Torres Rojas, Genara

From: tworthington@mcgrathnorth.com
Sent: Monday, January 19, 2015 1:14 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree; Ng, Danny
Subject: Freedom of Information Online Request Form

Information:

First Name: Thomas
Last Name: Worthington
Company: McGrath North
Mailing Address 1: 1601 Dodge Street
Mailing Address 2: Suite 3700
City: Omaha
State: NE
Zip Code: 68102
Email Address: tworthington@mcgrathnorth.com
Phone: 4026339554
Required copies of the records: Yes

List of specific record(s):
A copy of the lease agreement between the Port Authority and Wild Flavors for the Elizabeth, NJ Marine Terminal located at 132 Corbin Street, Building 1200, Elizabeth, New Jersey 07201

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

February 6, 2015

Mr. Thomas Worthington
Worthington
1601 Dodge Street, Suite 3700
Omaha, NE 68102

Re: Freedom of Information Reference No. 15704

Dear Mr. Worthington:

This is a response to your January 19, 2015 request, which has been processed under the Port Authority's Freedom of Information Code, copy enclosed, for the lease agreement between the Port Authority and Wild Flavors for the Elizabeth, NJ Marine Terminal located at 132 Corbin Street, Building 1200, Elizabeth, New Jersey 07201.

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/15704-LPA.pdf. Paper copies of the available records are available upon request.

Pursuant to the Code, certain portions of the material responsive to your request are exempt from disclosure as, among other classifications, personal privacy.

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

4 World Trade Center, 18th Floor
150 Greenwich Street
New York, NY 10006
T: 212 435 3642 F: 212 435 7555

Lease No. EP-275

AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

CARGILL, INCORPORATED

Dated as of: September 1, 2011

{00683222.DOC}

CONFORMED COPY

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Lease No. EP-275

THIS AGREEMENT OF LEASE (this "**Agreement**" or "**Lease**"), made as of September 1, 2011, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called the "**Port Authority**"), a body corporate and politic created by Compact between the States of New 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 **CARGILL, INCORPORATED**, a Delaware corporation (hereinafter called the "**Lessee**") with an office and place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391-2399, whose representative is John Geisler, Corporate Vice President, 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. Background

(a) Effective as of March 20, 1985, the Port Authority and the Lessee entered into that certain Agreement of Lease EP-154 (as subsequently amended, "**Lease 154**)", for certain premises (the "**Lease 154 Premises**") located at Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, in the County of Union and the State of New Jersey (hereinafter called "**EPAMT**") and at Port Newark, in the City of Newark, County of Essex, State of New Jersey ("**Port Newark**" and, together with EPAMT, the "**Facility**").

(b) Pursuant to that certain Letter Agreement dated March 25, 2011, the Port Authority and the Lessee have agreed that, the Port Authority has begun constructing and installing a new "fly-over" bridge over Corbin Street at Port Newark (the "**Bridge Project**"). As a consequence of the Bridge Project, the parties have agreed to reconfigure the Lease 154 Premises and to terminate Lease 154, pursuant to the terms and conditions set forth in this Agreement.

(c) As set forth on "**Exhibit A**", as attached hereto and hereby made a part hereof, the Lessee will retain the following space from the existing Lease 154 Premises: paved and fenced improved open area upland of Berth 50 in EPAMT (the "**Open**

Area"), consisting of approximately 3.39 acres, which space shall include Building 1200, a cool-freezer liquid bulk terminal/warehouse with a footprint of approximately 23,345 square feet previously constructed by the Lessee (the "**Terminal**"), said premises being more particularly defined in Section 1A, subparagraph (a) below.

(d) In connection with the Bridge Project, in accordance with the terms and conditions set forth in Section 1A hereof, the parties anticipate that the Port Authority will temporarily terminate the Lessee's rights with respect to a portion of the northwest quadrant of the Lease 154 Premises, including the north side entrance gate ("**Area B**", as more specifically described in Section 1A(b)), and the Lessee will permanently surrender the Lessee's rights with respect to a portion of the Lease 154 Premises ("**Area A,**" as more specifically described in Section 1A(e)(i)), as more particularly set forth on **Exhibit A**, in accordance with Section 1A, subparagraphs (b)-(f) below.

Section 1A. Letting

(a) Base Premises. Subject to and in accordance with the terms and conditions of this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at EPAMT and at Port Newark the following: Three and Thirty Nine/Hundredths (3.39) acres as marked in bold, broken outline on **Exhibit A**, together with the buildings (including without limitation, the Terminal), 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 "**Base Premises**", to be and become a part of the Premises (as hereinafter defined in Section 1A(d)). The parties agree that the Base Premises constitute non-residential property.

