to the permanent premises nor shall cost include the costs of any equipment, fixture or improvements which are secured by liens, mortgages, other encumbrances or conditional bills of sale.

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

12. Notwithstanding any other provision of this Agreement, including without limitation Article I and Article IV hereof, the Lessee shall have no right to use or occupy the Demolition Area unless and until the Lessee shall have completed the Lessee's construction work, in which case the open area upon which the Demolition Area previously was located shall be open area under the provisions of this Agreement. Notwithstanding any other provision of this Agreement, including without limitation Article I and Article IV hereof, the Lessee shall have no right to use or occupy the enclosed space shown in diagonal hatching on Exhibit A and designated by the letter "A" unless and until the Lessee shall have supplied the Port Authority with a construction application and plans and specifications satisfactory to the Port Authority for the renovation of said enclosed space and shall

SPECIAL ENDORSEMENTS

have completed said work to the satisfaction of the Port Authority.

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

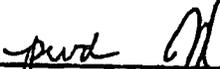
(b) The Lessee is not acquiring an ownership interest in the premises defined in Article I of this Agreement (which premises, as therein defined, are hereinafter in this paragraph referred to as "the Property"). The Lessee hereby irrevocably elects not to claim for purposes of federal, state or local taxation of income any depreciation deductions or investment tax credits, for which it may be eligible with respect to the Property, including without limitation the Lessee's construction work identified in paragraph (a) of Special Endorsement No. 11 hereto. 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 interests under this Agreement.

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

(d) It is understood that the election set forth in paragraph (b) of this Special Endorsement 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

SPECIAL ENDORSEMENTS

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.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Lessee

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

EXHIBIT Y

ELECTION

(PURSUANT TO SECTION 142 (B) OF THE  
INTERNAL REVENUE CODE OF 1986, AS AMENDED)

1. HARBOR FREIGHT TRANSPORT CORP. (hereinafter called "the Lessee") pursuant to an Agreement of Lease bearing Port Authority Lease No. L-PN-239 (hereinafter called "the Lease") made under date of November 1, 1997, between the Lessee and The Port Authority of New York and New Jersey (hereinafter called "the Port Authority") has leased a site and the structures, improvements, additions, buildings and facilities located or to be located thereon at Port Newark, all as described in the Lease (hereinafter sometimes called "the Property") to be used basically as premises constituting a portion of a public port for a term commencing on November 1, 1997 and expiring on October 31, 2007.

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

3. The principal office of the Lessee is at 301 Craneway Street, Port Newark, Newark, New Jersey 07114 and its taxpayer identification number is

4. Capital expenditures in connection with the Property have been, or are expected to be made, in whole or in part by the Port Authority from various obligations issue by it from time to time.

5. The Lessee has not acquired and is not acquiring an ownership interest in the Property. The Lessee hereby irrevocably elects not to claim for purposes of federal, state or local taxation of income any depreciation deductions or investment tax credits, for which it may be eligible with respect to the Property, including without limitation the Lessee's construction work identified in paragraph (a) of Special Endorsement No. 11 to the Lease. The Lessee further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under the Lease, and as a condition of any permitted sale or assignment of the interest of the Lessee under the Lease, every successor in interest shall furnish an executed irrevocable election in the form of the immediately preceding

sentence to the Port Authority. The foregoing shall not grant or be deemed to grant to the Lessee the right to sell or assign, in any manner, its interests under the Lease.

6. It is understood that the foregoing election shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the premises leased to the Lessee pursuant to the Lease, installed by the Lessee in or on the premises leased to the Lessee pursuant to the Lease, and which are deemed to be and remain the property of the Lessee.

ATTEST:

HARBOR FREIGHT TRANSPORT CORP.

*Rigra Sanchez*  
Secretary  
(Corporate Seal)

By *[Signature]*  
(Title) President

Dated: 9-18-97

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

On the 17<sup>th</sup> day of November, 1997, before me, the subscriber, a notary public of the State of New York, personally appeared Hillian C. Borbone, the Director / Port Commerce Dept. of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

Marie M. Edwards  
(notarial seal and stamp)

MARIE M. EDWARDS, NOTARY  
Public, State of New York  
No. 24-4959693 1/6/98  
Qualified in Kings County  
Commission Expires

STATE OF NEW JERSEY  
 ) ss.  
COUNTY OF UNION )

On the 18<sup>th</sup> day of SEPTEMBER, 1997, before me, the subscriber, a notary public of THE STATE OF NEW JERSEY personally appeared STEPHEN S. LIBERTI, the President of Harbor Freight Transport Corp., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Patricia W. Duemig  
(notarial seal and stamp)

PATRICIA W. DUEMIG  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires July 26, 1998

## SPECIAL ENDORSEMENTS

1. Notwithstanding the provisions of paragraph (c) of Section 7 of the Terms and Conditions of this Agreement, the Lessee shall not be obligated, except as provided in paragraph (b) of Section 7 and except as provided hereinafter in this Special Endorsement, to make any repairs to the sprinkler system on or serving the premises, or any structural repairs or replacements to the following parts of the premises: the roof, floors, exterior walls, exterior pavement, foundation and supporting members. After receipt by the Port Authority of notice from the Lessee that repair or replacement of any of the foregoing parts of the premises is needed (stating precisely the items of work required), the Port Authority shall make the same to the extent necessary to keep such part of the premises in a reasonably good condition for the operations of the Lessee under this Agreement; but the Port Authority shall not be obligated to make repairs or replacements to bring the premises to a better condition than that existing at the commencement of the letting. The Port Authority shall have no obligation whatsoever under this Special Endorsement to make repairs or replacements of any structure, building, installation or fixture, or any part of any of them, which have been brought to or built or installed on the premises by the Lessee or its contractor, whether or not with the prior consent of the Port Authority, whether or not the same has become part of the premises under this Agreement and whether or not title thereto has vested in the Port Authority. The responsibility of the Port Authority under this Special Endorsement shall be limited to bearing the expense of the repair or replacement and, without limitation of the foregoing, the Port Authority shall have no obligation whatsoever with respect to any repairs or replacements which are the obligation of the Lessee under other provisions of this Agreement. The Port Authority shall have no obligation with respect to any repairs or replacements required because of a casualty, whether or not insured or insurable, except as expressly provided in Section 8 of the said Terms and Conditions. If the Port Authority shall fail after a reasonable time to perform its obligations hereunder, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay to the Lessee its actual certified cash expenditures therefor or, at the option of the Port Authority, shall extend to the Lessee

in an amount equal to such expenditures a credit against its rental obligations under this Agreement. Furthermore, prior to commencement by the Port Authority of any work set forth in the Lessee's notice to the Port Authority, the Lessee shall take all precautions necessary to protect persons or property at the Facility, including the immediate performance by the Lessee of such work as may be required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Lessee for such work as hereinabove provided. Without limiting any obligation of the Lessee under this Agreement, the Port Authority, at any time and from time to time during the letting, may enter the premises for the purpose of making repairs or replacements, or for the purpose of performing maintenance, whether or not the Port Authority is obligated hereunder to do the same and whether or not the Port Authority has received a notice, request or other communication from the Lessee concerning any such repair or replacement, provided that this right of the Port Authority shall not constitute or be deemed to constitute any obligation or duty on the Port Authority either to the Lessee or others to make any repairs or replacements, do any maintenance or do anything else in connection therewith. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives from and against all claims and demands of any and all third persons whatsoever, including without limitation thereto the Lessee's employees, officers, agents and representatives, for personal injuries (including death) or property damage, which may arise from the condition of the premises or any part thereof or from failure of the Lessee to notify the Port Authority of conditions requiring repair or replacement, or from failure of the Lessee to make timely corrections of dangerous or potentially dangerous conditions in or on the premises. The Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, agents, employees, contractors and subcontractors, and their employees, from all liability for damage to the Lessee, consequential or otherwise, in connection with any provision of this Special Endorsement concerning repair or replacement of any portion of the premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

SPECIAL ENDORSEMENTS

2. The Lessee shall pay to the Port Authority a basic rental as follows: (a) for the period from November 1, 1997 through November 30, 1997, both dates inclusive, at the annual rate of One Hundred Nineteen Thousand Five Hundred Forty-six Dollars and Sixteen Cents (\$119,546.16) payable in advance in an installment of Nine Thousand Nine Hundred Sixty-two Dollars and Eighteen Cents (\$9,962.18) on November 1, 1997; (b) for the period from December 1, 1997 through December 31, 1997, both dates inclusive, at the annual rate of Two Hundred Thirty-nine Thousand Ninety-two Dollars and Twenty Cents (\$239,092.20) payable in advance in an installment of Nineteen Thousand Nine Hundred Twenty-four Dollars and Thirty-five Cents (\$19,924.35) on December 1, 1997; (c) for the period from January 1, 1998 through January 31, 1998, both dates inclusive, at the annual rate of Three Hundred Fifty-eight Thousand Six Hundred Thirty-eight Dollars and Twenty-four Cents (\$358,638.24) payable in advance in an installment of Twenty-nine Thousand Eight Hundred Eighty-six Dollars and Fifty-two Cents (\$29,886.52) on January 1, 1998; (d) for the period from February 1, 1998 through October 31, 1999, both dates inclusive, at the annual rate of Four Hundred Ninety Thousand Nine Hundred Eighty-four Dollars and No Cents (\$490,984.00) payable in advance in equal monthly installments of Forty Thousand Nine Hundred Fifteen Dollars and Thirty-four Cents (\$40,915.34) on February 1, 1998 and on the first day of each calendar month thereafter during such period; (e) for the period from November 1, 1999 through October 31, 2001, both dates inclusive, at the annual rate of Five Hundred Twenty Thousand Eight Hundred Eighty-four Dollars and Ninety-two Cents (\$520,884.92) payable in advance in equal monthly installments of Forty-three Thousand Four Hundred Seven Dollars and Eight Cents (\$43,407.08) on November 1, 1999 and on the first day of each calendar month thereafter during such period; (f) for the period from November 1, 2001 through October 31, 2003, both dates inclusive, at the annual rate of Five Hundred Fifty-two Thousand Six Hundred Six Dollars and Eighty-one Cents (\$552,606.81) payable in advance in equal monthly installments of Forty-six Thousand Fifty Dollars and Fifty-seven Cents (\$46,050.57) on November 1, 2001 and on the first day of each calendar month thereafter during such period; (g) for the period from November 1, 2003 through October 31, 2005, both dates inclusive, at the annual rate of Five Hundred Eighty-six Thousand Two Hundred Sixty Dollars and Fifty-six Cents (\$586,260.56) payable in advance in equal monthly installments of Forty-eight Thousand Eight Hundred Fifty-five Dollars and Five Cents (\$48,855.05) on November 1, 2003 and on the first day of each calendar month thereafter during such period; and (h) for the period from November 1, 2005 through October 31, 2007, both dates inclusive, at the annual rate of Six Hundred Twenty-one Thousand Nine Hundred Sixty-three Dollars and Eighty-two Cents (\$621,963.82) payable in advance in

SPECIAL ENDORSEMENTS

equal monthly installments of Fifty-one Thousand Eight Hundred Thirty Dollars and Thirty-two Cents (\$51,830.32) on November 1, 2005 and on the first day of each calendar month thereafter during such period.

3. (a) In addition to the rentals set forth in Special Endorsement No. 2 hereto, the Lessee shall pay to the Port Authority an annual throughput rental (hereinafter called the "Annual Throughput Rental") at the times set forth in and in accordance with paragraph (c) below at the rate of Three Dollars and No Cents (\$3.00) for each ton of "Qualified Cargo," as hereinafter defined, loaded onto vessels berthing at the Facility during each "Annual Period," as hereinafter defined, in excess of the "Exemption Tonnage," as hereinafter defined. The computation of the Annual Throughput Rental for each Annual Period, or a portion of an Annual Period as hereinafter provided, shall be individual to such Annual Period, or such portion of an Annual Period, and without relation to any other Annual Period, or any other portion of any Annual Period.

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

(1) The term "Annual Period" shall mean, as the context requires, the twelve-month period commencing on November 1, 1997, and each succeeding twelve-month period commencing on each November 1 occurring thereafter during the term of the letting.

(2) The term "Exemption Tonnage" shall mean three thousand five hundred (3,500) tons of Qualified Cargo for each Annual Period.

(3) The term "Qualified Cargo" shall mean any cargo (i) exceeding 44'5" in length, 8'2" in width, and 9'2" in height and which requires loading onto a flatrack container (a container having no roof or sides); and (ii) stored at the premises prior to being loaded onto vessels berthing at the Facility.

(4) The term "Ton" shall mean 2,000 pounds.

(c) Qualified Cargo shall be reported and the Annual Throughput Rental shall be paid by the Lessee as follows: on or before December 20, 1997 and on the 20th day of each and every month thereafter occurring during the term of the letting hereunder, including the month following the end of the term of the letting, the Lessee shall render to the Port Authority a statement sworn to by the chief financial officer of the Lessee

## SPECIAL ENDORSEMENTS

showing the tonnage of Qualified Cargo loaded onto vessels berthing at the Facility during the preceding month and also showing the cumulative tonnage of Qualified Cargo loaded onto vessels berthing at the Facility from the commencement of the Annual Period for which the report is made through the last day of the preceding month. Whenever any monthly statement shall show that the cumulative tonnage of Qualified Cargo loaded onto vessels berthing at the Facility during the Annual Period for which the report is made is in excess of the Exemption Tonnage, the Lessee shall pay to the Port Authority at the time of rendering such statement an amount equal to the product obtained by multiplying Three Dollars and No Cents (\$3.00) by the number of tons of Qualified Cargo in excess of the Exemption Tonnage loaded onto vessels berthing at the Facility and shall thereafter on the 20th day of each month during such Annual Period, and the month following the end of such Annual Period, pay an amount equal to the product obtained by multiplying Three Dollars and No Cents (\$3.00) by the number of tons of Qualified Cargo loaded onto vessels berthing at the Facility during each subsequent month during that Annual Period.

(d) Upon any termination of the letting hereunder (even if stated to have the same effect as expiration), the tonnage of Qualified Cargo shall be reported and the Annual Throughput Rental shall be paid on the 20th day of the first month following the month in which the effective date of such termination occurs, as follows: the Lessee shall render to the Port Authority a statement sworn to by the chief financial officer of the Lessee of the total tonnage of Qualified Cargo loaded onto vessels berthing at the Facility during the Annual Period in which the effective date of termination falls; the payment then due on account of all Annual Throughput Rental for the Annual Period in which the effective date of termination falls shall be the excess of the Annual Throughput Rental for such Annual Period, computed as follows, over the total of all Annual Throughput Rental payments previously made by the Lessee for such Annual Period: an amount equal to the product obtained by multiplying Three Dollars and No Cents (\$3.00) by the number of tons of Qualified Cargo loaded onto vessels berthing at the Facility during such Annual Period which is in excess of the Exemption Tonnage, said Exemption Tonnage being multiplied by a fraction, the numerator of which shall be the number of days from the commencement of such Annual Period to the effective date of termination and the denominator of which shall be 365.

(e) Notwithstanding that the Annual Throughput Rental hereunder is measured by the product of a rate and throughput of tonnage of cargo, no partnership relationship or joint venture

## SPECIAL ENDORSEMENTS

between the Port Authority and the Lessee is created or intended to be created by this Agreement.

(f) Nothing contained in this Special Endorsement shall affect the survival of the obligations of the Lessee as set forth in Section 19 of the Terms and Conditions of this Agreement.

(g) In the event that the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of basic rental, then the Exemption Tonnage shall be reduced proportionately to the reduction of the basic rental.

4. Paragraph (b) of Section 19 of the Terms and Conditions of this Agreement entitled "Survival of the Obligations of the Lessee" shall be amended by deleting the period appearing at the end of subparagraph (2) thereof and inserting in lieu thereof a semicolon and the word "and" and by adding at the end thereof a new subparagraph (3) to read as follows:

"(3) On account of the Lessee's obligation to pay the Annual Throughput Rental, an amount equal to the product obtained by multiplying Three Dollars and No Cents (\$3.00) by the number of tons of Qualified Cargo in excess of the Exemption Tonnage, as the same may be prorated, which tonnage of Qualified Cargo would have been handled by the Lessee during the balance of the term of the letting if there had been no termination or cancellation or re-entry, regaining, or resumption of possession (any of the foregoing in this subparagraph (3) being called a 'Termination'); and for the purpose of calculation hereunder (i) the said number of tons of Qualified Cargo shall be derived by multiplying the number of days in the balance of the term had there been no Termination by the daily average of the Lessee's tonnage of Qualified Cargo loaded onto vessels berthing at the Facility; (ii) the daily average of the Lessee's tonnage of Qualified Cargo shall be the total of the actual tonnage of Qualified Cargo loaded onto vessels berthing at the Facility during the twelve months immediately preceding said Termination during which the premises were open and in operation and in which no abatement was in effect divided by 365; and (iii) in the event that the effective date of Termination shall be on other than the last day of an Annual Period, the Exemption Tonnage for the period from the day after the effective date of Termination to the end of the Annual Period in which the Termination

## SPECIAL ENDORSEMENTS

shall have occurred shall be equal to the product obtained by multiplying the original Exemption Tonnage by a fraction, the numerator of which shall be the number of days from the effective date of termination to the end of such Annual Period and the denominator of which shall be 365."

5. The policy of comprehensive general liability insurance required by Standard Endorsement No. L21.1 to this Agreement shall include a contractual liability endorsement covering the Lessee's indemnity obligations under this Agreement. In addition to the policies of insurance required under said Standard Endorsement No. L21.1, the Lessee in its own name as assured shall secure and pay the premium or premiums for a policy of warehousemen's legal liability insurance in the minimum limit of \$2,000,000 per occurrence. Said policy of warehousemen's legal liability insurance shall cover and insure against such hazards and risks as are customarily insured under such a policy, shall cover the operations of the Lessee under this Agreement, shall be effective throughout the term of the letting, shall be subject to the provisions of paragraph (e) of said Standard Endorsement No. L21.1, and shall contain an endorsement waiving any rights of subrogation of the insurer against the Port Authority. Each policy of insurance required by said Standard Endorsement No. L21.1 shall contain an endorsement providing that the protections 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.

6. Notwithstanding anything contained in Special Endorsement No. 5 to this Agreement or in Standard Endorsement No. L21.1 annexed to this Agreement, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the limits set forth in said Special Endorsement No. 5 or said Standard Endorsement No. L21.1 and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority.

7. The Port Authority shall deliver the premises to the Lessee in its "as is" condition. The Lessee acknowledges that it has thoroughly inspected the premises and agrees to take the same in such "as is" condition. The Port Authority shall

## SPECIAL ENDORSEMENTS

have no responsibility or obligation hereunder for finishing work or for preparation of the premises for the Lessee's use.

8. If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time 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 Special Endorsement, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Special Endorsement 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 16 of the Terms and Conditions 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 Special Endorsement 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.

9. The number of pounds avoirdupois contemplated in paragraph (h) of Section 4 of the Terms and Conditions for the premises is as follows: five hundred (500) for the enclosed

## SPECIAL ENDORSEMENTS

space shown in diagonal crosshatching on Exhibit A and one hundred (100) for the enclosed space shown in diagonal hatching on Exhibit A.

10. The Lessee shall have the right to terminate the letting under this Agreement, without cause, effective as of October 31, 2002, on one year's prior written notice to the Port Authority; provided, that, the Lessee shall not be under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination by the Lessee under the provisions of this Special Endorsement 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.

11. (a) The Lessee shall have the right to perform the following work to prepare the premises for the Lessee's operations therein (which work is hereinafter called "the Lessee's construction work"): the demolition of (1) the annex to Building No. 301 located on the west side thereof and shown in diagonal hatching on Exhibit A, and (2) the portion of Building No. 301 shown in the color red on Exhibit A (which annex and portion of Building No. 301 are hereinafter collectively called "the Demolition Area"). The Lessee's construction work shall be paid for by the Port Authority as provided for in paragraphs (o) and (p) of this Special Endorsement.

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

## SPECIAL ENDORSEMENTS

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, 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 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. 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 Construction Application and complete plans and specifications, the Port

## SPECIAL ENDORSEMENTS

Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The 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 Special Endorsement 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 of the letting 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 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 Special Endorsement, 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 Special Endorsement, have been finally approved by the Port Authority.

(e) If the Lessee desires to commence construction of portions of the Lessee's construction work prior to the approval by the Port Authority of the complete Construction Application

## SPECIAL ENDORSEMENTS

and plans and specifications covering all of such work pursuant to paragraph (c) of this Special Endorsement, the Lessee shall submit to the Port Authority a separate Construction Application for each portion of the Lessee's construction work the Lessee so desires to commence (each such portion of the Lessee's construction work being hereinafter designated as "Partial Approval Work") which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to such portion of the Lessee's construction work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's construction work are hereinafter referred to as "the Partial Approval Work Plans" with respect to such portion of the Lessee's construction work) setting forth in detail the work to be performed in connection with each such portion of the Lessee's construction work. The Port Authority shall have full and complete discretion as to whether to permit the Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review the Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of the Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

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

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that the Lessee has complied with any laws,

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

Harbor Freight Transport Corp.  
LPN-298

Rent Schedule A  
Minimum Increase 2%

Yr.	Date	Bidg 301		Open Area		Total Rent		
		Rate/SF	Annual	Rate/SF	Annual	Annual	Mo.	
1	10/1/11-9/30/12	\$ 6.15	\$861,129.15	\$1.75	\$495,495.00	\$41,291.25	\$1,356,624.15	\$113,052.01
2	10/1/12-9/30/13	\$ 6.15	\$861,129.15	\$1.75	\$495,495.00	\$41,291.25	\$1,356,624.15	\$113,052.01
3	10/1/13-9/30/14	\$ 6.27	\$878,351.73	\$1.79	\$505,404.90	\$42,117.08	\$1,383,756.63	\$115,313.05
4	10/1/14-9/30/15	\$ 6.40	\$895,918.77	\$1.82	\$515,513.00	\$42,959.42	\$1,411,431.77	\$117,619.31
5	10/1/15-9/30/16	\$ 6.53	\$913,837.14	\$1.86	\$525,823.26	\$43,818.60	\$1,439,660.40	\$119,971.70
6	10/1/16-9/30/17	\$ 6.66	\$932,113.89	\$1.89	\$536,339.72	\$44,694.98	\$1,468,453.61	\$122,371.13
7	10/1/17-9/30/18	\$ 6.79	\$950,756.16	\$1.93	\$547,066.52	\$45,588.88	\$1,497,822.68	\$124,818.56
8	10/1/18-9/30/19	\$ 6.93	\$969,771.29	\$1.97	\$558,007.85	\$46,500.65	\$1,527,779.13	\$127,314.93
9	10/1/19-9/30/20	\$ 7.06	\$989,166.71	\$2.01	\$569,168.00	\$47,430.67	\$1,558,334.72	\$129,861.23
10	10/1/20-9/30/21	\$ 7.21	\$1,008,950.05	\$2.05	\$580,551.36	\$48,379.28	\$1,589,501.41	\$132,458.45
11	10/1/21-9/30/22	\$ 7.35	\$1,029,129.05	\$2.09	\$592,162.39	\$49,346.87	\$1,621,291.44	\$135,107.62
12	10/1/22-9/30/23	\$ 7.50	\$1,049,711.63	\$2.13	\$604,005.64	\$50,333.80	\$1,653,717.27	\$137,809.77

**Harbor Freight Transport Corp.**  
**LPN-298**

**Rent Schedule B**  
**Maximum Increase 4%**

Yr. Date	Bldg 301		Open Area		Total Rent	
	Rate/SF	Annual	Rate/SF	Annual	Annual	Mo.
		Mo.		Mo.		
1 10/1/11-9/30/12	\$ 6.15	\$861,129.15	\$1.75	\$495,495.00	\$1,356,624.15	\$113,052.01
2 10/1/12-9/30/13	\$ 6.15	\$861,129.15	\$1.75	\$495,495.00	\$1,356,624.15	\$113,052.01
3 10/1/13-9/30/14	\$ 6.40	\$895,574.32	\$1.82	\$515,314.80	\$1,410,889.12	\$117,574.09
4 10/1/14-9/30/15	\$ 6.65	\$931,397.29	\$1.89	\$535,927.39	\$1,467,324.68	\$122,277.06
5 10/1/15-9/30/16	\$ 6.92	\$968,653.18	\$1.97	\$557,364.49	\$1,526,017.67	\$127,168.14
6 10/1/16-9/30/17	\$ 7.19	\$1,007,399.31	\$2.05	\$579,659.07	\$1,587,058.37	\$132,254.86
7 10/1/17-9/30/18	\$ 7.48	\$1,047,695.28	\$2.13	\$602,845.43	\$1,650,540.71	\$137,545.06
8 10/1/18-9/30/19	\$ 7.78	\$1,089,603.09	\$2.21	\$626,959.25	\$1,716,562.34	\$143,046.86
9 10/1/19-9/30/20	\$ 8.09	\$1,133,187.21	\$2.30	\$652,037.62	\$1,785,224.83	\$148,768.74
10 10/1/20-9/30/21	\$ 8.42	\$1,178,514.70	\$2.39	\$678,119.12	\$1,856,633.82	\$154,719.49
11 10/1/21-9/30/22	\$ 8.75	\$1,225,655.29	\$2.49	\$705,243.89	\$1,930,899.18	\$160,908.26
12 10/1/22-9/30/23	\$ 9.10	\$1,274,681.50	\$2.59	\$733,453.64	\$2,008,135.14	\$167,344.60

## SCHEDULE C

### Security Deposit.

(a) The amount required as a security deposit (the "**Required Security Deposit**") hereunder is Two Hundred Twenty-five Thousand Dollars and No Cents (\$225,000.00) (the "**Required Security Deposit Amount**"), which is an increase in the amount of Sixty-five Thousand Dollars and No Cents (\$65,000) from the security deposit currently deposited with the Port Authority in connection with the Prior Lease, which is in the form of a letter of credit (the "**Prior Lease Security Deposit**").

(b) As of the Effective Date, the Prior Lease Security Deposit shall remain deposited with the Port Authority as the initial security deposit in connection with this Agreement. No later than March 31, 2013, the Lessee shall deliver to 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 the Agreement on its part to be fulfilled, kept, performed or observed, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District and acceptable to the Port Authority, in favor of the Port Authority, and payable in the Port of New York District in the Required Security Deposit Amount. 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 effective term granted under the Agreement 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 clean and irrevocable satisfactory letter of credit. If requested by the Port Authority, said letter of credit shall be accompanied by a letter explaining the opinion of counsel for the banking institution that the issuance of said clean, irrevocable letter of credit is an appropriate and valid exercise by the banking institution of the corporate power conferred upon it by law. Upon notice of cancellation of a letter of credit, the Lessee agrees that unless the letter of credit is replaced by another letter of credit satisfactory to the Port Authority by a date not later than twenty (20) days prior to the effective date of cancellation, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security. Failure to provide such a letter of credit at any time during the effective term granted under the Agreement 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 the 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, upon demand by the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to the Required Security Deposit Amount. No action by the Port Authority pursuant to the terms of any letter of credit, or any receipt by the Port Authority of funds from any bank issuing such letter of credit, shall be or be deemed to be a waiver of any default by the Lessee under the

terms of the Agreement, and all remedies under the Agreement and of the Port Authority consequent upon such default shall not be affected by the existence of a recourse to any such letter of credit.

c) The Lessee acknowledges and agrees that the Port Authority reserves the right, in its sole discretion at any time and from time to time upon sixty (60) days' notice to the Lessee, to adjust the Required Security Deposit Amount but in no event would the adjusted amount equal more than three months of fees that would be payable to the Port Authority. Not later than the effective date set forth in said notice by the Port Authority, the Lessee shall furnish additional cash or bonds, as provided for in paragraph (a) above, or an amendment to, or a replacement of, the letter of credit providing for such adjusted Required Security Deposit Amount, as the case may be, and such additional cash and/or bonds or adjusted (or replaced) letter of credit shall thereafter constitute the Required Security Deposit required under this Section.

d) If the Lessee is obligated by any other agreement ("**Other PA Agreement**") to maintain a security deposit with the Port Authority to insure payment and performance by the Lessee of all fees, rentals, charges and other obligations which may become due and owing to the Port Authority arising from the Lessee's operations at the Airport (or other Port Authority facility) pursuant to any such Other PA Agreement or otherwise, then all such security deposit-related obligations under such Other PA Agreement, and any deposit pursuant thereto, also shall be deemed obligations of the Lessee under the Agreement and as security hereunder, as well as under any such Other PA Agreement. All provisions of such Other PA Agreement with respect to security deposit-related obligations, and any obligations thereunder of the Port Authority as to the security deposit, are hereby incorporated herein by this reference as though fully set forth herein and hereby made a part hereof. It is understood that the term Other PA Agreement refers both to agreements entered into prior to, or as of, the effective date of the Agreement, as well as agreements hereinafter entered into.

e) The Lessee represents to the Authority that its Federal Tax Identification number is 22-2013708.

## INSURANCE SCHEDULE

(a) The Lessee named in the Agreement of Lease to which this Insurance Schedule is attached and of which it constitutes an integral part (the "*Lease*"), in its own name as insured and including the Port Authority as an additional insured, shall maintain and pay the premiums during the effective period of the Lease on a policy or policies of Commercial General Liability Insurance and Commercial Automotive Liability Insurance including premises-operations and products-completed operations and covering bodily-injury liability, including death, and property damage liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the limit set forth below:

	<u>Minimum Limits</u>
Commercial General Liability Insurance Combined single limit per occurrence for death, bodily injury and property damage liability:	\$3,000,000.00
Commercial Automotive Liability Insurance Combined single limit per occurrence for death, Bodily injury and property damage liability:	\$2,000,000.00
Workers' Compensation and Employers Liability Insurance Lessee's obligations under the applicable State Workers' Compensation Law for the employees of the Lessee employed in operations conducted pursuant to the Lease at or from the Premises	Statutory

In the event the Lessee maintains the foregoing insurance in limits greater than aforesaid, the Port Authority shall be included therein as an additional insured, except for the Workers' Compensation and Employers Liability Insurance policies, to the full extent of all such insurance in accordance with all terms and provisions of the Lease, including without limitation this Insurance Schedule.

(b) Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and any claim or action against the Port Authority by the Lessee, as if the Port Authority were the named insured thereunder, but such clause or endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured. Each policy of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under the Lease.

(c) All insurance coverages and policies required under this Insurance Schedule may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the period of permission under the Lessee. The Port Authority may, at any such time, require additions, deletions, amendments or modifications to the above-scheduled insurance requirements, or may require such other and

additional insurance, in such reasonable amounts, against such other insurable hazards, as the Port Authority may deem required and the Lessee shall promptly comply therewith.

(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement 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." The foregoing provisions or endorsements shall be recited in each policy or certificate to be delivered pursuant to the following paragraph (e).

