

**Torres Rojas, Genara**

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**From:** nkist@decotiislaw.com  
**Sent:** Thursday, November 06, 2014 12:00 PM  
**To:** Duffy, Daniel  
**Cc:** Torres Rojas, Genara; Van Duyne, Sheree  
**Subject:** Freedom of Information Online Request Form

Information:

First Name: Nancy  
Last Name: Kist  
Company: DeCotiis, FitzPatrick & Cole, LLP  
Mailing Address 1: 500 Frank W. Burr Boulevard  
Mailing Address 2: Suite 31  
City: Teaneck  
State: NJ  
Zip Code: 07666  
Email Address: [nkist@decotiislaw.com](mailto:nkist@decotiislaw.com)  
Phone: 201-907-5225  
Required copies of the records: No

List of specific record(s):  
the Current Lease, License, Right of Entry and Permit Agreements executed between the Port Authority and P. Judge Sons for property in Port Newark.

**THE PORT AUTHORITY OF NY & NJ**

FOI Administrator

November 21, 2014

Ms. Nancy Kist  
DeCotiis, FitzPatrick & Cole, LLP  
500 Frank W. Burr Fovlevard, Suite 31  
Teaneck, NJ 07666

Re: Freedom of Information Reference No. 15461

Dear Ms. Kist:

This is in response to your November 6, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy enclosed) for a copy of the current Lease, License, Right of Entry and Permit Agreements executed between the Port Authority and P. Judge Sons for property in 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/15461-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 exemptions (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

Enclosure

**AGREEMENT OF LEASE**

**Between**

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

**and**

**PORT ELIZABETH TERMINAL & WAREHOUSE CORP.**

**Dated as of: May 1, 2012**

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**THIS AGREEMENT OF LEASE**, made as of the 1st day of May 2012, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (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 **PORT ELIZABETH TERMINAL & WAREHOUSE CORP.** (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 201A Export Street, Port Newark, New Jersey 07114, whose representative is Michael Wynne,

**WITNESSETH THAT:**

The Port Authority and the Lessee, for and in consideration of the rents, covenants and agreements hereinafter contained, mutually covenant and 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, the "**Facility**") in the City of Newark, County of Essex, State of New Jersey, the following described premises:

The warehouse space in Building 292, as shown in diagonal cross-hatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A" (the "**Warehouse Space**") and its associated open area (the "**Open Area Space**") as shown in stipple on "Exhibit A", (collectively, the Warehouse Space and the Open Area Space shall hereinafter be referred to as the "**Premises**").

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 (all of the foregoing, collectively, the "**Premises**"). The Port Authority and the Lessee hereby acknowledge that the premises constitute non-residential property.

**ARTICLE II.** The term of the letting shall commence at 12:01 o'clock a.m. on May 1, 2012 and, unless sooner terminated, shall expire at 11:59 o'clock p.m. on April 30, 2022 (the "**Expiration Date**").

**ARTICLE III.** The Lessee shall pay a basic rental hereunder as set forth in Special Endorsements 1.

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

- (a) Warehouse Space. For the receipt and storage of general cargoes and breakbulk, excluding hazardous and red label products to or from the Facility or to and from the Elizabeth-Port Authority Marine Terminal.
- (b) Open Area Space. For the parking of the Lessee's trucks and employee's vehicles only.

**ARTICLE V.** The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, 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. L19.4	10/6/73
Abatement	Standard Endorsement No. L27.4	10/6/68
Insurance Schedule		8/10
Special Endorsement Nos. 1 through 13		
Exhibit A		
Schedule E		

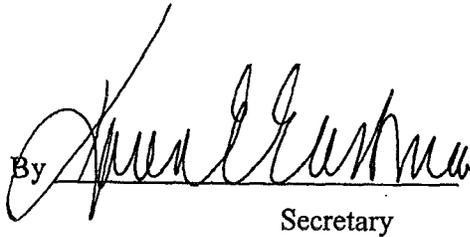
**ARTICLE VI.** The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by written instrument duly executed by the 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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

ATTEST:

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

By  Secretary

By 

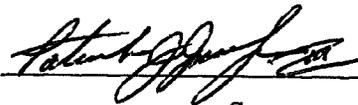
**RICHARD M. LARRABEE  
DIRECTOR, PORT COMMERCE DEPT.**

Name \_\_\_\_\_  
(Please Print Clearly)

(Title) \_\_\_\_\_  
(Seal)

ATTEST:

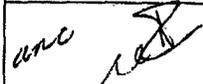
**PORT ELIZABETH TERMINAL & WAREHOUSE  
CORP.**

By  Secretary

By 

Name PATRICK J WYNN  
(Please Print Clearly)

(Title) \_\_\_\_\_ President  
(Corporate Seal)

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
	

LLF/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.

(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 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) 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.

Ex. 1/4 (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: Commerce Bank; Bank ABA Number: 031201360; Account Number: 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 employee s 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***

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 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 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 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

Standard Endorsement No. L 19.4 (2 pages)

Port Newark  
Port Newark  
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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.

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Port Newark  
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(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 Warehouse Space the use of which is denied to the Lessee, at the annual rate of \$6.15\*

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 April 30, 2013, thereafter the said rate to be increased in proportion to increases in basic rental.**

Standard Endorsement No. L27.4

Abatement

All Marine Terminals

10/6/68

## 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 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 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.

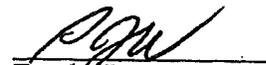
(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement that the insurer "shall not, without 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. Basic Rental.

(a) *Definition.* “**Rent Commencement Date**” shall mean May 1, 2012.

(b) *Basic Rental.* The Lessee shall pay a basic rental under this Agreement as follows:

(i) For the period from the Rent Commencement Date through April 30, 2013, both dates inclusive, at the annual rate of Five Hundred Sixty-four Thousand Nine Hundred Eight Dollars and Twenty-five Cents (\$564,908.25), payable in advance in equal monthly installments of Forty-seven Thousand Seventy-five Dollars and Sixty-nine Cents (\$47,075.69) on the Rent Commencement Date and on the first day of each calendar month thereafter during such period.

(ii) For the period from May 1, 2013 through April 30, 2014, both dates inclusive, at the annual rate of Five Hundred Eighty-one Thousand Eight Hundred Fifty-five Dollars and Fifty Cents (\$581,855.50), payable in advance in equal monthly installments of Forty-eight Thousand Four Hundred Eighty-seven Dollars and Ninety-six Cents (\$48,487.96) on May 1, 2013 and on the first day of each calendar month thereafter during such period.

(iii) For the period from May 1, 2014 through April 30, 2015, both dates inclusive, at the annual rate of Five Hundred Ninety-nine Thousand Three Hundred Eleven Dollars and Sixteen Cents (\$599,311.16), payable in advance in equal monthly installments of Forty-nine Thousand Nine Hundred Forty-two Dollars and Sixty Cents (\$49,942.60) on May 1, 2014 and on the first day of each calendar month thereafter during such period.

(iv) For the period from May 1, 2015 through April 30, 2016, both dates inclusive, at the annual rate of Six Hundred Seventeen Thousand Two Hundred Ninety Dollars and Fifty Cents (\$617,290.50), payable in advance in equal monthly installments of Fifty-one Thousand Four Hundred Forty Dollars and Eighty-seven Cents (\$51,440.87) on May 1, 2015 and on the first day of each calendar month thereafter during such period.

(v) For the period from May 1, 2016 through April 30, 2017, both dates inclusive, at the annual rate of Six Hundred Thirty-five Thousand Eight Hundred Nine Dollars and Twenty-one Cents (\$635,809.21), payable in advance in equal monthly installments of Fifty-two Thousand Nine Hundred Eighty-four Dollars and Ten Cents (\$52,984.10) on May 1, 2015 and on the first day of each calendar month thereafter during such period.

(vi) For the period from May 1, 2017 through April 30, 2018, both dates inclusive, at the annual rate of Six Hundred Fifty-four Thousand Eight Hundred Eighty-three Dollars and Forty-nine Cents (\$654,883.49), payable in advance in equal monthly installments of Fifty-four Thousand Five Hundred Seventy-three Dollars and Sixty-two Cents (\$54,573.62) on May 1, 2017 and on the first day of each calendar month thereafter during such period.

(vii) For the period from May 1, 2018 through April 30, 2019, both dates inclusive, at the annual rate of Six Hundred Seventy-four Thousand Five Hundred Twenty-nine Dollars and Ninety-nine Cents (\$674,529.99), payable in advance in equal monthly installments of Fifty-six Thousand Two Hundred Ten Dollars and Eighty-three

Cents (\$56,210.83) on May 1, 2018 and on the first day of each calendar month thereafter during such period.

(viii) For the period from May 1, 2019 through April 30, 2020, both dates inclusive, at the annual rate of Six Hundred Ninety-four Thousand Seven Hundred Sixty-five Dollars and Eighty-nine Cents (\$694,765.89), payable in advance in equal monthly installments of Fifty-seven Thousand Eight Hundred Ninety-seven Dollars and Sixteen Cents (\$57,897.16) on May 1, 2019 and on the first day of each calendar month thereafter during such period.

(ix) For the period from May 1, 2020 through April 30, 2021, both dates inclusive, at the annual rate of Seven Hundred Fifteen Thousand Six Hundred Eight Dollars and Eighty-seven Cents (\$715,608.87), payable in advance in equal monthly installments of Fifty-nine Thousand Six Hundred Thirty-four Thousand Seven Cents (\$59,634.07) on May 1, 2020 and on the first day of each calendar month thereafter during such period.

(x) For the period from May 1, 2021 through April 30, 2022, both dates inclusive, at the annual rate of Seven Hundred Thirty-seven Thousand Seventy-seven Dollars and Fourteen Cents (\$737,077.14), payable in advance in equal monthly installments of Sixty-one Thousand Four Hundred Twenty-three Dollars and Nine Cents (\$61,423.09) on May 1, 2021 and on the first day of each calendar month thereafter during such period.

2. Place of Payments.

Payments made hereunder 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 via the following wire transfer instructions: Bank: TD Bank, Bank ABA Number: 031201360, Account Number: Ex. 1/4 or to such other address, or by such other wire transfer instructions, as may hereafter be substituted therefor by the Port Authority, from time to time, by notice to the Lessee.

3. Security Deposit.

Notwithstanding anything to the contrary contained in this Lease, the Lessee hereby agrees that this Lessee is one of the "Agreements", as such term is defined in that certain Security Agreement entered into between the Port Authority and the Permittee, dated as of November 1, 2009, and identified by Port Authority Agreement No. PCX-010 (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 security deposit 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, if applicable, any failure of any banking institution issuing a letter of credit to make one or more payments as provided in security deposit, 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 for cause.

4. "As Is".

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, with no accommodation for rail service. The Port Authority shall have no responsibility or obligation hereunder for finishing work or preparation of the premises for the Lessee's use.

5. Maintenance and Repair.

Without in any way limiting the provisions of paragraph (c) of Section 7 of the Terms and Conditions of this Agreement, the Lessee shall make all repairs necessary to the sprinkler system on or serving the premises and the Lessee shall be responsible to make any structural repairs or replacements to the following parts of the premises: exterior pavement, roofs, floors, exterior walls, and foundations and supporting members to the extent necessary to keep such part of the premises in a reasonably good condition for the operation of the Lessee under this Agreement. 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 Port Authority shall have no obligation whatsoever with respect to any repairs or replacements which are the obligation of the Lessee under the provisions of this Special Endorsement and under other provisions of this Agreement.

6. Compliance with Sustainable Design Guidelines.

(a) **Tenant Construction and Alteration Review Fee.** The Lessee shall not make any alteration to the Premises, or perform any construction in the Premises, without the Port Authority's prior written approval in each instance. In the event the Lessee shall obtain such consent, the Lessee shall pay a fee to the Port Authority as compensation for its review and oversight of any such construction work (the "Review Fee"). The Review Fee shall be an amount equal to one percent (1%) of the actual cost of the construction work or the Review Fee then generally applicable to such work under the Port Authority's construction application review process, whichever is greater.

(b) The Lessee agrees that in the performance of any work that is subject to Section 11 of the Terms and Conditions of the Lease, entitled "*Construction by the Lessee*", 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.

7. Special 30-Day Termination.

(a) The Port Authority and the Lessee may at any time terminate the letting under this Agreement, without cause, on thirty (30) days' notice. 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 term of the letting as set forth herein.

(b) In the event of termination of the letting pursuant to the foregoing paragraph (a), or the postponement of the commencement of the term of the letting by reason of the failure of the occupant of the premises, or a part thereof, to deliver possession, or otherwise by reason of any cause or condition beyond the control of the Port Authority, the basic rental hereunder shall be pro-rated accordingly. Subject to the foregoing, the Port Authority shall have no liability for such postponement, and no such postponement or failure to give possession shall affect the validity of this Agreement or the Lessee's obligations hereunder, and no such postponement shall extend the Expiration Date.

8. Assignment and Subleasing; Consent Fees.

Without limiting the generality of Section 9 of the Terms and Conditions, the following shall apply.

(a) In the event that the Port Authority consent to any assignment of this Agreement to any third party (an "Assignee"), the Lessee 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 then net present value of this Agreement, which shall equal the gross amount of the fees payable for the unexpired portion of the term of the letting hereunder, discounted at (5%) five percent. The Assignment Consent Fee shall be paid at the time of the Port Authority's consent to such assignment.

(b) In the event that any consent to sublet the Premises to any third party (a "Sublessee") is granted, upon the terms and conditions set forth in the Port Authority consent to sublease ("Consent to Sublease"), the Lessee and its Sub-Lessee, as a joint and several obligation, shall pay to the Port Authority a fee (the "Sublease Consent Fee") at the times set forth in and in accordance with this paragraph (b). The Sublease Consent Fee shall be paid to the Port Authority by the Lessee and the Sublessee as a joint and several obligation as follows: on the twentieth (20<sup>th</sup>) day of each and every calendar month during the time such sublease remains in effect (including the calendar month following the expiration or earlier termination of the Consent to Sublease), the Lessee or the Sublessee shall render to the Port Authority a statement sworn to by a responsible fiscal or executive officer of the Lessee or the Sublessee showing all amounts, monies, revenues, rental (whether basic or additional), and income of every kind paid or payable to the Lessee by such Sublessee arising out of or in connection with the Sublessee's use

and/or occupancy of space in the Premises (the "Sublease Payments") paid or payable for the preceding month. The Lessee or the Sublessee shall pay to the Port Authority at the time of rendering such statement the Sublease Consent Fee in an amount equal to: in the event that the rate per square foot of the subleased Premises exceeds the rate per square foot due and payable by the Lessee under this Agreement, fifty percent (50%) of the total amount by which the rate under the Sublease exceeds the rate under this Agreement. The Sublease Consent Fee shall constitute rent hereunder and shall be in addition to the rental due hereunder.

(c) The foregoing shall be without limitation as to the Port Authority's right, in its sole discretion, to consent or withhold its consent to any proposed assignment or subleasing of this Agreement and the rights granted hereunder.

9. OFAC.

(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 Special Endorsement. 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 Special Endorsement shall survive the expiration or earlier termination of the term of the letting hereunder.

10. (a) 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 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.

11. Hazardous Substance.

(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 in accordance with and subject to the provisions of the Section of this Agreement entitled "*Construction by the Lessee*," 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 Facility as a result of (v) the Lessee's use or occupancy of the Premises, or the performance of any 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 Facility, 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, Leases, 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, Leasing, 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.

12. 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 Special Endorsement 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.

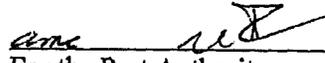
(d) In the implementation of this Special Endorsement, the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Special Endorsement, as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

13. Additional Obligations at Termination or Expiration of Lease.

On the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, the Lessee Shall remove from the premises the outdoor scale and trailers located or installed on the premises by the Lessee during the term of the letting. The Lessee shall remove any piling or any other equipment supporting the scales, including the concrete support pad above grade (approximately 3 inches) and the ramps at either end of the scale. The scale area must be repaved to match the surrounding grade.

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

Initialed:

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

**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

SCHEDULE E

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

Part I. Affirmative Action Guidelines - Equal Employment Opportunity

I. As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E of Port Authority Agreement No. LPN-320 (herein called the "Lease") with Port Elizabeth Terminal & Warehouse Corp. (herein and in the Lease called the "Lessee"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

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

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

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

(1) Minority participation	
Minority, except laborers	30%
Minority, laborers	40%
(2) Female participation	
Female, except laborers	6.9%
Female, laborers	6.9%

These goals are applicable to all the Contractor's construction work performed

in and for the premises.

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

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

(c) As used in these specifications:

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

(2) "Minority" includes:

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

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

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

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

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

minority and female participation.

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

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

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

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

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

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

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

(3) Maintain a current file of the names, addresses and telephone number of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with

respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

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

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

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

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

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority

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

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

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

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

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

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

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

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

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) hereof provided that: the Contractor actively participates in the group, makes good faith efforts to assure that the group has a

positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

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

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

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

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

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

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

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

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

PART II. MINORITY BUSINESS ENTERPRISES/WOMEN-OWNED BUSINESS ENTERPRISES

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

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

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

(c) Making plans and specifications for prospective construction work

available to MBEs and WBEs in sufficient time for review.