(b) Area B. The Lessee hereby grants to the Port Authority, its employees, agents, representatives, contractors, subcontractors, and designees a temporary right of entry and exclusive occupancy and possession of the portion of the Base Premises shown in dark stipple and designated as "**Area B**" on **Exhibit A**, consisting of approximately 18,500 square feet of space, for use by the Port Authority in connection with the Bridge Project (which right of entry and exclusive occupancy and possession of Area B are hereinafter called the "**Temporary Surrender**"). The Temporary Surrender shall become effective as of 11:59 o'clock P.M. on the date set forth in written notice

given by the Port Authority to the Lessee as the date that Area B is required in connection with the performance of the Bridge Project (hereinafter called the "**Area B Surrender Date**"), and shall terminate at 11:59 o'clock P.M. on the date set forth in written notice given by the Port Authority to the Lessee as the date that Area B is no longer required by the Port Authority in connection with the performance of the Bridge Project (hereinafter called the "**Area B Exit Date**"), the said written notice to be furnished to the Lessee not less than ten (10) days prior to the Area B Surrender Date or the Area B Exit Date, as the case may be. The Lessee shall not be entitled to an abatement of the Basic Rental (as hereinafter defined) payable under this Lease in connection with the Temporary Surrender of Area B. Nothing contained in this Lease shall or shall be deemed to create any obligation on the part of the Port Authority to perform any or all of the Bridge Project.

(c) Area C. In addition to the Base Premises, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at EPAMT and at Port Newark, for the term of the Lease, the area shown in diagonal cross-hatching on **Exhibit A** and designated as "Area C," consisting of approximately 13,908 square feet of space, together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located thereon, the said land, buildings, structures, fixtures, improvements and other property of the Port Authority thereon ("**Area C**") to be and become a part of the Premises (as hereinafter defined) under this Lease for a term commencing as set forth in Section 2 of this Lease. The Port Authority and the Lessee hereby acknowledge that Area C constitutes non-residential real property.

(d) Area D. In addition to the Base Premises and Area C, the Port Authority hereby lets on a temporary basis to the Lessee and the Lessee hereby hires and takes from the Port Authority at EPAMT and at Port Newark, the area shown in hexagonal stipple on **Exhibit A** and designated as "Area D", consisting of approximately 32,360 square feet of space, together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located thereon, the said land, buildings, structures, fixtures, improvements and other property of the Port Authority thereon ("**Area D**") (when taken together, the Base Premises and Area C and, on a temporary basis, Area D, are known herein as the "**Premises**"). Area D shall become a part of the Premises, for a term commencing at 12:01 o'clock A.M. on the day

immediately following the Area B Surrender Date and terminating at 11:59 o'clock P.M. on the Area B Exit Date. The Lessee shall not be required to pay Basic Rental, Cargo Rental, escalation or usage fees of any type for Area D during the term of the letting thereof. The Port Authority and the Lessee hereby acknowledge that Area D constitutes non-residential real property.

(e) Permanent Surrender

(i) Effective as of 11:59 o'clock P.M. on the Area B Surrender Date, the Lessee has granted, bargained, sold, surrendered and yielded up and does by these presents grant, bargain, sell, surrender and yield up to the Port Authority, its successors and assigns, forever, that portion of the premises let to the Lessee shown in light stipple and designated as "Area A" on **Exhibit A**, and the term of years with respect thereto under the Lease as herein amended yet to come (which premises are hereinafter called the **"Permanent Surrendered Area"**) and has given, granted and surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by this Lease with respect to the Permanent Surrendered Area all to the intent and purpose that the said term under this Lease and the said rights, rights of renewal, licenses, privileges and options may be wholly merged, extinguished and determined on the Area B Surrender Date with the same force and effect as if the said term were in and by the provisions of this Lease originally fixed to expire on such date; to have and to hold the same unto the Port Authority, its successors and assigns forever.

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

(iii) All promises, covenants, agreements and obligations of the Lessee with respect to the Permanent Surrendered Area under this Lease or otherwise which under the

provisions thereof would have matured upon the date originally fixed in this Lease for the expiration of the term thereof, or upon the termination of this Lease prior to the said date, or within a stated period after expiration or termination, shall, notwithstanding such provisions, mature upon the Area B Surrender Date and shall survive the partial surrender provided for in this subparagraph.

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

(v) In consideration of the making of this Lease by the Port Authority, the Lessee hereby agrees to terminate its occupancy of the Permanent Surrendered Area and to deliver actual physical possession of the same to the Port Authority on or before the Area B Surrender Date in the condition required by the Lease as herein amended upon surrender. The Lessee further agrees that it will remove from the Permanent Surrendered Area prior to the Area B Surrender Date all equipment, removable fixtures and other personal property of the Lessee or for which the Lessee is responsible. With respect to any such property not so removed, the Port Authority may at its option as agent for the Lessee and at the risk and expense of the Lessee remove such property to a public warehouse or may retain the same in its own possession and in either event, after the expiration of twenty (20) days may sell or consent to the sale of the same at public auction; the proceeds of any such sale shall be applied first to the expenses of removal, sale and storage, and second to any sums owed by the Lessee to the Port Authority. Any balance remaining shall be paid to the Lessee. The Lessee shall pay to the Port Authority any excess of the total cost of removal, storage and sale over the proceeds of sale within ten

(10) days from its receipt of an invoice from the Port Authority.