(e) A certified copy of each policy or a certificate or certificates of insurance evidencing the existence thereof, or binders, shall be delivered to the Port Authority upon execution and delivery of the Lease by the Lessee to the Port Authority. In the event any binder is delivered it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate of insurance. Any renewal policy shall be evidenced by a renewal certificate of insurance delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the Lease. The aforesaid insurance shall be written by a company or companies approved by the Port Authority. If at any time any insurance policy shall be or become unsatisfactory to the Port Authority as to form or substance or if any of the carriers issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement. If the Port Authority at any time so requests, a certified copy of each policy shall be delivered to or made available for inspection by the Port Authority.

(f) The foregoing insurance requirements shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Lessee under the Lease. The foregoing insurance requirements shall not constitute a representation or warranty as to the adequacy of the required coverage to protect the Lessee with respect to the obligations imposed on the Lessee by the Lease or any other agreement or by law.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Lessee



THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY  
225 PARK AVENUE SOUTH, NEWYORK, NEW YORK 10003

RIGHT OF ENTRY LICENSE

(Agreement No. ROE-015PN)

**THIS RIGHT OF ENTRY LICENSE** (hereinafter referred to as the "**License**") made as of the **1<sup>ST</sup>** day of November, 2011, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**, a body corporate and politic, created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America, having its principal office at 225 Park Avenue South, New York, New York 10003 (the "**Port Authority**"), and **INTERNATIONAL MOTOR FREIGHT INC.**, a New Jersey corporation, having its principal office at 120 Tyler Street, Newark, NJ 07114 (the "**Licensee**");

WITNESSETH, That

WHEREAS, the Port Authority and the Licensee are in discussions with regard to entering into a ten (10) year Lease Agreement (the "**Proposed Lease**") for property owned by the Port Authority in Port Newark (the "**Facility**"), in the City of Newark, County of Essex and State of New Jersey, such property being commonly known as Port Newark Building 318, together with the associated open area (the "**Property**"); and

WHEREAS, the Licensee has requested permission to conduct inspections on the Property, including without limitation, the right to enter (i) Building 318, consisting of approximately 12,410 square feet, and (ii) the associated open area, consisting of approximately eight (8) acres, both as shown in checkered stipple on the exhibit attached hereto, hereby becoming a part hereof and marked "**Exhibit A**" (collectively, the "**Site**"), for the purpose of performing necessary repairs and improvements to Building 318 (collectively, the "**Work**"), provided that such Work is approved by the Port Authority pursuant to Paragraph 11 hereof; and

WHEREAS, the Licensee understands that the Proposed Lease may never be executed, which would result in the Licensee's loss of any benefit the Work would have provided the Licensee, and hereby releases the Port Authority from any and all claims by Licensee for consulting or construction fees, the cost of materials, or other costs or expenses relating to or incurred by the Licensee in connection with any such Work; and

WHEREAS, the Licensee is willing to accept and assume all the risks, costs, expenses and obligations set forth herein, and in consideration therefore, the Port Authority is hereby willing to grant access to the Site without payment of any access or similar fee or expense;

WHEREAS, the Port Authority is willing to grant permission to the Licensee and its representatives, contractors, employees, agents and servants permission to enter upon,

use and occupy the Site, for the purpose of performing the Work, and for no other purpose whatsoever, subject to the following terms and conditions:

NOW, THEREFORE, the Port Authority and the Licensee hereby mutually agree as follows:

1. Term; Nature of Permission.

(a) This License shall take effect as of the date the Port Authority approves the Tenant Alteration Application (as hereinafter defined) (the "**Effective Date**"), and shall expire, unless sooner revoked or terminated, upon the earlier occurrence of completion of the Work or one hundred eighty (180) days from the Effective Date. The permission hereby granted may be revoked at any time by the Port Authority, with or without cause, upon forty-eight (48) hours' written notice to the Licensee or may be terminated at any time by the Licensee, without cause, upon forty-eight (48) hours' written notice to the Port Authority. Revocation, termination or expiration of this License shall not relieve the Licensee of any liabilities or obligations hereunder which shall have accrued prior to the effective date of such revocation, termination or expiration. To the extent however that the Licensee requires entry to the Property after the Port Authority terminates the License Agreement, for the purpose of fulfilling any of Licensee's obligations under the License Agreement, the License Agreement shall be extended for such time that may be reasonably required for Licensee to fulfill its obligations provided, however, that the Port Authority, in its sole and absolute discretion, agrees to such extension.

(b) The permission granted herein shall not create a tenancy or any other interest in the Site except a non-exclusive license revocable at will. Without limiting the generality of the foregoing, the Port Authority, by its Commissioners and officers, contractors, agents and employees, shall have the right at any time and as often as the Port Authority shall determine to be necessary or desirable, in its absolute discretion, to enter upon the Site for any purpose whatsoever.

(c) The Licensee shall not use a Licensed Site Remediation Professional ("**LSRP**") unless the Port Authority, in its sole discretion, requires the Licensee to utilize a LSRP to undertake any of the Work. In the event that Licensee does use a LSRP, as required by the Port Authority, the Licensee shall select and hire the LSRP of its choice.

2. Project Manager's Approval.

(a) Prior to commencement of the Work and the introduction of any equipment, supplies or materials of the Licensee onto the Site, the Licensee shall submit to the General Manager of New Jersey Marine Terminals, the Port Authority of New York and New Jersey, at 260 Kellogg Street, 2<sup>nd</sup> Floor, Newark, New Jersey 07114, or his or her authorized representative or successor (the "**Project Manager**"), plans and a detailed description of the scope of work for the Work prepared by a Port Authority approved environmental consultant and/or professional engineer, as applicable. The Work shall not commence until the Licensee receives the approval of the Project Manager to do so after his or her review of said plans and scope of work.

(b) The Project Manager may withhold his or her approval to proceed with the Work if, in his or her sole opinion, the Work will in any manner endanger persons or property and may condition his or her approval on the Licensee's agreement to take such precautions as the Project Manager may, in his or her sole opinion, deem advisable. In the event that at any time the Project Manager determines, in his or her sole opinion, that the Work will unduly interfere with the operations of the facilities of the Port Authority or constitutes a hazard to life or property, the Project Manager shall have the right to suspend the Work until such time as he or she determines that the Work may safely resume.

(c) Any additions to or changes in the plans for the Work must be submitted to the Project Manager in a timely manner for review and must be approved prior to implementation.

(d) It is expressly understood and agreed that any review of the Licensee's plans and scope of work, comments thereon or monitoring, if any, of the Work shall not constitute or be construed as a representation or warranty on the part of the Port Authority as to the adequacy or propriety of such plans or methods of work, nor shall the Port Authority be deemed to have assumed any liability to the Licensee, its contractors, subcontractors, or any third party by reason of such approval or monitoring, if any, or by virtue of the presence at the Site of representatives of the Port Authority.

### 3. Commencement and Performance of Work.

(a) At least seven (7) days prior to initiating the Work, the Licensee shall notify the Project Manager and comply with his or her instructions, including time and manner of work, ingress and egress to and from the Site, design and installation of safety and security precautions and limitations on the Site. In the event that the Licensee or the Port Authority determines that the Work may extend to property that is not under the jurisdiction or the control of the Port Authority, the Licensee shall secure the necessary access or permits thereto, including appropriate Tenant Alteration Application authorization, as defined in Section 11 hereof, and shall provide the Port Authority with written evidence thereof prior to the commencement of performance of the Work.

(b) All Work shall be performed at the sole cost and expense of the Licensee and shall be carried on in a manner so as not to interfere with or interrupt the operations or services of the Port Authority. Except as to any costs or expenses relative to any work or services which the Licensee deems commercially and reasonably deficient or faulty but subject to the thirty (30) day time period set forth below, the Licensee shall pay, or cause to be paid, all costs and expenses associated with the Work, and shall pay, or cause to be paid, all claims made against it and/or its contractors or subcontractors in connection with the Work, and shall cause its contractors and subcontractors to pay all claims validly made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against any part of the Site. The Port Authority shall not be liable for any labor or materials furnished or to be furnished to Licensee upon credit, and that no mechanic's, construction or other lien, charge or order for the payment of money for any such labor or materials (hereinafter collectively referred to as "Mechanic's Liens") shall attach to or affect the reversion of any estate or interest of the Port Authority in and to the Property or the Facility. Licensee covenants that whenever and as often as any Mechanic's Liens shall have been filed against any part or all of the Property or any part of the Facility based upon any act or interest of Licensee or of anyone claiming through Licensee, Licensee shall forthwith take such action by bonding, depositing or paying so

as to remove or satisfy the lien, and in default thereof for thirty (30) days after notice to Licensee from the Port Authority.

(c) Except as otherwise provided herein, the Work shall be permitted Monday through Friday between the hours of 8:00 o'clock a.m. and 5:00 o'clock p.m. unless the Project Manager shall determine that such Work will unduly interfere with operations at the Site or will constitute a hazard to life or property. In the event of such determination, the Project Manager shall have the right to suspend the Work until such time as he or she determines that the Work may safely resume.

(d) The Licensee shall provide, and its employees and contractors shall wear, or carry badges or other suitable means of immediate identification. The badges or other suitable means of identification shall be subject to approval of the Port Authority.

(e) During the performance of the Work, the Licensee shall place barricades and signs to cordon off the portions of the Site where the Work is or will be performed and provide adequate security for its vehicles and equipment. At the conclusion of each day's work and whenever the Work is unattended by the Licensee's personnel, the Licensee shall secure its equipment, vehicles, signs and materials, and clean up all debris in such a manner as to secure the safety of all persons and property. The Site must be fenced off at the end of each work day.

(f) The Licensee, at its own cost and expense, and within ten (10) days of the completion of the Work, agrees to furnish to the Port Authority copies of any surveys or measurements, or inspection, testing, engineering or environmental sampling data, results, reports or studies concerning the Property or other similar engineering material. Except as required by law, data shall not be shared with, conveyed to or discussed in any manner with any person or entity other than the Port Authority without the express written permission of the Port Authority.

(g) Purged water, soil drums or any other materials shall be stored or left at the Site whatsoever for any period of time. Except for materials returned to the soil in accordance with New Jersey Department of Environmental Protection policies, all other materials generated during the entry upon the Site shall be the sole responsibility of Licensee. The Licensee shall ensure that any decontamination water, soil, groundwater, waste, samples or other materials generated during the Work are placed in appropriate containers and are properly identified, sealed and removed from the Site at the sole cost of the Licensee. The Licensee shall be responsible for the containerization, characterization and disposal of such materials. Copies of any hazardous waste manifests required to dispose properly of this material shall be provided to the Port Authority.

4. Damage to Property. Any damage to property of the Port Authority or under the jurisdiction of the Port Authority, including property of or under the care of the Port Authority's licensee(s), lessee(s) and/or permittee(s), resulting from or in any way arising out of the Work or the Licensee's entry hereunder, will promptly be repaired or replaced by the Licensee at its sole cost and expense with equal or better materials. If the Licensee fails to complete such repairs or replacements within thirty (30) days after being requested to do so, the Port Authority shall have the right to make such repairs or replacements and the Licensee hereby agrees to reimburse the Port Authority for all costs and expenses thereof.

5. No Interference with Property of Others. Except as to the Work, no overhead, surface or subsurface structures, buildings, piping and/or wiring belonging to or under the control of the Port Authority, its lessees, permittees or licensees or any public utility shall be removed, relocated or reconstructed by the Licensee without first obtaining the approval of the Port Authority or the affected utility company, as the case may be, and any such work shall be performed at the sole cost and expense of the Licensee. Prior to the commencement of the Work, the Licensee shall ascertain the location of subsurface utilities, if any, at the Work Site. The Licensee shall provide the Port Authority with written evidence of such coordination with utility companies. All subsurface utilities, if any, shall be marked by the Licensee prior to the commencement of the Work. No subsurface work shall proceed without the presence of representatives of both the Port Authority Resident Engineer's Office and the Licensee's engineering staff, respectively.

6. Third Party Permissions.

(a) This License is not intended, and shall not be construed, to grant the Licensee permission to use or occupy property not owned by or under the jurisdiction of the Port Authority; and this License is not intended, and shall not be construed, to relieve the Licensee from its responsibility to procure and maintain in effect all requisite permissions and approvals from appropriate public utilities and other interested third parties, together with all licenses, franchises or permits necessary for it to comply with all laws, rules and regulations of federal, state and other governmental entities, authorities and agencies applicable to it and to the Work.

(b) The Licensee shall, and shall cause its contractors and subcontractors to, promptly observe, comply and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to the Licensee's operations at, above or adjacent to the Site, including those of the State of New Jersey and its various departments, boards and bureaus. The provisions of this Paragraph are not to be construed as a submission by the Port Authority to the application to itself of any governmental laws, rules, regulations, enactments, requirements, ordinances, orders, resolutions, and directions, and no alleged or purported immunity or exemption from any of the foregoing available to the Port Authority shall excuse compliance or be grounds for non-compliance on the part of the Licensee, its contractors or subcontractors. Nothing contained in this License shall constitute a determination or indication by the Port Authority that the Licensee, its contractors or subcontractors has complied with any applicable governmental law, ordinance, enactment, resolution, order, rule or regulation, including but not limited to those of the State of New Jersey which may pertain to the Work.

7. Risk of Loss; Indemnification.

(a) The Licensee hereby agrees to specifically assume any and all risk of loss or damage of any kind whatsoever to property or injury (including death) of persons directly or indirectly arising out of, as a result of or in connection with the Work, and/or use of the Site herein permitted, including, without, limitation, loss, damage, injury or death, and any and all remediation, removal, restoration or mitigation costs and expenses, fines, penalties or payments in lieu of penalties, occurring as a result of the release or threat of release of hazardous and/or toxic wastes or substances or as a result of its compliance or noncompliance with applicable law or as a result of compliance or noncompliance with Port Authority requirements as set forth herein. Without limiting the generality of the foregoing, the Licensee shall specifically be responsible for all costs, including capital, operating and

maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any cleanup, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by a non-governmental entity or person on account of Hazardous Substances (as hereinafter defined in Paragraph 10) released by Licensee as a result of an act or omission in undertaking the Work on, under or about or migrating to or from the Site. The Port Authority, for itself and its successors and assigns, covenants and agrees that the Licensee does not assume responsibility for, and none of the provisions of this Paragraph shall apply to, Hazardous Substances (a) which have been released on the site prior to the execution of this Agreement unless Licensee's Work causes the release, exacerbation, or migration of such Hazardous Substance off the Site or exacerbates an existing environmental condition on the Site, or (b) which have migrated or shall have migrated onto the Site after the execution of this Agreement from other lands actually occupied by or under the actual control of the Port Authority, unless it has been determined that such migration occurred due to acts or omissions of the Licensee.

(b) The Licensee further agrees to indemnify and hold harmless the Port Authority, each Commissioner of the Port Authority, each officer, agent, employee and representative of the Port Authority (each, an "**Indemnified Party**", and collectively, the "**Indemnified Parties**") from and against any and all claims, suits, demands, litigations and proceedings (the "**Claims**") based upon any of the risks so assumed, whether just or unjust, fraudulent or not, including without limitation, Claims of whatever kind or nature arising out of or because of the performance of the Work, or out of or as a result of the acts or omissions of the Licensee at the Site, its officers, agents, employees, contractors, subcontractors, consultants and representatives; and from all costs and expenses incurred by any Indemnified Party in the defense, settlement or satisfaction of the Claims, including but not limited to attorneys' fees and costs of suit; provided, however, that the Licensee's obligation hereunder to indemnify and hold the Port Authority harmless shall not apply to any claims or demands resulting from the intentional tortious acts or gross negligence of the Port Authority. The Port Authority shall, within thirty (30) days of its notice of a Claim, provide written notice to Licensee of the Claim against which the Port Authority is seeking, or may seek, indemnification. If so directed, the Licensee shall, at no cost and expense to any Indemnified Party, defend against all Claims, and in handling such Claims, the Licensee shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority or its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority;

#### 8. Insurance.

(a) During the term of this License, the Licensee shall take out and maintain in its own name and at its own cost and expense a Commercial General Liability Insurance policy in limits of not less than Five Million Dollars and No Cents (\$5,000,000.00), combined single limit per occurrence for Bodily Injury and Property Damage Liability, including but not limited to Broad Form Property Damage, Explosion, Collapse and Underground Property Damage Hazards, Premises/Operations, Products Liability/Completed Operations and Independent Contractor coverages. In addition, the policy shall include a Contractual Liability endorsement covering the risks and indemnities the Licensee has assumed under this License.

(b) The Licensee shall take out and maintain in its own name and at its own expense a Comprehensive Automobile Liability Insurance policy covering owned, non owned and hired vehicles, as applicable, with limits of not less than Five Million Dollars and No

Cents (\$5,000,000.00) combined single limit per accident for Bodily Injury and Property Damage Liability.

(c) The aforementioned policies shall name the Indemnified Parties as additional insureds and shall be specifically endorsed to provide that in any action or proceeding under or in connection with such policies, the insurance carrier shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority. The aforementioned policies must be specifically endorsed to provide that the policy may not be canceled, terminated or modified without thirty (30) days' written notice to the Port Authority, Manager, Risk Financing Department, at the address below. In particular, the Commercial General Liability Policy and the related certificate of insurance must include a cross-liability endorsement providing severability of interests so that coverage will respond as if separate policies were in force for each insured.

(d) Further, the Licensee shall cause to be obtained and maintained without cost or expense to the Port Authority a policy of Workers' Compensation Insurance and Employer's Liability Insurance in compliance with the requirements of law covering all persons employed by the Licensee and its contractors in connection with the Work.

(e) Prior to the commencement of the Work or the introduction of any equipment onto the Site, the Licensee shall deliver to the Manager, Risk Financing Division, The Port Authority of New York and New Jersey, 225 Park Avenue South, 12th Floor, New York, New York 10003 (Attention: Certificate Review), an original certificate or certificates of insurance evidencing the above coverages. Any certificate required under this License shall adequately identify this Agreement, shall contain a separate express statement of compliance with each and every requirement set forth above in this Paragraph, and shall stipulate that the policies may not be canceled, terminated or modified without thirty (30) days' advance written notice to the said Manager. Moreover, all the aforesaid policies of insurance shall not contain any provisions for exclusions from liability not forming part of the standard basic unamended and unendorsed Liability Insurance policy. Upon request of the said Manager, the Licensee shall furnish him with a certified copy of each policy and proof that it is in full force and effect, including evidence that premiums have been paid.

#### 9. Environmental Terms.

(a) The Licensee for itself and its successors and assigns, covenants that it will abide by all applicable Environmental Requirements when performing the Work and any remediation required hereunder.

(b) It is expressly understood that the Licensee shall not exacerbate the environmental condition of the Site or the Facility or interfere with any environmental clean-up or remediation work being performed at the Site whether by the Port Authority or others. The Licensee shall be fully responsible, at its sole cost and expense, for the remediation and final disposition of any Hazardous Substance discovered, tested or sampled as part of the Work. The Licensee will obtain all necessary licenses, manifests, permits and approvals to perform any remediation or disposition of any Hazardous Substances required under this License.

(c) Title to any soil, dirt, sand, asbestos or other material on the Site or the Facility removed or excavated by the Licensee during the course of the Work shall vest in the Licensee upon the removal or excavation thereof and shall be delivered and deposited by the Licensee at Licensee's sole cost and expense to a location off the Facility in accordance with the terms and conditions of this License and all applicable Environmental Requirements (including, if required, disposal of asbestos in a long-term disposal facility at Licensee's sole cost and expense) and all in a manner satisfactory to the Port Authority.

(d) In the event any Hazardous Substance is discovered in the performance of the Work, the Licensee, in reporting such Hazardous Substance shall direct such report to the attention of such individual at the subject governmental authority as the Project Manager shall require in order to assure consistency in the environmental management of the Facility.

(e) Promptly upon final disposition of any Hazardous Substance in the performance of the Work, the Licensee shall submit to the Port Authority a "Certification of Final Disposal" stating the type and amount of material disposed, the method of disposal and the owner and location of the disposal facility. The format of such certification shall follow the requirements, if any, of governmental agencies having jurisdiction as if the Port Authority were a private organization and the name of the Port Authority shall not appear on any certificate or other document as a generator or owner of such material.

(f) The Licensee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on the Site or at the Facility. Any Hazardous Substance disposed of, released or discharged by the Licensee or permitted by the Licensee to be disposed of, released or discharged at the Site or at the Facility shall be completely removed and/or remediated by the Licensee by methods and procedures satisfactory to and approved by the Port Authority and in accordance with all applicable Environmental Requirements.

(g) In no event shall the License Agreement be deemed to, or otherwise interpreted to, obligate Licensee to remediate any adverse environmental condition caused by the Port Authority or by any other third parties unless Licensee, its agents, employees, contractors, subcontractors, consultants and/or representatives exacerbate an adverse environmental condition on the Property.

#### 10. Definitions.

(a) "**Environmental Requirement**" shall mean in the singular and "**Environmental Requirements**" shall mean in the plural all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidance documents, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, 'best management practices plans', and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof,

provided such programs adopted and agreements made by the Port Authority have been provided to the Licensee by the Port Authority prior to execution of this Agreement and all applicable judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and unless otherwise agreed to by the applicable governmental entities, in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation, to the extent for which Licensee is responsible under this Agreement:

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

(ii) All requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and

(iii) The Atomic Energy Act of 1954 , 42 U.S.C. Section 2011 et. seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et. seq.; the Clean Air Act, 42 U.S.C. Section 7401 et. seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et. seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq.; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Section 2701 et. seq. ; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et. seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et. seq.; the New Jersey Spill Compensation and Control Act ("N.J. Spill Act"), N.J.S.A. 58:10-23.11 et seq., the New Jersey Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq., the Site Remediation Reform Act, N.J.S.A. 58:10C-1, et. seq., and Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; together, in each case, with any amendment thereto, and the regulations adopted, guidance documents, memoranda and publications promulgated thereunder and all substitutions thereof.

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

or at any time hereafter in effect as amended or supplemented and by the regulations and guidance documents adopted and publications promulgated pursuant thereto.

11. Tenant Alteration Application. Prior to the Licensee performing any of the Work on the Site, in addition to obtaining the Project Manager's approval pursuant to Paragraph 2 of this License, such Work must be set forth in plans and specifications submitted to the Port Authority with the Port Authority's form of Tenant Alteration Application (which application as submitted by the Licensee, but not approved by the Port Authority, is hereinafter called the "Pending Tenant Alteration Application"). The Pending Tenant Alteration Application shall contain such terms and conditions as the Port Authority may include and shall set forth in detail and by complete plans and specifications the Work the Licensee desires to perform and the manner and time periods for performing the same (the foregoing tenant alteration application, as approved by the Port Authority, is hereinafter called the "Tenant Alteration Application"). If the Port Authority does not approve the Pending Tenant Alteration Application, the Licensee shall redo and resubmit the Pending Tenant Alteration Application until approved by the Port Authority. The Licensee shall not commence performance of the Work covered by any Pending Tenant Alteration Application until said Pending Tenant Alteration Application is approved by the Port Authority, it being understood and agreed that the Port Authority may in its sole discretion disapprove all or any portion of the Work the Licensee proposes to do for any reason whatsoever. All locations where the Work is to be performed shall be specified in the Tenant Alteration Application. Notwithstanding the performance of the Work or any approval of the Tenant Alteration Application, it is hereby understood and agreed that the areas upon which the Licensee shall perform the work shall be set forth in the Tenant Alteration Application and said approval and references shall not be, nor be deemed to be, a part of or imply any lease, permit or other agreement covering the leasing, use or occupancy of the Site or the Property by the Licensee.

12. Miscellaneous.

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

(b) No Indemnified Party shall be charged personally with any liability or held liable under any term or provision of this License or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

(c) The entire agreement between the Port Authority and the Licensee is contained herein and no modification or termination hereof shall be effective unless in writing, signed by the both parties. The Licensee agrees that no representations or warranties shall be binding upon the Port Authority unless express in writing in this License.

(d) The Licensee shall not assign, sell or transfer this License or any of the rights granted hereunder, without the prior written approval of the Port Authority, directly or indirectly, in whole or in part, by operation of law or otherwise, and any such assignment, transfer or sale without such prior written approval shall be void as to the Port Authority.

(e) This License, and any claim, dispute or controversy arising out of, under or related to this License shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to conflict of laws principles.

(f) The Licensee hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this License. The Licensee agrees that the service of process on the Licensee in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Licensee indicated herein, or by actual personal delivery to the Licensee, one of its directors or managing or general. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

(g) This License may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

(h) This License may not be construed as a promise or covenant to lease property. In addition, notwithstanding the performance of the Work, approval of the plans and specifications and/or any alteration application, and notwithstanding any references therein to the Licensee or to various proposed property lines or to space to be occupied by the Licensee, it is hereby understood and agreed that said performance, approvals and references are not and shall not be or be deemed to be a part of, or to imply, any lease, permit or other agreement covering the leasing, use or occupancy of any area or that any Port Authority approval for any construction, destructive building investigation or demolition of any structures at the Sites or leasing of such area or portion thereof shall be forthcoming. Additionally, no permission is hereby granted to the Licensee and Licensee is hereby expressly prohibited from doing any work that would in any way damage or alter any improvement on the Site.

(i) All notices hereunder shall be given in writing and delivered in person or by certified mail with return receipt, to the Port Authority by addressing the same to: (i) the Project Manager at the address designated in Paragraph 2 above; and (ii) The Port Authority of New York and New Jersey; and to the Licensee by addressing the same to the address first set forth above with copy to Anthony J. Vizzoni, Esq., Becker Meisel, LLC, Eisenhower Plaza II, 354 Eisenhower Parkway, Suite 1500, Livingston, NJ 07039. Notices shall be effective upon receipt.

(j) Notwithstanding anything contained herein, it is hereby specifically understood that neither party shall constitute the agent or representative of the other party for any purpose whatsoever hereunder, nor shall any partnership or joint venture be deemed created hereby.

(k) The Port Authority shall, from time to time, perform such acts and execute, in its sole and absolute discretion, and deliver to the Licensee, such other and further instruments, documents and other considerations as the Licensee may reasonably request to complete the Work and/or to satisfy its obligations under the License Agreement.

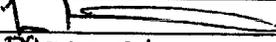
*Signatures Appear on Following Page*

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

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By:   
Name: RICHARD M. LARRABEE  
Title: DIRECTOR, PORT COMMERCE DEPT.  
(Seal)

INTERNATIONAL MOTOR FREIGHT INC.

By: Lou Gzato  
Name:   
Title: PRESIDENT  
(Corporate Seal)



**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT ("Agreement"), made as of May 1, 2011 ("Effective Date"), by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the "Port Authority") and KINDER MORGAN BULK TERMINALS INC. (hereinafter called the "Lessee").

WITNESSETH, That:

WHEREAS, heretofore and as of May 1, 2009, the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease may have been heretofore amended, modified and supplemented, called the "Lease") covering premises at Port Newark in the City of Newark, County of Essex and State of New Jersey, all as more particularly described in the Lease; and

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

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

1. In addition to the premises heretofore let to the Lessee under the Lease, the letting as to which shall continue in full force and effect, subject to and in accordance with all the terms, provisions, covenants and conditions of the Lease as amended by this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority, at Port Newark aforesaid, the paved open area upland of Berth 12 (west of Hudson Tank) as shown in diagonal cross-hatching on the sketch attached hereto hereby made a part hereof and marked Exhibit A-1, together with the structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located therein or thereon (all of which is sometimes hereinafter called the "additional premises") to be and become a part of the premises under the Lease at 12:01 o'clock A.M. on May 1, 2011 let to the Lessee, subject to and in accordance with all of the terms, covenants and conditions of the Lease as herein amended. Such letting shall be for a term expiring at 11:59 P.M. o'clock on April 30, 2016, unless sooner terminated. The parties hereby acknowledge that the additional premises constitute non-residential property.
2. The Lessee shall use the additional premises solely for the purposes set forth in Article IV of the Lease, and for no other purpose or purposes whatsoever.
3. (a) The Port Authority shall deliver the additional premises to the Lessee in its presently existing "as is" condition. The Lessee acknowledges that prior to the execution of this Agreement, it has thoroughly examined and inspected the additional premises and has found it in

good order and repair and has determined it to be suitable for the Lessee's operations therein under the Lease as herein amended. The Lessee agrees to and shall take the additional premises in its "as is" condition and the Port Authority shall have no obligations under the Lease as herein amended for finishing work or preparation of any portion of the additional 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 suitability of the additional premises for the operations permitted thereon by the Lease as herein amended. Without limiting any obligation of the Lessee to commence operations under the Lease as herein amended at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the additional premises will be used initially or at any time during the letting thereof under the Lease as herein amended which is in a condition unsafe or improper for the conduct of the Lessee's operations therein under the Lease as herein amended so that there is possibility of injury or damage to life or property.

4. The Lessee shall at all times keep the additional 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 additional premises. The Lessee shall repair, replace, rebuild and paint all or any part of the additional premises which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers, employees, agents or of other persons on or at the additional premises with the consent of the Lessee.

5. The Port Authority shall have no obligation to supply to the Lessee any services or utilities in the additional premises.

6. (a) In addition to all other rentals payable under the Lease as herein amended, the Lessee shall pay to the Port Authority an annual basic rental (hereinafter called "Additional Premises Basic Rental") for the additional premises during the period from May 1, 2011 through April 30, 2012 at the annual rate of One Hundred Fifty-two Thousand One Hundred Seventy-two Dollars and No Cents (\$152,172.00), payable in advance in equal monthly installments of Twelve Thousand Six Hundred Eighty-one Dollars and No Cents (\$12,681.00) on May 1, 2011 and on the first day of each calendar month thereafter during the term of the letting of the additional premises. The Additional Premises Basic Rental set forth in this paragraph shall be adjusted during the term of the letting of the additional premises in accordance with the provisions of subparagraph (b) of this paragraph 6.

(b) The Additional Premises Basic Rental set forth in paragraph (a), above, shall be adjusted during the letting of the additional premises in accordance with the provisions set forth below:

(i) *Definitions.* As used herein:

(1) "**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.

(2) “**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.

(3) “**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, the Annual Index Increase for the Anniversary Date that is May 1, 2013 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).

(4) “**Base Period**” shall mean April 2011.

(5) “**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.

(6) “**Percentage Increase**” shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than three percent (3%) in which case the Percentage Increase shall be three percent (3%) or (y) such Annual Index Increase is more than five percent (5%), in which case the Percentage Increase shall be five percent (5%).

(ii) *Annual Increases.* Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the expiration date of the term of the letting, as the case may be, the Lessee shall pay an Additional Premises Basic Rental at a rate per annum equal to the sum of (x) the Additional Premises Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable an Additional Premises Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(d) *Adjustments.*

(1) In the event the Index to be used in computing any increase referred to in

paragraph (c) of this paragraph 6 is not available on the effective date of such increase, the Lessee shall continue to pay the Additional Premises Basic Rental at the annual rate then in effect, subject to retroactive increase 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 increase as the Port Authority may in its discretion determine.