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

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

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

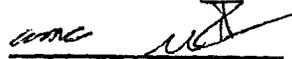
(g) Not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs, where appropriate.

Certification of MBEs and WBEs hereunder shall be made by the Office of Business 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, One World Trade Center, 63 East, New York, New York 10048 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing the Director in charge of the Office of Business 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 or such, firms, their technical competence to perform, or any other performance-related qualifications.

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

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

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

Initialed:

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

For The Port Authority

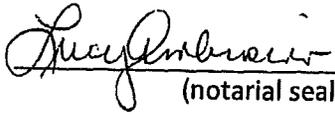
STATE OF NEW YORK )

SS

COUNTY OF NEW YORK )

On the 19<sup>th</sup> day of December in the year 2012, 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.

**RICHARD M. LARRABEE**  
**DIRECTOR, PORT COMMERCE DEPT.**

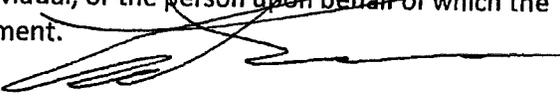
  
(notarial seal and stamp)

**LUCY AMBROSINO**  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01AM6101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2015

For the Lessee

STATE OF New Jersey  
COUNTY OF Essex )  
SS

On the 14 day of NOVEMBER in the year 2012, before me, the undersigned, a Notary Public in and for said state, personally appeared PATRICK J WYNN, 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.



(notarial seal and stamp)  
**LOUIS E. QUIMI**  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 11/19/2012

**Lease No. LPN-297**

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**AGREEMENT OF LEASE**

**Between**

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

**and**

**PORT ELIZABETH TERMINAL & WAREHOUSE CORP.**

**Dated: As of November 1, 2009**

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<b>Exhibit A</b>	<b>Exhibit A-5</b>
<b>Exhibit A-1</b>	<b>Exhibit B</b>
<b>Exhibit A-2</b>	<b>Exhibit C</b>
<b>Exhibit A-3</b>	

**THIS AGREEMENT OF LEASE** (this "Agreement"), made as of November 1, 2009, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at 225 Park Avenue South, New York, New York 10003; and **PORT ELIZABETH TERMINAL & WAREHOUSE CORP.**, a New Jersey corporation (hereinafter called "the Lessee") with an office and place of business at 201A Export Street, Port Newark, New Jersey 07114, whose representative is Patrick J. Wynne, or such authorized person as may be designated by the Lessee to the Port Authority.

WITNESSETH, THAT:

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

**Section 1. Letting**

(a) Subject to and in accordance with the terms and conditions of this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at Port Newark (sometimes hereinafter called "the Facility"), in the City of Newark, in the County of Essex and the State of New Jersey, the following:

(i) The enclosed space shown in cross-hatching and the associated open areas shown in stipple on the sketch attached hereto and made a part hereof marked as "Exhibit A," together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Building 201 Premises"; and

(ii) The enclosed space shown in cross-hatching and the associated open areas shown in stipple on the sketch attached hereto and made a part hereof marked as "Exhibit A-1," together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein

or thereon, and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Building 202 Premises"; and

(iii) The enclosed space shown in cross-hatching and the associated open areas shown in stipple on the sketch attached hereto and made a part hereof marked as "Exhibit A-2," together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Building 194 Premises"; and

(iv) The enclosed space shown in cross-hatching and the associated open areas shown in stipple on the sketch attached hereto and made a part hereof marked as "Exhibit A-3," together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Building 199 Premises"; and

(v) The enclosed space shown in cross-hatching and the associated open areas shown in stipple on the sketch attached hereto and made a part hereof marked as "Exhibit A-4," together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Building 173 Annex Premises" and, when taken together with the Building 194 Premises, the Building 199 Premises, the Building 201 Premises, and the Building 202 Premises, the "Enclosed Area"; and

(vi) The open areas shown in cross-hatching on the sketch attached hereto and made a part hereof marked as "Exhibit A-5," totaling Three and Nine-Tenths (3.90) acres, together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, and buildings, structures, fixtures,

improvements and other property of the Port Authority being hereinafter collectively called "the Open Area", which, when taken together with the Enclosed Area, shall hereinafter be collectively called the "Premises."

(vii) The parties agree that the Premises constitute non-residential property.

(b) Nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the air space above the roof of any building or buildings or portion of any building or buildings, if any are included in the Premises (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the Premises.

## Section 2. Term; Lease Commencement Dates

(a) The term of the letting under this Agreement for the Building 173 Annex Premises, the Building 201 Premises, and the Building 202 Premises (the "Building 173/201/202 Premises") shall commence at 12:01 o'clock A.M. on November 1, 2009 (the "Building 173/201/202 Lease Commencement Date") and shall expire if not sooner terminated, at 11:59 o'clock P.M. on October 31, 2019 (the "Building 173/201/202 Premises Term").

(b) The term of the letting under this Agreement for the Building 194 Premises and the Building 199 Premises (when taken together, the "Building 194/199 Premises") shall commence at 12:01 o'clock A.M. on November 1, 2009 (the "Building 194/199 Lease Commencement Date") and shall expire, if not sooner terminated, at 11:59 o'clock P.M. on October 31, 2012 (the "Building 194/199 Premises Term").

(c) The term of the letting under this Agreement for the Open Area shall commence at 12:01 o'clock A.M. on November 1, 2009 (the "Open Area Lease Commencement Date") and shall expire if not sooner terminated at 11:59 o'clock P.M. of October 31, 2019 (the "Open Area Term").

(d) The Building 173/201/202 Premises Term, plus the Building 194/199 Premises Term, and the Open Area Term shall collectively be referred to herein as the "Term".

(e) The Building 173/201/202 Lease Commencement Date, the Building 194/199 Lease Commencement Date and the Open Area

Commencement Date shall be referred to herein as the "Lease Commencement Date."

**Section 3. Enclosed Area Basic Rental**

(a) The Lessee shall pay a basic rental to the Port Authority at the annual rate of Three Million Two Hundred Thirty Nine Thousand Five Hundred Ninety Two and 64/100 Dollars (\$3,239,592.64) for the Enclosed Area, payable in advance in equal monthly installments of Two Hundred Sixty Nine Thousand and Nine Hundred Sixty Six and 05/100 Dollars (\$269,966.05) commencing on November 1, 2009 (the "Enclosed Area Rental Commencement Date") and on the first day of each calendar month thereafter during the Term (the "Enclosed Area Basic Rental"). The Enclosed Area Basic Rental set forth in this Section shall be adjusted during the Term under this Agreement in accordance with the provisions of subparagraph (b) of Section 4 hereof. Upon the expiration of the Building 194/199 Premises Term, the Enclosed Area Basic Rental shall be readjusted accordingly to reflect that basic rental is no longer being paid by Lessee for the Building 194/199 Premises.

**Section 4. Enclosed Area Basic Rental Escalation**

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

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

(ii) "Anniversary Date" shall mean, as the context requires, November 1, 2014 (the "First Anniversary Date") and each anniversary of such date occurring during the Term.

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

the Annual Index Increase for the Anniversary Date that is November 1, 2014 would be a fraction of which the numerator is the Index for September 2014 less the Index for September 2013 and the denominator is the Index for September 2013. As a further example, the Annual Index Increase for the Anniversary Date that is November 1, 2015 would be a fraction of which the numerator is the Index for September 2015 less the Index for September 2014 and the denominator is the Index for September 2014.

(iv) "Base Period" shall mean the calendar month immediately preceding the first full calendar month occurring before the fifth (5<sup>th</sup>) annual anniversary of the Effective Date; said Base Period date being September 2014.

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

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

(vii) "Percentage Increase" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date 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 three percent (3%), in which case the Percentage Increase shall be three percent (3%).

(b) *Annual Increases.*

(i) Commencing on November 1, 2009 and through and including October 31, 2014, the Lessee shall pay an Enclosed Area Basic Rental that increases at two percent (2%) on each of the following dates: November 1, 2010; November 1, 2011; November 1, 2012; and November 1, 2013; provided, however, that for the Building 194/199 Premises, the portion of the Enclosed Area Basic Rental attributable to such Building 194/199 Premises shall instead increase at three percent (3%) on each of the following dates: November 1, 2010, and November 1, 2011, and payment of such Basic Rental shall terminate on October 31, 2012. Beginning on November 1, 2014, and continuing for the remainder of the Term, the remaining Enclosed Area Basic Rental

shall increase in accordance with subsection (ii) of this subparagraph (b).

(ii) Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date thereafter and continuing through to the day preceding the next Anniversary Date for each year thereafter, or the expiration date of the Term under this Agreement, as the case may be, the Lessee shall pay a Enclosed Area Basic Rental at a rate per annum equal to: the sum of (x) the Enclosed Area Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Enclosed Area Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date; provided, however, that in no event shall such Percentage Increase be less than two percent (2%) or exceed three percent (3%).

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

(d) *Adjustments.*

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

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

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

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

#### Section 5. Open Area Basic Rental

The Lessee shall pay a basic rental to the Port Authority at the annual rate of Two Hundred Ninety Three Thousand Seven Hundred Sixty Seven and 84/100 Dollars (\$293,767.84) for the Open Area, payable in advance in equal monthly installments of Twenty Four Thousand Four Hundred and Eighty and 65/100 Dollars (\$24,480.65) commencing on February 1, 2010, as provided in this Section 5 (the "Open Area Rental Commencement Date," and, when taken together with the "Enclosed Area Rental Commencement Date," the "Rental Commencement Date") and on the first day of each calendar month thereafter during the Open Area Term (the "Open Area Basic Rental," and, when taken together with the Enclosed Area Basic Rental, the "Basic Rental"). The Open Area Basic Rental set forth in this Section shall be adjusted during the Term in accordance with the provisions of subparagraph (b) of Section 6 hereof.

Section 6. Open Area Basic Rental Escalation

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

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

(ii) "Anniversary Date" shall mean, as the context requires, November 1, 2014 (the "First Anniversary Date") and each anniversary of such date occurring during the Term.

(iii) "Annual Index Increase" shall mean the percentage of increase in the Index on each Anniversary Date, equal to: (x) with respect to the First Anniversary Date, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period, and the denominator shall be the Index for the Base Period, and (y) with respect to each Anniversary Date thereafter, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the next preceding Adjustment Period, and the denominator shall be the Index for such next preceding Adjustment Period. For example, the Annual Index Increase for the Anniversary Date that is November 1, 2014 would be a fraction of which the numerator is the Index for September 2014 less the Index for September 2013 and the denominator is the Index for September 2013. As a further example, the Annual Index Increase for the Anniversary Date that is November 1, 2015 would be a fraction of which the numerator is the Index for September 2015 less the Index for September 2014 and the denominator is the Index for September 2014.

(iv) "Base Period" shall mean the calendar month immediately preceding the first full calendar month occurring before the fifth (5<sup>th</sup>) annual anniversary of the Effective Date; said Base Period date being September 2014.

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

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

Bureau of Labor Statistics of the United States Department of Labor.

(vii) "Percentage Increase" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date 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 three percent (3%), in which case the Percentage Increase shall be three percent (3%).

(b) *Annual Increases.*

(i) Commencing on February 1, 2010 and through and including October 1, 2014, the Lessee shall pay an Open Area Basic Rental that increases at two percent (2%) on each of the following dates: November 1, 2010; November 1, 2011; November 1, 2012; and November 1, 2013. Beginning on November 1, 2014, and continuing for the remainder of the Term, the Open Area Basic Rental shall increase in accordance with subsection (ii) of this subparagraph (b).

(ii) Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date thereafter and continuing through to the day preceding the next Anniversary Date for each year thereafter, or the expiration date of the Term under this Agreement, as the case may be, the Lessee shall pay an Open Area Basic Rental at a rate per annum equal to: the sum of (x) the Open Area Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Open Area Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date; provided, however, that in no event shall such Percentage Increase be less than two percent (2%) or exceed three percent (3%).

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

(d) *Adjustments.*

(i) In the event the Index to be used in computing any adjustment referred to in subparagraph (b) of this Section is not available on the effective date of such adjustment, the Lessee shall continue to pay the Open Area Basic Rental at the annual rate then in effect subject to retroactive adjustment at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then

published to constitute the specified Index. In the event the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) shall hereafter be converted to a different standard reference base or otherwise revised or the United States Department of Labor shall cease to publish the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine.

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

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

#### Section 7. Abatement

(a) If at any time during the Term, the Lessee shall become entitled to an abatement of Basic Rental, pursuant to the terms of this Agreement, such abatement shall be computed as follows: for the period from November 1, 2009 to October 31,

2010, both dates inclusive, for each square foot of usable area the use of which is denied the Lessee, at the following annual rates: (i) \$1.73 for the Open Area; (ii) \$6.04 for the Building 201 Premises and the Building 202 Premises; (iii) \$6.04 for the Building 199 Premises; (iv) \$6.35 for the Building 194 Premises; and (v) \$2.59 for the Building 173 Annex Premises, such rates thereafter to be adjusted during the Term proportionately to the adjustment in Basic Rental in accordance with the provisions of subparagraph (b) of Sections 4 and 6 hereof.

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

#### Section 8. Rights of User

The Lessee shall use the Premises for the following purposes and in full compliance with all applicable laws, rules and regulations: the receipt and storage of general cargoes, excluding hazardous and red label products to or from the Facility or to and from the Newark-Port Authority Marine Terminal. Any other use not specifically authorized in this Section 8 shall require the prior written consent of the Port Authority, in its sole and absolute discretion.

#### Section 9. Ingress and Egress

The Lessee shall have the right of ingress and egress between the Premises and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways, to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the Rules and Regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility (See Section 11 for Rules and Regulations). The Port Authority may at any time temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority and its successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area whether

within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in, along, across or through any streets, ways and walks near the Premises.

#### Section 10. Governmental and Other Requirements

(a) Prior to or contemporaneous with the commencement of its operations under this Agreement, at its sole cost and expense, the Lessee shall procure from all governmental authorities having jurisdiction over the operations of the Lessee hereunder, all licenses, certificates, permits and other authorizations which may be necessary for the conduct of such operations and, upon the request of the Port Authority, shall provide copies of all such items to the Port Authority. Lessee covenants that it shall ensure that all such licenses, certificates, permits and other authorizations shall remain in full force and effect through the Term and shall not commence operations until all licenses, certificates, permits and other authorizations necessary for the conduct of Lessee's business operations have been obtained.

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items now or at any time during the occupancy of the Premises by the Lessee which as a matter of law are applicable to or which affect (i) the Premises, (ii) the operations of the Lessee at the Premises or the Facility, (iii) the use and occupancy of the Premises and/or (iv) any hazardous substance which has migrated from the Premises, pursuant to Section 50 hereof. The Lessee, at its sole cost and expense, subject to Section 16 hereof, shall make any and all structural and non-structural improvements, repairs or alterations of the Premises and perform all remediation work and clean up of hazardous substances required in order to fully satisfy the compliance obligations set forth in this Agreement, subject to the provisions of Section 20(q) hereof.

(c) The Lessee shall, for the Port Authority's information, deliver to the Port Authority promptly after receipt any notice, warning, summons or other legal process for the enforcement of any enactment, ordinance, resolution or regulation of a governmental authority of competent jurisdiction (collectively, a "Notice").

(d) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of

assuring proper safeguards for the protection of persons and property in or near the Facility, and proper operation by the Lessee. Even though Lessee is required to deliver a copy of the Notice to the Port Authority, the Port Authority shall have no liability or obligation with regard to such matters.

#### Section 11. Rules and Regulations

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

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

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

#### Section 12. Operational Obligations of the Lessee

(a) In the performance of its obligations hereunder and in the use of the Premises, the Lessee shall conduct its operations in an orderly, lawful and proper manner, so as not to annoy,

disturb or be offensive to others near the Premises or at the Facility.

(b) The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it. As soon as reasonably possible the Lessee shall remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or of any such others on the Premises with the consent of the Lessee.

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

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

(e) The Lessee shall permit the use of and provide reasonable access to the Premises from time to time for the installation, maintenance and operation of such navigation lights as the same may be required by the United States Coast Guard or other governmental authority having jurisdiction.

(f) From time to time and as often as required by applicable fire regulations and upon prior notice to the Port Authority, the Lessee shall conduct tests and inspections of the fire-extinguishers on the Premises, whether furnished by the Port Authority or by the Lessee, without cost to the Port Authority. The Lessee shall keep all fire-extinguishers in

working order, and shall train the appropriate number of its employees in the use of all fire-extinguishing and fire-fighting equipment (with such employees to participate in periodic training drills), as required by law.

Section 13. Prohibited Acts

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

(b) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Premises or elsewhere at the Facility, including without limitation, systems for the supply of heat, hot and cold water, gas, electricity and fuel, and for the furnishing of air-conditioning, telephone, telegraph, teleregister, internet, fiber optic cable, and intercommunications services including any lines, pipes, mains, wire, conduits and equipment connected with or appurtenant to all such systems.