(f) Air Space. 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. If any construction or installation is contemplated in accordance with this Agreement, the height thereof shall be determined solely by the Port Authority.

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

Section 2. Term; Lease Commencement Date

(a) The term of the letting of the Base Premises (other than Area C and Area D) under this Agreement (the "**Term**") shall commence at 12:01 o'clock A.M. as of September 1, 2011 (the "**Lease Commencement Date**") and shall expire if not sooner terminated, at 11:59 o'clock P.M on May 31, 2017 (the "**Lease Expiration Date**").

As described in Section 1A, the following are added to the Premises during the dates specified hereunder:

(b) The term of the letting of Area C under this Agreement shall commence at 12:01 o'clock A.M. on the day following the Area B Surrender Date and shall continue for the remainder of the Term of this Lease, expiring at 11:59 o'clock P.M. on May 31, 2017.

(c) The term of the temporary letting of Area D under this Agreement shall commence at 12:01 o'clock A.M. on the day following the Area B Surrender Date and shall expire at 11:59 o'clock P.M. on the Area B Exit Date.

(d) In connection with the Bridge Project and as described in Section 1A, the following will be released from the Premises during the dates specified herein:

(1) The Permanent Surrendered Area will be permanently released from the Premises as of 11:59 o'clock P.M. on the Area B Surrender Date.

(2) Area B will be temporarily released as of 11:59 o'clock P.M. on the Area B Surrender Date, but added back into the Premises for the remainder of the Term under this Lease as of 11:59 o'clock P.M. on the Area B Exit Date.

Section 3. Basic Rental

(a) Beginning on the Lease Commencement Date and continuing through February 28, 2012, the Lessee shall pay a basic rental to the Port Authority at the annual rate of One Hundred Fifteen Thousand Nine Hundred Two and 60/100 Dollars ($115,902.60) for the entire Premises, payable in advance on the first day of each calendar month in equal monthly installments of Nine Thousand Six Hundred Fifty Eight and 55/200 Dollars ($9,658.55), representing a rate of Zero and 79/100 Dollars ($0.79) per square foot for the entire Premises (the "**Initial Basic Rental**").

(b) Beginning on March 1, 2012 and continuing for the remainder of the Term under this Agreement, the Lessee shall pay a basic rental to the Port Authority as follows:

(1) At the annual rate of One Hundred Thirty Six Thousand Six Hundred Eighty and 50/100 Dollars ($136,680.50) for the Open Area, payable in advance monthly installments of Eleven Thousand Three Hundred Ninety and 04/100 Dollars ($11,390.04), representing a rate of One and 10/100 Dollars ($1.10) per square foot for the Open Area (the "**Modified Open Area Basic Rental**"); and

(2) At the annual rate of One Hundred Forty Thousand Seventy and 00/100 Dollars ($140,070.00) for the Terminal, payable in advance monthly installments of Eleven Thousand Six Hundred Seventy Two and 50/100 Dollars ($11,672.50), representing a rate of Six and 00/100 Dollars ($6.00) per square foot for the Terminal (the "**Modified Terminal Basic Rental**", and, when taken together with the Initial Basic Rental and the Modified Open Area Basic Rental, the "**Basic Rental**").

(c) The Basic Rental set forth in this Section 3 shall be adjusted during the Term under this Agreement only in accordance with the provisions of paragraph (b) of Section 4 hereof.

(d) This Lease is a triple net lease, and, except as expressly provided to the contrary in this Lease, the Lessee shall pay any and all costs, charges, and other expenses of every character and nature, foreseen or unforeseen, whether currently in existence or enacted at a future date, for the payment of which the Port Authority or the Lessee is or shall become liable by reason of its respective estate, right, title or interest in the Premises, or which are connected with or arise out of the possession, use, occupancy, maintenance, addition to, repair of or construction on the Premises, including, without limitation, those specifically referred to in this Lease.

(e) The Lessee further agrees to pay promptly upon demand as Basic Rental any user fees and/or security fees imposed by the Port Authority pursuant to the Rules and Regulations (as hereinafter defined) and/or the Tariff (as hereinafter defined).

Section 4. Basic Rental Escalation

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

(i) **"Adjustment Period"** shall mean, as the context requires, the calendar month of January 2013 and the same calendar month in each calendar year thereafter during the Term.