(2) If, after an increase in the Additional Premises Basic Rental shall have been fixed for any period, the Index used for computing such increase is changed or adjusted, then the rental increase 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 Additional Premises Basic Rental due for such period, as recomputed, over amounts theretofore actually paid on account of the Additional Premises Basic Rental for such period. If such change or adjustment results in a reduction in the Additional Premises Basic Rental due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the Additional Premises Basic Rental as recomputed for that period and amounts of the Additional Premises Basic Rental actually paid.

(3) If any increase in the Additional Premises Basic Rental referred to in paragraph (c) of this paragraph 6 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 such rental increase an installment of the Additional Premises Basic Rental equal to 1/12th of the increment of annual Additional Premises Basic Rental as increased, multiplied by a fraction of which the numerator shall be the number of days from the effective date of the basic rental increase to the end of the calendar month in which the basic rental increase became effective and the denominator shall be the number of days in that calendar month.

7. Abatement of the Additional Premises Basic Rental, if any, to which the Lessee may be entitled with respect to the additional premises shall be computed in accordance with the provisions of Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof, for purposes of this Supplement No. 1 to the Lease, it being understood that the reference in said Standard Endorsement to "basic rental" shall mean, for purposes of this Supplement o. 1 to the Lease, "Additional Premises Basic Rental"

8. In addition to all other rights under the Lease as herein amended, the Port Authority and the Lessee shall have the right to terminate the letting of the additional premises, without cause, at any time, on thirty (30) days' prior written notice to the other party. 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 of the additional premises under the Lease as herein amended. Such termination shall not relieve the Lessee of any liabilities or obligations which shall have accrued on or prior to the effective date of termination or which shall mature on such date.

9. Any alterations, additions, improvements, demolitions, or repairs that are made by the Lessee in connection with the leasehold premises under the Lease shall be made in accordance with the terms and provisions of the Port Authority Construction and Alteration Application process. Any required construction and alteration application shall be submitted by the Lessee to the Port Authority for its approval, in the form supplied by the Port Authority and containing such terms and conditions as the Port Authority may include, setting forth in detail and by appropriate plans and specifications the work proposed by the Lessee, and the manner of and time periods for performing the same. The Port Authority shall be entitled to impose, and the Lessee shall pay, a fee (“**Review Fee**”) as compensation for the Port Authority’s review and oversight in connection with any such work. The Review Fee shall be an amount equal to the greater of (a) one percent (1%) of the actual cost of the construction work or (b) the Review Fee then in effect and generally applicable to such work performed pursuant to the Port Authority’s Construction and Alteration Application process.

10. (a) Notwithstanding the generality of paragraph 3, above, the parties hereby acknowledge that the additional premises were occupied by the Lessee pursuant to a Space Permit, dated as of May 1, 2009, and identified as Port Authority Space Permit MNS-311 by and between the Port Authority and the Lessee (which space permit, as the same may have been supplemented and amended, is hereinafter called the “Old Space Permit”) covering the additional premises. It is hereby agreed that the commencement of the letting of the additional premises under this Agreement occurred immediately after the expiration of the Old Space Permit and that no reversion with respect to the additional premises occurred between the expiration of the Old Space Permit and the commencement of its letting hereunder. Further, it is hereby acknowledged that the Lessee remained in possession of the additional premises continuously from the expiration of the Old Space to the Effective Date and at no time did the Lessee surrender the additional premises to the Port Authority.

(b) The terms, provisions and conditions of the Old Space Permit shall apply to the use and occupancy of the additional premises, to the Lessee and the rights and obligations of the parties thereto prior to the Effective Date, and from and after the Effective Date, the terms, provisions and conditions of this Agreement shall apply to the letting of the additional premises, to the Lessee and the rights and obligations of the parties hereto. Accordingly, and without limiting the generality of any of the foregoing, any of the obligations under the Old Space Permit which were to mature upon the expiration or termination thereof, shall be deemed to have survived and shall mature upon the expiration or termination of this Agreement.

(c) All obligations of the Lessee under the Old Space Permit that arose or accrued during or with respect to the period prior to the effective date of this Agreement shall survive the execution and delivery of this Agreement. The Lessee shall not, by virtue of this

Agreement be released or discharged from any liabilities or obligations whatsoever arising under the Old Space Permit, all of which shall survive.

(d) All references in this Agreement to the condition of the additional premises at the beginning of the term of the letting shall mean and be deemed to mean the condition of the additional premises as they existed at the beginning of the period of permission under the Old Space Permit. Further, the obligation of the Lessee to remove any alterations or improvements, etc. made during the letting hereunder shall apply and pertain to any alterations and improvements, etc. made during the term of the Old Space Permit.

11. Effective as of May 1, 2011, paragraph 3(a)(iii) shall be deleted and restated as follows:

“(iii) “Guarantee number” shall mean two hundred twenty-eight thousand two hundred fifty (228,250) metric tons.”

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

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

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

15. This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement and the Lease, the relationship of the parties hereunder, and/or the interpretation and enforcement of the rights and obligation of the parties hereunder or thereunder shall be governed by, interpreted and construed in accordance with the laws of the State of New Jersey, without regard to choice of law principles.

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

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

ATTEST:

*Karel Eustien*  
Secretary

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By *Richard M. Larrabee*

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

KINDER MORGAN BULK TERMINALS INC.

ATTEST: *WITNESS*

*Cynthia Plimch*  
Secretary

By *Michael J. Dodson*

(Title) C. O. O. President  
(Corporate Seal) *N/A*  
*MSO*

**APPROVED:**  
**FORM** | **TERMS**  
*[Signature]* | *IA* | *[Signature]*

Kindler Morgan  
bulk Terminals, Inc.  
July 3, 1986  
State of  
Louisiana

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of this Agreement or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of \$ 1.52\*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$ No Abatement

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

\* through April 30, 2012, thereafter the said rate to be increased in proportion to increases in Additional Premises Basic Rental.

Standard Endorsement No. L27.4

Abatement

All Marine Terminals

10/6/68

CSL-61273; - Ack. N.J.: Corp. & Corp.

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF )

On this <sup>(1st)</sup> 1<sup>st</sup> day of <sup>(May)</sup> May, 2013, before me, the subscriber, a notary public of New York, personally appeared the <sup>(Richard M. Larrabee)</sup> of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate and delivered the same as such officer aforesaid and the within instrument is the voluntary act and deed of such corporation made by virtue of the authority of its Board of Commissioners.

**RICHARD M. LARRABEE**  
**DIRECTOR, PORT AUTHORITY OF NY&NJ**

*Lucy Ambrosino*  
(notarial seal and stamp)

**LUCY AMBROSINO**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
**NO. 01AM6101070**  
**QUALIFIED IN NEW YORK COUNTY**  
**MY COMMISSION EXPIRES NOV. 3, 2015**

STATE OF Pennsylvania )  
 ) ss.  
COUNTY OF Allegheny )

On this <sup>(20)</sup> 20 day of <sup>(April)</sup> April, 2013, before me, the subscriber, a notary public of Pennsylvania personally appeared <sup>(Michael J. Dodson)</sup> Michael J. Dodson the <sup>(C.O.O.)</sup> C.O.O. of Kinder Morgan Bulk Terminals Inc., who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate and delivered the same as such officer aforesaid and the within instrument is the voluntary act and deed of such corporation made by virtue of the authority of its Board of Directors.

(notarial seal and stamp)

**NOTARIAL SEAL**  
**CYNTHIA PLOCINIK**  
**Notary Public**  
**MOON TWP., ALLEGHENY COUNTY**  
**My Commission Expires Nov 23, 2013**

*Cynthia Plocinik*

**Lease No. L-PN-292**

**AGREEMENT**

**between**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**and**

**KINDER MORGAN BULK TERMINALS INC.**

**Dated as of May 1, 2009**

MLPF 4473.1

THIS AGREEMENT OF LEASE, made as of 1<sup>st</sup> day of May 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 York and New Jersey 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 KINDER MORGAN BULK TERMINALS INC., a corporation of the State of New Jersey (hereinafter called "the Lessee") with an office and place of business at 124 Starboard Street Port Newark, New Jersey 07114, whose representative is Scott Rudolph:

WITNESSETH, That:

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

**ARTICLE I.** The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at Port Newark (sometimes hereinafter called "the Facility") in the City of Newark, County of Essex, State of New Jersey, the following described premises:

the enclosed area (portion of Building No. 187) shown in diagonal cross-hatching on the sketch attached hereto 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 therein or thereon, the said areas, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential property.

**ARTICLE II.** The term of the letting shall commence at 12:01 o'clock A.M. on May 1, 2009 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on April 30, 2016.

**ARTICLE III.** The Lessee shall pay a basic rental as follow:

(a) For the period from May 1, 2009 through April 30, 2010, both dates inclusive, the basic rental rate is Four Hundred Twenty-five Thousand Five Hundred Sixty-eight Dollars and No Cents (\$425,568.00) per annum. The basic rental is payable in equal monthly installments in full in advance in the sum of Thirty-five Thousand Four Hundred Sixty-four Dollars and No Cents (\$35,464.00) on May 1, 2009 and on the first day of each calendar month thereafter during such period.

(b) The basic rental set forth in paragraph (a), above, shall be adjusted during the term of the letting in accordance with the provisions of Special Endorsement No. 2 of this Agreement.

**ARTICLE IV.** The Lessee shall use and occupy the premises for the following purposes only, and for no other purpose whatsoever:

for the storage of bulk commodities, including belgium block, salt and such other bulk cargoes as may be approved by the Manager of the Facility.

**ARTICLE V.** The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 34) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

<u>TITLE</u>	<u>NUMBER</u>	<u>DATE</u>
Services	Standard Endorsement No. L5.1	10/6/75
Port Newark	Standard Endorsement No. 19.4	10/6/73
Insurance	Standard Endorsement No. L21.1	3/25/82
Abatement	Standard Endorsement No. 27.4	10/6/68
Special Endorsements		
Exhibit A		

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

**ARTICLE VI.** The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of 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 by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

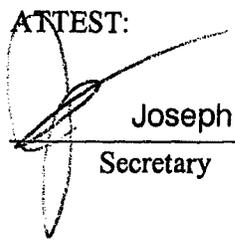
IN WITNESS WHEREOF, the Port Authority and the Lessee hereto have executed these presents as of the date first above written.

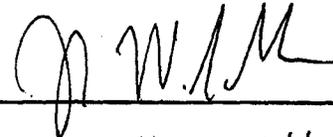
THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

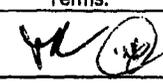
ATTEST:  
  
Secretary

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

KINDER MORGAN BULK TERMINALS INC.  
Lessee

ATTEST:  
  
Joseph Listengart  
Secretary

By   
Print Name John W. Schlosser *OK Legal & Inc*  
Title Vice President  
(Corporate Seal)

Port Authority Use Only	
Approval as to Terms:	Approval as to Form:
	
	MG/mmww

Kinder Morgan  
Bulk Terminals, Inc.  
July 3, 1986  
State of  
Louisiana

## TERMS AND CONDITIONS

### SECTION 1. *Ingress and Egress*

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

### SECTION 2. *Governmental and Other Requirements*

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

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the Premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

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

### SECTION 3. *Rules and Regulations*

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the Premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Lessee thereof by either 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 said 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 4. *Method of Operation***

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

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Premises and the Lessee shall remove from the Premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. The 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 first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof.

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

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

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the Premises or the Facility or any part thereof.

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

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

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the Premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the Premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the Premises or any

part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on 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 National Fire Protection Association and, if the Premises are located in New York, of the Insurance Services Office of New York, or, if the Premises are located in New Jersey, of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the Premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, make any and all structural and non-structural improvements, alterations or 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 any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the Premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

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

#### **SECTION 5. *Signs***

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

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Lessee on the Premises or elsewhere on the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the Premises and the Facility to the same condition as at the commencement of the letting. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every sign or piece of advertising and so to restore the Premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

#### **SECTION 6. *Indemnity***

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal expenses, whether those of the Port Authority's Law Department or otherwise, incurred in connection with the defense of) all claims and demands of third persons, including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of the use or occupancy of the Premises by the Lessee or by others with its consent, or out of any other acts or omissions of the Lessee, its officers, employees, guests, representatives, customers, contractors, invitees or business visitors on the Premises, or arising out of the acts or omissions of the Lessee, its officers and employees elsewhere at the Facility, claims and demands of the

party from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

(b) If so directed, the Lessee shall at its own expense defend any suit based on any claim or demand referred to in the foregoing paragraph (a) (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining the prior written consent of the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, its governmental nature or the provisions of any statutes respecting the Port Authority.

#### **SECTION 7. *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.

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

(c) With respect to all parts of the Premises, including without limitation such of the following as are or may be during the term of the letting located in or on the Premises; fences, the exterior and interior of the building walls the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and unpaved areas, glass of every kind, and the utility, mechanical, electrical and other systems, the Lessee shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (the exterior of the building, areas of joint or common use and areas visible to the general public to be painted in colors which have been approved by the Port Authority), and, except under circumstances as set forth in paragraph (a) of Section 8 of these Terms and Conditions, the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the Premises, all of which shall be in quality equal to the original in materials and workmanship and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) The obligation of the Lessee as set forth in paragraphs (b) and (c), of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; *provided, however*, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

**SECTION 8. Casualty**

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the Premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the Premises with its consent) so as to render it untenable in whole or substantial part, then

(1) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence, and the rental hereunder shall be abated as provided in this Agreement, for the period from the occurrence of the damage to the completion of the repairs or rebuilding, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(2) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage or if one or more of the structures or buildings which are a part of the Premises or the entire Premises require rebuilding, then the Port Authority shall have options: (i) to proceed with due diligence to repair or to rebuild as necessary or (ii) to terminate the letting as to the damaged structure or structures, building or buildings or portion thereof only; or (iii) to cancel this Agreement and terminate the letting as to the entire Premises; and the rental payable under this Agreement shall be abated, as provided in this Agreement, either, as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination, for the area or areas involved.

(b) "Substantial part" shall mean for the purpose of this Section at least twenty-five percent (25%) of the usable floor space in the structure or building or part thereof comprising the Premises, or, if there is more than one structure or building on the Premises, at least twenty-five percent (25%) of the aggregate usable floor space comprising the Premises in all of the structures and buildings covered by insurance.

(c) The parties hereby stipulate that if the Premises are in New Jersey neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the Premises are in New York, 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.

(d) In the event of damage to or a partial or total destruction of the Premises, the Lessee shall within five (5) days of the occurrence commence to remove all of its damaged property and all debris thereof from the Premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, 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 upon demand.

**SECTION 9. 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.

(b) The Lessee shall not sublet the Premises or any part thereof.

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of subdivisions (a) or (b) of this Section or if the Premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right to this Agreement or 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 subdivisions (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 herein.

(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 as provided in Article IV of this Agreement.

#### **SECTION 10. *Condemnation***

(a) In any action or other proceeding by any governmental agency or agencies 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.

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

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

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

(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 open and enclosed space, then the Lessee and the Port

Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

**SECTION 11. *Construction by the Lessee***

Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify, or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made with or without such consent and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, or within sixty (60) days after expiration or earlier termination of the term of the letting, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

**SECTION 12. *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 the basic rental as set forth in Article III hereof.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof shall likewise be *prima facie* evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" in this Agreement 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 pay; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) thirty percent (30%) of the sum of the foregoing.

**SECTION 13. *Rights of Entry Reserved***

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed 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 to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(d) Nothing in this Section shall 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 nor for any injury or damage to the Premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the acts of the Port Authority).

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

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises.

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

**SECTION 14. *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 of the Facility or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted.

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a 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 feet (20') above the present ground level of any open area included in the Premises.

#### **SECTION 15. *Prohibited Acts***

(a) Unless otherwise expressly permitted so to do, 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, dispensing or sale of food, beverages tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any equipment or device for the furnishing to the public of service of any kind, including without limitation telephone pay-stations.

(b) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the Premises; *provided, however*, that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machine installed except at the sole discretion of the Port Authority.

#### **SECTION 16. *Termination***

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

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

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

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

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

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

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

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

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

(9) Any lien shall be filed against the Premises because of any act or omission of the Lessee and shall not be discharged within twenty (20) days; or

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

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

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

(d) The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the Port Authority

would have at law or in equity consequent upon any breach of this Agreement by the Lessee, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

**SECTION 17. *Right of Re-entry***

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 16 of these Terms and Conditions, 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 any 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 18. *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 19. *Survival of the Obligations of the Lessee***

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 16 of these Terms and Conditions, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 17 of these Terms and Conditions, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Article II hereof, and the amount or mounts 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 had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) an account of the Lessee's rental obligations, shall be the sum of the following:

(1) The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of a 30-day month; and

(2) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the Premises, for legal expenses, boiler insurance premiums, if any, putting the Premises in order, including without limitation cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

**SECTION 20. *Reletting by the Port Authority***

The Port Authority, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon any re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions, may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or of the Premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions 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 of the letting 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 expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

**SECTION 21. *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 the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

**SECTION 22. *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 same condition as at the commencement of the letting, reasonable wear arising from use of the Premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the Premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such 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, 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. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

**SECTION 23. *Acceptance of Surrender of Lease***

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

**SECTION 24. *Notices***

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party, or (ii) delivered to an office or residence of such party, officer or representative during regular business hours, or (iii) delivered to an office or the residence of such party, officer or representative, or (iv) delivered to the Premises, or (v) forwarded to such party or representative at the office or residence address by registered mail or by a nationally recognized overnight courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office, the address of which is set forth on the first page of this Agreement, as their respective offices where notices and requests may be served.

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

**SECTION 25. *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 obligation shall be performed by it and its rights shall be exercised only by its officers and employees or

(2) If the Lessee is an unincorporated association, or a "Massachusetts" or business trust, its obligations shall be performed by and its rights shall be exercised only by it acting only through the medium of its members, trustees, officers and employees or

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

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

(5) If the Lessee is a limited liability company, its obligations shall be performed by and its rights shall be exercised by it acting only through the medium of its managers, members and employees;

(6) 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 Article IV on page 2 of this Agreement, the rights of user thereby granted to the Lessee with respect to the Premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

(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 these Terms and Conditions and in the endorsements, if any, attached hereto 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 sent to the following address: The Port Authority of New York and New Jersey, P. O. Box 95000-1517, Philadelphia, Pennsylvania 19195-001, or made via the following wire transfer instructions: Bank: TD Bank; Bank ABA Number: 031201360; Account Number: Exemption 1/4 sent to such other address, or via such other wire transfer instructions, as may hereafter be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly prorated.

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

(h) 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, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, 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.

## **SECTION 26. Premises**

(a) 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 and has found them to be in good order and repair and determined them to be suitable for the Lessee's operations hereunder. Without limiting any obligation of the Lessee to commence operations hereunder 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 Lessee's operations hereunder so that there is possibility of injury or damage to life or property and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

(c) If permission is given to the Lessee to enter into the possession of the Premises or to occupy space other than the Premises prior to the date specified in Article II as the commencement of the term of the letting, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the Premises, the date of such possession shall be the date of commencement of the term hereunder.

#### **SECTION 27. *Postponement***

If the Port Authority shall not give possession of the Premises on the date fixed in Article II for the commencement of the term, by reason of the fact that the Premises or any part thereof are in the course of construction, repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the term shall in any wise affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any wise to extend the term beyond the date stated in Article II for expiration. However, the rent shall not commence until possession of the Premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Article II for commencement of the term then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof.

#### **SECTION 28. *Force Majeure***

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors). 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 laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, 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 29. *Brokerage***

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

#### **SECTION 30. *Non-liability of Individuals***

No Commissioner, officer, agent or employees of the Port Authority shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

#### **SECTION 31. *Right to Audit Books and Records***

(a) (i) The Lessee shall permit and/or cause to be permitted in ordinary business hours during the term of the letting hereunder and for one year thereafter the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Lessee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant in connection with the Lessee's use and occupancy of the Premises within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any such corporate records and books of account.

(ii) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee (hereinafter referred to as 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 fees to be paid hereunder. 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 32. *Late Charges***

1. If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; 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 (15) (but not less than thirteen (13)) 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 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. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental payable under this Agreement. 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. 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. 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 33. *Waiver of Trial by Jury***

The Lessee specifically agrees that it shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment of rents, fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

**SECTION 34. *Effect of Use and Occupancy of Premises after Expiration or Termination***

Without in any way limiting the provisions set forth in the Sections of this Agreement entitled "*Termination*", "*Right of Re-entry*" and "*Survival of the Obligations of the Lessee*", unless otherwise notified by the Port Authority in writing, in the event the Lessee remains in possession of the Premises after the expiration or termination of the term of the letting under this Agreement, as it may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Agreement or other remedies the Port Authority may have by law or otherwise, the Lessee shall pay to the Port Authority a rental for the period commencing on the day immediately following the date of such expiration or the effective date of such termination and ending on the date that the Lessee shall surrender and completely vacate the Premises at an annual rate equal to twice the sum of (i) the annual rate of rental in effect on the date of such expiration or termination, plus (ii) all items of additional rent and other periodic charges, if any, payable with respect to the Premises by the Lessee at the annual rate in effect during the three-hundred-sixty-five (365) day period immediately preceding such date. Nothing herein contained shall give, or be deemed to give, the Lessee any right to remain in possession of the Premises after the expiration or termination of the letting under this Agreement. The Lessee acknowledges that the failure of the Lessee to surrender, vacate and yield up the Premises to the Port Authority on the effective date of such expiration or termination will or may cause the Port Authority injury, damage or loss. The

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Lessee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

\* \* \* \* \*

(a) The Port Authority agrees to grant (if requested so to do by the Lessee), to suppliers of water, gas, electricity and telephone service operating in the vicinity a right of way or rights of way under the Facility from the streets outside of the Facility to the premises for the sole purpose of supplying such service or services to the Lessee. No such right of way shall include the right to use any system, equipment or portion thereof constructed or owned by or leased to the Port Authority.

(b) The Lessee shall promptly pay all water bills covering its own consumption. Such payment shall include any factor which may have been included by the appropriate governmental authority as a sewer-rent or other charge for the use of a sewer system. In the event that any such water bill 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 at any time so made shall constitute an additional item of rental, payable to the Port Authority upon demand. Where sewage is contained in tanks periodically cleaned by a contractor paid by the Port Authority the Lessee shall pay such portion of the contact charge as may be reasonably determined by the Port Authority, on demand.

(c) Unless the Port Authority has expressly undertaken to heat the enclosed portions of the premises, if any, the Lessee agrees to heat the enclosed portions of the premises to a sufficient temperature so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings which, or a portion or portions of which, are included in the premises, (including but not limited to any sewer-rent or other charge for the use of a sewer system or systems), 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 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 directly to the Port Authority, as such notice may direct. All payments to be made by the Lessee hereunder shall constitute items of additional rental.

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

(f) In the event any one or more structures within or attached to the premises but not accessible directly from the enclosed portion of the premises is or are in use as a valve-room or valve-rooms for a sprinkler system, the same shall not be deemed a portion of the premises hereunder, and the Lessee shall afford access thereto through and across the premises at all times as required by the Port Authority for itself or its contractors, with or without tools, equipment, parts and supplies.

Standard Endorsement No. L5.1

Services

All Facilities

10/6/75

(a) As used in this Agreement:

(1) "Facility", "Port Newark" or "marine terminal" shall mean the land and premises in the City of Newark, in the County of Essex and State of New Jersey, which are easterly of the right of way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the Basic Lease and marked "Exhibit A" as contained within the limits of a line of crosses appearing on the said Exhibit A and marked (by means of the legend) "Boundary of Terminal Area in City of Newark", and lands contiguous thereto (but only those lying within the County of Essex) which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes:

(2) "Basic Lease" shall mean that agreement respecting marine and air terminals entered into with the Port Authority by the City of Newark (New Jersey) under date of October 22, 1947, and recorded in the Office of the Register of the County of Essex on October 30, 1947, in Book E-110 of Deeds, on pages 242 et seq., as the same has been or may be from time to time supplemented and amended.

(3) "Letting" shall include any extension of the letting under this Agreement, whether made by agreement or by operation of law.

(4) "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) of the Port Authority Marine Terminals - New Jersey for the time being, or his duly designated representative or representatives.

(b) The letting shall in any event terminate simultaneously with the termination or expiration of the Basic Lease. The rights of the Port Authority in the premises are those granted to it by the Basic Lease and no greater rights are granted or intended to be granted to the Lessee than the Port Authority has power thereunder to grant.

(c) No designation in this Agreement of any area as a street, avenue, highway or roadway, or by any other comparable characterization, whether or not by name, shall be or be deemed to be an admission, recognition or acknowledgement of any public or private rights in the area so designated, or as a dedication for or 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.

(d) Since the Port Authority has agreed by a provision in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of the City and its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation, to the extent that the Port Authority finds it practicable so to do, the Lessee agrees except in cases where the Port Authority either notifies the Lessee that it need not comply therewith or directs it not to comply therewith, to comply with all enactments, ordinances, resolutions and regulations which would be applicable to its operations at the marine terminal or to any of the premises leased to it for its exclusive use if the Port Authority were a private corporation, and, subject to the provisions of this Agreement concerning construction by the Lessee, to make all non-structural improvements and alterations of or to the premises required at any time hereafter by any such enactment, ordinance, resolution or regulation, and all structural improvements or alterations of or to the premises that may be required at any time hereafter by any such enactment, ordinance, resolution or regulation because of the operations of the Lessee on the premises or its use and occupancy thereof. The Lessee shall for the information of the Port Authority, deliver to the Port Authority within three (3) days (Saturdays, Sundays and holidays included)

after receipt of any notice, warning, summons or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation, a true copy of the same. In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the Lessee, acting in good faith, commenced after such delivery to the Port Authority but prior to the receipt by the Lessee of a written direction from the Port Authority not to comply, (and thereafter discontinued) such compliance shall not constitute a breach of this Agreement, although the Port Authority thereafter directs the Lessee not to comply. Nothing herein contained shall release or discharge the Lessee from compliance with any other provision of this Agreement respecting governmental requirements.

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

(f) If by the provisions of Article IV or by other express provision in this Agreement the Lessee is authorized to use the premises to store for distribution items of merchandise or other materials (whether for the account of the Lessee or of others, as may be specifically provided elsewhere in this Agreement) such storage shall be substantially for merchandise and materials waterborne to the Facility or intended to be waterborne from the Facility, except that as specifically authorized from time to time by the Port Authority, the Lessee may store non-waterborne items, the handling of which is necessary as an incident to its business at the premises. "Waterborne to (or from) the Facility" shall mean and include all shipments consigned to or from the Facility which reach or leave the Port of New York by water carrier.

(a) The Lessee in its own name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, shall cover the operations of the Lessee under this Agreement, and shall be effective throughout the term of the letting.

### SCHEDULE

<u>Policy</u>	<u>Minimum Limit</u>
(1) Commercial general liability insurance (to include contractual liability endorsement)	
(i) Bodily-injury liability:	
For injury or wrongful death to one person:	\$ 2,000,000.00
For injury or wrongful death to more than one person in any one occurrence:	\$ 2,000,000.00
(ii) Property-damage liability:	
For all damages arising out of injury to or destruction of property in any one occurrence:	\$ 2,000,000.00
(iii) Products liability:	\$
(2) Automotive liability insurance:	
(i) Bodily-injury liability:	
For injury or wrongful death to one person:	\$ 2,000,000.00
For injury or wrongful death to more than one person in any one occurrence:	\$ 2,000,000.00
(ii) Property-damage liability:	
For all damages arising out of injury to or destruction of property in any one occurrence:	\$ 2,000,000.00
(3) Plate and mirror glass insurance, covering all plate and mirror glass in the premises, and the lettering, signs, or decorations, if any, on such plate and mirror glass:	\$
(4) Boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	\$
(5) "Additional Interest" policy of boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	\$
(6) Garagekeepers' legal liability:	\$

(b) The Port Authority shall be named as an additional insured in any policy of liability insurance required by this Endorsement, unless the Port Authority shall, at any time during the term of the letting under this Agreement, direct otherwise in writing, in which case the Lessee shall cause the Port Authority not to be so named.

(c) In any policy of insurance on property other than that of the Lessee required by this Endorsement, the Port Authority shall be named as the owner except that as to property as to which the Port Authority is itself a lessee, the Port Authority shall be named as the lessee and the owner shall be named as the owner. Each shall be endorsed substantially as follows:

“Loss, if any, under this policy, as to the interest of the owner and as to the interest of the Port Authority of New York and New Jersey, shall be adjusted solely with the Port Authority and all proceeds under this policy shall be paid solely to the Port Authority.”

(d) Any “Additional Interest” policy of boiler and machinery insurance required by this Endorsement shall provide protection under Sections 1 and 2 only of the Insuring Agreements of the form of policy approved for use as of the date hereof by the Insurance Rating Board, New York, New York.

(e) As to any insurance required by this Endorsement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority within ten (10) days after the execution of this Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days’ written advance notice thereof to the Port Authority. A 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 term of the letting under this Agreement, as the same may be from time to time extended. If at any time any of the policies shall be or become unsatisfactory to the Port Authority as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

(f) Each policy of insurance required by this Endorsement 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.

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of this Agreement or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of \$1.43

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$No Abatement

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

\* through April 30, 2010, thereafter the said rate to be increased in proportion to increases in basic rental.

## Special Endorsements

1. In addition to all other rights under this Agreement, the Port Authority and the Lessee, shall each have the right to terminate the letting under this Agreement without cause, at any time, on thirty (30) days' notice to the other party in advance. Termination under the provisions of this Special Endorsement shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the letting.

2. The Lessee shall pay a basic rent as follows:

(a) The basic rent set forth in Article III shall be adjusted during the period of letting in accordance with the provisions set forth below:

(i) *Definitions.* As used in this Special Endorsement:

(1) **"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 of the letting.

(2) **"Anniversary Date"** shall mean, as the context requires, May 1, 2010 (the **"First Anniversary Date"**) and each anniversary of such date occurring during the term of the letting.

(3) **"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, the Annual Index Increase for the Anniversary Date that is May 1, 2010 would be a fraction of which the numerator is the Index for February 2010 less the Index for February 2009 and the denominator is the Index for February 2009).

(4) **"Base Period"** shall mean February 2009.

(5) **"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.

(6) **"Percentage Increase"** shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than three percent (3%) in which case the Percentage Increase shall be three percent (3%) or (y) such Annual Index Increase is

more than five percent (5%), in which case the Percentage Increase shall be five percent (5%).

(ii) *Annual Increases.* Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the Expiration Date, as the case may be, the Lessee shall pay a basic rent at a rate per annum equal to the sum of (x) the basic rent theretofore payable and (y) the product obtained by multiplying such theretofore payable basic rent by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(b) *Adjustments.*

(1) In the event the Index to be used in computing any increase referred to in paragraph (a) of this Special Endorsement is not available on the effective date of such increase, the Lessee shall continue to pay the basic rent at the annual rate then in effect, subject to retroactive increase 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 increase as the Port Authority may in its discretion determine.