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

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

(e) The Lessee shall not dispose of nor permit any one to dispose of any industrial/hazardous waste material (whether liquid or solid) by means of the toilets, manholes, sanitary sewers or storm sewers in the Premises or on the Facility except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority, and in compliance with all applicable statutes, ordinances, laws, rules, and regulations.

(f) The Lessee shall not operate any engine or any item of automotive equipment in any enclosed space on the Premises unless such space is adequately ventilated and unless such engine or item of automotive equipment is equipped with a proper

spark arresting device which has been approved by the Port Authority.

(g)(1) The Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the Premises of any vending-machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation or dispensing of food, beverages, tobacco, tobacco products, or merchandise of any kind whether or not included in the above categories, or of any equipment or devices for the furnishing to the public of service of any kind including therein, without limitation thereto, telephone pay stations.

(2) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the Premises for the sale of merchandise of all types or for the rendering of services, provided, however, that no such machine or device shall be installed by the Port Authority unless Lessee shall request the same. 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.

(h) The Lessee shall not overload any floor or paved area at the Premises, and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this subparagraph (h) or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear. The Lessee shall also not overload any roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. Any repair, replacement or rebuilding required under this Section shall be conducted in accordance with the provisions of Section 20(q) hereof.

(i) The Lessee shall not fuel or defuel its automotive vehicles or other equipment in the enclosed portions of the Premises without the prior approval of the Manager of the Facility (as hereinafter defined).

(j) The Lessee shall not keep or store in the Premises, explosives, inflammable liquids or solids or oxidized materials

or use any cleaning materials having a harmful corrosive effect on any part of the Premises, except for those materials normally used in the operations permitted at the Premises pursuant to Section 8 of this Lease and stored in a structure normally used for the storage of such materials and made safe for the storage thereof.

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

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

(m) The Lessee shall not do or permit to be done any act or thing on the Premises or at the Facility which (i) will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof, or the Facility, or any part thereof, or (ii) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement or (iii) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the Insurance Services Office of New Jersey, the National Fire Protection Association, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the Premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, make all improvements, alterations and repairs of the Premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of the Lessee to comply with the provisions of this paragraph or by reason of any act by Lessee, any rate for fire insurance, extended coverage or rental insurance on the Premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid

by the Port Authority which shall have been charged because of such act, violation or failure by the Lessee.

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

(o) The Lessee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance (as defined in Section 50) on or from the Premises, and shall not dispose of, release or discharge or permit anyone subject to its control or authority to dispose of, release or discharge any Hazardous Substance at the Facility. Any Hazardous Substance disposed of, released or discharged by the Lessee (or permitted by the Lessee to be disposed of, released or discharged) on or from the Premises or at the Facility, shall upon notice by the Port Authority to the Lessee and subject to the provisions of Section 50 hereof, be completely removed, cleaned up and/or remediated by the Lessee. The obligations of the Lessee pursuant to this subparagraph shall survive the expiration or termination of this Agreement.

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

#### Section 14. Signs

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

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

or device and so to restore the Premises and the Facility after receipt of written notice from the Port Authority, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

**Section 15. Indemnity and Liability Insurance**

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, attorneys, agents, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the Premises by the Lessee or by its officers, agents, employees, customers, vendors, or representatives, contractors, subcontractors or their employees, or by others on the Premises or out of any other acts or omissions of the Lessee, its officers, agents or employees on the Premises or elsewhere at the Facility.

(b) If so directed by the Port Authority, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) in which event it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

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

(i) Commercial General Liability Insurance including but not limited to coverage for Premises-Operations and Products Liability-Completed Operations, with a minimum combined single limit coverage for bodily injury and property damage of \$2,000,000. Said insurance shall also include coverage within fifty (50) feet of the property located adjacent to the railroad and for explosion, collapse and underground property damage hazards.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum

combined single limit coverage for death, bodily injury and property damage of \$2,000,000 per occurrence, no general aggregate.

(iii) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law and in limits of not less than \$1,000,000 per accident.

(iv) Warehousemen's Legal Liability Insurance with a minimum combined single limit coverage for death, bodily injury and property damage of not less than \$1,000,000 per occurrence.

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

(e) As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority on or before the Commencement Date, and on each anniversary date thereafter. In the event any binder is delivered it shall be replaced within thirty (30) days by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated,

changed or modified, without giving thirty (30) days' written advance notice thereof to the Port Authority. A binder evidencing each renewal policy shall be delivered to the Port Authority at least seven (7) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting hereunder, as the letting may be from time to time extended, and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance or as to coverages or minimum limits, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority in its sole and absolute discretion, the Lessee shall promptly obtain one or more new and satisfactory policies in replacement. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

#### Section 16. Maintenance and Repair

(a) The Lessee shall at all times keep the Premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Lessee located in or on the Premises, and shall comply with all applicable governmental statutes, rules and regulations (See Section 10 "Governmental and Other Requirements"). Without limiting the generality of the immediately preceding sentence or any obligations of the Lessee with respect to the Premises, the Lessee agrees that upon the commencement of the letting and during the Term it shall place and keep the Premises in good operating condition.

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the Premises or the Facility which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees, or of other persons on or at the Premises with the consent of the Lessee. Any repair, replacement or rebuilding required under this Section shall be conducted pursuant to the terms and conditions set forth in Section 20(q).

(c) Subject to the provisions of subparagraph (e) of this Section and Section 20(q) of this Agreement, throughout the Term, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the Premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or

outside, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing, the Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the Premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Premises or the Lessee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items: (1) sprinkler systems; (2) gas and electric from the meter (utility companies are responsible up to the meter); (3) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (4) the plumbing system, fixtures and equipment, and all finished plumbing; (5) buildings and all parts thereof; (6) signs; (7) fire extinguishers; (8) all painting; (9) catch basins and storm sewer system drains, which are to be kept fully functional, clear of obstruction and free of damage at all times; and (10) any paving required on the Premises; provided, however, that (i) as to the Building 173 Annex Premises, the Building 201 Premises, the Building 202 Premises, and the Open Area, the Lessee shall not be responsible for any maintenance of the fire sprinkler system; and (ii) as to the Building 194 Premises and the Building 199 Premises, the Lessee shall not be responsible for the fire sprinkler system or structural repairs (such as roofs, floors, exterior walls, foundations and supporting members), but shall be responsible for general maintenance of the Building 194 Premises and the Building 199 Premises and for all utilities thereof. The Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance during the Term.

(d) Upon the expiration of this Lease, the Premises must be in as good condition as at the time the Lessee first took possession of the leasehold Premises under the Agreement of Lease that expired on October 31, 2009, LPN-226, as amended and supplemented ("Lease 226"), except for reasonable wear and tear. Further, the Lessee shall make its own periodic inspections of the Premises and subject to this Section 16 and Section 20(q) of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacement. All repairs, rebuilding and replacements by the Lessee shall be in quality

and class not inferior to the original in materials and workmanship.

(e) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for any damage caused by Lessee, its employees, agents or representatives to any and all personal property, equipment, fixtures, traps, grates (manhole covers), frames, inlet boxes, catch basins, drains and the lateral service line connection up through the first valve or the main line, and shall also be responsible to keep the forgoing free and clean of clutter and debris and shall conduct regular inspections of same, belonging to the Port Authority, located or to be located in or on the Premises and shall promptly replace or repair the same within twenty (20) days after such damage (except that if any such repair requires activity over a period of time, then the Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption). The Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at the commencement of the letting, reasonable wear and tear excepted.

(f) The responsibility of the Port Authority to make repairs under this Agreement shall be limited to (i) making all repairs necessary to the sprinkler systems on the Building 173 Annex Premises, the Building 201 Premises and the Building 202 Premises and (ii) making structural repairs to the Building 194 Premises and the Building 199 Premises, and the Port Authority shall have no obligation whatsoever with respect to any repairs or replacements which are the obligation of the Lessee under this Agreement. After receipt by the Port Authority of written notice from the Lessee that repair or replacement of the sprinkler systems on the Building 173 Annex Premises, the Building 201 Premises, the Building 202 Premises, and/or the Open Area is required or structural repairs (including the sprinkler system) to the Building 194 Premises or the Building 199 Premises are required (stating precisely the 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. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable, except as expressly provided in Section 16 of this Agreement.

The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, the Lessee's officers, employees, agents, and representatives which may arise from the condition of the Premises or any part thereof, or from the failure of the Lessee to make timely corrections of dangerous or potentially dangerous conditions in or on the Premises. Except as set forth above, the Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, employees, agents and representatives from any liability for damages to the Lessee, consequential or otherwise, in connection with any of the provisions of this paragraph concerning repairs or replacements to any portion of the Premises, 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.

#### Section 17. 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 a part of the Premises, any of the Building 201 Premises, the Building 202 Premises, the Building 194 Premises, the Building 199 Premises, the Building 173 Annex Premises, or the Open Area (each, for purposes of this Section 17 only, an "Individual Building Premises") is damaged (without the fault of the Lessee, its officers, employees, or others on or at the affected Individual Building Premises with its consent) so as to render such Individual Building Premises untenable in whole or substantial part, then as to each Individual Building Premises

(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 may, at the Port Authority's sole and absolute discretion, repair or rebuild with due diligence, and the Rental hereunder shall be abated as provided in this Agreement for such Individual Building Premises, 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 Individual Building Premises or the entire Individual Building 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 Individual Building 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 Individual Building Premises, or, if there is more than one structure or building on the Individual Building Premises, at least twenty-five percent (25%) of the aggregate usable floor space comprising the Individual Building Premises in all of the structures and buildings covered by insurance.

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

(d) In the event of damage to or a partial or total destruction of any of the Individual Building 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 affected Individual Building 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 18. Assignment and Sublease**

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

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

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

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the Premises or any portion thereof for any purpose other than in accordance with Section 8 of this Agreement.

**Section 19. Condemnation**

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

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

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

(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 subparagraph (b) of this Section, then this Agreement shall, as of the date possession is taken by such agency or agencies from the Port Authority, or as of the effective date of such termination,

cease and terminate in the same manner and with the same effect as if the said date were the original date of expiration hereof.

(d) In the event that the taking or conveyance covers less than fifty percent (50%) of the total useable area of the Premises, or in the event that the letting is terminated pursuant to subparagraph (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 terminate in the same manner and with the same effect as if the Term had on that date expired, and Basic Rental and Additional Rental (as hereinafter defined) shall be abated as provided in Section 7 hereof.

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

#### Section 20. Construction by the Lessee

(a) Any construction work performed by Lessee pursuant to this Lease is hereinafter called "the Lessee's Construction Work". Any Lessee's Construction Work shall be performed at the Lessee's sole cost and expense and with the prior consent of the Port Authority. Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any 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.

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

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

(ii) The risk of death, injury or damage, direct or consequential, to the Port Authority, and its Commissioners, officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, for all such injuries and damages (including without limitation, direct or consequential damages), and for all loss suffered by reason thereof;

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

(c) Prior to the commencement of any of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval a Construction Application in the form supplied by the Port Authority, and containing such terms and conditions as the Port Authority may include, setting forth in detail by appropriate plans and specifications the work the Lessee proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Lessee shall identify each of the items constituting the Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. Lessee shall pay to the Port Authority any Construction Application review fee or other review fee charged by the Port Authority for its cost of administration with regard to the Lessee's Construction Application. The Lessee shall be

responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be reasonably directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this paragraph, the Lessee shall submit to the Port Authority, at the Port Authority's reasonable request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, and once the Construction Application has been deemed complete by the Port Authority in its sole discretion, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The 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 subparagraphs (j) and (k) of this Section 20 and such performance bonds as the Port Authority may specify. All of the Lessee's Construction Work shall be performed by the Lessee in accordance with the Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon final completion of all of the Lessee's Construction Work the Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and the Lessee shall supply the Port Authority with as-built drawings of the Lessee's Construction Work in such form and number requested

by the Port Authority. The Lessee shall keep said drawings current during the Term under this Agreement. No changes or modifications to such work shall be made without prior Port Authority consent. Following its receipt of the Lessee's certificate, the Port Authority shall inspect the work and, unless such certification is not correct, or the Port Authority reasonably determines that the premises are unsuitable for occupancy and use by the Lessee, a certificate of final completion shall be delivered to the Lessee by the Port Authority.

(d) Except as set forth in subparagraph (e) of this Section 20, the Lessee shall not commence any portion of the Lessee's Construction Work until the Construction Application and plans and specifications covering such work, referred to in subparagraph (c) of this Section, have been finally approved by the Port Authority, and the insurance required pursuant to subparagraphs (j) and (k) of this Section procured.

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

item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

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

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that the Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the State of New Jersey or 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 the Lease as herein amended.

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

(4) No Partial Approval Work performed by the Lessee pursuant to the provisions of this paragraph shall affect

or limit the obligations of the Lessee with respect to the Lessee's Construction Work or any prior approvals thereof.

(5) The Lessee specifically understands that neither the Port Authority's approval of any Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work nor the performance by the Lessee of any item of Partial Approval Work pursuant to such approval shall obligate the Port Authority to approve the Construction Application and plans and specifications submitted by the Lessee for the balance of the Lessee's Construction Work or shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent Partial Approval Work to be performed. Without limiting the generality of the provisions of this paragraph, it is specifically understood that the Port Authority may withhold its approval of a Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work if the Port Authority determines that review of subsequent items of Partial Approval Work is required before the Port Authority can approve, reject, or comment upon such Partial Approval Work Plans.

(6) In the event that in the opinion of the Port Authority the Lessee: (i) fails to comply with all of the provisions of this Agreement with respect to such work; (ii) fails to comply with the provisions of the Construction Application covering such work and the plans and specifications forming a part thereof; (iii) fails to comply with any requirements, stipulations, or provisions reasonably imposed by the Port Authority in its approval of the performance of such item of Partial Approval Work; (iv) shall be in breach of any of the provisions of this Agreement covering such work; (v) shall be in breach of any of the provisions of the Construction Application and plans and specifications covering the performance of such work; or (vi) shall be in breach of any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the work, the Port Authority shall have the right to cause the Lessee to cease the work that is being performed in violation of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, the Lessee shall promptly cease performance of the portion of the Partial Approval Work specified. The Lessee shall thereupon submit

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

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

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

subject to the Port Authority's review and reasonable approval in accordance with the provisions of this Agreement.

(g) Without limiting the generality of subparagraph (c) of this Section, the Port Authority shall have no liability or responsibility for the adequacy or sufficiency of the plans or specifications submitted by the Lessee to the Port Authority, nor for any improvements, fixtures and equipment depicted thereon or covered thereby, regardless of any consent or approval granted by the Port Authority thereof or the incorporation therein of any Port Authority requirement or recommendation. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall not conduct any business at the Premises with respect to any improvements, fixtures or equipment constituting the Lessee's Construction Work until the Port Authority shall have notified the Lessee in writing that the Lessee's Construction Work has been completed or substantially completed to its satisfaction. In the event of any inconsistency between the provisions of this Agreement and those of the Construction Application referred to in subparagraph (c) of this Section the provisions of this Agreement shall control; provided, however, that the Lessee shall be obligated to pay any tenant construction review fee or other review fee charged by the Port Authority for its costs of administering the Tenant Construction Application Process.

(h) Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Premises by the Lessee and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Lessee in the Premises and shall do preventive maintenance and make such repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear and tear.

(i) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen,

and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Premises or any part thereof, nor to prevent the Lessee from contesting claims in good faith.

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

(i) Commercial General Liability Insurance including but not limited to Independent Contractor coverage and coverage for premises operations and completed-operations and for Broad Form Property Damage, with a contractual liability endorsement covering the obligations assumed by the Lessee under subparagraph (b) of this Section, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage in an amount to be determined by the Port Authority, at the Port Authority's sole and absolute discretion.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for bodily injury and property damage in an amount to be determined by the Port Authority, in the Port Authority's sole and absolute discretion.