(ii) **"Anniversary Date"** shall mean, as the context requires, March 1, 2013 (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 March

1, 2013 would be a fraction of which the numerator is the Index for January 2013 less the Index for January 2012 and the denominator is the Index for January 2012. As a further example, the Annual Index Increase for the Anniversary Date that is March 1, 2014 would be a fraction of which the numerator is the Index for January 2014 less the Index for January 2013 and the denominator is the Index for January 2013.

(iv) "**Base Period**" shall mean the calendar month of January 2012.

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

(vi) "**Percentage Increase**" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than three percent (3%), in which case the Percentage Increase shall be three percent (3%) or (y) such Annual Index Increase is more than five percent (5%), in which case the Percentage Increase shall be five percent (5%).

(b) *Annual Increases*. Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date and continuing through to the day preceding the next Anniversary Date for each year thereafter, or the Lease Expiration Date of the Term under this Agreement, as the case may be, the Lessee shall pay a Basic Rental at a rate per annum equal to the sum of: (x) the Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(c) Notwithstanding any other provision of this Agreement, the annual Basic Rental that shall be payable pursuant to Section 3(b)(1) hereof and this Section commencing with each Anniversary Date and continuing through to the day preceding each following Anniversary Date, or the expiration date of the Term, as the case may be, both dates inclusive, shall in no event exceed the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "**Schedule**

A" (setting the maximum amount of the Basic Rental for each one year period during the Term) opposite the respective Anniversary Date.

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

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

(f) *Adjustments.*

(i) In the event the Index to be used in computing any adjustment referred to in paragraph (b) of this Section is not available on the effective date of such adjustment, the Lessee shall continue to pay the 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 the Basic Rental shall have been fixed for any period, the Index used for computing such adjustment shall be changed or adjusted, then the rental adjustment for that period shall be recomputed, and from and after notification of the change or adjustment, the Lessee shall make payments based upon the recomputed rental and upon demand shall pay any excess in the Basic Rental due for such period as recomputed, over amounts theretofore actually paid on account of the Basic Rental for such period. If such change or adjustment results in a reduction in the Basic Rental due for any period prior to notification, the Port Authority will credit the Lessee with the

difference between the Basic Rental as recomputed for that period and amounts of Basic Rental actually paid.

(iii) If any adjustment in Basic Rental referred to in paragraph (b) of this Section is effective on a day other than the first day of a calendar month, there shall be payable in advance on the effective date of rental adjustment an installment of Basic Rental equal to 1/12th of the increment of annual 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 5. Annual Cargo Rental

(a) For purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

"Annual Cargo Rental" shall mean an amount computed by multiplying the Tonnage Rate by the Handled Cargo during each Calendar Year.

"Calendar Year" shall mean each twelve-month period commencing on January 1 and terminating on December 31 and each Calendar Year thereafter and continuing throughout the Term of the letting under this Agreement.

"Guaranteed Annual Minimum Wharfage Volume" shall mean Forty Thousand (40,000) metric Tons of Handled Cargo.

"Handled Cargo" shall mean the number of Tons of cargo unloaded from or loaded onto vessels at the Facility during each Calendar Year and shall not include cargo in containers; provided, that while Lessee shall not be charged Annual Cargo Rental on cargo in containers, the Lessee shall separately report the Tons of cargo in containers in the Handled Cargo Monthly Report (as defined in Section 5(d)(1)) and the Final Annual Cargo Monthly Report (as defined in Section 5(d)(3)).

"Ton" shall mean 2,204.6 pounds.

"Tonnage Rate" shall mean One and 49/100 Dollars ($1.49) per metric Ton of Handled Cargo.

(b) In addition to all other rentals payable under this Agreement, as an additional Basic Rental under this Lease, the Lessee shall pay to the Port Authority an Annual Cargo Rental for each Calendar Year running from the Lease Commencement Date of this Lease, through the expiration of the Term of this Lease as follows: during each Calendar Year, the Lessee shall pay the Port Authority an Annual Cargo Rental by multiplying (i) the amount of the Tonnage Rate by (ii) the actual amount of Handled Cargo loaded onto or discharged from vessels berthing at the Facility handled by the Lessee during such Calendar Year.

(c) The Tonnage Rate shall be adjusted during the Term as follows: the Tonnage Rate shall be adjusted during the Term of this Agreement proportionately to such adjustments as may be made to the "Port Authority Marine Terminals PAMT FMC No. PA-10 The Port Authority of New York and New Jersey FMC Schedule No. PA 10 Naming Rules and Regulations Applying At Port Authority Marine Terminals and Rates and Charges Applicable For the Use of Public Areas at Port Authority Marine Terminals", as the same may be amended from time to time during the Term of this Agreement, or any successor tariff as the same may be amended from time to time during the Term of this Agreement (the "**Tariff**").