(2) If, after an increase in basic rent shall have been fixed for any period, the Index used for computing such increase is changed or adjusted, then the rental increase 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 basic rent due for such period, as recomputed, over amounts theretofore actually paid on account of the basic rent for such period. If such change or adjustment results in a reduction in the basic rent due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the basic rent as recomputed for that period and amounts of basic rent actually paid.

(3) If any increase in basic rent referred to in paragraph (a) of this Special Endorsement 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 such rental increase an installment of basic rent equal to 1/12th of the increment of annual basic rent as increased, multiplied by a fraction of which the numerator shall be the number of days from the effective date of the rent increase to the end of the calendar month in which the rent increase became effective and the denominator shall be the number of days in that calendar month.

3. (a) In addition to all other rent payable under this Agreement, the Lessee shall pay to the Port Authority additional rent ("**Annual Throughput Rent**") as follows: If during any

"annual period", as hereinafter defined, the Port Authority shall not receive with respect to vessels berthing at the Facility wharfage charges on at least the "guarantee number", as hereinafter defined, of metric tons of belgium block and/or other bulk commodities discharged to or from all Lessee's leased premises and occupied space at the Facility, then, the Lessee shall pay to the Port Authority a sum computed by applying to the number of metric tons of such deficiency the per metric ton wharfage rate applicable to such bulk commodities as of the last day of that annual period, as set forth in the Port Authority's tariff, as incorporated in FMC SCHEDULE PA-10, as the same or any successor tariff may be amended from time to time.

(i) "Metric ton" as used herein shall mean 2,240 pounds.

(ii) "Annual period" as used herein shall mean the respective periods of May 1, 2009 through April 30, 2010, both dates inclusive, and each of the twelve month periods thereafter occurring during the term of this Agreement, as the same may be hereafter amended.

(iii) "Guarantee number" shall mean two hundred thousand (185,300) metric tons.

(b) In the event that the letting under the Lease as herein amended shall be terminated (even if stated to have the same effect as expiration), then the Lessee shall pay to the Port Authority with ten (10) days after the effective date of said termination the additional basic rent provided for in this paragraph computed by applying the per ton wharfage rate as of said effective date of termination to the difference, if any, between (a) the guarantee number and (b) the number of metric tons of salt transported to or from the premises during the period from the first day of said annual period through said date of termination. For purposes of the computation of the additional basic rental payable under the provisions of the immediately preceding sentence, the guarantee number shall be adjusted by multiplying such number by a fraction the numerator of which shall be the number of days from the first day of the annual period in which said effective date of termination shall occur to said effective date of termination and the denominator which shall be 365.

(c) Together with the payment of the Annual Throughout Rent after the end of an annual period, and within ten (10) days after revocation or termination of the use and occupancy (even if stated to have the same effect as expiration) of the premises, the Lessee shall render to the Port Authority a statement (hereinafter called (the "Annual Throughout Report"), in a form acceptable to the Port Authority and certified by a responsible officer of the Lessee showing on a month-by-month basis, the name of the ship, the duration of its stay, the number of metric tons discharged from or loaded onto vessels berthing at the Facility during the preceding twelve (12) months, and showing the cumulative amount of metric tons discharged from or loaded onto vessels berthing at the Facility from the commencement of the relevant annual period for which the Annual Throughout Report is made through the last day of the preceding month. In the event of revocation or termination prior to the Expiration Date, the Annual Throughout Report shall contain the aforesaid information for the period of time from the commencement of the relevant period through the effective termination or expiration date of the Agreement.

(d) If during any annual period the Port Authority shall receive, with respect to vessels berthing at the Facility, wharfage charges on a greater number of metric tons than the

"incentive threshold number", as hereinafter defined, of metric tons of belgium block and/or other bulk commodities discharged to or from all Lessee's leased premises and occupied premises at the Facility, then the Lessee shall be entitled to a credit against the basic rent payable under this Agreement. The credit shall be equal to (i) the product obtained by multiplying fifty percent (50%) of the wharfage charge set forth in the Tarriff by (ii) the difference between the aggregate metric tons of belgium block, salt and other bulk commodities discharged to or from the Lessee's leased premises and premises at the Facility actual throughput for the annual period in question (at the combined leased premises and occupied premises), and the Incentive Threshold Number. The "Incentive Threshold Number" shall be five hundred forty-five thousand (545,000) metric tons

4. The policy of commercial general liability insurance required by Standard Endorsement No. 21.1 to this Agreement shall include a contractual liability endorsement covering the Lessee's indemnity obligations under this Agreement. Without limiting the generality of any insurance coverage required under Standard Endorsement No. 21.1 to this Agreement, the Port Authority shall be an additional insured thereunder for both premises-operations and completed operations. Each policy of insurance required by said Standard Endorsement No. 21.1 shall contain an endorsement providing that the protections 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. The Lessee shall also secure and pay the premium or premiums for a policy of Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law

5. The Lessee hereby acknowledges that prior to the execution of this Agreement it has thoroughly examined and inspected the premises and has found the premises in good order and repair and has determined the premises to be suitable for the Lessee's operations hereunder and acknowledges and agrees that it has not relied on any representations or statements of the Port Authority, its Commissioners, officers, employees or agents as to the condition or suitability thereof for use by the Lessee for the purposes contemplated herein. The Lessee agrees to and shall take the premises in its "as is" condition and the Port Authority shall have no obligation hereunder for preparation of the premises for the Lessee's use. The Lessee agrees that no portion of the premises will be used initially or at any time during the term of the letting granted hereunder which is in a condition unsafe or improper for the purposes contemplated herein so that there is no possibility of injury or damage to life or property and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

6. Neither the execution and delivery of this Agreement nor any act done pursuant thereto shall create between the Lessee and the Port Authority the relationship of bailor and bailee, the relationship of storer and garagekeeper, or any other relationship except that of lessee and lessor of space, nor shall there be created thereby any legal status which would impose upon the Port Authority with respect to any property located in the premises any duty or obligation whatsoever. The Lessee expressly agrees that unless otherwise agreed in writing, the Port Authority shall have no liability with respect to any vehicle parked in the premises, or with respect to any property of the Lessee or of any other person whatsoever left in any vehicle parked in the premises, except for damage resulting solely from affirmative willful acts of the Port Authority.

7. Except in case of emergency or breakdown, the Lessee shall not perform or permit the performance of mechanical, electrical or structural repairs of vehicles on the premises, and shall not itself or permit others to clean, wash, fuel, lubricate or paint any vehicle or vehicles thereon, and shall not store or permit others to store on the premises any automotive fuel or lubricants, oil, greases or other liquids contained in the functional reservoirs of the vehicles parked thereon.

8. The Lessee shall promptly wipe up all oil, gasoline, grease, lubricants, cleaning fluids and other inflammable liquids and substances and all liquids and substances having a corrosive or detrimental effect on the paving or other surface of the premises which may leak or be spilled or placed thereon by reason of the operations of the Lessee hereunder. Without limiting the generality of Section 7 of the Terms and Conditions, the Lessee shall repair, replace, repave and rebuild, all or any part of the premises which may be damaged or destroyed by such oil, gasoline, grease, lubricants, cleaning fluids or other liquids and substances. In the event the Lessee fails to commence to such repair, replacement, repaving or rebuilding within a period of ten (10) days after notice from the Port Authority so to do, or fails diligently to continue to completion such repair, replacement, repaving or rebuilding, the Port Authority, in addition to other remedies it may have, may at its option repair, replace, repave or rebuild all or any part of the paving or other surface of the premises so damaged or destroyed and charge the cost thereof to the Lessee, which cost the Lessee hereby agrees to pay on demand.

9. The Lessee shall ensure labor harmony in its operations at the Facility, to the end of avoiding and preventing strikes, walkouts, work stoppages, slowdowns, boycotts and other labor trouble and discord. The Lessee particularly recognizes the essential necessity of the continued and full operation of the whole Facility.

10. (a) Notwithstanding anything to the contrary herein contained, the Lessee hereby agrees that this lease agreement is one of the "Agreements," as such term is defined in that certain security agreement entered into between the Port Authority and the Lessee, made as of May 1, 2009, and identified by Port Authority Agreement No. PCX-007 (the "Security Agreement"), and that a breach or failure to perform or comply with any of the terms and conditions of the Security Agreement, including, without limitation, failure to provide a letter of credit in accordance with the terms and conditions for the Security Agreement at any time during the term under any of the Agreements valid and available to the Port Authority or any failure of any banking institutions issuing a letter of credit to make one or more payments as provided in such letter of credit, shall constitute a material breach of this Lease and the Security Agreement thereby entitling the Port Authority to immediately exercise any and all rights available to it, including, without limitation, the right to terminate this lease Agreement for cause.

(b) The Lessee hereby certifies that its Federal Tax Identification Number is for the purposes of this paragraph.

(c) The Lessee acknowledges and agrees that the Port Authority reserves the right, at its sole discretion, to adjust at any time and from time to time upon fifteen (15) days notice to the Lessee, the security deposit amount as set forth in the Security Agreement. Not later than the effective date set forth in said notice the Lessee shall deposit with the Port Authority the new security deposit amount as set forth in and in such form as requested by said notice which new amount (including with limitation an amendment to or a replacement of the letter of credit) shall thereafter constitute the security deposit subject to said Section.

11. (a) Any alterations, additions, improvements, demolitions, or repairs that are made by the Lessee hereunder shall be made in accordance with the terms and provisions of the Port Authority Construction and Alteration Application process. Any required construction and alteration application shall be submitted by the Lessee to the Port Authority for its approval, in the form supplied by the Port Authority and containing such terms and conditions as the Port Authority may include, setting forth in detail and by appropriate plans and specifications the work proposed by the Lessee, and the manner of and time periods for performing the same. The Port Authority shall be entitled to impose, and the Lessee shall pay, a fee ("Review Fee") as compensation for the Port Authority's review and oversight in connection with any such work. The Review Fee shall be an amount equal to the greater of (a) three percent (3%) of the actual cost of the construction work or (b) the Review Fee then in effect and generally applicable to such work performed pursuant to the Port Authority's Construction and Alteration Application process.

(b) The Lessee shall be obligated to undertake or cause to be undertaken, at the Lessee's sole and full cost and expense, the complete demolition of Building 187 upon the first to occur of (i) the Lessee's vacancy or cessation of use as permitted under the Lease of Building 187, (ii) the termination of the Lease and (iii) the expiration of the Lease. The Lessee further agrees that such demolition shall be accomplished on a date, at a time and in a manner which is in strict compliance with and subject to Port Authority requirements, processes (including but not limited to the Tenant Alteration and Application process), rules and regulations, including but not limited to all matters relating to removal and disposal of debris and those relating to the condition in which the premises must be left after such demolition, removal and disposal is completed.

(c) The Lessee shall maintain and repair and, if so directed by the Port Authority, shall remove and replace the barriers now installed on the premises for the purpose of separating belgium block stored on the premises from the adjoining buildings by at least ten (10) feet. The Port Authority and the Lessee acknowledge and agree that said barriers are the personal property of the Lessee and that the Lessee shall remove the barriers on the effective date of expiration or earlier termination of the term of the letting under this Agreement.

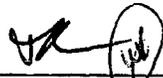
12. (a) The parties hereby acknowledge that the premises were occupied by the Lessee pursuant to the agreement of lease, dated as of May 31, 1989, and identified as Port Authority Lease No. LPN-143 by and between the Port Authority and Kinder Morgan Bulk Terminals Inc. (which agreement of lease, as the same has been heretofore supplemented and amended, is hereinafter called the "Old Lease") covering the premises demised hereunder. It is hereby agreed that the commencement of the letting under this Agreement occurred immediately after the expiration of the Old Lease and that no reversion with respect to the premises occurred between the expiration of the Old Lease and the commencement of the letting hereunder. Further, it is hereby acknowledged that the Lessee remained in possession of the Premises hereunder continuously from the expiration of the Old Lease to the effective date of this Agreement and at no time did the Lessee surrender the premises to the Port Authority.

(b) The terms, provisions and conditions of the Old Lease shall apply to the letting of the premises, to the Lessee and the rights and obligations of the parties thereto prior to the effective date of this Agreement, and from and after the effective date of this Agreement, the terms, provisions and conditions of this Agreement shall apply to the letting of the premises, to the Lessee and the rights and obligations of the parties hereto. Accordingly, and without limiting

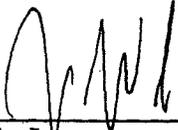
the generality of any of the foregoing, any of the obligations under the Old Lease which were to mature upon the expiration or termination thereof, shall be deemed to have survived and shall mature upon the expiration or termination of this Agreement.

(b) All obligations of the Lessee under the Old Lease that arose or accrued during or with respect to the period prior to the effective date of this Agreement shall survive the execution and delivery of this Agreement. The Lessee shall not, by virtue of this Agreement be released or discharged from any liabilities or obligations whatsoever arising under the Old Lease or any other Port Authority permits or agreements including but not limited to any permits to make alterations all of which shall survive.

(c) All references in this Agreement to the condition of the premises at the beginning of the term of the letting shall mean and be deemed to mean the condition of the premises as they existed at the beginning of the term under the Old Lease. Further, the obligation of the Lessee to remove any alterations or improvements, etc. made during the letting hereunder shall apply and pertain to any alterations and improvements, etc. made during the term of the Old Lease.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Lessee

OK  
SAC  
Legal

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

FOR THE PORT AUTHORITY OF NY & NJ

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

On this 29<sup>th</sup> day of September 29, 2009, before me, the subscriber, a notary public of New York, personally appeared RICHARD M. LARRABEE the DIRECTOR PORT COMMERCE DEPT of The Port Authority of New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him/her the contents thereof, he/she did acknowledge that he/she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

Lucy Ambrosino  
(notarial seal and stamp)  
LUCY AMBROSINO  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01AMB101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2011

FOR KINDER MORGAN BULK TERMINALS INC.

STATE OF Texas )  
 ) :ss  
COUNTY OF Harris )

On the 28<sup>th</sup> day of July, 2009, before me the subscriber a notary public of Texas, personally appeared John W. Schlosser the Vice President of, KINDER MORGAN BULK TERMINALS INC., who I am satisfied is the person who has signed the within instrument; and I having first made known to him/her the contents thereof, he/she did acknowledge that he/she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Patricia Rae Monroe  
(notarial seal and stamp)

 PATRICIA RAE MONROE  
MY COMMISSION EXPIRES  
August 10, 2011

Lease No. L-PN-308

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

KINDER MORGAN BULK TERMINALS, INC.

Dated as of January 1, 2011

THIS AGREEMENT OF LEASE, made as of January 1, 2011, 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 York and New Jersey 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 **KINDER MORGAN BULK TERMINALS, INC.**, a New Jersey corporation (hereinafter called "the Lessee") with an office and place of business at 124 Starboard Street, Port Newark, Newark, New Jersey 07114, whose representative is Scott Rudolph, Terminal Manager:

WITNESSETH, That:

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

**ARTICLE I.** The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at Port Newark (sometimes hereinafter called "the Facility") in the City of Newark, County of Essex, State of New Jersey, the following described Premises:

the open unpaved area west of Coastwise street between Marsh and Tyler Streets consisting of approximately 5.2 acres shown in diagonal cross-hatching on the sketch attached hereto 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 therein or thereon, the said areas, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the Premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential property.

**ARTICLE II.** The term of the letting shall commence at 12:01 o'clock A.M. on January 1, 2011 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2016.

**ARTICLE III.** The Lessee shall pay a basic rental as follow:

(a) For the period from January 1, 2011 through December 31, 2016, both dates inclusive, the basic rental rate is Two Hundred Sixty-Nine Thousand Two Hundred and Forty-Seven Dollars and Sixty Cents (\$269,247.60) per annum. The basic rental is payable in equal monthly installments in full in advance in the sum of Twenty-Two Thousand Four Hundred Thirty-Seven Dollars and Thirty-Cents (\$22,437.30) on January 1, 2011 and on the first day of each calendar month thereafter during such period.

(b) The basic rental set forth in paragraph (a), above, shall be adjusted during the term of the letting in accordance with the provisions of Special Endorsement No. 2 of this Agreement.

**ARTICLE IV.** The Lessee shall use and occupy the Premises for the following purposes only, and for no other purpose whatsoever:

for the storage of salt and such other non-hazardous bulk commodities as shall have the prior and continuing approval of the Port Authority, for the account of persons, firms or corporations other than the Lessee.

**ARTICLE V.** The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 30) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

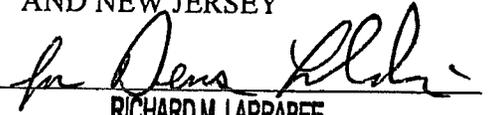
<u>TITLE</u>	<u>NUMBER</u>	<u>DATE</u>
Services	Standard Endorsement No. L5.1	10/6/75
Port Newark	Standard Endorsement No. 19.4	10/6/73
Abatement	Standard Endorsement No. 27.4	10/6/68
Insurance	Insurance Schedule	8/2010
Special Endorsements		
Exhibit A		

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**ARTICLE VI.** The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of 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 by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

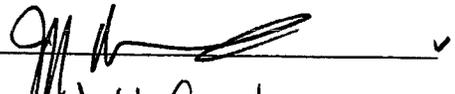
IN WITNESS WHEREOF, the Port Authority and the Lessee hereto have executed these presents as of the date first above written.

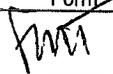
ATTEST:  
  
 Secretary

THE PORT AUTHORITY OF NEW YORK  
 AND NEW JERSEY  
 By   
 RICHARD M. LARRABEE  
 Title DIRECTOR, PORT COMMERCE DEPT.  
 (Seal)

KINDER MORGAN BULK TERMINALS,  
 INC.

ATTEST:  
  
 Secretary

Lessee  
 By   
 Print Name Jeff Armstrong  
 Title Vice President President  
 (Corporate Seal) ✓

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
 	

FMT/mmw

## TERMS AND CONDITIONS

### SECTION 1. *Ingress and Egress*

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

### SECTION 2. *Governmental and Other Requirements*

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

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the Premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

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

### SECTION 3. *Rules and Regulations*

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the Premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Lessee thereof by either 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 said 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 4. *Method of Operation***

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

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Premises and the Lessee shall remove from the Premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. The 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 first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof.

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

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

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the Premises or the Facility or any part thereof.

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

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

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the Premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the Premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the Premises or any

part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on 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 National Fire Protection Association and, if the Premises are located in New York, of the Insurance Services Office of New York, or, if the Premises are located in New Jersey, of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the Premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, make any and all structural and non-structural improvements, alterations or 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 any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the Premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

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

#### **SECTION 5. *Signs***

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

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Lessee on the Premises or elsewhere on the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the Premises and the Facility to the same condition as at the commencement of the letting. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every sign or piece of advertising and so to restore the Premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

#### **SECTION 6. *Indemnity***

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal expenses, whether those of the Port Authority's Law Department or otherwise, incurred in connection with the defense of) all claims and demands of third persons, including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of the use or occupancy of the Premises by the Lessee or by others with its consent, or out of any other acts or omissions of the Lessee, its officers, employees, guests, representatives, customers, contractors, invitees or business visitors on the Premises, or arising out of the acts or omissions of the Lessee, its officers and employees elsewhere at the Facility, claims and demands of the

party from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

(b) If so directed, the Lessee shall at its own expense defend any suit based on any claim or demand referred to in the foregoing paragraph (a) (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining the prior written consent of the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, its governmental nature or the provisions of any statutes respecting the Port Authority.

#### **SECTION 7. *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.

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

(c) With respect to all parts of the Premises, including without limitation such of the following as are or may be during the term of the letting located in or on the Premises; fences, the exterior and interior of the building walls the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and unpaved areas, glass of every kind, and the utility, mechanical, electrical and other systems, the Lessee shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (the exterior of the building, areas of joint or common use and areas visible to the general public to be painted in colors which have been approved by the Port Authority), and, except under circumstances as set forth in paragraph (a) of Section 8 of these Terms and Conditions, the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the Premises, all of which shall be in quality equal to the original in materials and workmanship and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) The obligation of the Lessee as set forth in paragraphs (b) and (c), of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; *provided, however*, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

**SECTION 8. *Casualty***

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the Premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the Premises with its consent) so as to render it untenable in whole or substantial part, then

(1) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence, and the rental hereunder shall be abated as provided in this Agreement, for the period from the occurrence of the damage to the completion of the repairs or rebuilding, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(2) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage or if one or more of the structures or buildings which are a part of the Premises or the entire Premises require rebuilding, then the Port Authority shall have options: (i) to proceed with due diligence to repair or to rebuild as necessary or (ii) to terminate the letting as to the damaged structure or structures, building or buildings or portion thereof only; or (iii) to cancel this Agreement and terminate the letting as to the entire Premises; and the rental payable under this Agreement shall be abated, as provided in this Agreement, either, as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination, for the area or areas involved.

(b) "Substantial part" shall mean for the purpose of this Section at least twenty-five percent (25%) of the usable floor space in the structure or building or part thereof comprising the Premises, or, if there is more than one structure or building on the Premises, at least twenty-five percent (25%) of the aggregate usable floor space comprising the Premises in all of the structures and buildings covered by insurance.

(c) The parties hereby stipulate that if the Premises are in New Jersey neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the Premises are in New York, 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.

(d) In the event of damage to or a partial or total destruction of the Premises, the Lessee shall within five (5) days of the occurrence commence to remove all of its damaged property and all debris thereof from the Premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, 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 upon demand.

**SECTION 9. *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.

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

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of subdivisions (a) or (b) of this Section or if the Premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right to this Agreement or 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 subdivisions (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 herein.

(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 as provided in Article IV of this Agreement.

#### **SECTION 10. *Condemnation***

(a) In any action or other proceeding by any governmental agency or agencies 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.

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

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

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

(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 open and enclosed space, then the Lessee and the Port

Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

#### **SECTION 11. *Construction by the Lessee***

Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify, or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made with or without such consent and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, or within sixty (60) days after expiration or earlier termination of the term of the letting, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

#### **SECTION 12. *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 the basic rental as set forth in Article III hereof.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof shall likewise be *prima facie* evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" in this Agreement 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 pay; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) thirty percent (30%) of the sum of the foregoing.

**SECTION 13. *Rights of Entry Reserved***

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed 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 to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(d) Nothing in this Section shall 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 nor for any injury or damage to the Premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the acts of the Port Authority).

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

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises.

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

**SECTION 14. *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 of the Facility or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted.

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a 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 feet (20') above the present ground level of any open area included in the Premises.

#### **SECTION 15. *Prohibited Acts***

(a) Unless otherwise expressly permitted so to do, 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, dispensing or sale of food, beverages tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any equipment or device for the furnishing to the public of service of any kind, including without limitation telephone pay-stations.

(b) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the Premises; *provided, however*, that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machine installed except at the sole discretion of the Port Authority.

#### **SECTION 16. *Termination***

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

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

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

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

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

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

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

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

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

(9) Any lien shall be filed against the Premises because of any act or omission of the Lessee and shall not be discharged within twenty (20) days; or

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

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

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

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

**SECTION 17. *Right of Re-entry***

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 16 of these Terms and Conditions, 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 any 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 18. *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 19. *Survival of the Obligations of the Lessee***

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 16 of these Terms and Conditions, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 17 of these Terms and Conditions, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Article II hereof, and the amount or mounts 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 had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) an account of the Lessee's rental obligations, shall be the sum of the following:

(1) The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of a 30-day month; and

(2) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the Premises, for legal expenses, boiler insurance premiums, if any, putting the Premises in order, including without limitation cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

**SECTION 20. *Reletting by the Port Authority***

The Port Authority, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon any re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions, may occupy the Premises or may relet the Premises and shall have the right to

permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or of the Premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions 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 of the letting 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 expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

**SECTION 21. 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 the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

**SECTION 22. 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 same condition as at the commencement of the letting, reasonable wear arising from use of the Premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the Premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such 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, 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. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

**SECTION 23. Acceptance of Surrender of Lease**

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

#### **SECTION 24. Notices**

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party, or (ii) delivered to an office or residence of such party, officer or representative during regular business hours, or (iii) delivered to an office or the residence of such party, officer or representative, or (iv) delivered to the Premises, or (v) forwarded to such party or representative at the office or residence address by registered mail or by a nationally recognized overnight courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office, the address of which is set forth on the first page of this Agreement, as their respective offices where notices and requests may be served.

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

#### **SECTION 25. 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 obligation shall be performed by it and its rights shall be exercised only by its officers and employees or

(2) If the Lessee is an unincorporated association, or a "Massachusetts" or business trust, its obligations shall be performed by and its rights shall be exercised only by it acting only through the medium of its members, trustees, officers and employees or

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

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

(5) If the Lessee is a limited liability company, its obligations shall be performed by and its rights shall be exercised by it acting only through the medium of its managers, members and employees;

(6) 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 Article IV on page 2 of this Agreement, the rights of user thereby granted to the Lessee with respect to the Premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

(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 these Terms and Conditions and in the endorsements, if any, attached hereto 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 sent to the following address: The Port Authority of New York and New Jersey, P. O. Box 95000-1517, Philadelphia, Pennsylvania 19195-001, or made via the following wire transfer instructions: Bank: TD Bank; Bank ABA Number: 031201360; Account Number: Exemption 1/4 or sent to such other address, or via such other wire transfer instructions, as may hereafter be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly prorated.

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

(h) 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, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, 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.

## **SECTION 26. Premises**

(a) 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 and has found them to be in good order and repair and determined them to be suitable for the Lessee's operations hereunder. Without limiting any obligation of the Lessee to commence operations hereunder 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

Lessee's operations hereunder so that there is possibility of injury or damage to life or property and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

(c) If permission is given to the Lessee to enter into the possession of the Premises or to occupy space other than the Premises prior to the date specified in Article II as the commencement of the term of the letting, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the Premises, the date of such possession shall be the date of commencement of the term hereunder.

#### **SECTION 27. *Postponement***

If the Port Authority shall not give possession of the Premises on the date fixed in Article II for the commencement of the term, by reason of the fact that the Premises or any part thereof are in the course of construction, repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the term shall in any wise affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any wise to extend the term beyond the date stated in Article II for expiration. However, the rent shall not commence until possession of the Premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Article II for commencement of the term then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof.

#### **SECTION 28. *Force Majeure***

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors). 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 laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, 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 29. *Brokerage***

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

#### **SECTION 30. *Non-liability of Individuals***

No Commissioner, officer, agent or employees of the Port Authority shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

#### **SECTION 31. *Right to Audit Books and Records***

(a) (i) The Lessee shall permit and/or cause to be permitted in ordinary business hours during the term of the letting hereunder and for one year thereafter the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Lessee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant in connection with the Lessee's use and occupancy of the Premises within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any such corporate records and books of account.

(ii) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee (hereinafter referred to as 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 fees to be paid hereunder. 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 32. *Late Charges***

1. If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; 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 (15) (but not less than thirteen (13)) 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 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. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental payable under this Agreement. 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. 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. 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 33. *Waiver of Trial by Jury***

The Lessee specifically agrees that it shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment of rents, fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

**SECTION 34. *Effect of Use and Occupancy of Premises after Expiration or Termination***

Without in any way limiting the provisions set forth in the Sections of this Agreement entitled "*Termination*", "*Right of Re-entry*" and "*Survival of the Obligations of the Lessee*", unless otherwise notified by the Port Authority in writing, in the event the Lessee remains in possession of the Premises after the expiration or termination of the term of the letting under this Agreement, as it may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Agreement or other remedies the Port Authority may have by law or otherwise, the Lessee shall pay to the Port Authority a rental for the period commencing on the day immediately following the date of such expiration or the effective date of such termination and ending on the date that the Lessee shall surrender and completely vacate the Premises at an annual rate equal to twice the sum of (i) the annual rate of rental in effect on the date of such expiration or termination, plus (ii) all items of additional rent and other periodic charges, if any, payable with respect to the Premises by the Lessee at the annual rate in effect during the three-hundred-sixty-five (365) day period immediately preceding such date. Nothing herein contained shall give, or be deemed to give, the Lessee any right to remain in possession of the Premises after the expiration or termination of the letting under this Agreement. The Lessee acknowledges that the failure of the Lessee to surrender, vacate and yield up the Premises to the Port Authority on the effective date of such expiration or termination will or may cause the Port Authority injury, damage or loss. The Lessee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or

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unforeseen, special, direct, consequential or otherwise and the Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

\* \* \* \* \*

(a) The Port Authority agrees to grant (if requested so to do by the Lessee), to suppliers of water, gas, electricity and telephone service operating in the vicinity a right of way or rights of way under the Facility from the streets outside of the Facility to the premises for the sole purpose of supplying such service or services to the Lessee. No such right of way shall include the right to use any system, equipment or portion thereof constructed or owned by or leased to the Port Authority.

(b) The Lessee shall promptly pay all water bills covering its own consumption. Such payment shall include any factor which may have been included by the appropriate governmental authority as a sewer-rent or other charge for the use of a sewer system. In the event that any such water bill 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 at any time so made shall constitute an additional item of rental, payable to the Port Authority upon demand. Where sewage is contained in tanks periodically cleaned by a contractor paid by the Port Authority the Lessee shall pay such portion of the contact charge as may be reasonably determined by the Port Authority, on demand.

(c) Unless the Port Authority has expressly undertaken to heat the enclosed portions of the Premises, if any, the Lessee agrees to heat the enclosed portions of the Premises to a sufficient temperature so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the Premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings which, or a portion or portions of which, are included in the Premises, (including but not limited to any sewer-rent or other charge for the use of a sewer system or systems), 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 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 directly to the Port Authority, as such notice may direct. All payments to be made by the Lessee hereunder shall constitute items of additional rental.

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

(f) In the event any one or more structures within or attached to the premises but not accessible directly from the enclosed portion of the premises is or are in use as a valve-room or valve-rooms for a sprinkler system, the same shall not be deemed a portion of the premises hereunder, and the Lessee shall afford access thereto through and across the premises at all times as required by the Port Authority for itself or its contractors, with or without tools, equipment, parts and supplies.

(a) As used in this Agreement:

(1) "Facility", "Port Newark" or "marine terminal" shall mean the land and premises in the City of Newark, in the County of Essex and State of New Jersey, which are easterly of the right of way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the Basic Lease and marked "Exhibit A" as contained within the limits of a line of crosses appearing on the said Exhibit A and marked (by means of the legend) "Boundary of Terminal Area in City of Newark", and lands contiguous thereto (but only those lying within the County of Essex) which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes:

(2) "Basic Lease" shall mean that agreement respecting marine and air terminals entered into with the Port Authority by the City of Newark (New Jersey) under date of October 22, 1947, and recorded in the Office of the Register of the County of Essex on October 30, 1947, in Book E-110 of Deeds, on pages 242 et seq., as the same has been or may be from time to time supplemented and amended.