(k) With the exception of the Commercial Automobile Liability, each policy of insurance described in subparagraph (j) of this Section shall include the Port Authority as an additional insured and/or loss payee, where applicable, in its coverages including, without limitation, coverage for Premises-operations and completed operations, and no such policy shall contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair the coverages resulting from the Port Authority's status as an additional insured or the coverage under the contractual liability endorsement described in subsection (i) of subparagraph (j) of this Agreement. The certificates of such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder

with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured and/or loss payee. The certificates of insurance shall also provide for the Port Authority to be notified, in writing, at least thirty (30) days prior to the cancellation of any certificates of insurance. Such insurance shall contain a provision that the insurer shall not, without obtaining express written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

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

(m) In the performance of the Lessee's Construction Work the Lessee shall not permit any situation or condition to continue that may cause or be conducive to any labor troubles at the Facility which interferes with the progress of other construction work at the Facility. The determination of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority of the threat of any such labor troubles, the Lessee shall, or shall cause its contractor to, immediately rectify any condition specified in the notice. In

the event of failure by the Lessee or any of its contractors to immediately comply with the requirements of this paragraph (whether or not such failure is due to the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with any portion of the Lessee's Construction Work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee shall reinstate the permission to the Lessee to perform the work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(n) No contractor or third party shall, or shall be deemed to, have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

(o) Without limiting any of the terms and conditions hereof, the Lessee understands and agrees that it shall put into effect prior to the commencement of the Lessee's Construction Work an affirmative action program and Minority Business Enterprise ("MBE") program and Women-owned Business Enterprise ("WBE") program in accordance with the provisions of Schedule A, attached hereto and hereby made a part hereof. The provisions of Schedule A shall be applicable to the Lessee's contractors and subcontractors at any tier of construction as well as to the Lessee, and the Lessee agrees to include the provisions of Schedule A in all of its construction contracts so as to make the provisions and undertakings set forth in Schedule A the direct obligation of the contractors and subcontractors at any tier of construction. The Lessee agrees to and shall require its contractors and subcontractors to furnish to the Port Authority such data, including but not limited to compliance reports, relating to the operation and implementation of the affirmative action, MBE, and WBE programs of the Lessee and its contractors, and subcontractors at any tier of construction called for under the provisions of this paragraph and Schedule A 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 A to effectuate the goals of affirmative action, MBE, and WBE programs. The obligations imposed on the Lessee under this paragraph and Schedule A shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

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

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

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

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

(4) The contractor will include the provisions of subsections (1) through (3) of this subparagraph 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 subparagraph (p) and in this paragraph shall include each contractor and subcontractor at any tier of construction.

(q) Prior to the commencement of any repairs, replacements or alterations required to be performed by the Lessee during the Term pursuant to the terms of this Agreement other than the Lessee's Construction Work (as defined in subparagraph (a) of this Section), the Lessee shall submit to the Port Authority for its approval an Alteration Application in the form supplied by the Port Authority (the "Alteration Application"), and containing such terms and conditions as the Port Authority may include, setting forth in detail by appropriate plans and specifications the work the Lessee proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Lessee shall identify each anticipated repair or alteration, and shall describe in detail any systems, improvements, fixtures and equipment to be installed by the Lessee. The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this subparagraph (q), the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of the Lessee's Alteration Application and complete plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find 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 Alteration Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in subparagraphs (j) and (k) of this Agreement and such performance bonds as the Port Authority may reasonably specify. All of the Lessee's repairs, replacements or alterations performed pursuant to this subparagraph (q) shall be performed by the Lessee in accordance with the Alteration Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. The Lessee shall be obligated to pay any tenant alteration review fee or other review fee charged by the Port Authority for its costs of administering the Alteration Application process.

#### Section 21. Additional Rent and Charges

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

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

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

#### Section 22. Rights of Entry Reserved

(a) Upon reasonable notice, except in emergent situations as determined by the Port Authority in its sole discretion, the Port Authority, by its officers, employees, agents, representatives and contractors shall have the right to enter upon the Premises for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise.

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and on behalf of furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises upon reasonable notice, except in emergent situations as determined by the Port Authority in its sole discretion, to make such repairs, replacements or alterations as the Port Authority shall deem necessary or advisable and, from time to time, to construct or install over, in or under the Premises new systems or parts thereof, and to use the Premises for access to other parts of the Facility otherwise not conveniently accessible; provided, however that in the exercise of such rights of access, repair, alteration or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the Premises by the Lessee.

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

(d) Except as described in Section 16(f) hereof, nothing in this Agreement shall impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the Premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Premises or for any injury or damage to the Premises or to any property of the Lessee or of any other person located therein or thereon (other than those occasioned by the acts of the Port Authority).

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

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

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

Section 23. Limitation of Rights and Privileges Granted

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

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

Section 24. Termination

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

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

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

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee

and shall not be dismissed within thirty (30) days after the filing thereof; or

(4) Except as permitted under Section 18 hereof, the letting or the interest of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(5) The Lessee shall, without the prior approval of the Port Authority, merge, consolidate, dissolve; or

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

(7) The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Premises for over thirty (30) days (except in connection with a casualty, in accordance with Section 17 hereof). The Lessee, after exhausting or abandoning any right of further appeal, shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the Premises, as a result of any act or omission by Lessee; or

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

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

(10) The Lessee shall fail to keep, perform and observe any other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within 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).

Upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Port Authority may by written notice terminate the letting and the rights of the Lessee under this Agreement, such termination to be effective upon the date specified in such notice, which date shall not be less than five (5) days after the giving of such notice.

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

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

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

Section 25. Intentionally Deleted.

Section 26. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 24 of

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

**Section 27. Waiver of Redemption**

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

**Section 28. Survival of the Obligations of the Lessee**

(a) In the event that the letting shall have been terminated in accordance with this Agreement (including without limitation pursuant to a notice of termination as provided in Section 24), or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 26 of this Agreement, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Section 2 hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due, or at its option and at any time may sue to recover the full deficiency (less the proper discount) for the entire unexpired term.

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

(1) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including, without limitation thereto, all sums constituting

Additional Rental under Section 21 of this Agreement, and all sums constituting the Basic Rental under Sections 3 through 6 of this Agreement, accrued prior to the effective date of termination, and the cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the Term or on the expiration date originally fixed or within a stated time after expiration or termination; and

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

#### Section 29. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of a part of the Premises or of the entire Premises, and may be for any period of time (whether the same as or different from the amount remaining in the Term hereunder), and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, have the right to repair and to make structural or other changes in the Premises, including changes which alter the character of the Premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the Premises (or portion thereof)

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

Section 29 A. Remedies Under Bankruptcy and Insolvency Codes

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

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

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

(c) that if Lessee's trustee, Lessee or Lessee as debtor-in-possession assumes this Agreement and proposes to assign it (pursuant to Title 11 U.S.C. Section 365, as it may be amended) to any person who has made a bona fide offer therefor, the

notice of such proposed assignment, giving (i) the name and address of such person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided the Port Authority to assure such person's future performance under this Agreement, including the assurances referred to in Title 11 U.S.C. Section 365, as it may be amended, and such other assurances as the Port Authority may reasonably require, shall be given to the Port Authority by the trustee, Lessee or Lessee as debtor-in-possession of such offer, not later than twenty (20) days before the date that the trustee, Lessee or Lessee as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Port Authority shall thereupon have the prior right and option, to be exercised by notice to the trustee, Lessee and Lessee as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Agreement upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person (including any higher or better offers made that may be made in such proceedings), less any brokerage fees, finders' fees, procuring fees or commissions, or any similar fees or commissions which may be payable out of the consideration to be paid by such person for the assignment of this Agreement ("Brokerage Commissions"). The Port Authority shall have no obligation to pay any such Brokerage Commissions. If Lessee attempts to arrange such an assignment of this Lease, then as an element of the required adequate assurance to the Port Authority, and as a further condition to Lessee's right to make such an assignment, Lessee's agreement(s) with brokers shall, to the Port Authority's reasonable satisfaction, provide that the Port Authority shall have no obligation to pay such Brokerage Commissions if the Port Authority exercises the Port Authority's rights under this Section 29A.

#### Section 30. Remedies to Be Nonexclusive

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

#### Section 31. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on

the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Section 16(d) hereof regarding the condition of the Premises at the expiration or termination of the letting hereunder.

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

### Section 32. Acceptance of Surrender of Lease

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

### Section 33. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port Authority or the Lessee, except as otherwise expressly provided herein, shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an officer or representative at their office during regular business hours; or (iii) delivered to the residence of such party, officer or representative at any time; or (iv) if directed to the Lessee, delivered to the Premises at any time to the attention of the President; or (v) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar reputable overnight courier service. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office, the address of which is set forth on Page 1 of this Agreement, as their respective offices where notices and requests may be served.

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

### Section 34. General

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

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

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

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

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

(5) None of the provisions of this subparagraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Premises with its consent.

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

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

(d) The Lessee's representative, hereinbefore specified in this Agreement (or such substitute as the Lessee may hereafter designate in writing), shall have full authority to act for the Lessee in connection with this Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

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

(f) All payments required of the Lessee by this Agreement shall be made by mail to the Port Authority at P. O. Box 95000-1517, Philadelphia, Pennsylvania 19195-1517 or via wire transfer to TD Bank, Bank ABA Number: 031201360, Account Number:  
Ex. 1/4 , or to such other address as may be substituted therefor.

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

(h) As used in Sections 20 and 22 hereof, the phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

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

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

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

(l) So long as the Lessee shall pay all Rentals provided for in this Agreement and shall observe and perform all the terms, covenants and conditions on the Lessee's part to be observed and performed under this Agreement, the Lessee may peaceably and quietly enjoy the Premises, during the Term, without disturbance by anyone claiming by, through or under the Port Authority, subject, nevertheless, to the terms, covenants and conditions of this Agreement, it being understood that the

Port Authority's obligations hereunder shall continue only so long as it remains the owner of the Premises.

(m) This Agreement and the letting hereunder are and shall be subject and subordinate to all mortgages which may now or hereafter affect the Premises or the Facility, and to all renewals, modifications, consolidations, replacements and extensions thereof, and although the provisions of this Section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Lessee, the Lessee shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this Section as the Port Authority may request.

(n) Without in any way limiting the obligations of the Lessee as elsewhere stated in this Agreement, the Lessee shall be liable to the Port Authority for any damage done to the Facility or to any part thereof, or to any property of the Port Authority thereon through any act or omission arising from Lessee's business operations or its use and occupancy of the Premises, including, but not limited to, acts or omissions of invitees, licensees, agents and representatives.

(o) For purposes of the provisions set forth in this Agreement, the Lessee hereby certifies that its I.R.S. Employer Identification No. is Ex. 1/4

(p) Intentionally Deleted

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

(r) Intentionally Deleted

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

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

(u) The Port Authority shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by the Port Authority, and then only to the extent specifically set forth therein. A waiver in one specific event shall not be deemed to apply either as a waiver or bar to any right or remedy stemming from a subsequent event.

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

**Section 35. Premises**

(a) The Port Authority shall deliver the Premises to the Lessee in its presently existing "as is" "where is" condition, without any representations or warranties of any kind whatsoever except as expressly provided in this Agreement. The Lessee agrees to and shall take the Premises in its "as is" "where is" condition and the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the Premises for the Lessee's use. The Lessee acknowledges that, pursuant to Lease 226, it has been in continuous occupancy of the Premises and is fully familiar with the Premises.

(b) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Premises or the suitability thereof for the operations permitted on the Premises by this Agreement. The Lessee, prior to the execution of this Agreement, has thoroughly examined the Premises as existing and has found the same to be suitable and satisfactory for the operations of the Lessee contemplated and permitted under this Agreement. Without limiting any obligation of the Lessee to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the Premises will be used initially or at any time during the letting which is in a

condition unsafe or improper for the conduct of the operations of the Lessee, so that there is a likelihood of injury or damage to life or property, and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

### Section 36. Force Majeure

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its respective obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors), embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control. Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption.

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

(c) No abatement, diminution or reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption,

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

**Section 37. Brokerage**

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

**Section 38. Non-Liability of Individuals**

No Commissioner, director, officer, agent or employee of the Port Authority shall be held personally 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 alleged breach thereof.

**Section 39. Services**

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

(b) The Lessee shall promptly pay all utility bills covering its own consumption. In the event that any such utility 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. When 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) Intentionally Deleted.

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

(e) No failure, delay or interruption (collectively, an "Interruption") in any water or gas service, whether supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder 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 payable under this Agreement, or grounds for any claim by the Lessee for damages, consequential or otherwise.

#### Section 40. Right of Termination - Ownership and Control

(a) (1) The Lessee hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that it is a corporation incorporated and existing under the laws of the State of New Jersey, and that the requisite corporate consents to enter into this Agreement have been obtained. The Lessee hereby represents that all of the common stock and other securities of the Lessee are owned by Patrick J. Wynne, Patrick J. Judge III, Michael P. Wynne and Barbara Judge.

(b) The Lessee recognizes the fact that a transfer of Securities (as hereinafter defined in Section 40(f) hereof) or membership interests or membership units in the Lessee or of a substantial part thereof, entry into any management, services or similar type of agreement for operations on the Premises, or any other act or transaction involving or resulting in a change in the ownership or distribution of Lessee's Securities or with respect to the identity of the parties in control of the Lessee or the Premises, or the degree thereof, is for practical purposes a transfer or disposition of the rights obtained by the Lessee through this Agreement. The Lessee further recognizes that because of the nature of the obligations of the Lessee hereunder, the qualifications and identity of the Lessee and its security holders are of particular concern to the Port Authority. The Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Lessee for the faithful performance of all obligations and covenants hereunder. Therefore, the Lessee represents and agrees for itself, its present owners and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, there shall be no transfer of any Securities in the Lessee by its present owners to any other person except with respect to (i) transfers made for estate planning purposes or business succession purposes to immediate family members (or trusts established for the benefit of such immediate family members), or (ii) transfers between the four (4) shareholders set forth in subparagraph (a) of this Section, provided that any such transferee shall have obtained any and all licenses required by law necessitated by such transfer of ownership; nor shall the present owners suffer any transfer of Securities that does not comply with the foregoing provision to be made; nor shall there be or be suffered to be made by the Lessee or by any owner of Securities therein, any other change in the ownership of such Securities or in the relative distribution thereof, or with respect to the identity of the parties in control of the Lessee or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional new Securities or classification of Securities or otherwise; and the Lessee further represents and agrees for itself and its present owners, and any successor in interest thereof, respectively, that the direct ownership and control of the Lessee shall be and remain as represented in subparagraph (a) of this Section, except as otherwise permitted herein.

(c) The Lessee acknowledges the Lessee's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Lessee with the provisions contained in this Section shall be and be deemed an Event of Default under Section 24 of this Agreement, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of said Section 24 hereof.

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

(e) The phrase "direct or indirect beneficial ownership" shall include without limiting the generality thereof the direct or indirect power through contract, arrangement, understanding, relationship or otherwise to dispose of or to direct the disposal of, or to vote or to direct the voting of, any voting security of an entity.

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

(g) The Lessee shall promptly advise the Port Authority of any change in the representations made in this Section 40.

#### Section 41. Additional Termination Rights/Recapture Rights

(a) In addition to all other rights under this Agreement, as to the Building 173 Annex Premises, the Building 201 Premises, the Building 202 Premises, and the Open Area, both the Port Authority and the Lessee shall have the right to terminate the letting under the Agreement, without cause, effective at any time from and after October 31, 2015, on one (1) year's prior written notice to the other party. Termination under the

provisions of this Section shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the Term.

(b) In addition to all other rights under this Agreement, as to only the Building 194 Premises, both the Port Authority and the Lessee shall have the right to terminate the letting under the Agreement, without cause, at any time, on sixty (60) days' prior written notice to the other party. Termination under the provisions of this Section shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the Term.

(c) In addition to all other rights under this Agreement, as to only the Building 199 Premises, both the Port Authority and the Lessee shall have the right to terminate the letting under the Agreement, without cause, at any time, on one (1) year's prior written notice to the other party. Termination under the provisions of this Section shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the Term.

#### Section 42. Security

The Lessee and the Port Authority hereby agree that all sums deposited by the Lessee as security under this Lease LPN-297 shall be held and used by the Port Authority as security for the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of this Agreement, Lease LPN-297. Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deliver to the Port Authority, as security for the Lessee's full, faithful and prompt performance of and compliance with all of its obligations under this Agreement, a clean irrevocable letter of credit issued by a banking institution reasonably satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of \$610,000.00, allowing for partial and complete draws upon presentation of a site draft (the Port Authority hereby acknowledges receipt of the foregoing 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. Such letter of credit shall provide that it shall continue throughout the Term and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit.

Upon notice of cancellation of a letter of credit, the Lessee agrees that unless, by a date not less than twenty (20) days prior to the scheduled expiry thereof, the letter of credit is replaced by another letter of credit reasonably satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under this Agreement. Failure to provide such a letter of credit at any time during the Term, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit shall be deemed to be a breach of this Agreement on the part of the Lessee. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Lessee, on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to its full amount. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to draw upon the letter of credit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee arising out of or with respect to the Lessee's obligations under this Agreement. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the letter of credit itself shall cure any default or breach of this Agreement on the part of the Lessee. After the expiration or earlier termination of the letting under this Agreement (as it may have been amended or extended or both), and upon condition that no default under this Agreement (as it may have been amended or extended or both), shall have occurred and upon written request therefor by the Lessee, the Port Authority will return the letter of credit to the Lessee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Lessee of this Agreement or any part thereof.