(d) The Annual Cargo Rental shall be reported and payable as set forth below in this paragraph, based on the number of Handled Cargo loaded onto or discharged from vessels berthing at the Facility per Calendar Year:

(1) On or before October 20, 2011, and on the twentieth (20th) day of each and every month thereafter occurring during the Term of the letting hereunder, including the month following the Lease Expiration Date of the Term of this Lease, the Lessee shall render to the Port Authority a statement (a "**Handled Cargo Monthly Report**") certified by a responsible officer of the Lessee showing (i) the names of vessels berthing at the Facility during the preceding month and duration of stay (including the date of arrival and the date of departure) of each such vessel from which Handled Cargo is discharged or onto which Handled Cargo is loaded, (ii) the total number of Tons of Handled Cargo loaded onto or discharged from vessels berthing at the Facility, (iii) the amount of wharfage charges paid to the Port Authority during the preceding month; and (iv) the cumulative number of Tons of Handled Cargo loaded onto or discharged from vessels berthing at the Facility, from the date of the commencement of the

Calendar Year for which the Handled Cargo Monthly Report is made through the last day of the preceding month.

(2) As Annual Cargo Rental, the Lessee will be billed the guaranteed minimum amount of Fifty Nine Thousand Six Hundred and 00/100 Dollars ($59,600.00) (the "**Guaranteed Minimum Cargo Rental**"), payable in arrears on the first day of each calendar month in equal monthly installments of Four Thousand Nine Hundred Sixty Six and 66/100 Dollars ($4,966.66), an amount representing the Tonnage of Handled Cargo equal to one-twelfth (1/12th) of the Guaranteed Annual Minimum Wharfage Volume multiplied by the Tonnage Rate for Handled Cargo, plus any additional amounts payable in accordance with subsection (3) below; provided, however, that for the partial Calendar Year running from September 1, 2011 through December 31, 2011, the Guaranteed Minimum Cargo Rental shall be Nineteen Thousand Eight Hundred Sixty Six and 64/100 Dollars ($19,866.64), payable as set forth above, commencing on September 1, 2011, and continuing through December 1, 2011.

(3) The Handled Cargo Monthly Report made on the twentieth (20th) day of each January of each Calendar Year (the "**Final Annual Cargo Monthly Report**") shall include a reconciliation of the amount of the Annual Cargo Rental payable for the preceding Calendar Year. In the event that the Final Annual Cargo Monthly Report indicates that the actual number of Tons of Handled Cargo handled by the Lessee during such Calendar Year exceeded the Guaranteed Annual Minimum Wharfage Volume, the Port Authority will bill the Lessee the difference between the Guaranteed Minimum Cargo Rental already paid and the amount of Annual Cargo Rental actually due (calculated by subtracting the Guaranteed Annual Minimum Wharfage Volume from the actual number of Tons of Handled Cargo handled by the Lessee, and multiplying the result by the Tonnage Rate), and the Lessee's payment of such difference shall be due and payable within thirty (30) days of the date of the Port Authority's bill. It being understood and agreed by Lessee that Lessee shall be responsible for payment of the Guaranteed Minimum Throughput Rental of $59,600 per annum (equating to 40,000 Tons of Handled Cargo x the Tonange Rate), payable at $4,966.66 per month on the first day of each month during the Term commencing on September 1, 2011, regardless of whether less than the Guaranteed Annual Minimum Wharfage Volume is handled by Lessee during a Calendar Year.

(e) The computation of the Annual Cargo Rental for each Calendar Year, or a portion of a Calendar Year, shall be individual to such Calendar Year, or such portion of a Calendar Year, and without relation to any other Calendar Year, or any other portion of any Calendar Year; provided, however, that for each such Calendar Year, the Port Authority shall receive for Annual Cargo Rental, at a minimum, the Guaranteed Minimum Cargo Rental.

(f) Upon any termination of the letting (even if stated to have the same effect as expiration), no later than the twentieth (20th) day of the month following the month in which the effective date of termination occurs, the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee setting forth the total actual number of Tons of Handled Cargo handled on the Premises or loaded onto or discharged from vessels berthing at the Facility from the commencement of the Calendar Year through the effective date of termination, the names of vessels berthing at the Facility during such Calendar Year, the date of arrival/entry and of stay of each such vessel from which Handled Cargo is discharged or onto which Handled Cargo is loaded. The statement shall also set forth the number obtained by (a) multiplying (i) a fraction, the numerator of which shall be the Guaranteed Annual Minimum Wharfage Volume, and the denominator of which shall be 365 by (ii) the number of days from the commencement of the Calendar Year in which the effective date of termination occurs through the effective date of termination (the result of such calculation being hereinafter called the "**Projected Amount of Handled Cargo**"). Then, the Projected Amount of Handled Cargo, rounded to the nearest whole number, shall be subtracted from the actual number of Tons of Handled Cargo handled during the partial Calendar Year. In the event that the result is positive, the result shall be multiplied by the Tonnage Rate, and the Lessee shall pay this amount to the Port Authority as Annual Cargo Rental, with the Port Authority to bill the Lessee for such amount, and the Lessee to remit payment within thirty (30) days of the date of the Port Authority's invoice.