(3) "Letting" shall include any extension of the letting under this Agreement, whether made by agreement or by operation of law.

(4) "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) of the Port Authority Marine Terminals - New Jersey for the time being, or his duly designated representative or representatives.

(b) The letting shall in any event terminate simultaneously with the termination or expiration of the Basic Lease. The rights of the Port Authority in the premises are those granted to it by the Basic Lease and no greater rights are granted or intended to be granted to the Lessee than the Port Authority has power thereunder to grant.

(c) No designation in this Agreement of any area as a street, avenue, highway or roadway, or by any other comparable characterization, whether or not by name, shall be or be deemed to be an admission, recognition or acknowledgement of any public or private rights in the area so designated, or as a dedication for or 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.

(d) Since the Port Authority has agreed by a provision in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of the City and its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation, to the extent that the Port Authority finds it practicable so to do, the Lessee agrees except in cases where the Port Authority either notifies the Lessee that it need not comply therewith or directs it not to comply therewith, to comply with all enactments, ordinances, resolutions and regulations which would be applicable to its operations at the marine terminal or to any of the premises leased to it for its exclusive use if the Port Authority were a private corporation, and, subject to the provisions of this Agreement concerning construction by the Lessee, to make all non-structural improvements and alterations of or to the premises required at any time hereafter by any such enactment, ordinance, resolution or regulation, and all structural improvements or alterations of or to the premises that may be required at any time hereafter by any such enactment, ordinance, resolution or regulation because of the operations of the Lessee on the premises or its use and occupancy thereof. The Lessee shall for the information of the Port Authority, deliver to the Port Authority within three (3) days (Saturdays, Sundays and holidays included)

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after receipt of any notice, warning, summons or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation, a true copy of the same. In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the Lessee, acting in good faith, commenced after such delivery to the Port Authority but prior to the receipt by the Lessee of a written direction from the Port Authority not to comply, (and thereafter discontinued) such compliance shall not constitute a breach of this Agreement, although the Port Authority thereafter directs the Lessee not to comply. Nothing herein contained shall release or discharge the Lessee from compliance with any other provision of this Agreement respecting governmental requirements.

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

(f) If by the provisions of Article IV or by other express provision in this Agreement the Lessee is authorized to use the premises to store for distribution items of merchandise or other materials (whether for the account of the Lessee or of others, as may be specifically provided elsewhere in this Agreement) such storage shall be substantially for merchandise and materials waterborne to the Facility or intended to be waterborne from the Facility, except that as specifically authorized from time to time by the Port Authority, the Lessee may store non-waterborne items, the handling of which is necessary as an incident to its business at the premises. "Waterborne to (or from) the Facility" shall mean and include all shipments consigned to or from the Facility which reach or leave the Port of New York by water carrier.

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of this Agreement or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of \$1.20

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$No Abatement

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

\*through December 31, 2011 thereafter the said rate to be increased in proportion to increases in basic rental.

## INSURANCE SCHEDULE

(a) The Lessee named in the Lease to which this Insurance Schedule is attached and of which it constitutes an integral part (the "Lease"), in its own name as insured and including the Port Authority as an additional insured, shall maintain and pay the premiums during the effective period of the Lease on a policy or policies of Commercial General Liability Insurance including premises-operations and products-completed operations and covering bodily-injury liability, including death, and property damage liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the limit set forth below:

	<u>Minimum Limits</u>
Commercial General Liability Insurance	
Combined single limit per occurrence for death, bodily injury and property damage liability:	\$5,000,000.00
Workers' Compensation and Employers Liability Insurance	
Lessee's obligations under the applicable State Workers' Compensation Law for the employees of the Lessee employed in operations conducted pursuant to the Lease at or from the Facility	Statutory

In the event the Lessee maintains the foregoing insurance in limits greater than aforesaid, the Port Authority shall be included therein as an additional insured, except for the Workers' Compensation and Employers Liability Insurance policies, to the full extent of all such insurance in accordance with all terms and provisions of the Lease, including without limitation this Insurance Schedule.

(b) Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and any claim or action against the Port Authority by the Lessee, as if the Port Authority were the named insured thereunder, but such clause or endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured. Each policy of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under this agreement.

(c) All insurance coverages and policies required under this Insurance Schedule may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the period of permission under the Lessee. The Port Authority may, at any such time, require additions, deletions, amendments or modifications to the above-scheduled insurance requirements, or may require such other and additional insurance, in such reasonable amounts, against such other insurable hazards, as the Port Authority may deem required and the Lessee shall promptly comply therewith.

(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written

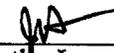
advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement that the insurer "shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the 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." The foregoing provisions or endorsements shall be recited in each policy or certificate to be delivered pursuant to the following paragraph (e).

(e) A certified copy of each policy or a certificate or certificates of insurance evidencing the existence thereof, or binders, shall be delivered to the Port Authority upon execution and delivery of the Lease by the Lessee to the Port Authority. In the event any binder is delivered it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate of insurance. Any renewal policy shall be evidenced by a renewal certificate of insurance delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the Lease. The aforesaid insurance shall be written by a company or companies approved by the Port Authority. If at any time any insurance policy shall be or become unsatisfactory to the Port Authority as to form or substance or if any of the carriers issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement. If the Port Authority at any time so requests, a certified copy of each policy shall be delivered to or made available for inspection by the Port Authority.

(f) The foregoing insurance requirements shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Lessee under the Lease. The foregoing insurance requirements shall not constitute a representation or warranty as to the adequacy of the required coverage to protect the Lessee with respect to the obligations imposed on the Lessee by the Lease or any other agreement or by law.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Lessee

## Special Endorsements

1. In addition to all other rights under this Agreement, after the last day of the second annual period December 31, 2012, the Port Authority shall have the right to terminate without cause upon (365) days notice to the Lessee. In the event the Port Authority exercises its termination right under this Special Endorsement, the Lessee shall be entitled to receive, and the Port Authority shall reimburse the Lessee up to two hundred and fifty thousand dollars and no cents (\$250,000.00) of the Lessee's unamortized capital investment, if any, on a straight-line basis over the term of the agreement. Termination under the provisions of this Special Endorsement shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the letting.
2. The Lessee shall pay a basic rent as follows:
  - (a) The basic rent set forth in Article III shall be adjusted during the period of letting in accordance with the provisions set forth below:
    - (i) *Definitions.* As used in this Special Endorsement:
      - (1) **"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 of the letting.
      - (2) **"Anniversary Date"** shall mean, as the context requires, January 1, 2011 (the **"First Anniversary Date"**) and each anniversary of such date occurring during the term of the letting.
      - (3) **"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, the Annual Index Increase for the Anniversary Date that is January 1, 2012 would be a fraction of which the numerator is the Index for October 2011 less the Index for October 2010 and the denominator is the Index for October 2010).
      - (4) **"Base Period"** shall mean October 2010.
      - (5) **"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.

(6) "Percentage Increase" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than two percent (2%) in which case the Percentage Increase shall be two percent (2%) or (y) such Annual Index Increase is more than five percent (5%), in which case the Percentage Increase shall be five percent (5%).

(ii) *Annual Increases.* Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the Expiration Date, as the case may be, the Lessee shall pay a basic rent at a rate per annum equal to the sum of (x) the basic rent theretofore payable and (y) the product obtained by multiplying such theretofore payable basic rent by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(b) *Adjustments.*

(1) In the event the Index to be used in computing any increase referred to in paragraph (a) of this Special Endorsement is not available on the effective date of such increase, the Lessee shall continue to pay the basic rent at the annual rate then in effect, subject to retroactive increase 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 increase as the Port Authority may in its discretion determine.

(2) If, after an increase in basic rent shall have been fixed for any period, the Index used for computing such increase is changed or adjusted, then the rental increase 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 basic rent due for such period, as recomputed, over amounts theretofore actually paid on account of the basic rent for such period. If such change or adjustment results in a reduction in the basic rent due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the basic rent as recomputed for that period and amounts of basic rent actually paid.

(3) If any increase in basic rent referred to in paragraph (a) of this Special Endorsement 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 such rental increase an installment of basic rent equal to 1/12th of the increment of annual basic rent as increased, multiplied by a fraction of which the numerator shall be the number of days from the effective date of the rent increase to the end of

the calendar month in which the rent increase became effective and the denominator shall be the number of days in that calendar month.

3. (a) In addition to all other rent payable under this Agreement, the Lessee shall pay to the Port Authority additional rent ("**Annual Throughput Rent**") as follows: If during any "annual period", as hereinafter defined, the Port Authority shall not receive with respect to vessels berthing at the Facility wharfage charges on at least the "guarantee number", as hereinafter defined, of metric tons of salt and/or other bulk commodities discharged to or from the Premises then, the Lessee shall pay to the Port Authority a sum computed by applying to the number of metric tons of such deficiency the per metric ton wharfage rate applicable to such bulk commodities as of the last day of that annual period, as set forth in the Port Authority's tariff, as incorporated in FMC SCHEDULE PA-10, as the same or any successor tariff may be amended from time to time.

(i) "**Metric ton**" as used herein shall mean 2,240 pounds.

(ii) "**Annual period**" as used herein shall mean the respective periods of January 1, 2011 through December 31, 2011, both dates inclusive, and each of the twelve month periods thereafter occurring during the term of this Agreement, as the same may be hereafter amended.

(iii) "**Guarantee number**" shall mean 130,000 metric tons.

(b) In the event that the letting under the Agreement shall be terminated (even if stated to have the same effect as expiration), then the Lessee shall pay to the Port Authority with ten (10) days after the effective date of said termination the additional basic rent provided for in this paragraph computed by applying the per ton wharfage rate as of said effective date of termination to the difference, if any, between (a) the guarantee number and (b) the number of metric tons of salt transported to or from the premises during the period from the first day of said annual period through said date of termination. For purposes of the computation of the additional basic rental payable under the provisions of the immediately preceding sentence, the guarantee number shall be adjusted by multiplying such number by a fraction the numerator of which shall be the number of days from the first day of the annual period in which said effective date of termination shall occur to said effective date of termination and the denominator which shall be 365.

(c) Together with the payment of the Annual Throughput Rent after the end of an annual period, and within ten (10) days after revocation or termination of the use and occupancy (even if stated to have the same effect as expiration) of the premises, the Lessee shall render to the Port Authority a statement (hereinafter called the "**Annual Throughput Report**"), in a form acceptable to the Port Authority and certified by a responsible officer of the Lessee showing on a month-by-month basis, the name of the ship, the duration of its stay, the number of metric tons discharged from or loaded onto vessels berthing at the Facility during the preceding twelve (12) months, and showing the cumulative amount of metric tons discharged from or loaded onto vessels berthing at the Facility from the commencement of the relevant annual period for which the Annual Throughput Report is made through the last day of the preceding month. In the event of revocation or termination prior to the Expiration Date, the Annual Throughput Report shall contain the aforesaid information for the period of time from the commencement of the relevant period through the effective termination or expiration date of the Agreement.

4. The Lessee agrees to and shall take the Premises in its "as is" condition and the Port Authority shall have no obligation hereunder for preparation of the Premises for the Lessee's use. The Port Authority shall have no obligation or responsibility for finishing work or for preparation of the Premises for the Lessee's use.

5. In addition to all other obligations under 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, all utilities related to 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.

6. Neither the execution and delivery of this Agreement nor any act done pursuant thereto shall create between the Lessee and the Port Authority the relationship of bailor and bailee, the relationship of storer and garagekeeper, or any other relationship except that of lessee and lessor of space, nor shall there be created thereby any legal status which would impose upon the Port Authority with respect to any property located in the premises any duty or obligation whatsoever. The Lessee expressly agrees that unless otherwise agreed in writing, the Port Authority shall have no liability with respect to any vehicle parked in the premises, or with respect to any property of the Lessee or of any other person whatsoever left in any vehicle parked in the premises, except for damage resulting solely from affirmative willful acts of the Port Authority.

7. Except in case of emergency or breakdown, the Lessee shall not perform or permit the performance of mechanical, electrical or structural repairs of vehicles on the Premises, and shall not itself or permit others to clean, wash, fuel, lubricate or paint any vehicle or vehicles thereon, and shall not store or permit others to store on the Premises any automotive fuel or lubricants, oil, greases or other liquids contained in the functional reservoirs of the vehicles parked thereon.

8. The Lessee shall promptly wipe up all oil, gasoline, grease, lubricants, cleaning fluids and other inflammable liquids and substances and all liquids and substances having a corrosive or detrimental effect on the paving or other surface of the Premises which may leak or be spilled or placed thereon by reason of the operations of the Lessee hereunder. Without limiting the generality of Section 7 of the Terms and Conditions, the Lessee shall repair, replace, repave and rebuild, all or any part of the Premises which may be damaged or destroyed by such oil, gasoline, grease, lubricants, cleaning fluids or other liquids and substances. In the event the Lessee fails to commence to such repair, replacement, repaving or rebuilding within a period of ten (10) days after notice from the Port Authority so to do, or fails diligently to continue to completion such repair, replacement, repaving or rebuilding, the Port Authority, in addition to other remedies it may have, may at its option repair, replace, repave or rebuild all or any part of the paving or other surface of the Premises so damaged or destroyed and charge the cost thereof to the Lessee, which cost the Lessee hereby agrees to pay on demand.

9. The Lessee shall ensure labor harmony in its operations at the Facility and shall to the end of avoid and prevent strikes, walkouts, work stoppages, slowdowns, boycotts and other labor trouble and discord. The Lessee particularly recognizes the essential necessity of the continued and full operation of the whole Facility.

10. (a) Notwithstanding anything to the contrary herein contained, the Lessee hereby agrees that this lease agreement is one of the "Agreements," as such term is defined in that certain security agreement entered into between the Port Authority and the Lessee, made as of May 1, 2009, and identified by Port Authority Agreement No. PCX-007 (the "Security Agreement"), and that a breach or failure to perform or comply with any of the terms and conditions of the Security Agreement, including, without limitation, failure to provide a letter of credit in accordance with the terms and conditions for the Security Agreement at any time during the term under any of the Agreements valid and available to the Port Authority or any failure of any banking institutions issuing a letter of credit to make one or more payments as provided in such letter of credit, shall constitute a material breach of this Lease and the Security Agreement thereby entitling the Port Authority to immediately exercise any and all rights available to it, including, without limitation, the right to terminate this lease Agreement for cause.

(b) The Lessee hereby certifies that its Federal Tax Identification Number is Exemption 1/4 for the purposes of this paragraph.

(c) The Lessee acknowledges and agrees that the Port Authority reserves the right, at its sole discretion, to adjust at any time and from time to time upon fifteen (15) days notice to the Lessee, the security deposit amount as set forth in the Security Agreement. Not later than the effective date set forth in said notice the Lessee shall deposit with the Port Authority the new security deposit amount as set forth in and in such form as requested by said notice which new amount (including with limitation an amendment to or a replacement of the letter of credit) shall thereafter constitute the security deposit subject to said Section.

11. Any alterations, additions, improvements, demolitions, or repairs that are made by the Lessee hereunder shall be made in accordance with the terms and provisions of the Port Authority Construction and Alteration Application process. Any required construction and alteration application shall be submitted by the Lessee to the Port Authority for its approval, in the form supplied by the Port Authority and containing such terms and conditions as the Port Authority may include, setting forth in detail and by appropriate plans and specifications the work proposed by the Lessee, and the manner of and time periods for performing the same. The Port Authority shall be entitled to impose, and the Lessee shall pay, a fee ("Review Fee") as compensation for the Port Authority's review and oversight in connection with any such work. The Review Fee shall be an amount equal to the greater of (a) three percent (3%) of the actual cost of the construction work or (b) the Review Fee then in effect and generally applicable to such work performed pursuant to the Port Authority's Construction and Alteration Application process.

12. (a) The 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. The 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 any of the foregoing representations and warranties by the 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 the Lessee. The Lessee further acknowledges that there shall be no cure for such a breach. In the event of any such termination by the Port Authority, the Lessee shall, immediately on receipt of the Port Authority's termination notice, cease all use of and operations permitted under this Agreement and surrender possession of the premises to the Port Authority without the Port Authority being required to resort to any other legal process. Termination on the afore-described basis shall be deemed a termination for cause.

(b) The Lessee shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the Lessee's breach of any of its representations and warranties made under this Section. Upon the request of 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) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

(c) The provisions of this Section shall survive the expiration or earlier termination of the Term.

13. (a) This Agreement and any claim, dispute or controversy arising out of, under or related to this Lease, the relationship of the parties hereunder, and/or the interpretation and enforcement of the rights and obligation of the parties hereunder shall be governed by, interpreted and construed in accordance with the laws of the State of New Jersey, without regard to choice of law principles.

(b) The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

(c) Notwithstanding the fact that certain references elsewhere in this Agreement to acts required to be performed by the Lessee hereunder, or to breaches or defaults of this Agreement by the Lessee, omit to state that such acts shall be performed at the Lessee's sole cost and expense, or omit to state that such breaches or defaults by the Lessee are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by the Lessee pursuant hereto shall be performed or fulfilled at the Lessee's sole cost and expense, and all breaches or defaults by the Lessee hereunder shall be deemed material.

(d) In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory authority of competent jurisdiction, the parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement, with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected by such holding.

14. (a) Any construction work performed by Lessee pursuant to this Lease is hereinafter called "the Lessee's Construction Work". The Lessee's Construction Work shall be performed at the Lessee's sole cost and expense. Lessee hereby acknowledges and agrees that it performed certain Construction Work, including without limitation grading, paving, fence installation and other general improvement work pursuant to a Right of Entry License dated October 19, 2010 bearing Port Authority Agreement No. ROE-011-PN. Lessee hereby acknowledges and agrees that it performed the Construction Work at its sole cost and expense and that the cost of the Construction Work equaled or exceeded Seven Hundred Thousand and 00/100 Dollars.

15. (a) 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 or at the Facility. In addition to and without limiting the generality of the obligations of the Lessee set forth in this Agreement, the Lessee shall at its sole cost and expense and upon notice from the Port Authority, promptly take all actions to completely remove and remediate all Hazardous Substances which result from the Lessee's use or occupancy of the Premises or which have been disposed of, released or discharged on, under or about the Premises during the term of the letting hereunder, and to cleanup and remediate all other Hazardous Substances on, about or under the Premises or which have migrated from the Premises to any adjoining property or other area which any federal, state or local governmental agency or political subdivision or any Environmental Requirements or any violation thereof require to be remediated, or which are necessary to mitigate Environmental Damages; and the foregoing obligations of the Lessee shall include without limitation the investigation of the environmental condition of the area to be remediated, the presentation of feasibility studies, reports and remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work; the standard for any of the foregoing to be that standard as required under Environmental Requirements and in the event that any Environmental Requirement sets forth more than one standard, the standard to be applied shall be that which requires the lowest level of a Hazardous Substance. Any such actions shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the Premises. The Lessee shall promptly provide 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. The obligations of the Lessee pursuant to this Special Endorsement shall survive the expiration or termination of this Agreement.

(b) As used in this Special Endorsement:

(1) "Environmental Damages" shall mean any one or more of the following:

(i) the presence in, on or under the Premises of any Hazardous Substance and/or (ii) the disposal, released or threatened released of any Hazardous Substance from the Premises or of any Hazardous Substance from under the Premises, and/or (iii) the presence of any Hazardous Substance in, on or under other property at the Airport as a result of (v) the Lessee's use or occupancy of the Premises, or the performance of any Lessee's

Construction Work or any other work or activities at the Premises or (w) a migration of a Hazardous Substance from the Premises or from under the Premises or (x) the Lessee's operations at the Airport, and/or (y) any personal injury (including wrongful death) or property damage arising out of or related to any such Hazardous Substance described in (i), (ii) or (iii) above, and/or (z) the violation of any Environmental Requirement pertaining to any such Hazardous Substance described in (i), (ii) or (iii) above, the Premises, and/or the activities thereon.

(2) "Environmental Requirement" shall mean in the singular and "Environmental Requirement" shall mean in the plural all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, 'best management practices plans', and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:

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

(ii) All requirements, pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and

(iii) All applicable requirements, contained in but not limited to the following laws as they are or may be supplemented and/or amended and their state and local counterparts: The Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et. seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et. seq.; the Clean Air Act, 42 U.S.C. Section 7401 et. seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et. seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et. seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et. seq.; the New Jersey Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11b et seq., Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq.;

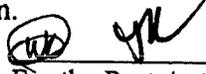
together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof.

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

16. (a) Notwithstanding Section 34 in the event that the Lessee remains in possession of the Premises after the expiration or earlier termination of the Term of the Lease, the Lessee shall be deemed a "holdover tenant" creating a month-to-month extension of the Lease, which shall be terminable on thirty (30) days' notice and shall be obligated to pay holdover rental in the amount of 200% of the last due annual Rental all as in accordance with law as a result of the Lessee's status as a holdover tenant. Nothing herein contained will 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 the Lease.

(b) The Lessee acknowledges that the failure of the Lessee to comply with any of the obligations set forth herein from the effective date of such expiration, revocation or termination will or may cause the Port Authority injury, damage or loss, and the Lessee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss. The Lessee acknowledges that the Port Authority reserves all its legal and equitable rights and remedies in the event of such failure by the Lessee to cease performance of any obligation contained in this Lease.

(c) The Lessee hereby acknowledges and agrees that, subject to the foregoing, all terms and provisions of this Lease shall be and continue in full force and effect during any period following such expiration, revocation or termination.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Lessee

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

FOR THE PORT AUTHORITY OF NY & NJ

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

On this 12<sup>th</sup> day of January, 2010, before me, the subscriber, a notary public of New York, personally appeared Dennis Lombardi, the Deputy Director of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him/her the contents thereof, he/she did acknowledge that he/she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

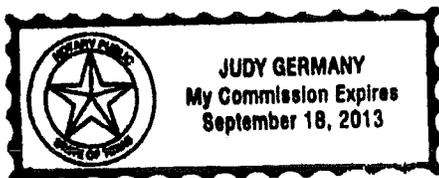
*Lucy Ambrosino*  
\_\_\_\_\_  
(notarial seal and stamp)

LUCY AMBROSINO  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01AM6101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2015

FOR KINDER MORGAN BULK TERMINALS, INC.

STATE OF Texas )  
 ) :ss  
COUNTY OF Harris )

On the 17<sup>th</sup> day of June, 2010, before me the subscriber a Jeffrey R. Armstrong, personally appeared the Vice President of, KINDER MORGAN BULK TERMINALS, INC., who I am satisfied is the person who has signed the within instrument; and I having first made known to him/her the contents thereof, he/she did acknowledge that he/she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.



*Judy Germany*  
\_\_\_\_\_  
(notarial seal and stamp)

LPN-316

AGREEMENT OF LEASE  
*Between*

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

and

KINDER MORGAN BULK TERMINALS INC.

Dated as of: June 1, 2012

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**KINDER MORGAN BULK TERMINALS INC.**

**Lease No. LPN-316**

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Standard Endorsement No. L27.4 Abatement

**ATTACHMENTS**

Exhibit A Premises

Insurance Schedule

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Schedule B Percentage Increase - Maximum 6%

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Women-Owned Business Enterprises Requirements

Port Authority Lease No. LPN-316

**AGREEMENT OF LEASE**

**THIS AGREEMENT OF LEASE**, made as of the 1<sup>st</sup> day of June, 2012, 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, in the Borough of Manhattan, in the City, County and State of New York, and **KINDER MORGAN BULK TERMINALS INC.** (hereinafter called the "**Lessee**"), a corporation organized and existing under the laws of the State of Louisiana, and having an office and place of business at 188 Calcutta Street, Port Newark, New Jersey 07114, whose representative is Scott Rudolph.

WITNESSETH, That:

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

**Section 1. Definitions**

The following terms, when used in this Agreement, shall, unless the context shall require otherwise, have the respective meanings given below:

**"Affiliate"** shall mean any Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Lessee and any Person in which the Lessee or a shareholder of the Lessee has an ownership, licensor/licensee or franchisor/franchisee interest or relationship, but if the Lessee shall be a corporation whose voting securities shall be registered with the Securities and Exchange Commission and publicly traded on a regular basis, then only such shareholder of the Lessee having an ownership interest greater than five percent (5%). As used in this definition, the term **"Control"** (including the terms Controlling, Controlled by and under common Control with) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the Person, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** shall mean this Agreement of Lease.

**"Basic Rental"** shall have the meaning set forth in the Section of this Agreement, entitled **"Basic Rental"**.

**"Claims"** shall have the meaning set forth in the Section of this Agreement entitled **"Indemnity"**.

**"Effective Date"** shall mean June 1, 2012.

**"Environmental Damages"** shall mean any one or more of the following: (i) the presence in, on, or under the Premises of any Hazardous Substance, whether such presence occurred prior to or during the Term or resulted from any act or omission of the Lessee or others, and/or (ii) the disposal, discharge, release or threatened release of any Hazardous Substance from the Premises or of any Hazardous Substance from under the Premises and/or (iii) the presence of any Hazardous Substance in, on or under other property at the Facility as a result of (x) the Lessee's use and occupancy of any portion of the Premises or the performance of the construction work or any other work or activities at the Premises or (y) a migration of a Hazardous Substance from the Premises or from under the Premises or (z) the Lessee's operations at the Facility, and/or (iv) any personal injury, including wrongful death, or property damage, arising out of or related to any Hazardous Substance described in (i), (ii) or (iii) above, and/or (v) the violation of any Environmental Requirement pertaining to any Hazardous Substance described in (i), (ii) or (iii) above, the Premises and/or the activities thereon.

**"Environmental Requirements"** shall mean all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, including without limitation Port Authority rules and regulations (including management bulletins), all pollution prevention programs, 'best management practices plans', and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:

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

(ii) All requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and

**"Expiration Date"** shall mean June 30, 2020.

**"Facility"** shall mean Port Newark located in the City of Newark, in the County of Essex and the State of New Jersey.

**"General Manager"** or **"General Manager of the Facility"** shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager or in the Superintendent of the Facility by this Agreement; but until further notice from the Port Authority to the Lessee, it shall mean the Manager (or the Acting Manager) Port Authority Marine Terminals-New Jersey for the time being, or his duly designated representative or representatives.

**"Governmental Authority"** and **"Governmental Agency"** shall each mean federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, except that they shall not be construed to include the Port Authority.

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

**"Lessee"** shall have the meaning set forth in the preamble to this Agreement.

**"Person"** shall mean a natural person, a corporation or other legal entity, and also two or more natural persons, corporations or other legal entities acting jointly as a firm, partnership, unincorporated association, consortium, joint adventurers or otherwise.

**"Port Authority"** shall mean the Port Authority of New York and New Jersey, a body corporate and politic, established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America.

**"Port of New York District"** shall have the meaning set forth in Article II of the Compact.

**"Premises"** shall have the meaning set forth in the Section of this Agreement entitled "**Letting**".

**"Remediate"** or **"Remediation"** shall mean the investigation (including any feasibility studies or reports), cleanup, removal, abatement, transportation, disposal, treatment (including in-situ treatment), management, stabilization, neutralization, collection, or containment of a Hazardous Substance or contamination, that may be required to satisfy, the Environmental Requirements, including, without limitation, any closure, restoration or monitoring, operations and maintenance activities that may be required by any Government Agency after the

completion of such investigation, cleanup, removal, transportation, disposal, treatment, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Agency in connection with such investigation, cleanup, removal, transportation, disposal, treatment (including in situ treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that may be imposed pursuant to an environmental permit or a consent order).

**"Rent Commencement Date"** shall mean July 1, 2012.

**"Term"** shall have the meaning set forth in the Section of this Agreement entitled **"Term"**.

## **Section 2. Letting**

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 Facility the following described premises: Building 188 (the **"Building"**) as shown in cross-hatching on the sketch attached hereto, hereby made a part hereof and marked **"Exhibit A"** (the **"Building Space"**) and its associated open area (the **"Open Area Space"**) as shown in stipple on Exhibit A, together with the fixtures, improvements and other property of the Port Authority, if any, located or to be located therein or thereon, the said areas, buildings, structures, fixtures, improvements and other property of the Port Authority (collectively, the Building Space and the Open Area Space shall hereinafter be referred to as the **"Premises"**). The Port Authority and the Lessee hereby acknowledge that the foregoing Premises constitute non-residential property.

## **Section 3. Term**

The term of the letting under this Agreement (as it may be terminated pursuant to the provisions of this Agreement, the **"Term"**) shall commence on the Effective Date and shall expire on the Expiration Date, unless sooner terminated in accordance with the terms and provisions of this Agreement.

## **Section 4. Use**

(a) **Building Space.** The Lessee shall use and occupy the Building Space solely for (i) the performance of maintenance and repair on equipment used by the Lessee and (ii) clerical and administrative office purposes, in connection with the Lessee's operations at the Facility for which Lessee is authorized to conduct under other Port Authority agreements and for no other purpose or purposes whatsoever.

(b) **Open Area Space.** The Lessee shall use and occupy the Open Area Space for the parking of the Lessee's trucks and employee's vehicles only, and for no other purpose whatsoever.

**Section 5. Basic Rental**

(a) **Free Rental Period.**

From the Effective Date until but not including the Rent Commencement Date, no Basic Rental shall be payable by the Lessee for the Lessee's use and occupancy of the Premises.

(b) **Basic Rental.**

i. For the period from the Rent Commencement Date to and including June 30, 2013, the Lessee shall pay to the Port Authority a basic rental (the "**Basic Rental**") at the rate of Seven Dollars and Fifty Cents (\$7.50) per square foot, which equals Fifty-eight Thousand Five Hundred Dollars and No Cents (\$58,500.00) per annum, payable in advance in equal monthly installments each in the sum of Four Thousand Eight Hundred Seventy-five Dollars and No Cents (\$4,875.00).

ii. Commencing on the First Anniversary Date (as hereinafter defined) and on each Anniversary Date (as hereinafter defined) thereafter, if any, the Lessee shall pay to the Port Authority the Basic Rental at annual rates escalated in accordance with the provisions of paragraph (c), below, of this Section.

(c) **Adjustment to Basic Rental**

i. As used in subparagraph (ii) of this paragraph:

(1) "**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.

(2) "**Base Period**" shall mean the calendar month of April 2012.

(3) "**Adjustment Period**" shall mean, as the context requires, the calendar month of April 2013 and the calendar month of April in each calendar year which thereafter occurs during the Term.

(4) "**Anniversary Date**" shall mean, as the context requires, July 1, 2013 (the "**First Anniversary Date**") and each anniversary of such date which thereafter occurs during the Term.