**Section 43. Late Charges**

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of Rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each

late charge period herein below described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (0.8%) of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become Additional Rental, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the Rental as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 24 of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

#### Section 44. Sustainable Design

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

**Section 45. Port Authority Costs Following Termination**

Without limiting the generality of any provision of this Agreement, in the event the Port Authority exercises its right of termination under the provisions of Section 24 of this Agreement entitled "Termination", the Lessee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably incurred by the Port Authority in connection with such termination, including without limitation any re-entry, regaining or resumption of possession, the collection of all amounts due to the Port Authority, the restoration of the Premises (on failure of the Lessee to have it restored), the preparation of the Premises for use and occupancy by a succeeding lessee, the care and maintenance of the Premises during any period of nonuse of the Premises; the foregoing shall include, without limitation, personnel costs and reasonable legal fees and expenses (including but not limited to the cost to the Port Authority of in house legal services and/or the legal services of outside counsel), repairing and altering the Premises and putting the Premises in working order.

**Section 46. Double Rent For Holdover**

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

**Section 47. Intentionally Deleted.**

**Section 48. Waiver of Jury Trial**

The Lessee 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 Lessee in respect of the letting and/or in any action that may be brought by the Port Authority

to recover fees, damages, or other sums due and owing under this Agreement. The Lessee specifically agrees that it shall not interpose any claims as counterclaims in any summary proceeding or action for eviction relating to non-payment of Rental or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

#### Section 49. Counterparts

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

#### Section 50. Environmental Responsibilities

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

(1) "Environmental Damage" and "Environmental Damages" shall mean any one or more of the following: (i) the presence on, about, under or migrating from the Premises of any Hazardous Substance whose presence occurred during the "Term," which definition of Term shall for purposes of this Section 50 include periods prior to the letting under this Agreement during which the Lessee was in occupancy under Lease 226, resulting from or arising under any act or omission of any person or entity during the Term except for the gross negligence or intentional tortious acts of the Port Authority, including direct or indirect acts or omissions of Lessee or its officers, employees, shareholders, members, agents, representatives, contractors, customers, guests, invitees, or other persons who are doing business with the Lessee or are on the Premises with the Lessee's consent, or are on the Premises without Lessee's consent but due to Lessee's failure to undertake adequate security measures (for purposes of this Section 50, the "Lessee's Representative"), and/or (ii) the disposal, release or threatened release of any Hazardous Substance on, about, under or migrating from the Premises during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term and if such presence was caused by the direct or indirect acts or omissions of Lessee or Lessee's Representative, and/or (iii) the presence of any Hazardous Substance on, about or under other property at the Facility or elsewhere as a result of the ownership, use or occupancy of the Premises or a migration of a Hazardous Substance from the Premises during the Term or thereafter if the

Hazardous Substance first came to be present on, about or under the Premises during the Term and such presence was caused by the direct or indirect acts or omissions of Lessee or Lessee's Representative, (iv) any personal injury, including wrongful death, property damage and/or natural resource damage arising out of or related to any such Hazardous Substance, and/or (v) the violation of any Environmental Requirements pertaining to any such Hazardous Substance, the Premises and/or the activities thereon.

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

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

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

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

(3) "Hazardous Substance" and "Hazardous Substances" shall mean and include, without limitation, any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, special nuclear byproduct material, asbestos in any form, asbestos containing material, any chemicals, materials, waste or other substance that are listed, designated,

classified, determined to be or defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "pollutants," "contaminants," "toxic substances," "toxic pollutants," or "hazardous constituents" under or pursuant to any Environmental Requirement and inclusive of any mixture or solution thereof, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), chemicals known to cause cancer or reproductive toxicity, petroleum, petroleum products and petroleum based derivatives, and other substances which have been or in the future shall be declared to be hazardous or toxic, or the regulation or removal of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have been or in the future shall be restricted, prohibited, regulated or penalized by any Environmental Requirement. When an Environmental Requirement defines any of the foregoing terms more broadly than another, the broader definition shall apply.

(4) "Governmental Authority" and "Governmental Authorities" shall mean all governmental agencies, authorities, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, except that it shall not be construed to include The Port Authority of New York and New Jersey, the lessor under this Agreement. Governmental Authorities shall also include with respect to any remediation hereunder a Licensed Site Remediation Professional ("LSRP") acting in such capacity, pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. ("SRRRA").

(b) Without limiting the generality of any of the other terms and provisions of this Agreement, the Lessee hereby agrees that it is responsible for and assumes responsibility for any Environmental Requirements and Environmental Damages arising out of or pertaining to the Premises that arise on or after the commencement of the Term. The Lessee shall be fully responsible for any and all costs, expenses and fees (including without limitation, oversight fees, annual remediation fees, document review fees, financial assurance, and permit fees) associated with the remediation of such Environmental Damages and pursuant to any Environmental Requirement. Lessee shall be responsible to post any required financial assurance. The Lessee shall

indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, agents and employees from and against all Environmental Damages and Environmental Requirements for which the Lessee is responsible under this Agreement (including, without limitation, all losses, damages, judgments, fines, penalties, payments in lieu of penalties, settlements, consultant and/or LSRP expenses, and legal expenses incurred by the Port Authority in connection therewith). If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing indemnified matters, and in handling such suit it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(c) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall report any and all discharges of Hazardous Substances at the Premises to the appropriate Governmental Authorities in accordance with all applicable Environmental Requirements, and at its sole cost and expense, upon notice from the Port Authority, promptly take all actions to remove and remediate: (1) any Hazardous Substance present on, about, under or migrating from the Premises whose presence first occurred during the Term or resulted from any act or omission of the Lessee or others during the Term, (2) any Hazardous Substance disposed of or released on the Premises during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, and (3) any Hazardous Substance present on, about or under the Premises, other property at the Facility or elsewhere whose presence resulted from the Lessee's use and occupancy of the Premises or which migrated from the Premises to such other property during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, which any Governmental Authority or any Environmental Requirements require to be removed and/or remediated, or which, in the reasonable opinion of the Port Authority, are necessary to mitigate Environmental Damages. Such removal and remediation shall include, but not be limited to, the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans, and the performance of any cleanup, remediation, mitigation, containment, operation, maintenance, monitoring or restoration

work to the extent required pursuant to any Environmental Requirements. In performing any remediation as required under this subparagraph (c), Lessee shall employ the most stringent applicable cleanup standards required pursuant to applicable Environmental Requirements that will not involve the use of any restriction on the possible use of the Premises or such other property and which will not require the use of any institutional or engineering controls. Notwithstanding the foregoing, Lessee shall be permitted to utilize institutional and/or engineering controls solely with respect to historic fill material (as such term is defined in the New Jersey Technical Requirements for Site Remediation, set forth at N.J.A.C. 7:26E-1, et. seq.) ("Historic Fill") to the extent it is determined that such Historic Fill is located on the Premises and such presence was not caused by Lessee or Lessee's Representative. The Lessee agrees that with respect to any of its obligations set forth above in this paragraph it will not make any claim against the Port Authority and/or the City of Newark and/or the State of New Jersey for contribution under any Environmental Requirement. Any actions required under this paragraph shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the Premises. All wells shall be flush mounted. The Lessee shall promptly provide to the Port Authority all copies of test results and reports generated in connection with such actions. Promptly upon completion of such investigation and remediation, the Lessee shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property. Upon the completion of any such remediation, the Lessee shall provide to the Port Authority a copy of either a No Further Action letter, Response Action Outcome issued by an LSRP, or such similar or equivalent final remediation document. Notwithstanding anything appearing in this Agreement, provided that the presence of any Historic Fill located on the Premises was not caused by Lessee or Lessee's Representative, solely as to the Historic Fill, the Lessee shall not be responsible for the remediation or cleanup of such Historic Fill.

(d) Without limiting any other of the Lessee's obligations under this Agreement, the Lessee shall provide the Manager of the Facility at the cost and expense of the Lessee with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall reasonably request in connection with any Environmental Requirements or Environmental Damages, and as may be necessary for the preparation of any application, registration, statement, certification, notice,

affidavit, communication, clean-up plan or other information, documentation or communication required by the Environmental Requirements. Lessee shall promptly swear to, sign or otherwise fully execute the same. Prior to retaining or dismissing any consultant or LSRP in connection with remediation of the Premises, the Lessee shall give notice of such retention or dismissal to the Port Authority. The Lessee shall comply with any and all timeframes set forth in any Environmental Requirement in connection with the filing of remediation documents and/or completion of remediation. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee and at the Lessee's cost and expense. Further, unless directed otherwise by the Port Authority, the Lessee agrees to provide the Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Lessee at the time the same are provided to the Lessee with respect to any Environmental Requirements.

(e) Notwithstanding any other provision of this Section 50, Lessee shall be responsible for all Environmental Damage involving any Hazardous Substance whose presence on, about, under or migrating from the Premises occurred prior to the commencement of the Term as a result of (1) any violation by the Lessee or the Lessee's Representative, as hereinafter defined, of any Environmental Requirements pertaining to such Hazardous Substance, the Premises and/or the activities thereon, or any failure by the Lessee or the Lessee's Representative to observe and comply with any Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including specifically those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities (which agreements have been provided by the Port Authority to the Lessee or are subsequently provided to Lessee in the future), or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Facility and/or the Premises and submitted to the Lessee, and/or are subsequently provided to Lessee in the future, and/or (2) any negligent act or omission by the Lessee or the Lessee's Representative with respect to such Hazardous Substance.

(f) Without limiting the Port Authority's remedies that it may have under this Agreement or at law or in equity, the Port Authority shall have the right during the Term and subsequent to the termination or expiration thereof to such equitable relief, including restraining injunctions and declaratory judgments, as may be required to enforce compliance by the Lessee with its environmental obligations under this Section 50. In the event the Lessee fails to comply with or perform any of its obligations hereunder, the Port Authority at any time during the Term of this Agreement and subsequent to the termination or expiration thereof may elect (but shall not be required) to perform such obligations and the Lessee shall pay to the Port Authority upon demand all of its costs thereof.

(g) Notwithstanding any other provision in this Agreement to the contrary, and without limiting the generality of subparagraph (e) of this Section, Lessee's obligations, undertakings and responsibilities under this paragraph shall not apply to any Environmental Damage involving any Hazardous Substance which migrated or shall migrate onto the Premises during the Term (hereinafter called the "Migrated Hazardous Substance"), except that Lessee shall be responsible for clean-up, remediation or other response action, or indemnification or other action under this Section with respect to such Migrated Hazardous Substance to the extent that any such action with respect to such Migrated Hazardous Substance becomes necessary due to: (1) any violation by the Lessee or the Lessee's Representative of any Environmental Requirements pertaining to such Migrated Hazardous Substance, the Premises and/or the activities thereon; (2) any failure by the Lessee or the Lessee's Representative to observe and comply with any written Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including without limitation, those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities (which agreements have been provided by the Port Authority to the Lessee or are subsequently provided to Lessee in the future), or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Facility and submitted to the Lessee; (3) any negligent act or omission of the Lessee or the Lessee's Representative causing the exacerbation of such Migrated Hazardous Substance; or (4) any Environmental Requirements obligating Lessee to undertake such cleanup of a Migrated Hazardous Substance, to the extent that the Lessee is obligated to perform such cleanup under this Section 50.

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

(i) Lessee represents that its use of the Premises is currently not subject to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. ("ISRA"), and Lessee shall not conduct any business operations at the Premises which are subject to ISRA. In the event that in contravention of this provision in the future Lessee's operations at the Premises are subject to ISRA, then Lessee shall comply with ISRA (including but not limited to filing all necessary documents and undertaking all remediation required in order to comply with all Environmental Requirements). Lessee shall, at Lessee's own expense, obtain in accordance with all Environmental Requirements and provide to the Port Authority a No Further Action letter, Response Action Outcome issued by an LSRP, or such similar or equivalent final remediation document. In the event Lessee fails to obtain either a No Further Action letter, Response Action Outcome or similar final remediation document prior to the expiration or earlier termination of the Term, at the Port Authority's option, it may consider Lessee a holdover tenant and subject to Section 46 hereof.

(j) The Port Authority hereby notifies the Lessee, in accordance with the Occupational Safety and Health Administration asbestos rule (1995), 59 Fed. Reg. 40964, 29 C.F.R. §1910.1001 et seq. and §1926.1101 et seq., clarification 60 Fed Reg. 33974 (collectively, the "OSHA Asbestos Rule"), of

the presence of asbestos-containing materials ("ACMS") and/or presumed asbestos-containing materials ("PACMS") located on the Premises in the following locations: (i) on the Building 194 Premises, in the fluffy sprayed-on insulation materials on the east, west and south metal walls, support beams and ceiling fall-out located in Section D; in the fluffy sprayed-on insulation materials on a support beam on the north metal wall of Section B; the insulation of the heat transfer pipe in the men's restroom of Section A, the insulation for the pipe elbow in the ladies' restroom of Section A, and the insulation for the heat transfer pipe and pipe elbow in the ladies' restroom of Section C; potentially on the drain pipes located on the outside of Building 194 on the west wall between doors 21 and 22; and potentially in the kitchen area tiles, the trailer outside the building, which has vinyl asbestos tiles, and in the east wall crawl space; (ii) on the Building 199 Premises, the valve and heat transfer pipe in the men's room (which may have asbestos-containing pipe insulation), and linoleum material and vinyl asbestos tiles located in the office areas of Section A; (iii) on the Building 173 Annex Premises, the roof (which has flashing material and some asbestos-containing pipe insulation), insulation materials in the piping in the lunch room wall and warehouse; insulation materials on the pipe valve in the pump room; insulation materials on vertical piping at the door entrance; and insulation materials on vertical piping on Tanks 13 and 24 of the tank room; (iv) on the Building 201 Premises, the fluffy sprayed-on insulation materials located on the columns in Sections B, C and D, and the insulation materials on the heat transfer pipe elbow for the restroom in Section A; and (v) on the Building 202 Premises, the fluffy sprayed-on insulation located on columns in Sections B, C, D and E, as set forth in the survey reports attached hereto as "Exhibit B". The Port Authority further notifies the Lessee that, with the exception of the Building 173 Annex Premises and as disclosed on Exhibit B, there is no information in the Port Authority's possession regarding the presence of asbestos-containing materials in the roofing materials of the buildings located on the Premises.

The Lessee hereby acknowledges receipt of such notification in this Section 50 and understands, after having consulted with its legal counsel, that the purpose of such notification is to make Lessee, its agents, employees, contractors, subcontractors and their employees aware of the presence of ACMS and PACMS on the Premises, in order to avoid or minimize any damage to or disturbance of such ACMS and/or PACMS. Lessee acknowledges that it is aware of its own obligations

under the OSHA Asbestos Rule due to the presence of ACMS and/or PACMS and shall not remove or deface any signs indicating the presences of ACMS and/or PACMS that may be located on the Premises in compliance with the OSHA Asbestos Rule.

The Lessee shall deliver to the Port Authority a copy of a signed acknowledgment (in the same form as the form of acknowledgement attached hereto as "Exhibit C") from any contractor, subcontractor, agent or employee of Lessee prior to the commencement of any of the following activities within or about the Premises: (i) removal of thermal system insulation and surfacing ACMS and/or PACMS (i.e., sprayed-on or troweled-on material, such as texture ceiling paint or fireproofing material); (ii) removal of ACMS and/or PACMS that are not thermal system insulation or surfacing ACMS and/or PACMS; (iii) repair and maintenance operations that are likely to disturb ACMS and/or PACMS; (iv) custodial and housekeeping activities where even minimal contact with ACMS and/or PACMS may occur; (v) salvage of structures with ACMS and/or PACMS; (vi) construction, alteration, repair, maintenance, or renovation of structures or substrates with ACMS and/or PACMS (i.e., plumbing, electrical or HVAC work); and (vii) transportation, disposal and storage of products containing ACMS and/or PACMS on a construction site.

The Lessee and the Port Authority agree and acknowledge that there are ACMS and/or PACMS present on Premises as of the commencement of this Agreement ("Pre-Existing ACMS/PACMS"). To the extent that any Environmental Requirement or other law requires the removal and/or encapsulation of any or all of such Pre-Existing ACMS/PACMS on the Premises, to the extent that such requirement is not triggered by any act or omission of Lessee or Lessee's Representative, the Port Authority shall be responsible for the removal and/or encapsulation of the applicable Pre-Existing ACMS/PACMS, and shall be responsible for the repair and maintenance of same; provided, however, that the Lessee acknowledges that if a disturbance of ACMS and/or PACMS occurs due to the act or omission of Lessee or Lessee's Representative (regardless of whether caused by accident, intentional act or negligent operations of the Lessee), abatement, encapsulation and/or removal of such ACMS and/or PACMS shall be the responsibility of the Lessee, at Lessee's sole cost and expense; provided, further, that the Port Authority shall have the right, but not the obligation, to undertake to perform such abatement, encapsulation and/or removal, at the Lessee's cost and expense.

(k) Without limiting the generality of any other term or provision of this Agreement, the obligations of the Lessee under

this Section 50 shall survive the expiration or termination of this Agreement.

**Section 51. Recordkeeping; Examination of Records.**

The Lessee shall maintain in accordance with generally accepted accounting principles ("GAAP") during the Term and for three years thereafter (the "Audit Period") records and books of account recording all transactions in any way connected with or reflecting the payment of any Rental by the Lessee pursuant to Sections 3, 4, 5 or 6 hereof or of any Additional Rental by the Lessee pursuant to Section 21 hereof. Such records and books of account shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session. During normal business hours during the Audit Period, the officers, employees and representatives of the Port Authority shall have the right to examine and perform an audit of (i) such records and books of account and (ii) any of such records and books of account of any company which is owned or controlled by the Lessee, if said company performs services, similar to those performed by the Lessee, anywhere in the Port of New York District.