As an example, in the event that the Agreement is terminated 180 days into the Calendar Year of 2012, and the Lessee has handled 30,000 Tons of Handled Cargo at that time, the calculation shall be (40,000/365) x 180 = 19,726.03 (the Projected Amount of Handled Cargo). Then, the equation shall be reflected as follows: 30,000-19,726= 10,274. As the Lessee has paid the Annual Cargo Rental for up to 19,726 Tons of Handled

Cargo at this point, but handled 30,000 Tons of Handled Cargo, the Lessee will pay to the Port Authority the amount of 10,274 x $1.49 [Tonnage Rate]=$15,308.26.

Section 6. Lessee's Use of Berth 50; Railroad

(a) The Lessee shall have the non-exclusive right to use Berth 50 at the Facility and the related berthing area for the berthing of sea-going vessels, not engaged in the common carriage of goods, solely for the purpose of loading and unloading cargo to be handled at the Premises, and the transfer of such cargo to or from the Premises in such a way as to leave the wharf clear of any obstruction to other berthing operations.

(b) The Lessee hereby agrees and acknowledges that the Port Authority shall have the right to permit other vessels to be berthed, loaded and unloaded at the berthing area at such times as a vessel delivering cargo to or receiving cargo from the Lessee is not actually in the berthing area and if at such times the Port Authority has not been advised by notice from the Lessee that the vessel carrying cargo destined for or intending to receive cargo from the Premises is expected to arrive within seventy-two (72) hours after the time when the Port Authority wishes to allow the berthing of another vessel. Within seventy-two (72) hours after notice from the Lessee, the Port Authority agrees that it will cause the berthing area to be cleared from use by a vessel delivering cargo to or receiving cargo from the Lessee at the berthing area at Berth 50.

(c) Berth 50 shall be open to all public users of the Facility and other tenants at the Facility for the import and export of cargo, and, during the use of the berthing area by ships other than those delivering cargo to the Lessee, the Lessee is required to provide free and unhindered access for vehicles and cargo across the Premises between Berth 50 and the related berthing area and areas outside the Premises to such users in a manner acceptable to the Manager of the Facility (as defined in Section 34(j) hereof) in its sole and absolute discretion; provided, that such access shall not cause unreasonable disruption of the Lessee's business on the Premises.

(d) The Lessee hereby agrees and acknowledges that the Port Authority shall have no responsibility or obligation whatsoever to provide railroad services to and/or from, or on, the Premises.

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 September 1, 2011 to February 28, 2012, both dates inclusive, for each square foot of usable area the use of which is denied the Lessee, at the annual rate of $0.79 per square foot for the Premises; and, for the period from March 1, 2012 to March 1, 2013, at the annual rate of $1.10 for the Open Area and $6.00 for the Terminal, the rate thereafter to be adjusted during the Term proportionately to the adjustment in Basic Rental in accordance with the provisions of Section 4 and 4A 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 only and for no other purpose whatsoever: for the receipt, storage, handling, blending, packaging and distribution of fruit juices including pulp, concentrate, corn sweeteners and other non-hazardous bulk liquid commodities, either owned by the Lessee or others and substantially waterborne to the Facility or intended to be waterborne from the Facility.

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; provided, however, that this sentence shall not be construed to require that the Lessee provide access to the wharf apron, except as otherwise provided in Section 6.

Section 10. Governmental and Other Requirements

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

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

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

(d) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility, and proper operation by the Lessee. Even though the Lessee is obligated to deliver a copy of every 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, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least twenty (20) 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, and the Lessee shall furnish such electricity as may be required for use by navigation lights which may be so installed.

(f) From time to time and as often as reasonably required by the Port Authority and upon prior notice to the Port Authority, the Lessee shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment on the Premises, whether furnished by the Port Authority or by the Lessee, without cost to the Port Authority. The Lessee shall keep all firefighting and fire-extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be, for the use of which such equipment is designed, and shall train the appropriate number of its employees in the use of all such equipment (with such employees to participate in periodic training drills) in accordance with any and all applicable codes and/or standards developed and published by the National Fire Protection Association ("**NFPA**").

(g) The Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), owned or operated by the Lessee, or by a corporation, company or other organization or person associated, affiliated or connected with the Lessee or for which the Lessee acts as agent, stevedore or terminal operator (or of others going to or from the Premises on business with the Lessee), which shall have sunk, settled or become partially or wholly submerged at the Facility.

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, 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 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 by means of the toilets, manholes, sanitary sewers or storm sewers in the Premises or on the Facility except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority, and in compliance with all applicable statutes, ordinances, laws, rules, and regulations.