(5) "**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 Adjustment Period one (1) year prior to the Adjustment Period immediately preceding such Anniversary Date, and the denominator shall be the Index for such the Adjustment Period one (1) year prior to the Adjustment Period immediately preceding such Anniversary Date (for example, the Annual Index Increase for the

Anniversary Date that is July 1, 2013 would be a fraction of the numerator that is the Index for April 2013 less the Index for April 2012 and the denominator is the Index for April 2012).

(6) "**Percentage Increase**" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than two percent (2%), in which case the Percentage Increase shall be two percent (2%) as shown in Schedule A attached hereto and made a part hereof or (y) such Annual Index Increase is more than six percent (6%), in which case the Percentage Increase shall be six percent (6%) as shown in Schedule B attached hereto and made a part hereof.

ii. Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the expiration or termination date of the Term, as the case may be, both dates inclusive, in lieu of the Basic Rental set forth in paragraph (a) of this Section, as the same may most recently have been adjusted during the Term in accordance therewith, the Lessee shall pay the Basic Rental at a rate per annum equal to the greater of :

(1) the sum obtained by adding to the Basic Rental payable immediately prior to such Anniversary Date the product obtained by multiplying such Basic Rental by one hundred percent of the Percentage Increase for such Anniversary Date; or

(2) the Basic Rental payable immediately prior to such Anniversary Date, including all amounts included therein as a result of prior adjustments thereof pursuant to the provisions of this subparagraph.

Each adjusted annual rental shall be payable in monthly installments equal to 1/12<sup>th</sup> of the annual Basic Rental, as adjusted, on the Anniversary Date and on the first day of each calendar month thereafter through the day preceding the next following Anniversary Date, or the expiration or termination date of the Term, as the case may be. All adjusted rental amounts shall be rounded to the nearest cent.

iii. Index

(1) 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 basic fee 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 in its discretion determines.

(2) If after an adjustment in the 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 Basic Rental due for such period as recomputed over amounts theretofore actually paid on account of the Basic Rental for such period. If such change or adjustment results in a reduction in the Basic Rental due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the Basic Rental as recomputed for that period and amounts of Basic Rental actually paid.

iv. If any adjustment of the Basic Rental referred to in paragraph (ii) 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 Basic Rental equal to 1/12th of the increment of annual Basic Rental as adjusted multiplied by a fraction, the numerator of which 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.

(d) **Abatement.**

Abatement of Basic Rental, if any, to which the Lessee may be entitled shall be computed in accordance with the provisions of Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof.

**Section 6. 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 the Basic Rental as set forth in the Section entitled "Rental".

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge

the Lessee with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof shall likewise be *prima facie* evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" in this Agreement 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 pay; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) Thirty percent (30%) of the sum of the foregoing.

### **Section 7. Late Charges**

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; 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 (15) (but not less than thirteen (13)) 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 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. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental payable under this Agreement. 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. 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. 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 8. Security Deposit.**

(a) **Security Agreement.** The Lessee hereby agrees that this Agreement is one of the "Agreements", as such term is defined in that certain security agreement entered into between

the Port Authority and the Lessee, dated as of May 1, 2009, and identified by Port Authority Agreement No. PCX-007 (as may be amended, modified or extended, the "**Security Agreement**"), and that a breach or failure to perform or comply with any of the terms and conditions of the Security Agreement, including without limitation failure to provide a letter of credit in accordance with the terms and provisions of the Security Agreement at any time during the term under any of the Agreements valid and available to the Port Authority or any failure of any banking institution issuing a letter of credit to make one or more payments as provided in such letter of credit, shall constitute a material breach of this Agreement and the Security Agreement thereby entitling the Port Authority to immediately exercise any and all rights available to it, including without limitation the right to terminate this Agreement for cause.

(b) **Required Security.** If the Security Agreement expires pursuant to its terms, the Lessee must promptly provide a letter of credit in the amount required by the Port Authority, such amount to be determined in the Port Authority's sole discretion (the "**Required Security Deposit Amount**"), as security for this Agreement. The form of the letter of credit must be in compliance with paragraph (c) of this Section.

(c) **Letter of Credit.** If pursuant to paragraph (b) of this Section, the Lessee shall deliver to 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 the Agreement on its part to be fulfilled, kept, performed or observed, a clean irrevocable letter of credit issued by an investment grade rated bank satisfactory to the Port Authority and having its main office within the Port of New York District (an "**Approved Bank**") and acceptable to the Port Authority, in favor of the Port Authority, and payable in the Port of New York District in the Required Security Deposit Amount. Notwithstanding the foregoing, such letter of credit may be issued by a bank (the "**Alternative Bank**") that is either (i) not within the Port of New York District, (ii) is not an investment grade rated bank or (iii) is a bank unknown to the Port Authority; provided, that (i) the Alternative Bank has an advising bank relationship with an Approved Bank and (ii) such Approved Bank guarantees such letter of credit. 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, **the form of any proposed letter of credit shall be submitted to the Port Authority in advance for review and approval by its Credit, Collection and Accounts Receivable unit.** Such letter of credit shall provide that it shall continue throughout the effective term granted under the Agreement 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 clean and irrevocable satisfactory letter of credit. If requested by the Port Authority, said letter of credit shall be accompanied by a letter explaining the opinion of counsel for the banking institution that the issuance of said clean, irrevocable letter of credit is an appropriate and valid exercise by the banking institution of the corporate power conferred upon it by law. Upon notice of cancellation of a letter of credit, the Lessee agrees that unless the letter of credit is replaced by another letter of credit satisfactory to the Port Authority by a date not later than twenty (20) days prior to the effective date of cancellation, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security. Failure to provide such a letter of credit at any time during the effective term granted

under the Agreement 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 the 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, upon demand by the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to the Required Security Deposit Amount. No action by the Port Authority pursuant to the terms of any letter of credit, or any receipt by the Port Authority of funds from any bank issuing such letter of credit, shall be or be deemed to be a waiver of any default by the Lessee under the terms of the Agreement, and all remedies under the Agreement and of the Port Authority consequent upon such default shall not be affected by the existence of a recourse to any such letter of credit.

(d) **Adjustment of Required Security Deposit Amount.** The Lessee acknowledges and agrees that the Port Authority reserves the right, in its sole discretion at any time and from time to time upon sixty (60) days' notice to the Lessee, to adjust the Required Security Deposit Amount but in no event would the adjusted amount equal more than three months of Basic Rental, as adjusted, that would be payable to the Port Authority. Not later than the effective date set forth in said notice by the Port Authority, the Lessee shall furnish an amendment to, or a replacement of, the letter of credit providing for such adjusted Required Security Deposit Amount.

(e) **Obligations Under Other Agreements.** If the Lessee is obligated by any other agreement ~~(**Other PA Agreement**)~~ to maintain a security deposit with the Port Authority to insure payment and performance by the Lessee of all fees, rentals, charges and other obligations which may become due and owing to the Port Authority arising from the Lessee's operations at the Facility (or other Port Authority facility) pursuant to any such Other PA Agreement or otherwise, then all such security deposit-related obligations under such Other PA Agreement, and any deposit pursuant thereto, also shall be deemed obligations of the Lessee under the Agreement and as security hereunder, as well as under any such Other PA Agreement. All provisions of such Other PA Agreement with respect to security deposit-related obligations, and any obligations thereunder of the Port Authority as to the security deposit, are hereby incorporated herein by this reference as though fully set forth herein and hereby made a part hereof. It is understood that the term Other PA Agreement refers both to agreements entered into prior to, or as of, the effective date of the Agreement, as well as agreements hereinafter entered into.

## **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. 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 all municipalities and other governmental authorities, and their respective 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. 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 any streets, ways and walks near the Premises.

#### **Section 10. Governmental and Other Requirements**

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

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the Premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

(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. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of any such requirements.

#### **Section 11. Rules and Regulations**

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

safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Lessee thereof by either 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 or by publication on the Port Authority of New York and New Jersey web site at [www.panynj.gov](http://www.panynj.gov).

(c) No statement or provision in the said 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. Method of Operation**

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

(b) The Lessee shall not allow any garbage, debris, recyclable materials 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, recyclable materials and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein (the "**Receptacles**"). The 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 first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof.

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

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

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the Premises or the Facility or any part thereof.

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

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

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the Premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in this Agreement shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the Premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on 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 National Fire Protection Association and, if the Premises are located in New York, of the New York Board of Fire Underwriters and the New York Fire Insurance Exchange, or, if the Premises are located in New Jersey, of the Fire Insurance Rating Organization of N.J., 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 any and all structural and non-structural improvements, alterations or 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 any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the Premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

(j) From time to time and as often as required by the Port Authority, the Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and fire-fighting equipment on the Premises whether furnished by the Port Authority or by the

Lessee. The Lessee shall keep all fire-fighting and fire extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

### **Section 13. Signs**

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

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Lessee on the Premises or elsewhere on the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the Premises and the Facility to the same condition as at the commencement of the letting. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every sign or piece of advertising and so to restore the Premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

### **Section 14. Indemnity**

(a) The Lessee agrees to indemnify and hold harmless the Port Authority, each Commissioner of the Port Authority, each officer, agent, employee and representative of the Port Authority (each, an "*Indemnified Party*", and collectively, the "*Indemnified Parties*") from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal expenses, whether those of the Port Authority's Law Department or otherwise, incurred in connection with the defense of), any and all claims, lawsuits, demands, penalties, fines, settlements, damages, injuries, losses, costs, expenses and judgments ("*Claims*") of third persons, including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of the use or occupancy of the Premises by the Lessee or by others with its consent, or out of any other acts or omissions of the Lessee, its officers, employees, guests, representatives, customers, contractors, invitees or business visitors on the Premises, or arising out of the acts or omissions of the Lessee, its officers and employees elsewhere at the Facility, claims and demands of the party from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

(b) If so directed, the Lessee shall at its own expense defend any suit based on any Claim referred to in the foregoing paragraph (a) (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining the prior written consent of the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, its governmental nature or the provisions of any statutes respecting the Port Authority.

## Section 15. Construction by the Lessee

(a) **No Construction without Prior Written Approval.** The Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify, or make additions or improvements to any structure now existing or built at any time during the letting, or install any fixture (the "**Lessee's Other Construction Work**") (other than trade fixtures, removable without material damage to the freehold, any such damage to be immediately repaired by the Lessee) without the prior written approval of the Port Authority of a tenant alteration application or other required document to be submitted by the Lessee to the Port Authority that is pursuant to and in compliance with the Tenant Construction and Alteration Process (the "**TCAA**"). In the event any construction, improvement, alteration, modification or addition is made without such prior written approval of the Port Authority, then upon reasonable notice so to do, the Lessee will remove the same, or at the option of the Port Authority cause the same to be changed to the satisfaction of the Port Authority. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change and the Lessee shall pay the cost thereof to the Port Authority.

(b) **No Repairs, etc., without Prior Written Approval.** Notwithstanding the obligation of maintenance imposed upon the Lessee by the provisions of the Section hereof entitled "**Care, Maintenance, Rebuilding and Repair by the Lessee**", the Lessee shall not make any repairs or replacements (except emergency repairs or replacements) unless and until it has first obtained the Port Authority's written approval for such repairs or replacements, which shall then be performed in full accordance with the terms of such written approval.

(c) **Compliance with Sustainable Design Guidelines.** The Lessee agrees that, in the performance of all 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.

(d) **Work.** The Lessee shall perform, at its sole cost and expense, certain work involving the investment by the Lessee of approximately Four Hundred Thousand Dollars and No Cents (\$400,000.00) to (i) improve the Premises and (ii) prepare the Premises for its use, including but not limited to, office renovations, electrical upgrades and waterproofing (the "**Lessee's Initial Construction Work**"; together with the Lessee's Other Construction Work, the "**Lessee's Construction Work**"). If the Lessee's Construction Work has been approved by the Port Authority in compliance with the conditions and terms hereof, the Lessee shall have the right and obligation to complete the Lessee's Construction Work without any further Port Authority approval under this Agreement.

All Work performed by the Lessee shall be done in accordance with the following terms and conditions:

(e) **Indemnification.**

i. The Lessee hereby specifically agrees to assume any and all risk of loss or damage of any kind whatsoever to property of the Port Authority, the Lessee or others (including but not limited to such property located or existing underground and the natural

environment) and any and all risk of loss or damage of any kinds whatsoever to the Lessee's Construction Work or any part thereof or injury (including death) of persons or resources directly or indirectly arising out of, as a result of or in connection with any of the Lessee's Construction Work and/or use of the Premises and/or Facility permitted herein. The Lessee shall itself and shall also require its contractors to indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers and agents of the Port Authority) arising or alleged to arise out of or in connection with the performance of the Lessee's Construction Work or based upon any of the risks assumed by the Lessee in this Agreement or any breach of this Agreement by the Lessee and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof including, without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Lessee, of any contractors of the Lessee, of the Port Authority, or of third persons, or from acts of God or of the public enemy, or otherwise. The Lessee specifically agrees to assume any and all risk including, without limitation, loss, damage, injury or death, and any and all removal, remediation, restoration or mitigation costs and expenses, fines, payments, penalties, or payments in lieu of penalties occurring as a result of the release or threat of release of Hazardous Substances, as a result of compliance or non-compliance with applicable law, or as a result of compliance or non-compliance with Port Authority requirements as set forth herein. Without limiting the generality of the foregoing, the Lessee shall specifically be responsible for all costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any cleanup, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by a non-governmental entity or person on account of Hazardous Materials released by the Lessee as a result of an act or omission in undertaking the Lessee's Construction Work on, under or about or migrating to or from the Premises. The Port Authority for itself and its successors and assigns covenants and agrees that the Lessee does not assume responsibility for, and none of the provisions of this Section shall apply to, Hazardous Substances (a) which have been released on the site prior to the execution of this Agreement (i) except if the Lessee's Construction Work causes the release or migration of such Hazardous Substance off the Premises or except for material removed or excavated in the performance of the Lessee's Construction Work to the extent that such conditions are exacerbated by the Lessee, by the operations of the Lessee under this Agreement or the performance of the Lessee's Construction Work or (b) which have migrated or shall have migrated onto the Premises after the execution of this Agreement from other lands actually occupied by or under the actual control of the Port Authority, unless it has been determined that such migration occurred due to acts or omissions of the Lessee.

ii. The Lessee agrees to indemnify and hold harmless the Indemnified Parties from and against, any and all Claims of whatever kind or nature arising out of or because of the performance of the Lessee's Construction Work or out of or as a result of the acts or omissions of the Lessee at the Premises, its officers, agents, employees, contractors, subcontractors, consultants and representatives, and for all expenses incurred by a Indemnified Party in the defense, settlement or satisfaction of any third party claims, demands, or actions, including,

without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential (excepting only claims and demands arising from the sole negligence or willful misconduct of the Port Authority). If so directed, the Lessee shall, at no cost and expense to any Indemnified Party, defend any lawsuit or proceedings based upon such Claims, in which event the Lessee shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority, or its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority.

(f) **Contractors.**

i. Architect. Unless the Port Authority determines, in its sole discretion, that an architect is not needed for the Lessee's Construction Work to be performed, prior to engaging or retaining an architect or architects for the Lessee's Construction Work, the name or names of said architect or architects shall be submitted to the Port Authority for its approval. The Port Authority shall have the right to disapprove any architect who may be unacceptable to it. All the Lessee's Construction Work shall be done in accordance with plans and specifications to be submitted to and approved by the Port Authority prior to the commencement of such Lessee's Construction Work.

ii. Contractor. Prior to entering into a contract for any part of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval the names of the contractors to whom the Lessee proposes to award said contracts. The Port Authority shall have the right to disapprove any contractor who may be unacceptable to it. The Lessee shall include in all such contracts such provisions and conditions as may be reasonably required by the Port Authority. Without limiting the generality of the foregoing, all of the Lessee's construction contracts shall provide as follows: "If (i) the Contractor fails to perform any of its obligations under the Contract, including its obligation to the Lessee to pay any claims lawfully made against it by any materialman, subcontractor or workman or other third person which arises out of or in connection with the performance of the Contract or (ii) any claim (just or unjust) which arises out of or in connection with the Contract is made against the Lessee or (iii) any subcontractor under the Contract fails to pay any claims lawfully made against it by any materialman, subcontractor, workman or other third persons which arise out of or in connection with the Contract or if in the Lessee's opinion any of the aforesaid contingencies is likely to arise, then the Lessee shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payments have already been certified as due) such sums as the Lessee may deem amply to protect it against delay or loss or to assume the payment of just claims of third persons, and to apply such sums in such manner as the Lessee may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Lessee to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Lessee does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Lessee to withhold and apply monies nor any exercise, or attempted exercise of, or

omission to exercise, such rights by the Lessee shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third persons. Until actual payment is made to the Contractor, its right to any amount to be paid under the Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Lessee under this provision."

iii. Contracts. The Lessee shall file with the Port Authority a copy of its contracts with its contractors prior to the start of the Lessee's Construction Work.

iv. Affirmative Action. Without limiting any of the terms and conditions hereof, the Lessee understands and agrees that it shall put into effect prior to the commencement of the Lessee's Construction Work an affirmative action program and Minority Business Enterprise (MBE) program and Women-owned Business Enterprise (WBE) program in accordance with the provisions of Schedule E, attached hereto and hereby made a part hereof. The provisions of Schedule E shall be applicable to the Lessee's contractor or contractors and subcontractors at any tier of construction as well as to the Lessee, and the Lessee agrees to include the provisions of Schedule E in all of its construction contracts so as to make the provisions and undertakings set forth in Schedule E the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. The Lessee agrees to and shall require its contractors and subcontractors to furnish to the Port Authority such data, including but not limited to compliance reports, relating to the operation and implementation of the affirmative action, MBE, and WBE programs of the Lessee and its contractor, contractors, and subcontractors at any tier of construction called for under the provisions of this paragraph and Schedule E annexed hereto as the Port Authority may request at any time and from time to time and the Lessee agrees to and shall also require that its contractors and subcontractors at any tier of construction make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions of this paragraph and Schedule E annexed hereto to effectuate the goals of affirmative action, MBE, and WBE programs. The obligations imposed on the Lessee under this paragraph and Schedule E annexed hereto shall not be construed to impose any greater requirements on the Lessee than those that may be imposed on the Lessee under applicable law.

v. Non-Discrimination. In addition to and without limiting any terms and provisions hereof, the Lessee shall provide in all of its contracts and subcontracts covering the 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 (i) through (iii) 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 this paragraph shall include each contractor and subcontractor at any tier of construction.

(g) **Performance of the Construction Work.**

i. **Certifications.** The Lessee shall require certification by a licensed engineer of all pile driving data and of all controlled concrete work and such other certifications as may be requested by the Port Authority from time to time. The Lessee shall submit all such certifications and logs to the Port Authority's resident engineer.

ii. **Plans and Specifications.** The Lessee agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof, notwithstanding the same have been approved by the Port Authority and notwithstanding the incorporation therein of the Port Authority recommendations or requirements. Notwithstanding the requirement for approval by the Port Authority of the contracts to be entered into by the Lessee or the incorporation therein of the Port Authority requirements or recommendations, and notwithstanding any rights the Port Authority may have reserved to itself hereunder, the Port Authority shall have no liabilities or obligations of any kind to any contractors engaged by the Lessee or for any other matter in connection therewith. Any warranties contained in any construction contract entered into by the Lessee for the performance of the Lessee's Construction Work hereunder shall be for the benefit of the Port Authority as well as the Lessee, and the contract shall so provide.

iii. **Port Authority Inspections.** The Port Authority shall have the right, through its duly designated representatives, to inspect the Lessee's Construction Work and the plans and specifications thereof, at any and all reasonable times during the progress thereof and

from time to time, in its discretion, to take samples and perform testing in any part of the Lessee's Construction Work.

iv. As-built Drawings. Upon final completion of all of the Construction Work the Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and the Lessee shall supply the Port Authority with one (1) set of as-built drawings of the Construction Work in such form as the Port Authority shall determine. The Lessee shall keep said drawings current during the term of the letting under this Agreement. No changes or modifications to 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, a certificate of final completion shall be delivered to the Lessee by the Port Authority.

v. Engineering Reports. The Lessee agrees that it shall deliver to the Port Authority all engineering reports, engineering analysis, boring logs, survey information and engineering design calculations and operation and maintenance manuals in a comprehensive, coordinated package. (No changes or modifications shall be made without prior written consent from the Port Authority.)

vi. Soil Erosion. The Lessee shall, if requested by the Port Authority, take all ~~reasonable measures to prevent erosion of the soil and the blowing of sand during the~~ performance of the Lessee's Construction Work, including but not limited to the fencing of the Premises or portions thereof or other areas and the covering of open areas with asphaltic emulsion or similar materials as the Port Authority may direct.

vii. Soil Excavation

(A) Without limiting the generality of any other term or condition of this Agreement, title to any soil, dirt or sand excavated by the Lessee during the course of the Lessee's Construction Work and not used at the Premises shall vest in the Lessee upon the removal thereof from the Premises, it being understood that unless the Lessee's Construction Work, expressly or otherwise, requires the removal of soil, dirt or sand, the Lessee shall have no obligation hereunder to remove such soil, dirt or sand from the Premises (all the soil, dirt and sand which is so excavated by the Lessee and removed from the Premises being hereinafter called the "*Removed Soil*") and title to any other material exclusive of soil, dirt or sand on the Premises or the Facility excavated or removed by the Lessee during the course of the Lessee's Construction Work and not used at the Premises shall vest in the Lessee upon the excavation or removal thereof (all the foregoing and the *Removed Soil* being hereinafter called the "*Removed Material*") and shall be transported and delivered off of the Facility by the Lessee. The transportation and disposal of all *Removed Material* shall be at the Lessee's sole cost and expense and in accordance with the terms and conditions of this Agreement including, without limitation, this paragraph 4(c), and all Environmental

Requirements. The entire proceeds, if any, of the sale or other disposition of the Removed Material shall belong to the Lessee.

(B) In addition, in its performance of the Lessee's Construction Work that involves the removal, disposal or disturbance of any Hazardous Substances on the Premises, the Lessee shall perform at its cost and expense all appropriate, required and necessary work for the removal of all such Hazardous Substances, including without limitation asbestos, lead, petroleum contamination and other Hazardous Substances from the Premises including, without limitation, the groundwater thereunder, the foregoing to include, without limitation, the handling, transporting and off-Facility disposal thereof in accordance with applicable law, including without limitation, all Environmental Requirements (including, if required, disposal of asbestos in a long-term disposal facility at the Lessee's sole cost and expense) and all in a manner satisfactory to the Port Authority.

(C) Promptly upon any final disposition of any Hazardous Substance from the Premises or the Facility in the performance of the Lessee's Construction Work, the Lessee shall submit to the Port Authority a "Certification of Final Disposal" stating the type and amount of material disposed, the method of disposal and the owner and location of the disposal facility. The format of such certification shall follow the requirements, if any, of governmental agencies having jurisdiction as if the Port Authority were a private organization and the name of the Port Authority shall not appear on any certificate or other document as a generator or owner of such material.

viii. Third Party Claims. The Lessee shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Lessee's Construction Work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them; *provided, however*, that nothing herein contained shall be construed to limit the right of the Lessee to contest any claim of a contractor, subcontractor, materialman, workman and/or other person and no such claim shall be considered to be an obligation of the Lessee within the meaning of this subparagraph (vii) unless and until the same shall have been finally adjudicated. The Lessee shall use its best efforts to resolve any such claims and shall keep the Port Authority fully informed of its actions with respect thereto. Nothing herein contained shall be deemed to constitute consent to the creation of any liens or claims against the Premises or any other area of the Facility, nor to create any rights in said third persons against the Port Authority.

(h) **Insurance.**

i. The Lessee in its own name as insured and including the Port Authority as an additional insured, including without limitation for both premises-operations and completed operations, shall procure and maintain Commercial General Liability Insurance including, but not limited to, premises-operations, products liability, broad form property damage, completed operations for a minimum of three years after the completion of the Lessee's Construction

Work, explosion, collapse and underground property damages, personal injury (including death), and independent contractors in not less than the minimum limit set forth below, and with a contractual liability endorsement covering the obligations assumed by the Lessee and the obligations required of the Lessee's contractors, and such other insurance as the Port Authority may require in connection with the performance of the Lessee's Construction Work. Notwithstanding the foregoing obligation of the Lessee to procure and maintain such insurance, the Lessee may provide such insurance by requiring each contractor engaged by it for the Lessee's Construction Work to procure and maintain such insurance including such contractual liability endorsement, said insurance, whether procured by the Lessee or by a contractor engaged by it as aforesaid, not to contain any care, custody or control exclusions, and not to contain 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 coverage under the contractual liability endorsement. Each of the said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority, and shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder with respect to any claim or action against the Port Authority by the Lessee shall be the same as the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person as if the Port Authority were the named insured thereunder; but such provision or endorsement shall not limit, vary or affect the protections afforded the Port Authority thereunder as an additional insured. In addition, each of the said policy or policies of insurance shall be endorsed to state they are primary in relation to any insurance carried or maintained by the Port Authority, including without limitation, any self-insurance, regardless of type. All the foregoing insurance requirements shall be in addition to all policies of insurance otherwise required by the Lease.

Minimum Limits:

Commercial General Liability

Combined single limit per  
occurrence for death, bodily injury  
and property damage liability: \$2,000,000.00

ii. Without limiting the provisions hereof, in the event the Lessee maintains the foregoing insurance in limits greater than aforesaid, the Port Authority shall be included therein as an additional insured to the full extent of all such insurance in accordance with all the terms and provisions hereof.

iii. The Lessee shall also procure and maintain in effect, or cause to be procured and maintained in effect, Workers' Compensation Insurance in accordance with and as required by law and including coverage for asbestos exposure, and Employer's Liability Insurance in limits of not less than \$1,000,000 per occurrence.

iv. The insurance required hereunder in this subparagraph (iv) shall be maintained in effect during the performance of the Lessee's Construction Work and a certified

copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority at least thirty (30) days prior to the commencement of the Lessee's Construction Work or any portion thereof. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy, certificate and binder shall bear the endorsement of or be accompanied by evidence of payment of the premium thereof and, also, each such copy or certificate shall be specifically endorsed to state that the policy may not be cancelled, terminated, changed or modified, without giving thirty (30) days' written notice thereof to the Port Authority. Each such copy and each such certificate with respect to the insurance required under this subparagraph (iv) shall contain an additional endorsement providing that the insurance carrier 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, directors, officers, agents, representatives or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal policy or certificate shall be delivered to the Port Authority prior to the expiration of each expiring policy. The aforesaid policies of insurance shall be written by a company or companies approved by the Port Authority. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy 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.

(i) **Engineering and Environmental Monitoring.** Prior to the commencement of construction of the Lessee's Construction Work and at all times during such construction, the Lessee shall submit to the Port Authority all engineering studies and environmental test results with respect to the Lessee's Construction Work and samples of construction materials as may be required at any time and from time to time by the Port Authority.

(j) **Agreement Controls.** The Work shall be performed strictly in accordance with and subject to all the terms, conditions and provisions of this Agreement and the approved TCAAs. In the event any of the terms, conditions and provisions of any TCAA are contrary to or conflict or are inconsistent with any of the terms, conditions and provisions of this Agreement, the terms, conditions and provisions of this Agreement shall be controlling, effective and determinative. The Lessee, if it elects to perform the Lessee's Construction Work under this Agreement, shall perform the Lessee's Construction Work at the Lessee's sole cost and expense. The Lessee shall remove, re-do, replace or reconstruct at its own cost and expense any and all portions of the Lessee's Construction Work not done in accordance with the TCAA covering such portion of the Lessee's Construction Work, the provisions of this Agreement including, without limitation, the Section of this Agreement entitled "*Construction by the Lessee*", and any further requirements of the Port Authority. The Lessee agrees that the Lessee's Construction Work, including workmanship and materials, shall be of first-class quality. Notwithstanding the generality of any other term or provision hereof, the Lessee understands and agrees that it shall cease the Lessee's Construction Work or any portion thereof at any time and from time to time

immediately upon notice from the General Manager of the Facility in accordance with the Section of this Agreement entitled "*Construction by the Lessee*".

(k) ***Responsibilities*** .

i. **Notice to General Manager**. The Lessee shall not commence the Lessee's Construction Work to be performed under each TCAA unless and until it has met with the General Manager of the Facility or his designated representative and has given him at least 72 hours advance notice of its intention to perform such Work. Scheduling of the Lessee's Construction Work shall be coordinated with the General Manager of the Facility or his duly authorized representative.

ii. **Modifications to Plans and Specifications**. The performance by the Lessee of the Lessee's Construction Work will be at its sole risk and if for any reason the plans and specifications for any TCAA is not approved by the Port Authority or if the approval thereof calls for modifications or changes in the Lessee's Construction Work undertaken by the Lessee, the Lessee will, at its sole cost and expense, make such modifications and changes in any such Work as may be required by the Port Authority. No work performed under any TCAA shall affect or limit the obligations of the Lessee under all prior TCAs.

iii. **Non-Compliance**. Without limiting any other term or provision of this Agreement, in the event that the Lessee shall at any time during the construction of any portion of the Lessee's Construction Work fail, in the opinion of the General Manager of the Facility, to comply with all of the provisions of this Agreement or the approved TCAA covering said portion of the Lessee's Construction Work or be, in the opinion of the said General Manager of the Facility, in breach of any of the provisions of this Agreement or the approved TCAA covering such portion of the Lessee's Construction Work, the Port Authority shall have the right, acting through said General Manager of the Facility, to cause the Lessee to cease all or such part of the Lessee's Construction Work as is being performed in violation of this Agreement or the approved TCAA. Upon such written direction from the General Manager of the Facility, the Lessee shall promptly cease construction of the portion of the Lessee's Construction Work specified. The Lessee shall thereupon submit to the Port Authority for its written approval the Lessee's proposal for making modifications, corrections or changes in or to the Lessee's Construction Work that has been or is to be performed so that the same will comply with the provisions of this Agreement and the approved TCAA. The Lessee shall not commence construction of the portion of the Lessee's Construction Work that has been halted until such written approval has been received.

iv. **Resident Engineer Authority**. It is hereby expressly understood and agreed that the Port Authority's resident engineer does not have any authority to approve any plans and specifications of the Lessee with respect to the Lessee's Construction Work, to approve the construction by the Lessee of any portion of the Lessee's Construction Work or the Proposed Work or to agree to any variation by the Lessee from compliance with the terms of this Agreement and the approved TCAA. Notwithstanding the foregoing, should the Port Authority's resident engineer give any directions or approvals with respect to the Lessee's performance of any portion of the Lessee's Construction Work which are contrary to the provisions of this Agreement or the approved TCAA covering said portion of the Lessee's Construction Work, said

directions or approvals shall not affect the obligations of the Lessee as set forth herein nor release or relieve the Lessee from strict compliance with this Agreement.

v. No Site Security. It is hereby further understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of the Lessee's Construction Work by the Lessee and the rights granted to the Port Authority under this Agreement shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the General Manager of the Facility has not exercised the Port Authority's right to require the Lessee to cease its construction of all or any part of the Lessee's Construction 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 portion of the Lessee's Construction Work in accordance with the terms of this Agreement and the approved TCAA covering such portion of the Lessee's Construction Work, nor shall such fact be or be deemed to be a waiver by the Port Authority from the requirement of strict compliance by the Lessee with the provisions of this Agreement and the approved TCAA with respect to such Work.

vi. Continuity of Work. The Lessee hereby acknowledges that if it commences the Lessee's Construction Work pursuant to this Agreement it shall do so with full knowledge that it may not be permitted to perform additional portions of the Lessee's Construction Work and/or that there may not be continuity by it in the performance of other portions of the Lessee's Construction Work under the procedures of this Agreement or otherwise.

vii. Port Authority Approval. No approval of any TCAA shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent work to be performed in connection with the Lessee's Construction Work. It is understood that no such approval shall release or relieve the Lessee from its obligation to submit complete plans and specifications for the Lessee's Construction Work and to obtain the Port Authority's approval of the same as required by the Lease and as set forth this Agreement.

viii. Utility Location. In connection with the performance of the Lessee's Construction Work, the Lessee shall be responsible for identifying the location of all utilities and shall prior to the commencement of any of the Lessee's Construction Work ascertain the location of underground utilities, if any, at the Premises.

ix. Labor Troubles. In the performance of the Lessee's Construction Work, the Lessee shall not employ any contractor nor shall the Lessee or any of its contractors employ any persons or use or have any equipment or materials or allow any condition to exist if any such shall or, in the opinion of the Port Authority, may cause or be conducive to any labor troubles at the Facility which interfere, or in the opinion of the Port Authority are likely to interfere, with the operations of others at the Facility or with the progress of other construction work thereat. The determinations of the Port Authority shall be conclusive to the Lessee. Upon notice from the Port Authority, the Lessee shall immediately remove such contractor or withdraw or cause its contractors to withdraw from the Facility, the persons, equipment or materials specified in the notice and replace them with unobjectionable contractors, persons, equipment and materials and 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 shall have the right to suspend the Lessee's right to perform the Lessee's Construction Work without prior notice; when the labor troubles shall be so settled that such interferences or the danger thereof no longer exists, the Port Authority, by notice to the Lessee, shall reinstate said right 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.

x. **Environmental Condition.** In the performance of the Lessee's Construction Work, the Lessee shall not exacerbate the environmental condition of the Premises or the Facility or interfere with any environmental clean-up or remediation work being performed at the Premises whether by the Port Authority or others.