**Section 52. Entire Agreement**

This Agreement, together with all schedules and exhibits hereto, constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

**Section 53. OFAC Representations**

Lessee hereby represents and warrants to the Port Authority that the Lessee is not, and shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order on Terrorist Financing

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit or Support Terrorism), or other governmental action and is not engaging, and shall not engage, in any dealings or transactions or be otherwise associated with such persons or entities. Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any breach of the foregoing representations and warranties by Lessee, the Port Authority shall have the right, in addition to any and all other remedies provided under this Agreement or at law or in equity, to immediately terminate this Agreement upon written notice to Lessee. In the event of any such termination by the Port Authority, Lessee shall, immediately on receipt such termination notice, have no further right to access the Premises and shall turnover to the Port Authority all books and records in Lessee's possession or control with respect to the Premises and its services under this Agreement. Termination on the aforescribed basis shall be deemed a termination for cause.

**Section 54. Estoppel Certificate.**

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

Section 55. Siding Rights.

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 use such of the existing railroad tracks located on the Premises and indicated on Exhibit A, Exhibit A-1, Exhibit A-2, and Exhibit A-3 as darkened tracks, on a non-exclusive basis, as may be necessary for ingress and egress of railroad cars to and from the respective rights-of-way of Consolidated Rail Corporation ("Conrail"), CSX, Norfolk Southern and/or their successors, from and to 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, locomotives and tenders;
- (3) the Lessee shall not cause or permit the tracks to be obstructed, (except for the portion of track adjacent to the Premises, and that portion for reasonable loading and unloading periods only), 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 or for the Lessee;

(8) the right of user granted hereby shall be subject to any existing or future agreements between the Port Authority and the railroads relating to the furnishing of service by the 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.

(9) 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 repassage of railroad cars, locomotives and tenders and reserves the right to enter upon the Premises to maintain and repair such tracks.

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

ATTEST:

*[Handwritten Signature]*  
SECRETARY

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

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

ATTEST:

*[Handwritten Signature]*

PORT ELIZABETH TERMINAL &  
WAREHOUSE CORP.

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

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

FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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

On the <sup>25<sup>th</sup></sup> day of <sup>Jan</sup> in the year <sup>2010</sup> ~~2009~~, before me, the undersigned, a Notary Public in and for said state, personally appeared **RICHARD M. LARRABEE** personally known **DIRECTOR, PORT COMMERCE DEPT.** to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

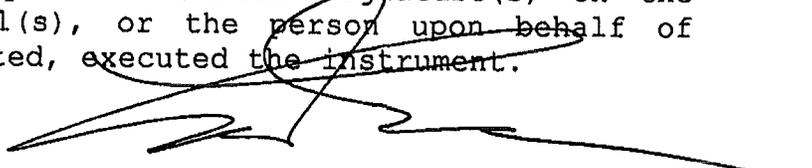
LUCY AMBROSINO  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01AM6101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2011

  
(notarial seal and stamp)

FOR PORT ELIZABETH TERMINAL & WAREHOUSE CORP.

STATE OF <sup>N.J.</sup> )  
 ) ss.  
COUNTY OF <sup>Essex</sup> )

On the <sup>9</sup> day of <sup>December</sup> in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared **PATRICK J. WYUNE** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
(notarial seal and stamp)

**LOUIS E. QUIMI**  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 11/19/2012

**SCHEDULE A**

See Attached

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

**Part I. Affirmative Action Guidelines - Equal Employment Opportunity**

I. As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule A and in Section 20 (o) of Port Authority Agreement No.LPN-297 (herein called the "Lease") with Port Elizabeth Terminal & Warehouse Corp. (herein and in the Lease called the "Lessee"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

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

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

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

(1)	Minority participation	
	Minority, except laborers	30%
	Minority, laborers	40%
(2)	Female participation	
	Female, except laborers	6.9%
	Female, laborers	6.9%

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

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

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

(c) As used in these specifications:

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

(2) "Minority" includes:

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

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

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

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

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

(e) The Contractor shall implement the specific affirmative action standards provided in subparagraphs (1) through (16) of Paragraph (h) hereof. The goals set

forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the premises. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

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

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

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

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

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

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

(3) Maintain a current file of the names, addresses and telephone number of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by union or, if referred,

not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

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

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

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

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

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for

apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

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

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

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

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

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

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

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

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) hereof provided that: the Contractor actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on

behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

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

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

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

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

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

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

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

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

**PART II. MINORITY BUSINESS ENTERPRISES/WOMEN-OWNED BUSINESS ENTERPRISES**

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself and shall require the general contractor or other construction supervisor and each of the Lessee's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the construction work pursuant to the provisions of this Schedule A. 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 A. "Meaningful participation" shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and Women-owned Business Enterprises, of which at least twelve percent (12%) are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

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

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

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

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

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

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

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

Certification of MBEs and WBEs hereunder shall be made by the Office of Business and Job Opportunity of the Port Authority. If the Contractor wishes to utilize a firm not already certified by the Port Authority, it shall submit to the Port Authority a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the Port Authority. All such requests shall be in writing addressed to the Office of Business and Job Opportunity, the Port Authority of New York and New Jersey, One World Trade Center, 63 East, New York, New York 10048 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing the Director in charge of the Office of Business and Job Opportunity of the Port Authority. The determination of the Port Authority shall be final and binding.

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

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

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

For the Port Authority

*amc*  


Initialed:

For the Lessee



**EXHIBIT A**

See Attached

**EXHIBIT B**

See Attached

**Engineering Department  
Environmental Field Operations  
Facility Asbestos Site-Specific Survey**

Charge Code: \_\_\_\_\_  
 Facility: PORT NEWARK MARINE TERMINAL  
 Building: 194  
 Area Description: WAREHOUSE

Contract No.: N/A  
 Floor: 1

Length 540.00 Width 142.00 Height 45.00

<u>Form of PACM</u>		<u>Ceiling Type</u>		<u>Location</u>	
<input checked="" type="checkbox"/> None		<input checked="" type="checkbox"/> Metal Decking		<input checked="" type="checkbox"/> Structural Beams	<input type="checkbox"/> Exposed
<input type="checkbox"/> Sprayed-On		<input type="checkbox"/> Concrete Slab		<input type="checkbox"/> Metal Decking	<input type="checkbox"/> In Plenum
<input type="checkbox"/> Troweled-On		<input type="checkbox"/> Wood		<input checked="" type="checkbox"/> Columns	<input type="checkbox"/> In Return Air Plenum
<input type="checkbox"/> Wet Plaster		<input type="checkbox"/> Acoustical Tiles		<input type="checkbox"/> Thermal System	<input type="checkbox"/> In the HVAC Air Stream
<input type="checkbox"/> Air Cell		<input type="checkbox"/> Stucco/Plaster		<input type="checkbox"/> Insulation	
<input type="checkbox"/> Cementitious		<input type="checkbox"/> Wall Board		<input type="checkbox"/> Pipe Insulation	<input type="checkbox"/> Exposed
<input type="checkbox"/> Pads		<input checked="" type="checkbox"/> Other		<input type="checkbox"/> Duct	<input type="checkbox"/> In Plenum
<input type="checkbox"/> Molded Sections		CORRUGATED		<input type="checkbox"/> Pipe Fittings	<input type="checkbox"/> In Return Air Plenum
<input type="checkbox"/> Tile				<input type="checkbox"/> Shaft	<input type="checkbox"/> Other
<input type="checkbox"/> Mastic		Ceiling Shape		<input type="checkbox"/> Ceiling	
<input type="checkbox"/> Transite		PEARED		<input type="checkbox"/> Floor Tile	
<input type="checkbox"/> Cloth Wrap				<input type="checkbox"/> Roof	
<input type="checkbox"/> Felt Paper					
<input type="checkbox"/> Other					

**Condition of PACM**

<u>On Metal Decking, Columns, Beams, and/or Slab</u>	<u>On Thermal System Insulation</u>
<input checked="" type="checkbox"/> Intact	<input checked="" type="checkbox"/> Intact
<input type="checkbox"/> Encapsulated	<input type="checkbox"/> Encapsulated
<input type="checkbox"/> Enclosed	<input type="checkbox"/> Fallout
<input checked="" type="checkbox"/> Hanging	<input checked="" type="checkbox"/> Cracked
<input type="checkbox"/> Shaved Areas	<input type="checkbox"/> Crumbling
<input type="checkbox"/> Water Damage	<input type="checkbox"/> Shaved Areas
<input type="checkbox"/> Delamination	<input type="checkbox"/> Hanging
<input type="checkbox"/> Fallout	<input type="checkbox"/> Water Damage
<input type="checkbox"/> Overspray	<input type="checkbox"/> Other
<input type="checkbox"/> Other	

**AHERA Codes**

- 1. Damaged or Significantly Damaged Thermal System Insulation ACM.
- 2. Damaged Friable Surfacing ACM.
- 3. Significantly Damaged Friable Surfacing ACM.
- 4. Damaged or Significantly Damaged Friable Miscellaneous ACM.
- 5. ACBM With Potential For Damage.
- 6. ACBM With Potential For Significant Damage.
- 7. Any Remaining Friable ACBM or Friable Suspected ACBM

**Special Sampling Equipment:**

Sampling Numbers: PN-0100 THROUGH PN-0109; PN-0321 THROUGH  
 Total Pipe Insulation: N/A L. Ft  
 Total Area of Steel Fireproofing: N/A Sq. Ft  
 Total Area of Metal Deck Fireproofing: N/A Sq. Ft  
 Thermal System Insulation: N/A Sq. Ft  
 Misc. Totals: N/A

**PA Classifications**

- Immediate Response
- Priority
- O & M
- Control Condition
- Area Abated
- No ACM Found in Samples

**Comments:** EXPOSED SUPPORT BEAMS AND ALL HORIZONTAL CEILING BEAMS AND HEAT TRANSFER PIPES. 1764 SQUARE FEET SPRAYED-ON / 320 FEET LONG - 18" O.D. PIPE INSULATION + 8 - 16" O.D. PIPE FITTINGS.

Port Authority's Inspector(s): M. JAMES, C. FRIZZELL

**PA 3742  
5-98R**



## THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #.:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: CEILING

Building: 194

Area Description: METAL WALL

Sample No.	Sample Description		Result
PN-0100	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH WALL-SECTION D).	L-1	14% AMOSITE
PN-0102	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH WALL-SECTION D).	L-1	12% AMOSITE
PN-0103	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH-WALL-SECTION D).	L-1	14% AMOSITE
PN-0104	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL - SECTION D).	L-1	14% AMOSITE
PN-0105	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL-SECTION D).	L-1	14% AMOSITE
PN-0106	FLUFFY SPRAYED ON INSULATION MATERIAL FROM METAL CEILING FALLOUT (SECTION D).	L-1	16% AMOSITE
PN-0107	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL-SECTION D).	L-1	14% AMOSITE
PN-0108	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL- SECTION D).	L-1	12% AMOSITE
PN-0109	FLUFFY SPRAYED ON INSULATION MATERIAL SUPPORT BEAM (SECTION D).	L-1	14% AMOSITE
PN-0321	FLUFFY SPRAYED ON INSULATION MATERIAL FROM METAL CEILING FALLOUT (SECTION D).	L-1	50% AMOSITE
PN-0322	FLUFFY SPRAYED ON INSULATION MATERIAL FROM METAL CEILING FALL-OUT (SECTION D).	L-1	20% AMOSITE
PN-0323	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL-SECTION D).	L-1	60% AMOSITE

Result NAD indicates no asbestos detected

Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code:

Job #:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: CEILING

Building: 194

Area Description: METAL WALL

Sample No.	Sample Description		Result
PN-1191	FLUFFY SPRAYED ON INSULATION MATERIAL ON SUPPORT BEAM (NORTH WALL SECTION B),	L-1	70% AMOSITE
PN-1192	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (EAST WALL SECTION D ).	L-1	10% CHRYSOTILE 80% AMOSITE
PN-1193	FLUFFY SPRAYED ON INSULATION MATERIAL ON SUPPORT BEAM (NORTH WALL SECTION B).	L-1	75% AMOSITE
PN-1251	AIR CELL INSULATION MATERIAL ON HEAT TRANSFER PIPE (MEN'S ROOM-SECTION A ).	L-1	5% CHRYSOTILE
PN-1252	CEMENTITIOUS INSULATION MATERIAL ON VALVE (MEN'S ROOM-SECTION A).	L-1	NAD
PN-1253	CEMENTITIOUS INSULATION MATERIAL ON PIPE ELBOW (LADIES' ROOM-SECTION A).	L-1	10% CHRYSOTILE
PN-1254	AIR CELL INSULATION MATERIAL ON HEAT TRANSFER PIPE (LADIES' ROOM-SECTION C).	L-1	5% CHRYSOTILE
PN-1255	FLUFFY INSULATION MATERIAL ON PIPE ELBOW (LADIES' ROOM-SECTION C).	L-1	10% CHRYSOTILE

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NY & NJ

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #:

Contract No.:

Facility: **PORT NEWARK MARINE TERMINAL**

Floor: **GROUND**

Building: **194**

Area Description: **OUTSIDE OF THE BUILDING**

Sample No.	Sample Description		Result
PN-2449	TRANSITE DRAIN PIPE LOCATED ON THE OUTSIDE OF THE BUILDING AT THE WEST WALL BETWEEN DOORS # 21 AND 22.	L-1	NO LAB RESULTS FOR
PN-2450	TRANSITE DRAIN PIPE LOCATED ON THE OUTSIDE OF THE BUILDING AT THE WEST WALL BETWEEN DOORS # 21 AND 22.	L-1	NO LAB RESULTS FOR

Result NAD indicates no asbestos detected

## THE PORT AUTHORITY OF NEW YORK

Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code:

Job #.:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: GROUND

Building: 194

Area Description: TRAILER.

Sample No.	Sample Description	Result
PN-2468	VINYL FLOOR TILE - N.E. (KITCHEN AREA).	L-1 NO LAB RESULTS FOR
PN-2469	CEILING TILE (FIBERBOARD) CENTER AREA OF TRAILER APPROXIMATELY 3 FEET FROM WEST WALL.	L-1 NO LAB RESULTS FOR
PN-2470	MINERAL WOOL - EAST WALL (CENTER OF BUILDING) CRAWL SPACE.	L-1 NO LAB RESULTS FOR
PN-2471	FIBER BOARD - EAST WALL (CENTER OF BUILDING) CRAWL SPACE.	L-1 NO LAB RESULTS FOR

Result NAD indicates no asbestos detected

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:  
Facility: **PORT NEWARK MARINE TERMINAL**  
Building: 194

Job #: N/A

Contract No.: N/A  
Floor: 1

Area Description: **WAREHOUSE**

Sample No.	Sample Description		Result
PN-0100	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH WALL-SECTION D).	L-1	14% AMOSITE
PN-0101	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH WALL-SECTION D).	L-1	12% AMOSITE
	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH WALL-SECTION D).	L-1	12% AMOSITE
PN-0102	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH WALL-SECTION D).	L-1	12% AMOSITE
PN-0103	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (SOUTH-WALL-SECTION D).	L-1	14% AMOSITE
PN-0104	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL - SECTION D).	L-1	14% AMOSITE
PN-0105	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL-SECTION D).	L-1	14% AMOSITE
PN-0108	FLUFFY SPRAYED ON INSULATION MATERIAL FROM METAL CEILING FALLOUT (SECTION D).	L-1	16% AMOSITE
PN-0107	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL-SECTION D).	L-1	14% AMOSITE
PN-0108	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL- SECTION D).	L-1	12% AMOSITE
PN-0109	FLUFFY SPRAYED ON INSULATION MATERIAL SUPPORT BEAM (SECTION D).	L-1	14% AMOSITE
PN-0321	FLUFFY SPRAYED ON INSULATION MATERIAL FROM METAL CEILING FALLOUT (SECTION D).	L-1	50% AMOSITE

Result NAD indicates no asbestos detected

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:  
Facility: PORT NEWARK MARINE TERMINAL  
Building: 194

Job #: N/A

Contract No.: N/A  
Floor: 1

Area Description: WAREHOUSE

Sample No.	Sample Description		Result
PN-0322	FLUFFY SPRAYED ON INSULATION MATERIAL FROM METAL CEILING FALL-OUT (SECTION D).	L-1	20% AMOSITE
PN-0323	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (WEST WALL-SECTION D).	L-1	60% AMOSITE
PN-1191	FLUFFY SPRAYED ON INSULATION MATERIAL ON SUPPORT BEAM (NORTH WALL SECTION B).	L-1	70% AMOSITE
PN-1192	FLUFFY SPRAYED ON INSULATION MATERIAL ON METAL WALL (EAST WALL SECTION D).	L-1	10% CHRYSOTILE 60% AMOSITE
PN-1193	FLUFFY SPRAYED ON INSULATION MATERIAL ON SUPPORT BEAM (NORTH WALL SECTION B).	L-1	75% AMOSITE