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

(g) Except as set forth in paragraph (g)(1) of this Section, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the Premises of any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation or dispensing of food, beverages, tobacco, tobacco products, or merchandise of any kind whether or not included in the above categories, or of any equipment or devices for the furnishing to the public of service of any kind including therein, without limitation thereto, telephone pay stations. However, the Lessee and its employees shall be permitted to use for personal use a portion of the Terminal for break rooms, including the use of coffee pots, microwaves and other similar appliances.

(1) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the Premises for the sale of merchandise

of all types or for the rendering of services; provided, however, that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machine or device installed except at the sole and absolute 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 vehicles or 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 hereof 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 NFPA, 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 paragraph shall survive the expiration or termination of this Agreement.

(p) The Lessee may store wooden pallets on 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; and (ii) pallets shall be sheltered from public view.

Section 14. Signs

(a) Except for any existing signs or with the prior reasonable 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, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the Premises by the Lessee or by its officers, agents, employees, customers, vendors, or representatives, contractors, subcontractors or their employees, or by others on the Premises with the consent or invitation of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents and 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 its provisions of any statutes respecting suits against the Port Authority.

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

(1) Commercial General Liability Insurance including but not limited to coverage for premises operations and Products Liability-Completed Operations, with a minimum combined single limit coverage for bodily injury and property damage of $5,000,000 per occurrence, $5,000,000.00 aggregate. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If the Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, or waterborne deliveries, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(2) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of $5,000,000 per occurrence, no general aggregate.

(3) 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 and specially endorsed to include Employer's Liability coverage for liabilities imposed by invocation of the U.S. Longshoremen and Harbor Workers' Compensation Act and Coverage B- "Jones Act", maritime (including coverage for Masters or Members of the Crews of Vessels).

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

(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 Lease Commencement Date, and on each anniversary date thereafter. In the event any binder is delivered it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving thirty (30) days' written advance notice thereof to the Port Authority. A binder evidencing each renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting hereunder, as the letting may be from time to time extended, and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance or as to coverages or minimum limits, or if any

carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain one or more new and satisfactory policies in replacement. If, in the case of a claim, 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 as required by Section 10 hereof. 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 paragraphs (e) and (f) 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, all utilities related to the Premises (except as provided below), 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) gas and electric from the meter; (2) 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; (3) the plumbing system, fixtures and equipment, and all finished plumbing; (4) buildings and all parts thereof; (5) signs; (6) fire extinguishers and fire sprinkler systems; (7) all painting; (8) any security measures (including without limitation cameras and fencing on the west, north and south sides of the Premises and jersey barriers not installed by the Port Authority) implemented on the Premises; (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 (subject to subparagraph (f) of this Section 16); and (10) any and all paving required on the Premises. The Lessee shall maintain all improvements, utilities, fixtures, machinery and equipment set forth above at all times in good condition, and shall perform all necessary preventive maintenance during the Term.

(d) Upon the expiration or earlier termination of this Lease, the Premises must be in or restored to as good a condition as it was in at the time of the commencement of Lease 154, ordinary wear and tear excepted, except for those matters for which maintenance and repair the Port Authority was liable under Lease 154 and/or this Lease. The Lessee shall make periodic inspections of the Premises and subject to Section 20(q) of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacement. All repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(e) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for any damage caused by Lessee, its employees, agents or representatives to any and all personal property, equipment and fixtures belonging to the Port Authority located or to be located in or on the Premises and shall promptly replace or repair the same within twenty (20) days after such damage (except that if any such repair requires activity over a period of time, then the Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption). The Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at

the commencement of the letting, reasonable wear and tear not materially affecting the efficient use and functioning of the same excepted.

(f) Notwithstanding anything in this Section 16 or this Lease to the contrary, the Lessee shall not be obligated, responsible, or liable for any repairs or maintenance to underground utilities on, under, or near the Premises or the Facility, including storm water underground utilities; provided, however, that the Lessee shall be responsible for the maintenance, repair and damage to 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. The Port Authority shall be responsible for maintenance and repair to all other portions of such storm water utilities, except as expressly provided in the preceding sentence, which items shall be the Lessee's responsibility.

(g) 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; provided, however, that the Lessee's obligation hereunder to indemnify and hold the Port Authority harmless shall not apply to any claims or demands resulting from the intentional tortious acts or gross negligence of the Port Authority. 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.

(h) Upon thirty (30) days' notice to the Lessee, upon the Port Authority's determination in its sole discretion that any part of the berthing area at Berth 50 has shallowed to a depth of less than thirty five (35) feet below mean low water, the Port Authority (to the extent permitted by governmental authorities having jurisdiction) will conduct routine maintenance dredging of that part of the water area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor. The term "**mean low water**" as used in this subparagraph (h) shall mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, the dredging required shall be only such as shall produce (or leave in place) depths and slopes as may be required for underwater support of structures, in the opinion of the Port Authority's engineer, which opinion shall be controlling.