(l) **Reports.** Without limiting any other term, provision or condition hereof, the Lessee agrees to provide the General Manager of the Facility, at the Lessee's cost and expense, with such information, documentation, records, correspondence, notices, reports, test results, certifications and any other information necessary to carry out the terms, provisions and conditions of this Agreement and to allow the Port Authority to determine whether the Lessee is in compliance therewith. In addition, the Lessee shall provide to the Port Authority copies of all information, documentation, records, correspondence, requests, approvals, notices, certifications, reports, test results, submittals and all other written communication between a Governmental Authority and the Lessee with respect to the Lessee's Construction Work at the same time the same are provided by the Lessee to a Governmental Authority and within two (2) business days of when the same are provided to the Lessee by a Governmental Authority.

(m) **Review Fee**

i. The Lessee shall pay to the Port Authority a fee as compensation for such review and oversight of the Lessee's Construction Work and any other work performed by the Lessee, including, but not limited to, the Port Authority's cost of administration with regard to the Port Authority's review of any TCAAs (the "Review Fee"). The Review Fee shall be an amount equal to the greater of the following: (1) one percent (1%) of the actual cost of the Lessee's Construction Work, or (2) the rate of the fee, if any, payable to the Port Authority for review of tenant work at the Facility under the Port Authority's Tenant Construction and Alteration Process at the time the Lessee submits any TCAA required under this Section. Upon final completion of all of the work under each specific contract to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof certifying that all such work has been completed and the final cost of such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee's certificate. The Port Authority shall have the right (but shall not be obligated) to conduct an interim inspection and audit in connection with the work performed under the specific contract certified as completed and shall have the rights in the conduct of such interim inspection and audit as are set forth below in this paragraph with regard to the final inspection and audit. Upon receipt of the Lessee's certification, or following

the aforesaid audit by the Port Authority, the Port Authority shall render a bill to the Lessee setting forth the Review Fee for the specific contract, and the Lessee shall pay the Review Fee to the Port Authority within fifteen (15) days of receipt of said bill. No payment made by the Lessee on account of the cost under a specific contract as set forth in the immediately preceding sentence shall be considered final until the final determination of the cost of the Lessee's Construction Work, as set forth below in this paragraph, has occurred. Upon final completion of all of the Lessee's Construction Work, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof certifying that all such work has been completed and the final cost of such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee's certificate. Upon receipt of the Lessee's certification, the Port Authority shall render a bill to the Lessee setting forth the Review Fee for each specific contract for which the Lessee has not previously made payment under the provisions of this paragraph, and the Lessee shall pay the Review Fee for each such specific contract to the Port Authority within fifteen (15) days of receipt of said bill. No payment made by the Lessee on account of the cost of the Lessee's Construction Work pursuant to the provisions of this paragraph, including, without limitation, any payment made by the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be considered final until the final determination of the cost of the Lessee's Construction Work as set forth below in this paragraph. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Lessee's Construction Work to examine and audit the records and other documentation of the Lessee that pertain to and will substantiate such cost.

#### **Section 16. Maintenance and Repair**

(a) **Condition.** 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.

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

(c) **Repairs and Replacements.** The Lessee shall assume the entire responsibility, be liable for and shall indemnify the Port Authority from any Claims arising from or in connection with, all care, maintenance, repair and rebuilding whatsoever in the Premises, whether ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise, with respect to all parts of the Premises, all utilities related to the Premises, all other fixtures, machinery or equipment now or hereafter belonging to or connection with the Premises or operations being conducted thereon, including without limitation such of the

following as are or may be during the term of the letting located in or on the Premises: (1) electrical system, equipment and fixtures, which includes, but is not limited to, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement, (2) the plumbing system, fixtures, equipment, and all finished plumbing, (3) lights, light poles and light pole foundations, (4) signs, (5) fire extinguishers and the sprinkler systems on the Premises, (6) security measures (including cameras, fencing, guard booths and jersey barriers) implemented on the Premises, (7) snow plowing, (8) painting, (9) metered gas and electric from the meter (utility companies are responsible up to the meters), (10) all painting, (11) the building and all parts thereof, (12) catch basins and storm sewer drains, which are to be kept fully functional, clear of obstruction and free of damage at all times and (13) all paving, which includes, but is not limited to, maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, underground storm water pipes, and grate support systems. The Lessee shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting, and, except under circumstances as set forth in paragraphs (b) or (c) of the Section entitled "*Casualty*", the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the Premises, all of which shall be in quality equal to the original in materials and workmanship as of the Effective Date, except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises, and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty (20) days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) ***Underground Water Distribution and Sanitary Systems.*** Notwithstanding paragraph (c) of this Section, the Lessee shall not be responsible or liable for the care, repair or maintenance of the water distribution system and sanitary underground utilities on, under, or near the Premises or the Facility; provided, however, that the Lessee shall be responsible for the maintenance, repair and damage to traps, grates and grate support systems, manhole covers, frames, inlet boxes, catch basins, drains and underground stormwater pipes, and shall also be responsible to keep the forgoing free and clean of clutter and debris and shall conduct regular inspections of same. Notwithstanding the foregoing in this paragraph (d), the Lessee shall repair, replace or rebuild all or any part of the water distribution system and sanitary underground

utilities on, under, or near the Premises or the Facility that may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers, employees or of other persons on or at the Premises with the consent of the Lessee.

(e) **Insured Casualty.** The obligation of the Lessee as set forth in paragraphs (b), (c) and (d), of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; *provided, however*, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

## **Section 17. Services**

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

(b) **Water-bills.** The Lessee shall promptly pay all water-bills covering its own consumption. 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) **Heat.** The Lessee agrees to heat the enclosed portions of the Premises to a sufficient temperature, or to bleed pipes, so that the plumbing, fire-protection and sprinkler system, if any, will not be damaged by reason of low temperatures.

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

(e) **Service Interruption.** No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder, or shall be or be

construed to be an eviction of the Lessee, or shall constitute grounds for any diminution or abatement of the rental or rentals payable under this Agreement, or grounds for any claim by the Lessee for damages, consequential, or otherwise.

(f) **Meters.** Without in any wise affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of the Section entitled "*Maintenance and Repair*", 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.

### **Section 18. Rights of Entry Reserved**

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed 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.

(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 to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(d) Nothing in this Section shall 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 nor for any injury or damage to the Premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the acts of the Port Authority).

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

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises.

(g) Subject to paragraph (d) of the Section of this Agreement entitled "*Maintenance and Repair*", 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 19. Property Insurance.**

(a) **Property Insurance.** The Lessee shall, during the term of this Agreement, insure and keep insured to the extent of the full replacement cost thereof, all buildings, structures, improvements, installations, facilities and fixtures now or in the future located on the Premises when the same are located on the Premises against all risks of physical loss or damage, including ~~loss against flood and earthquake, if available, and if not available, then against such hazards~~ and risks as may now or in the future be included under a standard form of fire and extended coverage insurance policy available in the State of New Jersey including damage or loss by windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, flood, earthquake and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination hazards and risks (if such coverage is or becomes available) and boiler and machinery hazards and risks in a separate insurance policy or policies or as an additional coverage endorsement to the aforesaid policies in the form as may now or in the future be prescribed as of the effective date of said insurance by the Rating Organization having jurisdiction or the Director of Insurance of The State of New Jersey and the Lessee shall furthermore provide additional insurance with respect to the Premises covering any other property risk that the Port Authority may at any time during the term of this Agreement cover by carrier or self-insurance covered by appropriate reserves at other locations at the Facility upon written notice to the Lessee to such effect.

(b) **Insureds.** The aforesaid insurance coverages and renewals thereof shall insure the Port Authority and the Lessee, as their interests may appear, and shall provide that the loss, if any, shall be adjusted with and payable to the Port Authority.

(c) **Occurrence of Insured Event.** In the event the Premises or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section, the Lessee shall promptly furnish to the Port Authority such information and data as may be necessary to enable the Port Authority to adjust the loss.

(d) **Policies.** As to all insurance required hereunder, a certified copy of each policy or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority within thirty (30) days after the execution of this Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall be specifically endorsed to state that the policy may not be cancelled, terminated, changed or modified, without giving thirty (30) days' written notice thereof to the Port Authority. Evidence of a renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration date of each expiring policy.

(e) **References to "Insurance".** Regardless, however, of the persons whose interests are insured, the proceeds of all policies covered by this Section shall be applied as provided in the Section of this Agreement entitled "*Casualty*"; and the word "insurance" and all other references to insurance in said Section shall be construed to refer to the insurance which is the subject matter of this Section, and to refer to such insurance only.

(f) **Insurance Requirements.** The insurance covered by this Section shall be written by companies approved by the Port Authority, the Port Authority covenanting and agreeing not to withhold its approval unreasonably. All insurance coverages and policies required under these Sections may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the term this Agreement remains in effect. The Port Authority at any such time may make additions, deletions, amendments to or modifications of the above-scheduled insurance requirements and may require such other and additional insurance, in such reasonable amounts, against such other insurable risks and hazards, as the Port Authority may deem advisable and the Lessee shall promptly comply therewith.

## **Section 20. Casualty**

(a) **Removal of Debris.** If the Premises, or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty, the Lessee shall within five (5) days of the occurrence commence to remove all of its damaged property and all debris thereof from the Premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, 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 upon demand.

(b) **Minor Damage.** If the Premises, or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty but not rendered untenable or unusable for a period of ninety (90) days, the Premises shall be repaired with due diligence in accordance with the plans and specifications for the Premises as they existed prior to such damage by and at the expense of the Lessee and if such damage is covered by insurance, the proceeds thereof shall be made available to and be used by the Lessee for that purpose. The Basic Rental shall be

abated as provided in paragraph (d) of the Section of this Agreement entitled "*Basic Rental*", for the period from the occurrence of the casualty to the date that is the earlier of (i) the completion of the repairs or rebuilding and (ii) ninety (90) days.

(c) ***Major Damage to or Destruction of the Premises.***

(i) If the Premises, or any part thereof, shall be destroyed or so damaged by fire, the elements, the public enemy or other casualty as to be untenable or unusable for ninety (90) days, then the Lessee shall either (x) terminate this Agreement and assign to the Port Authority any insurance proceeds received in connection with such destruction or damage or (y) proceed with due diligence to make the necessary repairs or replacements to restore such Premises in accordance with the plans and specifications for the Premises as the same existed prior to such damage or destruction; or with the approval in writing of the Port Authority make such other repairs, replacements or changes as may be desired by the Lessee and the Basic Rental shall be abated as provided in paragraph (d) of the Section of this Agreement entitled "*Basic Rental*", for the period from the occurrence of the casualty to the date that is the earlier of (i) the completion of the repairs or rebuilding and (ii) ninety (90) days. If such destruction or damage was covered by insurance, the proceeds thereof shall be made available to the Port Authority and be used by the Lessee for such restoration.

(ii) If the Lessee elects to terminate this Agreement pursuant to paragraph (c)(i) of this Section, then Lessee shall: (x) notify the Port Authority in writing of its intention to terminate this Agreement within thirty (30) days following such ninety (90) day period; and (y) pay to the Port Authority an amount equal to the then present value of the sum of the Basic Rental at an interest rate equal to the Revenue Bond Index for the week that includes the date that the Port Authority received notice of such termination from the Lessee that would have been paid by the Lessee to the Port Authority if this Agreement expired on the Expiration Date as such date may have been extended.

(d) ***Limited to Proceeds.*** The obligation of the Lessee to repair the Premises or any portion thereof pursuant to paragraph (b) of this Section shall be limited to the amount of the insurance proceeds provided the Lessee has carried insurance to the extent and in accordance with the Section of this Agreement entitled "*Property Insurance*". Any excess of the proceeds of insurance over costs of the restoration shall be retained by the Port Authority.

(e) ***Statutes.*** The parties hereby stipulate that if the Premises are in New Jersey neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the Premises are in New York, 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.

## **Section 21. Condemnation**

(a) In any action or other proceeding by any governmental agency or agencies 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.

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

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

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

(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 open and enclosed space, then the Lessee and the Port Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

## Section 22. 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.

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

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of subdivisions (a) or (b) of this Section or if the Premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right to this Agreement or 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 subdivisions (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 herein.

(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 as provided in the Section entitled "Use".

(e) Notwithstanding paragraph (a) above, the Lessee shall have the right to sublease or assign the Lease upon written consent and approval of the Port Authority. (an "**Approved Assignment**" or "**Approved Sublease**," as applicable).

i. If the rental under an Approved Sublease (the "**Sublease Rental**") is greater than the Basic Rental, the Lessee shall pay to the Port Authority fifty percent (50%) of that portion of the Sublease Rental that is equal to the Sublease Rental less the Basic Rental (the "**Overage Rental**"). The Lessee shall pay the Overage Rental, if any, to the Port Authority in the same manner and simultaneously with the Lessee's payment of the Basic Rental to the Port Authority.

ii. For any Approved Assignment, the Lessee shall pay a fee (the "**Assignment Consent Fee**") to the Port Authority for the Port Authority's cost of administration with regard to the Port Authority's review, approval and consent of such Approved Assignment (the "**Consent Process**"). The Assignment Consent Fee shall be equal to ten percent (10%) of the net present value of the gross Basic Rental payable to the Port Authority for the unexpired portion of the Term, at a discounted rate equal to five percent (5%). The Lessee and assignee under the Approved Assignment shall be jointly and severally liable for the payment of the Assignment Consent Fee to the Port Authority.

(f) The transfer or issuance of any capital stock of any corporate lessee, the transfer of any membership interests of any limited liability company lessee or the transfer of a controlling interest in any partnership lessee, however accomplished, whether in a single transaction or in a series of related or unrelated transactions that aggregate fifty percent (50%) or more of the outstanding shares of the capital stock and voting rights, membership interests

or partnership interests in the Lessee shall be deemed an assignment of this Agreement subject to paragraph (e) of this Section.

(g) The Lessee further covenants and agrees not to enter into any management agreement or service agreement or any other similar type of agreement for the Premises without the prior written consent of the Port Authority.

(h) Any sublease, assignment, transfer, mortgage, pledge, hypothecation, encumbrance or disposition of the Premises or of the rents, revenues or any other income from the Premises, or this Agreement or any part hereof, or any license or other interest of the Lessee herein that is not made in accordance with the provisions of this Agreement shall be null and void *ab initio* and of no force and effect.

### **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 of the Facility or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted.

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a 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 feet (20') above the present ground level of any open area included in the Premises.

### **Section 24. Prohibited Acts**

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

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

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

(d) Unless otherwise expressly permitted so to do, 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 or sale of food, beverages, tobacco, tobacco products, or merchandise of any kind whether or not included in the above categories, or of any equipment or devices for the furnishing to the public of service of any kind including therein, without limitation thereto, telephone pay stations.

(e) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain, receive and retain 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.

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

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

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

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

(j) The Lessee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on or from the Premises, and shall not dispose of, release or discharge or permit anyone subject to its control or authority to dispose of, release or discharge any Hazardous Substance at the Facility. Any Hazardous Substance disposed of, released or discharged by the Lessee (or permitted by the Lessee to be disposed of, released or discharged) on or from the Premises or at the Facility, shall upon notice by the Port Authority to the Lessee and subject to the provisions of the Section of this Agreement entitled "*Additional Rent and Charges*", be completely removed, cleaned up and/or remediated by the

Lessee. The obligations of the Lessee pursuant to this paragraph shall survive the expiration or termination of this Agreement.

## **Section 25. Termination**

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

i. 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

ii. 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

iii. 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

~~iv. 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~~

v. The Lessee, if a corporation, shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

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

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

viii. The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Premises or at the Facility or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the Premises, regardless of the fault of the Lessee; or

ix. Any lien shall be filed against the Premises because of any act or omission of the Lessee and shall not be discharged within twenty (20) days; or

x. The Lessee shall fail duly and punctually to pay the Basic Rental or to make any other payment required hereunder when due to the Port Authority; or

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

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

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

## **Section 26. Effect of Termination**

(a) Notwithstanding any other term or condition hereof, as of July 1, 2015 and each anniversary of such date until and including July 1, 2018, this Agreement may at any time be terminated by the Port Authority without cause upon one (1) year's prior notice; provided, however, that it may be terminated on twenty-four (24) hours' notice if the Lessee fails to keep,

perform and observe each and every promise, agreement, condition, term and provision contained in this Agreement, including without limitation the obligation to pay any rental. Further, in the event the Port Authority exercises its right to revoke or terminate this Agreement for any reason other than "without cause", 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 revocation or termination, including without limitation any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of any space which may be used and occupied under this Agreement (on failure of the Lessee to have it restored), preparing such space for use by a succeeding lessee, the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the space and putting the space in order (such as but not limited to cleaning and decorating the same). Unless sooner revoked or terminated, the term shall expire in any event upon the Expiration Date. Revocation or termination shall not relieve the Lessee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation or termination.

(b) No exercise by the Port Authority of any right of revocation or termination granted to it in this Section shall be deemed to be a waiver of any other rights of revocation or termination contained in this Section or elsewhere in this Agreement or a waiver of any other rights or remedies which may be available to the Port Authority under this Agreement or otherwise.

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### **Section 27. Right of Re-entry**

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in the Section entitled "*Termination*", 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 any 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 28. 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 29. Survival of the Obligations of the Lessee**

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in the Sections entitled "*Termination*" and "*Effect of Termination*" unless such termination is "without cause", or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of the Section entitled "*Right of Entry Reserved*", all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in the Section entitled "*Term*", and the amount or mounts 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 had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) an account of the Lessee's rental obligations, shall be the sum of the following:

i. The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of a 30-day month; and

ii. An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the Premises, for legal expenses, boiler insurance premiums, if any, putting the Premises in order, including without limitation cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

## **Section 30. Reletting by the Port Authority**

The Port Authority, upon termination or cancellation pursuant to the Section entitled "*Termination*", or upon any re-entry, regaining or resumption of possession pursuant to the Section entitled "*Right of Entry Reserved*", may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or of the Premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to the Section entitled "*Termination*", or upon re-entry, regaining or resumption of possession pursuant to the Section entitled "*Right of Entry Reserved*", 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, Lessee or other occupier in connection with the use of the Premises or portion thereof during the balance of the term of the letting 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 expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

### **Section 31. 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 the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

### **Section 32. 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 same condition as at the commencement of the letting, reasonable wear arising from use of the Premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the Premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such 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, 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. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

### **Section 33. Acceptance of Surrender of Lease**

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

### **Section 34. Affirmative Action**

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

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

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

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

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

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

### **Section 35. Environmental Compliance**

(a) ***No Release of Hazardous Substances.*** The Lessee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on, or under the Premises or into any ditch, conduit, stream, storm sewer, or sanitary sewer connected thereto or located 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 the Premises or at the Facility, shall upon notice by the Port Authority to the Lessee and subject to the provisions of all Environmental Requirements be completely removed and/or Remediated by the Lessee.

(b) ***Compliance with Environmental Requirements.*** Without limiting the Lessee's obligations elsewhere under this Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which were or at any time are in effect during the term, the Lessee understands and agrees that, except as provided in paragraph (d) of this Section, it shall be obligated, at its cost and expense, to comply with, and relieve the Port Authority from compliance with, all Environmental Requirements which are applicable to or which affect (w) the Premises, (x) the operations of, or work performed by, the Lessee or others with the consent of the Lessee at the Premises or the Lessee's operations at the Facility, (y) the occupancy and use of the Premises by the Lessee or by others with its consent or (z) any Hazardous Substance which has migrated from the Premises. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of the Lessee. Without limiting the generality of the foregoing and as part of the Lessee's fulfillment of the foregoing obligations, the Lessee shall be responsible, at its sole cost and expense and subject to the direction of the Port Authority, for:

i. the preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, no further action letter, remediation agreement or any other documentation or information;

ii. the obtaining of any surety bond or the giving of any other financial assurances; and

iii. complying with the provisions of all Environmental Requirements becoming effective on or relating to the termination, expiration or surrender of the letting of the Premises or of any portion thereof under this Agreement, or on the closure or transfer of the Lessee's operations at the Premises.

(c) **Environmental Site Assessment.** Promptly, when required by any applicable federal, state, or local regulatory authority, the Lessee shall perform, at its sole cost and expense, an environmental site assessment reasonably acceptable to the Port Authority to determine the extent, if any, of contamination of the Premises resulting from or in connection with the use and occupancy of the Premises by the Lessee and shall, at its sole cost and expense, clean up, remove, and Remediate (i) all Hazardous Substances in, on, or under the Premises, (ii) any petroleum in, on, or under the Premises in excess of allowable levels, and (iii) all contaminants and pollutants in, on, or under the Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or Remediated by any and all applicable environmental requirements.

(d) **Acts by the Port Authority.** Notwithstanding paragraph (c) of this Section, it is hereby agreed and understood that the Lessee shall not be responsible for the Remediation or removal of Hazardous Substances in the soil or groundwater in, on or under the Premises or which have migrated from the Premises, to the extent caused by the sole acts or omissions of the Port Authority prior to, on or after the Effective Date.

(e) **Obligation to Remediate.** 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:

i. except as provided in paragraph (d) of this Section, completely remove and Remediate all Hazardous Substances in, on and under the Premises and at the Facility resulting from or in connection with the use and occupancy of the Premises by the Lessee or any affiliate or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Facility by the Lessee or any affiliate or which have been disposed of, released, discharged or otherwise placed in, on or under the Premises during the term of the letting of the Premises under this Agreement or during the term of any previous agreement between the Lessee and the Port Authority covering the Lessee's or any such affiliate's use and/or occupancy of the Premises or any portion thereof;

ii. except as provided in paragraph (d) of this Section, remove and Remediate all Hazardous Substances in, on or under the Premises or which have migrated from

the Premises to any other property that (x) any Governmental Authority or any Environmental Requirement or any violation thereof require to be Remediated or removed and (y) were caused by or resulted from the use and occupancy of the Premises by the Lessee or by any affiliated company of the Lessee, or the performance of any work by any of them, or the acts or omissions of the Lessee, its officers, agents or employees, or the acts or omissions of any affiliated company of the Lessee or of any sublessees or others who occupied the Premises with the permission of the Lessee or with the permission of an affiliated company of the Lessee or their officers, agents or employees; and

iii. except as provided in paragraph (d) of this Section, remove and Remediate all Hazardous Substances in, on or under the Premises or which have migrated from or from under the Premises necessary to mitigate any Environmental Damages that were caused by or resulted from the use and occupancy of the Premises by the Lessee or by any affiliated company of the Lessee, or the performance of any work by any of them, or the acts or omissions of the Lessee, its officers, agents or employees, or the acts or omissions of any affiliated company of the Lessee or of any sublessees or others who occupied the Premises with the permission of the Lessee or with the permission of an affiliated company of the Lessee or their officers, agents or employees.

(f) **Asbestos Abatement And Removal.** Except as provided in paragraph (d) of this Section, if (i) any asbestos or asbestos-containing materials requiring removal, abatement or Remediation pursuant to any Environmental Requirement is or becomes located in any structures (whether above-grade or below-grade) on the Premises and (ii) the need for such removal, abatement or Remediation was caused by or resulted from the use and occupancy of the Premises by the Lessee or by any affiliated company of the Lessee, or the performance of any work by any of them, or the acts or omissions of the Lessee, its officers, agents or employees, or the acts or omissions of any affiliated company of the Lessee or of any sublessees or others who occupied the Premises with the permission of the Lessee or with the permission of an affiliated company of the Lessee or their officers, agents or employees., the Lessee shall conduct the complete abatement and removal of all of such asbestos and asbestos-containing materials located in all structures (whether above-grade or below-grade) and the handling, transporting and off-Facility disposal thereof (including, if required, disposal of asbestos in an off-Facility long-term asbestos disposal facility), all of the foregoing to be performed and completed in accordance with Environmental Requirements.

(g) **Port Authority Remedies.** Without limiting the Port Authority's other remedies under this Agreement or, generally, at law or equity, the Port Authority shall have the right, during and after the term, to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Lessee of its environmental obligations under this Agreement, including without limitation all the Lessee's obligations under this Section and the Section of this Agreement entitled "*Environmental Obligations*". In the event that the Lessee fails to comply with or perform any of such obligations, the Port Authority at any time during or subsequent to the termination, expiration or surrender of the letting of the Premises or any portion thereof may elect (but shall not be required) to perform such obligations, and

upon demand the Lessee shall pay to the Port Authority as additional rent its costs thereof, including all overhead costs as determined by the Port Authority.

(h) **Information and Reports.** Without limiting any other of the Lessee's obligations under this Agreement and except as provided in paragraph (d) of this Section, the Lessee, at its sole cost and expense, shall provide the General Manager of the Facility with such information, documentation, records, correspondence, notices, reports, tests, results, and certifications and any other information as the Port Authority may request in connection with any Environmental Requirements or Environmental Damages, and the Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same. 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 at the Lessee's cost and expense. Further, the Lessee agrees, unless directed otherwise by the Port Authority, to provide the General Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority, and by a Governmental Authority to the Lessee, within two (2) business days after the same have been made available to or received by the Lessee with respect to any Environmental Requirements or Environmental Damages.

(i) **Indemnification.** Without limiting the generality of any other provision of this Agreement, and except as provided in paragraph (d) of this Section, the Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, employees and representatives from all claims, demands, penalties, fines, liabilities (including strict liability), settlements, attorney and consultant fees, investigation and laboratory fees, removal and Remediation costs, court costs and litigation expenses, damages, judgments, losses, costs and expenses of whatsoever kind or nature and whether known or unknown, contingent or otherwise, just or unjust, groundless, unforeseeable or otherwise, arising or alleged to arise out of or in any way related to any Environmental Damages or any Environmental Requirement that the Lessee is obligated to comply with pursuant to this Agreement, or the risks and responsibilities assumed hereunder by the Lessee for the condition of the Premises or a breach or default of the Lessee's obligations under this Section. If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(j) **Compliance Standard.**

i. Without limiting the generality of any provision of this Agreement, in the event that any Environmental Requirement sets forth more than one compliance standard, the Lessee agrees that the standard or standards to be applied in connection with any obligation it may have under this Agreement with respect to such Environmental Requirement shall be that which requires or permits the lowest level of a Hazardous Substance; provided, however, that in

the event such lowest level of a Hazardous Substance (x) requires or allows the imposition of any restriction of any nature whatsoever upon the use or occupancy of the Premises or any other portion of the Facility or upon any operations or activities conducted or to be conducted on the Premises or the Facility or upon the transfer of the Premises or the Facility or (y) is not in compliance with the Basic Lease, then the Lessee shall Remediate to such a level so that there is no such restriction placed upon the use and occupancy of the Premises or the Facility or upon any operations or activities conducted or to be conducted on the Premises or the Facility.

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

(k) **Burden of Proof.** 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 or under the Premises occurred prior or subsequent to the commencement of the Lessee's tenancy or other occupancy of the Premises; (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 Lessee's tenancy or other occupancy of the Premises; and (3) whether the Lessee exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated subsequent to the commencement of the Lessee's tenancy or other occupancy of the Premises. For purposes of this Special Endorsement, "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.

(l) **Survival.** Without limiting the generality of any other term or provision of this Agreement, all of the obligations of the Lessee under this Section shall survive the expiration or earlier termination of this Agreement.

### **Section 36. Railroad Services**

The Port Authority shall not provide and shall not be responsible for the provision of any railroad or other transportation services to the Lessee.

### **Section 37. Notices**

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such

party, or (ii) delivered to an office or residence of such party, officer or representative during regular business hours, or (iii) delivered to an office or the residence of such party, officer or representative, or (iv) delivered to the Premises, or (v) forwarded to such party or representative at the office or residence address by registered mail or by a nationally recognized overnight courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office as it appears on the first page of this Agreement, as their respective offices where notices and requests may be served.

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

### **Section 38. 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:

i. If the Lessee is a corporation, its obligation shall be performed by it and its rights shall be exercised only by its officers and employees or

ii. If the Lessee is an unincorporated association, or a "Massachusetts" or business trust, its obligations shall be performed by and its rights shall be exercised only by it acting only through the medium of its members, trustees, officers and employees or

iii. If the Lessee is a partnership, its obligations shall be performed and its rights shall be exercised by its partners and employees only or

iv. If the Lessee is an individual, his obligations shall be performed and his rights shall be exercised by himself and his employees only or

v. If the Lessee is a limited liability company, its obligations shall be performed by and its rights shall be exercised by it acting only through the medium of its managers, members and employees;

vi. 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 the Section entitled "Use", the rights of user thereby granted to the Lessee with respect to the Premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

(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 these Terms and Conditions and in the endorsements, if any, attached hereto 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 sent to the following address: The Port Authority of New York and New Jersey, P. O. Box 95000-1517, Philadelphia, Pennsylvania 19195-1517, or made via the following wire transfer instructions: Bank: TD Bank; Bank ABA Number: 031201360; Account Number: Exemption 1/0r sent to such other address, or via such other wire transfer instructions, as may hereafter be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly prorated.