Result NAD Indicates no asbestos detected

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: ROOF

Building: 194

Area Description: ENTRANCE DOOR

Sample No.	Sample Description	Result
PN-2472	ROOFING MATERIAL ON ROOF ABOVE ENTRANCE DOOR OF BUILDING 114.	L-1 NO LAB RESULTS FOR

Result NAD indicates no asbestos detected

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #.:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: 1

Building: 199

Area Description: SECTION "A" &amp; "C"

Sample No.	Sample Description		Result
PN-1120	CEMENTITIOUS INSULATION MATERIAL FROM ELBOW OF HEAT TRANSFER PIPE ON WATER HEATER (MEN'S ROOM).	L-1	NAD
PN-1121	CEMENTITIOUS INSULATION MATERIAL ON VALVE (MEN'S ROOM).	L-1	5% CHRYSOTILE
PN-1122	CEMENTITIOUS INSULATION MATERIAL ON ELBOW OF HEAT TRANSFER PIPE (MEN'S ROOM).	L-1	5% CHRYSOTILE
PN-15178	CEMENTITIOUS SHEETROCK SAMPLE TAKEN FROM A WALL IN NORTH MENS ROOM OF SECTION A	L-1	NAD
PN-15179	CEMENTITIOUS SHEETROCK SAMPLE TAKEN FROM A WALL IN NORTH OFFICE OF SECTION A	L-1	NAD
PN-15180	LINOLEUM SAMPLE TAKEN FROM A FLOOR IN NORTH OFFICE OF SECTION A	L-1	20% CHRYSOTILE
PN-15181	LINOLEUM SAMPLE TAKEN FROM A FLOOR IN NORTH OFFICES OF SECTION A	L-1	25% CHRYSOTILE
PN-15182	CEMENTITIOUS SHEETROCK SAMPLE TAKEN FROM A WALL IN SOUTH OFFICE OF SECTION A	L-1	NAD
PN-15183	CEMENTITIOUS SHEETROCK SAMPLE TAKEN FROM A WALL IN SOUTH MENS ROOM OF SECTION B	L-1	NAD
PN-15184	FIBROUS MATERIAL TAKEN FROM A PRECAST PANEL FROM CEILING IN SOUTH MEN'S ROOM IN SECTION B	L-1	NAD
PN-15185	CEMENTITIOUS SHEETROCK SAMPLE TAKEN FROM A WALL IN SOUTH MEN'S ROOM OF SECTION B	L-1	NAD

Result NAD indicates no asbestos detected



## THE PORT AUTHORITY OF NY &amp; NJ

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #.:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: GROUND

Building: 173

Area Description: LUNCH ROOM

Sample No.	Sample Description		Result
PN-0575	CEMENTITIOUS INSULATION MATERIAL ON VERTICAL PIPE (LUNCH ROOM WALL).	L-1	NAD
PN-0576	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE (LUNCH ROOM WALL).	L-1	10% CHRYSOTILE
PN-0577	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE (LUNCH ROOM WALL).	L-1	80% CHRYSOTILE
PN-0578	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE (WAREHOUSE).	L-1	NAD
PN-0579	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE (WAREHOUSE).	L-1	30% CHRYSOTILE
PN-0580	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE (WAREHOUSE).	L-1	NAD
PN-0581	PLASTER-LIKE INSULATION MATERIAL ON PIPE VALVE IN PUMP ROOM (WAREHOUSE).		
PN-0582	PLASTER-LIKE INSULATION MATERIAL ON PIPE VALVE IN PUMP ROOM (WAREHOUSE).	L-1	30% CHRYSOTILE
PN-0583	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE AT DOOR ENTRANCE (WAREHOUSE).	L-1	10% CHRYSOTILE
PN-0584	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE AT TANK #13 (TANK ROOM).	L-1	50% CHRYSOTILE
PN-0585	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE AT TANK #24 (TANK ROOM).	L-1	20% CHRYSOTILE
PN-0586	AIR CELL INSULATION MATERIAL ON VERTICAL PIPE AT TANK #2 (TANK ROOM).	L-1	NAD

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NEW YORK

Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code: CP05-951.566

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 201

Area Description: 201 - TRAILER

Sample No.	Sample Description		Result
PN-21105	12 X 12 INCH WHITE FLOOR TILE MATERIAL COLLECTED FROM THE FLOOR LOCATED NEAR THE WATER METER	L-1	NAD
PN-21106	12 X 12 INCH WHITE FLOOR TILE MATERIAL COLLECTED FROM THE FLOOR LOCATED NEAR THE WATER METER	L-1	NAD
PN-21107	12 X 12 INCH WHITE FLOOR TILE MATERIAL COLLECTED FROM THE FLOOR LOCATED NEAR THE TOILET	L-1	NAD

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NEW YORK  
**Engineering Department**  
**Environmental Field Operations**  
**Asbestos Sample Data Sheet**

Charge Code: **CP05-951.566**

Job #: **N/A**

Contract No.: **N/A**

Facility: **PORT NEWARK MARINE TERMINAL**

Floor: **001**

Building: **201**

Area Description: **201A - OUTSIDE MEN'S ROOM**

Sample No.	Sample Description		Result
PN-21123	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21124	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21125	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code: CP08-951.566

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 201

Area Description: 201B - OUTSIDE MEN'S ROOM

Sample No.	Sample Description		Result
PN-21126	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21127	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21128	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

## THE PORT AUTHORITY OF NY &amp; NJ

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #.:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: GROUND

Building: 201

Area Description: COLUMNS (VARIOUS SECTIONS)

Sample No.	Sample Description		Result
PN-0001	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	15% CHRYSOTILE
PN-0002	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	30% CHRYSOTILE
PN-0003	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	30% CHRYSOTILE
PN-0004	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	40% CHRYSOTILE
PN-0005	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	70% CHRYSOTILE
PN-0006	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION C).	L-1	60% CHRYSOTILE
PN-0007	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION C).	L-1	50% CHRYSOTILE
PN-0008	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION C).	L-1	50% CHRYSOTILE
PN-0009	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	50% CHRYSOTILE
PN-0010	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	30% CHRYSOTILE
PN-0025	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	30% CHRYSOTILE
PN-0026	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	30% CHRYSOTILE

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NY & NJ

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #.:

Contract No.:

Facility: **PORT NEWARK MARINE TERMINAL**

Floor: **GROUND**

Building: **201**

Area Description: **COLUMNS (VARIOUS SECTIONS)**

Sample No.	Sample Description		Result
PN-0027	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	20% CHRYSOTILE
PN-0028	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	20% CHRYSOTILE
PN-0029	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	20% CHRYSOTILE
PN-0030	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	40% CHRYSOTILE
PN-0031	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	30% CHRYSOTILE

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NY & NJ

Engineering Department  
 Environmental Field Operations  
 Asbestos Sample Data Sheet

Charge Code:  
 Facility: PORT NEWARK MARINE TERMINAL  
 Building: 201

Job #:

Contract No.:  
 Floor: GROUND

Area Description: SECTION A, B

Sample No.	Sample Description		Result
PN-2112	FLUFFY FALLOUT MATERIAL FROM THE FLOOR AT THE WEST SIDE OF SECTION "A".	L-1	NAD
PN-2113	FLUFFY FALLOUT MATERIAL FROM THE FLOOR AT THE WEST SIDE OF SECTION "A".	L-1	NAD
PN-2114	CEMENTITIOUS INSULATION MATERIAL FROM A 2" O.D. HEAT TRANSFER PIPE ELBOW LOCATED IN THE CHASEWAY OF SECTION "A" REST ROOM.	L-1	35% CHRYSOTILE
PN-2115	CEMENTITIOUS SHEET ROCK SAMPLE FROM THE WALL OF SECTION "B" REST ROOM.	L-1	NAD

Result NAD indicates no asbestos detected

Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code: CP05-951.566

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 202

Area Description: 202A - OUTSIDE MEN'S ROOM

Sample No.	Sample Description		Result
PN-21108	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21109	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21110	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NEW YORK

Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code: CP05-951.566

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 202

Area Description: 202B, OUTSIDE MEN'S ROOM

Sample No.	Sample Description		Result
PN-21111	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21112	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21113	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NEW YORK

Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code: CP05-951.566

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 202

Area Description: 202C, OUTSIDE MEN'S ROOM

Sample No.	Sample Description		Result
PN-21150	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21151	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21152	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

## THE PORT AUTHORITY OF NEW YORK

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code: CF05-951.586

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 202

Area Description: 202D - OUTSIDE MEN'S ROOM

Sample No.	Sample Description		Result
PN-21114	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21115	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21116	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code: CP05-951.565

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 202

Area Description: 202E, OUTSIDE MEN'S ROOM

Sample No.	Sample Description		Result
PN-21117	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21118	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21119	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NEW YORK

Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code: CP05-951.568

Job #: N/A

Contract No.: N/A

Facility: PORT NEWARK MARINE TERMINAL

Floor: 001

Building: 202

Area Description: 202F, OUTSIDE MEN'S ROOM

Sample No.	Sample Description		Result
PN-21120	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21121	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD
PN-21122	BULK SAMPLE COLLECTED FROM 1" COLD WATER PIPE ELBOW LOCATED OUTSIDE MEN'S ROOM, GREY CEMENT	L-1	NAD

Result NAD indicates no asbestos detected

## THE PORT AUTHORITY OF NEW YORK

**Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet**

Charge Code:

Job #.:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: GROUND

Building: 202

Area Description: VARIOUS SECTIONS

Sample No.	Sample Description		Result
PN-0011	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION E).	L-1	20% CHRYSOTILE
PN-0012	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION E).	L-1	30% CHRYSOTILE
PN-0013	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	50% CHRYSOTILE
PN-0014	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	50% CHRYSOTILE
PN-0015	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION D).	L-1	60% CHRYSOTILE
PN-0016	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION C).	L-1	60% CHRYSOTILE
PN-0017	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION C).	L-1	40% CHRYSOTILE
PN-0018	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION C).	L-1	40% CHRYSOTILE
PN-0019	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION C).	L-1	20% CHRYSOTILE
PN-0020	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	30% CHRYSOTILE
PN-0021	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	40% CHRYSOTILE
PN-0022	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	40% CHRYSOTILE

Result NAD indicates no asbestos detected

THE PORT AUTHORITY OF NY & NJ  
Engineering Department  
Environmental Field Operations  
Asbestos Sample Data Sheet

Charge Code:

Job #.:

Contract No.:

Facility: PORT NEWARK MARINE TERMINAL

Floor: GROUND

Building: 202

Area Description: VARIOUS SECTIONS

Sample No.	Sample Description		Result
PN-0023	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	40% CHRYSOTILE
PN-0024	FLUFFY SPRAYED ON INSULATION MATERIAL ON COLUMN (SECTION B).	L-1	30% CHRYSOTILE

Result NAD indicates no asbestos detected

**EXHIBIT C**

Acknowledgment of Presence of Asbestos Containing Materials

I, \_\_\_\_\_, a/an (circle one) agent, employee, contractor of Port Elizabeth Terminal & Warehouse Corp. (the "Lessee"), providing services at Port Newark, Building 173 Annex, Building 194, Building 199, Building 201, or Building 202 (collectively, the "Premises"), by my signature below acknowledge (i) that I understand that there are asbestos-containing materials ("ACMS") and/or presumed asbestos-containing materials ("PACMS") located on the Premises; and (ii) that the Lessee has advised me of the specific location of the ACMS and/or PACMS. I further acknowledge that (i) any work or services provided by me on the Premises will not disturb such ACMS and PACMS; and (ii) that I will perform all necessary actions required by the Occupational Safety and Health Administration ("OSHA") or any other federal, state or local law or regulation, including, without limitation, as necessary, wearing protective gear, providing and/or attending applicable asbestos awareness training, and following required safety precautions. .

By: \_\_\_\_\_  
Print Name:  
Print Title:  
Print Name of Company:

Dated: \_\_\_\_\_

: For Port Authority Use Only :  
: Permit Number: MNS-330 :

**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 (herein called the "Port Authority") hereby grants to the Permittee hereinafter named permission to use and occupy the following described space (herein referred to as the "Space") at Port Newark (hereinafter called the "Facility"), in accordance with the Terms and Conditions hereof and the endorsements annexed hereto; and said Permittee agrees to pay the fee or fees hereinafter specified and to perform all other obligations imposed upon it in the said Terms and Conditions and the endorsements.

1. **PERMITTEE:** PORT ELIZABETH TERMINAL & WAREHOUSE CORP., a New Jersey corporation
2. **PERMITTEE'S ADDRESS:** 201A Export Street  
Port Newark, New Jersey 07114
3. **PERMITTEE'S REPRESENTATIVE:** Patrick J. Wynne
4. **SPACE:** As set forth in Special Endorsement No. 1 hereof.
5. **PURPOSES:** As set forth in Special Endorsement No. 2 hereof.
6. **FEES:** As set forth in Special Endorsement No. 3 hereof.
7. **EFFECTIVE DATE:** September 1, 2011
8. **EXPIRATION DATE:** July 31, 2013, unless sooner revoked or terminated as herein provided.
9. **ENDORSEMENTS:** Standard Endorsements 11.1 and 19.4, Special Endorsements, Exhibit A and Insurance Schedule

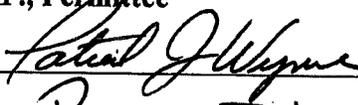
Dated: As of November 14, 2012

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

By   
Name **RICHARD M. LARRABEE**  
(Title) **DIRECTOR, PORT COMMERCE DEPT** (Please Print Clearly)

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

**PORT ELIZABETH TERMINAL & WAREHOUSE  
CORP., Permittee**

By   
Name **PATRICK J. WYNN**  
(Please Print Clearly)  
(Title) **President**

RR

**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  
AND NEW JERSEY  
P.O. BOX 95000-1517  
PHILADELPHIA, PENNSYLVANIA 19195-0001

or made via the following wire transfer instructions:

Credit Bank:	TD Bank
	6000 Atrium Way, Mount Laurel NJ 08054
Bank ABA Number:	031201360
Beneficiary Account/ID #:	Ex. 1/4
Beneficiary Name:	The Port Authority of NY & NJ

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) *Audit.*

i) 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.

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 (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.*

i) *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).

ii) *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.

iii) *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.

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

v) *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.

vi) *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.

vii) *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.*

i) *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.

ii) *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.

iii) *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.

iv) *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.

v) *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.

vi) *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) Possible Labor Disturbance.

i) 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.

ii) 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.

\* \* \* \* \*

The Port Authority, by its officers, employees, representatives, contractors, licensees, and their employees, shall have the right for the benefit of the Port Authority, or the Permittee and/or for the benefit of others than the Permittee to maintain existing and future heating, water, gas, electricity, sewerage, drainage, fire protection sprinkler, ventilating, refrigerating, fuel and communication systems and other such service systems, including all tubes, pipes, lines, mains, wires, conduits and equipment on or about the Space and to enter upon the Space at all reasonable times and to make such repairs, replacements and 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, on, in or under the Space new tubes, pipes, lines, mains, wires, conduits and equipment, provided however, that the same shall be done so as to interfere as little as reasonably possible with the Permittee's operations.

Nothing contained in this Endorsement shall or shall be construed to impose upon the Port Authority any obligations so to maintain or to make repairs, replacements, alterations or additions or any liability for failure to do so.

**STANDARD ENDORSEMENT NO. 11.1**  
**MAINTENANCE OF SERVICE FACILITIES**  
All Facilities  
7/21/49

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) **Space.** 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 open area shown in diagonal cross hatching, as shown on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A", together with the fixtures, improvements and other property of the Port Authority located or to be located therein or thereon (hereinafter the "**Space**").

2) **Purpose.** The Permittee, in accordance with all the provisions and conditions of this Permit, shall use the Space for the ancillary storage of vehicles (including trucks) and containers (including chassis) for the Permittee's operations at the Facility, and for no other purpose or purposes whatsoever.

3) **Fees.** (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 Thirty-Two Thousand Six Hundred Seventy Dollars and No Cents (\$32,670.00) per month. The Permittee shall start paying the Basic Fee as of Effective Date.

(b) Effective on each anniversary of the Effective Date, the Basic Fee set forth in paragraph 3(a) of this Special Endorsement shall by 100% the increase of the percentage increase in the CPI, compounded annually, at a minimum increase of 2%, and a maximum increase of 4%.

(c) 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.

(d) As used in this Special Endorsement, the following terms shall have the respective meanings set forth below:

(i) "Adjustment Period" shall mean, as the context requires, the period commencing on the Effective Date and expiring on the day preceding the second anniversary of the Effective Date (the "First Adjustment Period") and each succeeding twelve-month period beginning on each subsequent anniversary of the Effective Date to and including the Expiration Date, provided, however, that in the event the Expiration Date is on other than the last day of an Adjustment Period, then, in such event, the last Adjustment Period shall expire on the Expiration Date.