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

(h) 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, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, 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.

### **Section 39. Premises**

(a) 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 and has found them to be in good order and repair and determined them to be suitable for the Lessee's operations hereunder. The Lessee agrees to and shall take the Premises in its "as is" condition and the Port Authority shall have no obligation hereunder for preparation of the Premises for the Lessee's use. Without limiting any obligation of the Lessee to commence operations hereunder 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 Lessee's operations hereunder so that there is possibility of injury or damage to life or property and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

(c) If permission is given to the Lessee to enter into the possession of the Premises or to occupy space other than the Premises prior to the date specified in the Section entitled "Term" as the commencement of the term of the letting, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the Premises, the date of such possession shall be the date of commencement of the term hereunder.

### **Section 40. Force Majeure**

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation strikes, boycotts, picketing, slow-downs, work stoppages, labor troubles of any other type, 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 (or its contractors or subcontractors) is not responsible and which are not within its (or its contractors' or subcontractors') 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) 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 laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, 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 41. Brokerage**

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

#### **Section 42. Non-liability of Individuals**

No Commissioner, officer, agent or employees of the Port Authority shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

#### **Section 43. [Intentionally Omitted]**

#### **Section 44. Waiver of Trial by Jury**

The Lessee waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Lessee in respect of the Premises 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 summary proceeding or action for non-payment of rents, fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

#### **Section 45. Effect of Use and Occupancy of Premises after Expiration or Termination**

Without in any way limiting the provisions set forth in the Sections of this Agreement entitled "*Termination*", "*Effect of Termination*", "*Right of Re-entry*" and "*Survival of the*

*Obligations of the Lessee*", unless otherwise notified by the Port Authority in writing, in the event the Lessee remains in possession of the Premises after the expiration or termination of the term of the letting under this Agreement, as it may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Agreement or other remedies the Port Authority may have by law or otherwise, the Lessee shall pay to the Port Authority a rental for the period commencing on the day immediately following the date of such expiration or the effective date of such termination and ending on the date that the Lessee shall surrender and completely vacate the Premises at an annual rate equal to twice the sum of (i) the annual rate of rental in effect on the date of such expiration or termination, plus (ii) all items of additional rent and other periodic charges, if any, payable with respect to the Premises by the Lessee at the annual rate in effect during the three-hundred-sixty-five (365) day period immediately preceding such date. Nothing herein contained shall give, or be deemed to give, the Lessee any right to remain in possession of the Premises after the expiration or termination of the letting under this Agreement. The Lessee acknowledges that the failure of the Lessee to surrender, vacate and yield up the Premises to the Port Authority on the effective date of such expiration or termination will or may cause the Port Authority injury, damage or loss. The Lessee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

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#### **Section 46. Lessee's Rights Non-Exclusive**

Except as expressly provided herein with respect to the Premises, neither the execution of this Agreement by the Port Authority nor anything contained herein shall grant or be deemed to grant to the Lessee any exclusive rights or privileges.

#### **Section 47. OFAC Compliance**

(a) **Lessee's Representation and Warranty.** The Lessee hereby represents and warrants to the Port Authority that the Lessee (x) is not a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Assets Control ("**OFAC**") of the United States Department of the Treasury (including, without limitation, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other regulation relating to national security or foreign policy (including, without limitation, Executive Order 13224 of September 23, 2001, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism*), or other governmental action related to national security, the violation of which would also constitute a violation of law, such persons being referred to herein as "**Blocked Persons**" and such regulations, statutes, executive orders and governmental actions being referred to herein as "**Blocked Persons Laws**") and (y) is not engaging in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. The 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.

(b) **Lessee's Covenant.** Lessee covenants that (i) during the term of the Lease it shall not become a Blocked Person, and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of the aforesaid covenant, the same shall constitute an event of default and, accordingly, a basis for termination of the Lease by the Port Authority, in addition to any and all other remedies provided under the Lease or at law or in equity, which does not constitute an acknowledgement by the Port Authority that such breach is capable of being cured.

(c) **Lessee's Indemnification Obligation.** The Lessee shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the Lessee's breach of any of its representations and warranties made under this Agreement. Upon the request of 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) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

(d) **Survival.** The provisions of this Section shall survive the expiration or earlier termination of the term of the letting hereunder.

#### **Section 48. Construction and Application of Terms**

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

(b) Unless otherwise expressly specified, the terms, provisions and obligations contained in any Exhibits and Schedules attached hereto, whether they are set out in full or as amendments of, or supplements to provisions elsewhere in the Agreement stated, shall have the same force and effect as if herein set forth in full.

(c) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

(d) The fact that certain of the terms and provisions hereunder are expressly stated to survive the expiration or termination of the letting hereunder shall not mean that those provisions hereunder which are not expressly stated to survive shall terminate or expire on the expiration or termination of the letting hereunder and do not survive such termination or expiration.

(e) The parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applicable to the interpretation of this Agreement or any amendments, addenda or supplements hereto or any Exhibits or Schedules hereto.

**Section 49. Governing Law**

This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement, the relationship of the parties hereunder, and/or the interpretation and enforcement of the rights and obligations of the parties hereunder shall be governed by, interpreted and construed in accordance with the laws of the State of New Jersey, without regard to choice of law principles.

**Section 50. Entire Agreement**

This Agreement consists of the following: Sections 1 through 50, Standard Endorsement, Exhibit A, the Insurance Schedule and Schedules A, B and E attached hereto. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

\* \* \* \* \*

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

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

~~WITNESS~~ ~~MSD~~ IA  
ATTEST:

Karen Lautman Secretary By: [Signature]

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

(Seal)

KINDER MORGAN BULK TERMINALS INC.

WITNESS ~~MSD~~ IA  
ATTEST:

James M. Brown Secretary

By: Michael J. Dodson

(Print Name): MICHAEL J. DODSON

(Title): C. O. O.

(Corporate Seal) N/A ~~MSD~~ IA

Port Authority Use Only	
Approval as to Terms:	Approval as to Form:
IA <u>[Signature]</u>	IA <u>[Signature]</u>

SSA

(a) If at any time the Lessee shall become entitled to an abatement of Basic Rental under the provisions of this Agreement or otherwise, such abatement shall be computed as follows:

For each square foot of useable Building Space the use of which  
is denied to the Lessee, at the annual rate of \$7.50\*

For each square foot of Open Area Space the use of which  
is denied to the Lessee, at the annual rate of None

(b) If no rates are filled in above then the abatement of Basic Rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the Premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total Basic Rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the Premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full Basic Rental less only an abatement thereof computed in accordance with the above.

\* through June 30, 2013, thereafter the said rates shall be adjusted on an annual basis in the same manner as the Basic Rental is adjusted pursuant to and in compliance with Section 5(c) of this Agreement.

Standard Endorsement No. L27.4

Abatement

All Marine Terminals

10/6/68

LPN-316 Kinder Morgan

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

**INSURANCE SCHEDULE**

(a) The Lessee named in the Agreement of Lease to which this Insurance Schedule is attached and of which it constitutes an integral part (the "*Lease*"), in its own name as insured and including the Port Authority as an additional insured, shall maintain and pay the premiums during the effective period of the Lease on a policy or policies of Commercial General Liability Insurance and Commercial Automotive Liability Insurance including premises-operations and products-completed operations and covering bodily-injury liability, including death, and property damage liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the limit set forth below:

	<u>Minimum Limits</u>
Commercial General Liability Insurance Combined single limit per occurrence for death, bodily injury and property damage liability:	\$2,000,000.00
Commercial Automotive Liability Insurance Combined single limit per occurrence for death, Bodily injury and property damage liability:	None
Workers' Compensation and Employers Liability Insurance Lessee's obligations under the applicable State Workers' Compensation Law for the employees of the Lessee employed in operations conducted pursuant to the Lease at or from the Premises	Statutory

The Commercial General Liability 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.

In the event the Lessee maintains the foregoing insurance in limits greater than aforesaid, the Port Authority shall be included therein as an additional insured, except for the Workers' Compensation and Employers Liability Insurance policies, to the full extent of all such insurance in accordance with all terms and provisions of the Lease, including without limitation this Insurance Schedule.

(b) Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and any claim or action against the Port Authority by the Lessee, as if the Port Authority were the named insured thereunder, but such clause or endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured. Each policy of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under the Lease.

(c) All insurance coverages and policies required under this Insurance Schedule may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the period of permission under the Lessee. The Port Authority may, at any such time, require additions, deletions, amendments or modifications to the above-scheduled insurance requirements, or may require such other and additional insurance, in such reasonable amounts, against such other insurable hazards, as the Port Authority may deem required and the Lessee shall promptly comply therewith.

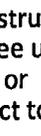
(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement that the insurer "shall not, without 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." The foregoing provisions or endorsements shall be recited in each policy or certificate to be delivered pursuant to the following paragraph (e).

(e) A certified copy of each policy or a certificate or certificates of insurance evidencing the existence thereof, or binders, shall be delivered to the Port Authority upon execution and delivery of the Lease by the Lessee to the Port Authority. In the event any binder is delivered it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate of insurance. Any renewal policy shall be evidenced by a renewal certificate of insurance delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the Lease. The aforesaid insurance shall be written by a company or companies approved by the Port Authority. If at any time any insurance policy shall be or become unsatisfactory to the Port Authority as to form or substance or if any of the carriers issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement. If the Port Authority at any time so requests, a certified copy of each policy shall be delivered to or made available for inspection by the Port Authority.

(f) The foregoing insurance requirements shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Lessee under the Lease. The foregoing insurance requirements shall not constitute a representation or warranty as to the adequacy of the required coverage to protect the Lessee with respect to the obligations imposed on the Lessee by the Lease or any other agreement or by law.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Lessee

KINDER MORGAN BULK TERMINALS, INC.  
LEASE NO. LPN-316  
SCHEDULE A  
MINIMUM 2%

Bldg.188 - 7,800 sq.ft.  
Base Year Annual Rent: \$58,500.00

<u>Anniversary</u> <u>Date</u>	<u>Annually</u>	<u>Monthly</u>	<u>Rate</u>
1-Jul-13	\$59,670.00	\$4,972.50	\$7.65
1-Jul-14	\$60,840.00	\$5,070.00	\$7.80
1-Jul-15	\$62,010.00	\$5,167.50	\$7.95
1-Jul-16	\$63,180.00	\$5,265.00	\$8.10
1-Jul-17	\$64,350.00	\$5,362.50	\$8.25
1-Jul-18	\$65,520.00	\$5,460.00	\$8.40
1-Jul-19	\$66,690.00	\$5,557.50	\$8.55

KINDER MORGAN BULK TERMINALS, INC.  
LEASE NO. LPN-316  
SCHEDULE B  
MAXIMUM 6%

Bldg.188 - 7,800 sq.ft.  
Base Year Annual Rent: \$58,500.00

<u>Anniversary Date</u>	<u>Annually</u>	<u>Monthly</u>	<u>Rate</u>
1-Jul-13	\$62,010.00	\$5,167.50	\$7.95
1-Jul-14	\$65,520.00	\$5,460.00	\$8.40
1-Jul-15	\$69,030.00	\$5,752.50	\$8.85
1-Jul-16	\$72,540.00	\$6,045.00	\$9.30
1-Jul-17	\$76,050.00	\$6,337.50	\$9.75
1-Jul-18	\$79,560.00	\$6,630.00	\$10.20
1-Jul-19	\$83,070.00	\$6,922.50	\$10.65

**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 Contractor shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E and in Section --- of Port Authority Agreement No. ----- (herein called the "Lease") with ----- (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 Port Authority's Aviation Department and Office of Business Diversity and Civil Rights 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 numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

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

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

(7) Review, at least every six months the Contractor's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decision including specific review of these items with on-terminal 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.

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 AND WOMEN-OWNED BUSINESS ENTERPRISES

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself and shall require that any Contractor utilized by the Lessee to perform contract work ("the work") on the premises including without limitation construction work to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the 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, preferably bi-weekly, and that retainage is paid to MBEs and WBEs when they have completed their work.

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

(h) Requiring each contractor to submit to the Lessee with each payment request evidence that all MBE and WBE Contractors have been paid in accordance with their contract.

Certification of MBEs and WBEs hereunder shall be made by the Office of Business Diversity and Civil Rights 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 Diversity and Civil Rights, the Port Authority of New York and New Jersey, 233 Park Avenue South, 4<sup>th</sup> Floor, New York, New York 10003 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing by the Director in charge of the Office of Business Diversity and Civil Rights 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 of 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.

IA   
\_\_\_\_\_  
For the Port Authority

Initialed:

MSD  
\_\_\_\_\_  
For the Lessee

For The Port Authority

STATE OF NEW YORK )

SS

COUNTY OF NEW YORK )

On the 3rd day of June in the year 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared RICHARD M. LARRABEE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DIRECTOR, PORT COMMERCE DEPT.

Thorp K. Pfeil  
(notarial seal and stamp)

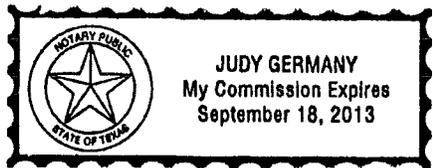
**THORP K. PFEIL**  
Notary Public, State of New York  
No. 02970000000000  
Qualified in Queens County  
Commission Expires March 20, 2014

For the Lessee

STATE OF Texas )  
                                  ) ss  
COUNTY OF Harris )

On the 4th day of April in the year 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael J. Dodson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Judy Germany  
(notarial seal and stamp)



THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY  
225 PARK AVENUE SOUTH  
NEW YORK, NEW YORK 10003

LICENSE

(Port Authority Agmt. No. ROE-011-PN)

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**, a body corporate and politic, created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America, having its principal office at 225 Park Avenue South, New York, New York 10003 (the "Port Authority"), hereby grants to **Kinder Morgan Bulk Terminals Inc.**, having its principal office at 124 Starboard Street, Port Newark, NJ 07114 (the "Licensee") and its representatives, contractors, employees, agents and servants permission to enter upon, use and occupy property owned by the Port Authority in Port Newark (the "Facility") in the City of Newark, County of Essex, and State of New Jersey, such property consisting of the work areas as shown and/or described in Exhibit A, hereby becoming a part hereof, (the "Site"), for the purpose of entering upon, using, and occupying the space in order to prepare it for occupancy (the "Work"), and for no other purpose, subject to the following terms and conditions:

1. Term. This License shall take effect on September 13, 2010, and shall expire, unless sooner revoked or terminated, upon the earlier occurrence of completion of the Work or October 15, 2010. The permission hereby granted may be revoked at any time by the Port Authority, with or without cause, upon forty-eight (48) hours' written notice to the Licensee or may be terminated at any time by the Licensee, without cause, upon forty-eight (48) hours' written notice to the Port Authority. Revocation, termination or expiration of this License shall not relieve the Licensee of any liabilities or obligations hereunder which shall have accrued prior to the effective date of such revocation, termination or expiration.

2. Project Manager's Approval.

(a) Prior to commencement of the Work and the introduction of any equipment, supplies or materials of the Licensee onto the Sites, the Licensee shall submit to the General Manager of New Jersey Marine Terminals (the "General Manager"), The Port Authority of New York and New Jersey, 260 Kellogg Street, 2<sup>nd</sup> Floor, Newark, New Jersey, 07114, or his authorized representative or successor specifications and drawings covering the Work prepared by a licensed professional engineer. The Work shall not commence until the Licensee receives the approval of the Project Manager, an authorized representative of the General Manager, to do so after his review of said specifications and drawings. Once the Project Manager has approved the Work, the Licensee must notify the Project Manager or his designee at least 48 hours in advance of entering the portions of the Site which are currently under lease to third parties, as shown within the solid black line in Exhibit A and the entire premises shown in Exhibit B.

(b) The Project Manager may withhold his approval to proceed with the Work if, in his sole opinion, the Work will in any manner endanger persons or property and may condition his approval on the Licensee's agreement to take such precautions as the Project Manager may, in his sole opinion, deem advisable. In the event that at any time the Project



Manager determines that the Work will unduly interfere with the operations of the facilities of the Port Authority or constitutes a hazard to life or property, the Project Manager shall have the right to suspend the Work until such time as he determines that the Work may safely resume.

(c) Any additions to or changes in the plans and specifications for the Work must be submitted to the Project Manager in a timely manner for review and must be approved prior to implementation.

(d) It is expressly understood and agreed that any review of the Licensee's plans and specifications, comments thereon or monitoring, if any, of the Work shall not constitute or be construed as a representation or warranty on the part of the Port Authority as to the adequacy or propriety of such plans and specifications or methods of work, nor shall the Port Authority be deemed to have assumed any liability to the Licensee, its contractors or any third party by reason of such approval or monitoring, if any, or by virtue of the presence at the Sites of representatives of the Port Authority.

### 3. Commencement and Performance of Work.

(a) At least seven (7) days prior to initiating the Work, the Licensee shall notify the Project Manager and comply with his instructions, including time and manner of work, ingress and egress to and from the Sites, design and installation of safety and security precautions and limitations on the Sites. In the event that the Licensee or the Port Authority determines that the Work extends to property that is not under the jurisdiction or the control of the Port Authority, the Licensee shall secure the necessary access or permits thereto and the Port Authority retains the right to require that the Licensee provide written evidence thereof.

(b) All Work shall be performed at the sole cost and expense of the Licensee and shall be carried on in a manner so as not to interfere with or interrupt the operations or services of the Port Authority. The Licensee shall keep the Sites free of debris. Upon expiration or revocation of this License, the Licensee shall, at its own cost and expense, restore all areas occupied or accessed in connection with the Work to the condition existing immediately prior to the commencement of the Work.

(c) Except as otherwise provided herein, the Work shall be permitted Monday through Friday between the hours of 8:00 o'clock a.m. and 5:00 o'clock p.m. unless the Project Manager shall determine that such Work will unduly interfere with operations at the Sites or will constitute a hazard to life or property. In the event of such determination, the Project Manager shall have the right to suspend the Work until such time as he determines that the Work may safely resume.

(d) The Licensee shall provide and its employees and contractors shall wear or carry badges or other suitable means of immediate identification. The badges or other suitable means of identification shall be subject to approval of the Port Authority.

(e) During the performance of the Work, the Licensee shall place barricades and signs to cordon off the portions of the Sites where the Work is or will be performed and provide adequate security for its vehicles and equipment. At the conclusion of each day's work and whenever the Work is unattended by the Licensee's personnel, the Licensee shall secure its equipment, vehicles, signs and materials, and clean up all debris in such a manner

as to secure the safety of all persons and property. The Work Sites must be fenced off at the end of each Work day, and the property must be returned to the condition it was found initially by the end of each Work day.

(f) The Licensee shall ensure that any drill cuttings, decontamination water, soil, groundwater, waste, samples or other materials generated during the Work are placed in appropriate containers and are properly identified, sealed and removed from the Property. The Licensee shall be responsible for the containerization, characterization and disposal of such materials and the Licensee shall, if required and permissible under law, affix the Licensee's generator identification number to all such waste.

4. Damage to Property. Any damage to property under the jurisdiction of the Port Authority, including property of or under the care of the Port Authority's licensee(s), lessee(s) and/or permittee(s), if any, resulting from or in any way arising out of the Work or the Licensee's entry hereunder, will promptly be repaired or replaced by the Licensee at its sole cost and expense. If the Licensee fails to complete such repairs or replacements within thirty (30) days after being requested to do so, the Port Authority shall have the right to make such repairs or replacements and the Licensee hereby agrees to reimburse the Port Authority for all costs and expenses thereof.

5. Third Party Permissions. This License is not intended, and shall not be construed, to grant the Licensee permission to use or occupy property not owned by or under the jurisdiction of the Port Authority; and this License is not intended, and shall not be construed, to relieve the Licensee from its responsibility to procure and maintain in effect all requisite permissions and approvals from appropriate public utilities and other interested third parties, together with all licenses, franchises or permits necessary for it to comply with all laws, rules and regulations of federal, state and other governmental entities, authorities and agencies applicable to it and to the Work.

6. Risk of Loss; Indemnification.

(a) The Licensee hereby specifically agrees to assume any and all risk of loss or damage of any kind whatsoever to property or injury (including death) of persons or resources directly or indirectly arising out of, as a result of or in connection with any of the Licensee's Work and/or use of the Sites and/or Facility permitted herein, including, without limitation, loss, damage, injury or death, and any and all removal, remediation, restoration or mitigation costs and expenses, fines, payments, penalties, or payments in lieu of penalties occurring as a result of the release or threat of release of Hazardous Substances, as a result of compliance or non-compliance with applicable law, or as a result of compliance or non-compliance with Port Authority requirements as set forth herein. Without limiting the generality of the foregoing, the Licensee shall specifically be responsible for all costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any cleanup, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by a non-governmental entity or person on account of Hazardous Materials released by Licensee as a result of an act or omission in undertaking the Work on, under or about or migrating to or from the Site. The Port Authority for itself and its successors and assigns covenants and agrees that the Licensee

does not assume responsibility for, and none of the provisions of this Section shall apply to, Hazardous Substances (a) which have been released on the site prior to the execution of this Agreement unless Licensee's Work causes the release or migration of such Hazardous Substance off the Site or (b) which have migrated or shall have migrated onto the Site after the execution of this Agreement from other lands actually occupied by or under the actual control of the Port Authority, unless it has been determined that such migration occurred due to acts or omissions of the Licensee.

(b) The Licensee agrees to indemnify and hold harmless the Port Authority, each Commissioner of the Port Authority, each officer, agent, employee and representative of the Port Authority (each, an "**Indemnified Party**", and collectively, the "**Indemnified Parties**") from and against, any and all claims, lawsuits, demands, penalties, fines, settlements, damages, injuries, losses, costs, expenses and judgments ("**Claims**") of whatever kind or nature arising out of or because of the performance of the Work or out of or as a result of the acts or omissions of the Licensee, its officers, agents, employees, contractors, subcontractors, consultants and representatives, and for all expenses incurred by a Indemnified Party in the defense, settlement or satisfaction of any third party claims, demands, or actions, including, without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential. If so directed, the Licensee shall, at no cost and expense to any Indemnified Party, defend any lawsuit or proceedings based upon such Claims, in which event the Licensee shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority, or its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority.

#### 7. Insurance.

(a) During the term of this License, the Licensee shall take out and maintain in its own name and the name of any subcontractor performing work on the property, and at its own cost and expense a Commercial General Liability Insurance policy in limits of not less than Three Million Dollars and No Cents (\$3,000,000.00), combined single limit per occurrence for Bodily Injury and Property Damage Liability, including but not limited to Broad Form Property Damage, Explosion, Collapse and Underground Property Damage Hazards, Premises/Operations, Products Liability/Completed Operations and Independent Contractor coverages. In addition, the policy shall include a Contractual Liability endorsement covering the risks and indemnities the Licensee has assumed under this License.

(b) The Licensee shall take out and maintain in its own name and at its own expense a Comprehensive Automobile Liability Insurance policy covering owned, non-owned and hired vehicles, as applicable, with limits of not less than Three Million Dollars and No Cents (\$3,000,000.00) combined single limit per occurrence for Bodily Injury and Property Damage Liability.

(c) The aforementioned policies shall name the Indemnified Parties as additional insureds and shall be specifically endorsed to provide that in any action or proceeding

under or in connection with such policies, the insurance carrier shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority.

(d) Further, the aforementioned policies must be specifically endorsed to provide that the policy may not be canceled, terminated, or modified without thirty (30) days' written notice to the Port Authority of New York and New Jersey, General Manager, Risk Financing, at the address below.

(e) Further, the Licensee shall cause to be obtained and maintained without cost or expense to the Port Authority a policy of Workers' Compensation Insurance and Employer's Liability Insurance in limits not less than \$1,000,000 and in compliance with the requirements of law covering all persons employed by the Licensee and its contractors in connection with the Work.

(f) Prior to the commencement of the Work or the introduction of any equipment onto the Sites, the Licensee shall deliver to the Manager, Risk Management Division, The Port Authority of New York and New Jersey, 225 Park Avenue South, 12<sup>th</sup> Floor, New York, New York 10003 (Attention: Certificate Review), an original certificate or certificates of insurance evidencing the above coverages. Any certificate required under this License shall adequately identify this Agreement, shall contain a separate express statement of compliance with each and every requirement set forth above in this paragraph, and shall stipulate that the policies may not be canceled, terminated or modified without thirty (30) days' advance written notice to the said Manager. Moreover, all the aforesaid policies of insurance shall not contain any provisions for exclusions from liability not forming part of the standard basic unamended and unendorsed Liability Insurance policy. Upon request of the said Manager, the Licensee shall furnish him with a certified copy of each policy and proof that it is in full force and effect, including evidence that premiums have been paid.

#### 8. Environmental Terms.

(a) The Licensee for itself and its successors and assigns covenants that it will abide by all applicable Environmental Requirements when performing the Work and any remediation required hereunder.

(b) It is expressly understood that the Licensee shall not exacerbate the environmental condition of the Sites or the Facility or interfere with any environmental clean-up or remediation work being performed at the Sites whether by the Port Authority or others. The Licensee shall be fully responsible, at its sole cost and expense, for the remediation and final disposition of any Hazardous Substance discovered, tested or sampled as part of the Work. The Licensee will obtain all necessary licenses, manifests, permits and approvals to perform any remediation or disposition of any Hazardous Substances required under this License.

(c) Title to any soil, dirt, sand, asbestos or other material on the Site or the Facility removed or excavated by the Licensee during the course of the Work shall vest in the Licensee upon the removal or excavation thereof and shall be delivered and deposited by the Licensee at Licensee's sole cost and expense to a location off the Facility in accordance with the terms and conditions of this License and all applicable Environmental Requirements (including, if required, disposal of asbestos in a long-term disposal facility at Licensee's sole cost and expense) and all in a manner satisfactory to the Port Authority.

(d) In the event any Hazardous Substance is discovered in the performance of the Work, the Licensee, in reporting such Hazardous Substance shall direct such report to the attention of such individual at the subject governmental authority as the Manager of the Facility shall require in order to assure consistency in the environmental management of the Facility.

(e) Promptly upon final disposition of any Hazardous Substance in the performance of the Proposed Work, the Licensee shall submit to the Port Authority a "Certification of Final Disposal" stating the type and amount of material disposed, the method of disposal and the owner and location of the disposal facility. The format of such certification shall follow the requirements, if any, of governmental agencies having jurisdiction as if the Port Authority were a private organization and the name of the Port Authority shall not appear on any certificate or other document as a generator or owner of such material.

(f) The Licensee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on the Site or at the Facility. Any Hazardous Substance disposed of, released or discharged by the Licensee or permitted by the Licensee to be disposed of, released or discharged at the Site or at the Facility shall be completely removed and/or remediated by the Licensee by methods and procedures satisfactory to and approved by the Port Authority.

9. Definitions. For purposes of this License, the following terms shall have the respective meanings provided below:

(1) "Environmental Requirement" shall mean in the singular and "Environmental Requirements" shall mean in the plural all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, 'best management practices plans', and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, provided such programs adopted and agreements made by the Port Authority have been provided to the Licensee by the Port Authority prior to execution of this Agreement and all applicable judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and unless otherwise agreed to by

the applicable governmental entities, in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation, to the extent for which Licensee is responsible under this Agreement:

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

(ii) All requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and

(iii) The Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et. seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et. seq.; the Clean Air Act, 42 U.S.C. Section 7401 et. seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et. seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq.; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Section 2701 et. seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et. seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et. seq.; the New Jersey Spill Compensation and Control Act ("N.J. Spill Act"), N.J.S.A. 58:10-23.11 et seq., the New Jersey Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq., and Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof.

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

and publications promulgated pursuant thereto.

10. Miscellaneous.

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

(b) No Indemnified Party shall be charged personally with any liability or held liable under any term or provision of this agreement or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

(c) The entire agreement between the Port Authority and the Licensee is contained herein and no modification or termination hereof shall be effective unless in writing, signed by the party to be charged therewith.

(d) The Licensee shall not assign, sell or transfer this License or any of the rights granted hereunder, without the prior written approval of the Port Authority, directly or indirectly, in whole or in part, by operation of law or otherwise, and any such assignment, transfer or sale without such prior written approval shall be void as to the Port Authority.

(e) This License, and any claim, dispute or controversy arising out of, under or related to this License shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to conflict of laws principles.

(f) The Licensee hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this License. The Licensee agrees that the service of process on the Licensee in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Licensee indicated herein, or by actual personal delivery to the Licensee, one of its directors or managing or general. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

(g) This License may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

(h) This License may not be construed as a promise or covenant to lease property. In addition, notwithstanding the performance of the Work, approval of the plans and specifications and/or any alteration application, and notwithstanding any references therein to the Licensee or to various proposed property lines or to space to be occupied by the Licensee, it is hereby understood and agreed that said performance, approvals and references are not and shall not be or be deemed to be a part of, or to imply, any lease, permit or other agreement covering the leasing, use or occupancy of any area or that any Port Authority approval for any construction, destructive building investigation or demolition of any structures at the Sites or leasing of such area or portion thereof shall be forthcoming. Additionally, no permission is

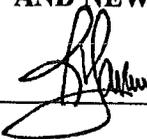
hereby granted to the Licensee and Licensee is hereby expressly prohibited from doing any work that would in any way damage or alter any improvement on the Site.

(i) All notices hereunder shall be given in writing and delivered in person or by certified mail with return receipt, to the Port Authority by addressing the same to: the General Manager at the address designated in paragraph 2 above; and (ii) to the Licensee by addressing the same to Scott Rudolph at 124 Starboard Street, Port Newark, NJ 07114. Notices shall be effective upon receipt.

The Licensee hereby indicates its acceptance of this License by signing and dating two (2) duplicate originals in the space provided below and returning the originals to the Port Authority. Upon the execution by the Port Authority of this License, one fully-executed original will be returned to the Licensee.

Accepted and agreed to on this 19<sup>th</sup> day of October, 2010:

**THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY**

By 

Name RICHARD M. LIPBEEF  
(Please Print Clearly)  
DIRECTOR, PORT COMMERCE DEPT.

(Title) \_\_\_\_\_

**KINDER MORGAN BULK TERMINALS INC.,  
Licensee**

Port Authority Use Only	
Approval as to Terms:	Approval as to Form:
<u>WR</u>	<u>RR</u>

PD/RR

By 

Name ARTHUR J. RUDOLPH  
(Please Print Clearly)

(Title) VP of OPERATIONS

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**