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

(iii) "CPI Percentage Increase" shall mean the annual percentage increase, if any, in the CPI, yielded by dividing (x) the amount of the increase, if any, in the CPI

for one Reference Month as compared to the CPI for the immediately preceding Reference Month, by (y) the CPI for the earlier of the two Reference Months.

(iv) "Reference Month" shall mean the third calendar month prior to the month in which the Effective Date occurs (the first Reference Month) and each succeeding such calendar month occurring thereafter. For example, if the Effective Date were December 1, 2007, then September 2007 would be the first Reference Month and September of each succeeding year would be a Reference Month.

(e) The Port Authority shall ascertain the CPI for the first Reference Month and for each succeeding Reference Month after the same has been published, and the Port Authority shall also determine the amount of each CPI Percentage Increase.

(f) In the event the CPI is not available for any Reference Month, the Permittee shall continue to pay the Basic Fee established under this Special Endorsement at the rate then in effect, subject to retroactive adjustment based upon the adjustment to the Basic Fee for such Adjustment Period when the CPI for such Reference Month becomes available. The Permittee hereby agrees to pay to the Port Authority all monthly fees established under this Special Endorsement due and owing to the Port Authority on the basis of such retroactive adjustments on demand.

(g) In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the CPI, such other appropriate index or indexes shall be substituted as may be agreed by the parties hereto as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said indexes used in the latest adjustment. In the event of the failure of the parties to so agree, the Port Authority may select and use such index or indexes as it deems appropriate.

(h) In no event shall any adjustment in the Basic Fee established under this Special Endorsement for any change in the CPI result in a decrease in said monthly fee.

(i) 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.

4) The Permittee specifically acknowledges and agrees that it shall be responsible for snow removal at the Space, to be performed pursuant to the Rules and Regulations of the Facility and the directions of the Manager of the Facility.

5) **Security Deposit.**

is (a) The Permittee hereby certifies that its Federal Tax Identification Number for the purposes of this Special Endorsement.

(b) The required Security Deposit is Six Hundred Fifty-Five Thousand Dollars and No Cents (\$655,000.00), which the Port Authority holds under existing agreement dated as of November 1, 2009 and identified by Port Authority Agreement No. PCX-010 (the "Security Agreement"). 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 security deposit or, if applicable, any failure of any banking institution issuing a letter of credit to make one or more payments as provided in the Security Agreement, shall constitute a material breach of this Permit 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 Permit for cause.

6) **Use and Maintenance of the Space.** (a) The Permittee shall not store or permit others to store in the Parking Space any flammable liquid or substance. The Permittee shall daily wipe up all oil, gasoline, grease, lubricants 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 Parking Space or of the means of ingress and egress to and from the Parking Space, which may leak or be spilled or placed thereon. The Permittee shall not perform or permit the performance of mechanical, electrical or structural repairs of vehicles in the Parking Space, except for minor emergency repairs, and shall not itself or permit another to clean, wash, fuel, lubricate or paint any vehicle or vehicles, and shall not store or permit another to store in the Parking Space any automotive fuel or lubricants, oil, greases or other chemicals or supplies, except automobile fuel, oil and other liquids contained in the functional reservoirs of the vehicles parked thereon.

(b) In addition to the obligations set forth in Section 13 of the Terms and Conditions, the Permittee shall be responsible for all repaving necessary for the Space.

7) **Protection of the Space.** The Permittee hereby acknowledges that the Port Authority shall have no responsibility to keep the Space guarded, attended or patrolled at any time. The Port Authority shall not be obligated to police the use of the Space, nor shall the Port Authority have any responsibility to ensure that others do not use or occupy the Space, or to provide any other service whatsoever in connection therewith.

8) **Tenant Construction and Alteration Process.** The Port Authority shall be entitled to impose and the Permittee shall pay a fee ("Review Fee") as compensation for the Port Authority's review and oversight in connection with any alterations, additions, improvements, repairs or any other construction work contemplated under Section 12 of the Terms and Conditions. The Review Fee shall be an amount equal to the greater of (a) one percent 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 construction and alteration process. Except for the Permittee's personal property, in the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Permittee shall have no right to remove the same either during the letting or at the expiration

thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, shall give notice to the Permittee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Permittee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Permittee to comply with such notice, the Port Authority may effect the removal or change, and the Permittee hereby agrees to pay the cost thereof to the Port Authority upon demand.

9) **Sustainable Design.** The Permittee agrees that in the performance of any 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.

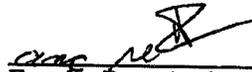
10) **Governing Law.** This Permit and any claim, dispute or controversy arising out of, under or related to this Permit, the relationship of the parties hereunder, and/or the interpretation and enforcement of the rights and obligations of the parties hereunder shall be governed by, interpreted and construed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

11) **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.

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

Initialed:

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

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**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

## 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:	\$3,000,000.00
Commercial Automotive Liability Insurance Combined single limit per occurrence for death, Bodily injury and property damage liability:	\$3,000,000.00
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

The above General Liability Insurance shall include coverage within 50 feet of Railroad property. 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.

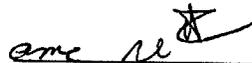
(b) Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Permittee thereunder with respect to any claim 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.

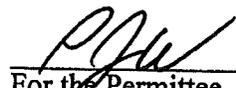
(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement that the insurer "shall not, without 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

: For Port Authority Use Only :  
: Permit Number: MNS-339 :

**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 (herein called the "Port Authority") hereby grants to the Permittee hereinafter named permission to use and occupy the following described space (herein referred to as the "Space") at Port Newark (hereinafter called the "Facility"), in accordance with the Terms and Conditions hereof and the endorsements annexed hereto; and said Permittee agrees to pay the fee or fees hereinafter specified and to perform all other obligations imposed upon it in the said Terms and Conditions and the endorsements.

1. **PERMITTEE:** PORT ELIZABETH TERMINAL & WAREHOUSE CORP., a New Jersey corporation
2. **PERMITTEE'S ADDRESS:** 201A Export Street  
Port Newark, New Jersey 07114
3. **PERMITTEE'S REPRESENTATIVE:** Patrick J. Wynne
4. **SPACE:** As set forth in Special Endorsement No. 1 hereof.
5. **PURPOSES:** As set forth in Special Endorsement No. 2 hereof.
6. **FEES:** As set forth in Special Endorsement No. 3 hereof.
7. **EFFECTIVE DATE:** July 1, ~~2009~~ 2011 *per amc*
8. **EXPIRATION DATE:** October 31, 2016, unless sooner revoked or terminated as herein provided.
9. **ENDORSEMENTS:** Standard Endorsements 11.1 and 19.4, Special Endorsements, Exhibit A and Insurance Schedule

Dated: As of June 19, 2012

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

By *[Signature]*  
Name RICHARD M. LARRABEE  
(Title) DIRECTOR, PORT COMMERCE DEPT. (Please Print Clearly)

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

**PORT ELIZABETH TERMINAL & WAREHOUSE  
CORP., Permittee**

By *[Signature]*  
Name PATRICK J. WYNN  
(Please Print Clearly)  
(Title) President

RR

**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  
AND NEW JERSEY  
P.O. BOX 95000-1517  
PHILADELPHIA, PENNSYLVANIA 19195-0001

or made via the following wire transfer instructions:

Credit Bank:	TD Bank
	6000 Atrium Way, Mount Laurel NJ 08054
Bank ABA Number:	031201360
Beneficiary Account/ID #:	Exemption (1/4)
Beneficiary Name:	The Port Authority of NY & NJ

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) ***Audit.***

i) 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.

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 (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.***

i) ***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).

ii) *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.

iii) *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.

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

v) *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.

vi) *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.

vii) *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.*

i) *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.

ii) *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.

iii) *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.

iv) *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.

v) *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.

vi) *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) Possible Labor Disturbance.

i) 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.

ii) 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.

\* \* \* \* \*

The Port Authority, by its officers, employees, representatives, contractors, licensees, and their employees, shall have the right for the benefit of the Port Authority, or the Permittee and/or for the benefit of others than the Permittee to maintain existing and future heating, water, gas, electricity, sewerage, drainage, fire protection sprinkler, ventilating, refrigerating, fuel and communication systems and other such service systems, including all tubes, pipes, lines, mains, wires, conduits and equipment on or about the Space and to enter upon the Space at all reasonable times and to make such repairs, replacements and 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, on, in or under the Space new tubes, pipes, lines, mains, wires, conduits and equipment, provided however, that the same shall be done so as to interfere as little as reasonably possible with the Permittee's operations.

Nothing contained in this Endorsement shall or shall be construed to impose upon the Port Authority any obligations so to maintain or to make repairs, replacements, alterations or additions or any liability for failure to do so.

**STANDARD ENDORSEMENT NO. 11.1**  
**MAINTENANCE OF SERVICE FACILITIES**  
All Facilities  
7/21/49

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) **Space.** (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, exclusively, the open area shown in stipple within broken outline and the area labeled "18 x 22" as shown on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A", together with the fixtures, improvements and other property of the Port Authority located or to be located therein or thereon (hereinafter the "Space").

(b) **The Nonexclusive Area.** The Permittee shall have the nonexclusive right to place Railcars on the section of tracks lying between (x) PN Bldg. 201, as shown in Exhibit A, and (y) the portion of the Space that consist of the open area shown in stipple within broken outline (such section of tracks, the "Nonexclusive Area").

2) **Purposes.** (a) The Permittee, in accordance with all the provisions and conditions of this Permit, shall use the Space for the unloading of rail hopper cars ("Railcars") into ocean-going cargo containers, and for no other purpose or purposes whatsoever.

(b) The Permittee's operations shall be conducted daily, Monday through Saturday, between the hours of 6:00 A.M. and 7:00 P.M.

3) **Fees.** (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 Four Thousand Nine Hundred Ninety-Nine Dollars and Fifty-Three Cents (\$4,999.53) per month. The Permittee shall start paying the Basic Fee as of Effective Date.

(b) Effective on each anniversary of the Effective Date, the Basic Fee set forth in paragraph 3(a) of this Special Endorsement shall by 100% the increase of the percentage increase in the CPI, compounded annually, at a minimum increase of 2%, and a maximum increase of 4%.

(c) 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.

(d) As used in this Special Endorsement, the following terms shall have the respective meanings set forth below:

(i) "Adjustment Period" shall mean, as the context requires, the period commencing on the Effective Date and expiring on the day preceding the second anniversary of the Effective Date (the "First Adjustment Period") and each succeeding twelve-month period beginning on each subsequent anniversary of the Effective Date to and including the Expiration Date, provided, however, that in the event the Expiration Date is on other than the last day of an Adjustment Period, then, in such event, the last Adjustment Period shall expire on the Expiration Date.

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

(iii) "CPI Percentage Increase" shall mean the annual percentage increase, if any, in the CPI, yielded by dividing (x) the amount of the increase, if any, in the CPI for one Reference Month as compared to the CPI for the immediately preceding Reference Month, by (y) the CPI for the earlier of the two Reference Months.

(iv) "Reference Month" shall mean the third calendar month prior to the month in which the Effective Date occurs (the first Reference Month) and each succeeding such calendar month occurring thereafter. For example, if the Effective Date were December 1, 2007, then September 2007 would be the first Reference Month and September of each succeeding year would be a Reference Month.

(e) The Port Authority shall ascertain the CPI for the first Reference Month and for each succeeding Reference Month after the same has been published, and the Port Authority shall also determine the amount of each CPI Percentage Increase.

(f) In the event the CPI is not available for any Reference Month, the Permittee shall continue to pay the Basic Fee established under this Special Endorsement at the rate then in effect, subject to retroactive adjustment based upon the adjustment to the Basic Fee for such Adjustment Period when the CPI for such Reference Month becomes available. The Permittee hereby agrees to pay to the Port Authority all monthly fees established under this Special Endorsement due and owing to the Port Authority on the basis of such retroactive adjustments on demand.

(g) In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the CPI, such other appropriate index or indexes shall be substituted as may be agreed by the parties hereto as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said indexes used in the latest adjustment. In the event of the failure of the parties to so agree, the Port Authority may select and use such index or indexes as it deems appropriate.

(h) In no event shall any adjustment in the Basic Fee established under this Special Endorsement for any change in the CPI result in a decrease in said monthly fee.

(i) 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.

4) The Permittee acknowledges and agrees that there shall be payable by the Permittee to the Port Authority, with respect to Railcars present at any time outside of the Space, the Railroad Car Unauthorized Storage Fee (Subrule 34-132) left out of the leasehold and past the period of the grain operations 6:00 a.m. to 7:00 p.m. as set forth in the Port Authority's tariff, as incorporated in FMC Schedule No. PA10, or any successor tariff, as the same may be amended from time to time. The Railroad Car Unauthorized Storage Fee payable with respect to the previous calendar month (or portion thereof) shall be paid on the first day of each calendar month.

5) The Permittee's operations shall in no way interfere with the movements of rail cars for other tenants at the Facility. The Permittee is responsible for coordinating rail movements and to ensure that grain cars are not impeding the operations of others.

6) The Permittee specifically acknowledges and agrees that it shall be responsible for snow removal at the Space, to be performed pursuant to the Rules and Regulations of the Facility and the directions of the Manager of the Facility.

7) **Security Deposit.**

(a) The Permittee hereby certifies that its Federal Tax Identification Number is Ex. 1/4 for the purposes of this Special Endorsement.

(b) The required Security Deposit is Six Hundred Fifty-Five Thousand Dollars and No Cents (\$655,000.00), which the Port Authority holds under existing agreement dated as of November 1, 2009 and identified by Port Authority Agreement No. PCX-010 (the "Security Agreement"). 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 security deposit or, if applicable, any failure of any banking institution issuing a letter of credit to make one or more payments as provided in the Security Agreement, shall constitute a material breach of this Permit 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 Permit for cause.

8) **Use and Maintenance of the Space.** The Permittee shall not store or permit others to store in the Parking Space any flammable liquid or substance. The Permittee shall daily wipe up all oil, gasoline, grease, lubricants 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 Parking Space or of the means of ingress and egress to and from the Parking Space, which may leak or be spilled or placed thereon. The Permittee shall not perform or permit the performance of mechanical, electrical or structural repairs of vehicles in the Parking Space, except for minor emergency repairs, and shall not itself or permit another to clean, wash, fuel, lubricate or paint any vehicle or vehicles, and shall not store or permit another to store in the Parking Space any automotive fuel or lubricants, oil, greases or other chemicals or supplies, except automobile fuel, oil and other liquids contained in the functional reservoirs of the vehicles parked thereon.

9) **Protection of the Space.** The Permittee hereby acknowledges that the Port Authority shall have no responsibility to keep the Space guarded, attended or patrolled at any time. The Port Authority shall not be obligated to police the use of the Space, nor shall the Port Authority have any responsibility to ensure that others do not use or occupy the Space, or to provide any other service whatsoever in connection therewith.

10) **Tenant Construction and Alteration Process.** The Port Authority shall be entitled to impose and the Permittee shall pay a fee ("Review Fee") as compensation for the Port Authority's review and oversight in connection with any alterations, additions, improvements, repairs or any other construction work contemplated under Section 12 of the Terms and Conditions. The Review Fee shall be an amount equal to the greater of (a) one percent 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 construction and alteration process. Except for the Permittee's personal property, in the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Permittee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, shall give notice to the Permittee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Permittee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Permittee to comply with such notice, the Port Authority may effect the removal or change, and the Permittee hereby agrees to pay the cost thereof to the Port Authority upon demand.

10) **Sustainable Design.** The Permittee agrees that in the performance of any 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.

11) The Port Authority and the Permittee were heretofore parties to Port Authority Space Permit MNS-325, made as of November 1, 2009, which has been replaced with this Permit. The Permittee shall remain liable for all obligations and liabilities which accrued under Permit No. MNS-325 through the expiration or termination date of Permit No. MNS-325 and all such obligations and liabilities which were expressly or impliedly stated or intended to survive the expiration or termination of said agreement shall so survive. The Space which is the subject of this Permit is apportion of the premises which was the subject of Permit MNS-325 and the Permittee has been in continuous occupancy of such Space. At the expiration or termination of this Permit, the Permittee agrees that it shall be obligated to return the Space to the Port Authority in the same good order and repair in which such premises was delivered to it under Permit No. MNS-325 as such Permit was amended from time to time.

12) **Governing Law.** This Permit and any claim, dispute or controversy arising out of, under or related to this Permit, 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.

13) **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.

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

Initialed:

  
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For the Permittee

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**EXEMPTION (4)**

**DRAWINGS OF NON-PUBLIC AREAS**

## 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:	\$3,000,000.00
Commercial Automotive Liability Insurance Combined single limit per occurrence for death, Bodily injury and property damage liability:	\$3,000,000.00
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

The above General Liability Insurance shall include coverage within 50 feet of Railroad property. 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.

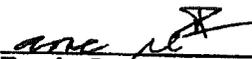
(b) Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Permittee thereunder with respect to any claim 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**