Section 17. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the Premises are damaged, the Lessee shall rebuild the same with due diligence in accordance with the procedures set forth in Section 20(q) hereof. Without in any way limiting the obligations of the Lessee set forth in the first sentence of this paragraph, with respect to all portions of the Premises, the Lessee shall secure and maintain in its own name as insured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the Term:

(1) All Risk property damage insurance covering the full replacement cost of any property owned, leased, or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the Premises, except for any personal property owned by the Port Authority. Full replacement cost shall be determined by the Port Authority. No omission on the part of the Port Authority to make such determination shall relieve the Lessee of its obligations to maintain the appropriate insurance under this paragraph. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New Jersey, or any successor thereto, and the broadest form of extended

coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and boiler and machinery hazards and risks.

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

The proceeds of insurance from coverages secured in accordance with this paragraph shall be made available to the Lessee and shall be applied by the Lessee to the repair, replacement, or rebuilding of the Premises as provided in this Agreement. The Lessee shall not be entitled to any abatement of the rentals payable hereunder at any time by reason of such casualty.

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

(c) In the event of damage to or a partial or total destruction of the Premises, the Lessee shall within thirty (30) days after the occurrence commence to remove from the Premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to the Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if the Lessee does not perform its obligation hereunder within such thirty (30) day period, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit at Lessee's sole cost and expense, or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority on demand. Without limiting any term or provision of this Agreement, the Lessee shall indemnify and save harmless the Port Authority, its officers, agents, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise.

Section 18. Assignment and Sublease

(a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof, except as provided in this Section 18. The Lessee shall not assign the Lease or its interest therein without the Port Authority's consent to and review and approval of the assignment in the Port Authority's sole discretion; provided, however, that if the following conditions are met, such approval shall not be unreasonably withheld by the Port Authority if: (i) the proposed assignee's principal executive officer submits a certification that, to the best of his or her knowledge, the proposed assignee does not appear on OFAC's Specially Designated and Blocked Persons list

(as defined in Section 53 of this Lease); (ii) the proposed assignee's principal executive officer or accountant submits a certification that, to the best of his or her knowledge, the proposed assignee is solvent and is in a sound financial condition; (iii) the proposed assignee's principal executive officer submits a certification that, to the best of his or her knowledge, the proposed assignee has an established record and reputation in the operation of a business similar to the business being operated by the Lessee on the Premises; and (iv) the Port Authority has not had an unfavorable experience with the proposed assignee in the past.

(b) The Lessee shall not sublet the Premises, the use of the Premises, or any part thereof, without the Port Authority's consent to and review and approval of the sublease agreement, in the Port Authority's sole discretion; provided, however, that if the following conditions are met, such approval shall not be unreasonably withheld by the Port Authority if: (i) the proposed sublessee's principal executive officer submits a certification that, to the best of his or her knowledge, the proposed sublessee does not appear on OFAC's Specially Designated and Blocked Persons list (as defined in Section 53 of this Lease); (ii) the proposed sublessee's principal executive officer or accountant submits a certification that, to the best of his or her knowledge, the proposed sublessee is solvent and is in a sound financial condition; (iii) the proposed sublessee's principal executive officer submits a certification that, to the best of his or her knowledge, the proposed sublessee has an established record and reputation in the operation of a business similar to the business being operated by the Lessee on the Premises; and (iv) the Port Authority has not had an unfavorable experience with the proposed sublessee in the past. Any such approval shall be evidenced by a **"Consent to Sublease"**, in substantially the form attached hereto as **"Exhibit B"**, which shall contain conditions, and be in a form, satisfactory to the Port Authority. All requested changes to the sublease agreement shall be made by Lessee.

(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 entity 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) Any other requests for sublease, assignment, conveyance, transfer, mortgage or pledge are subject to the consent and approval of the Port Authority in its sole discretion.

(e) In the event that any consent to sublet the Premises to any third party (other than an affiliate of the Lessee, of which the Lessee owns a minimum of fifty one percent (51%) of the shares, membership interests or other ownership interests) (a "**Sublessee**") is granted by the Port Authority, upon the terms and conditions set forth in the Consent to Sublease, the Lessee and the Sublessee, 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 subparagraph (e). 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 first (1st) 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 sublet), 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. Such Sublease Payments shall be in addition to the Rental due hereunder. The Lessee or the Sublessee shall pay to the Port Authority at the time of rendering such statement an amount equal to:

(i) In the event that the rate per square foot of the subleased premises exceeds the rate per square foot due and payable by Lessee under this Lease, the Lessee shall pay to the Port Authority fifty percent (50%) of the amount of the net proceeds to the Lessee by the Sublessee (such proceeds being calculated based on all amounts paid to the Port Authority by the Lessee under this Lease); or

(ii) In the event that the rate per square foot of the subleased premises is less than the rate per square foot due and

payable by Lessee under this Lease, no payments to the Port Authority in excess of the amount already due to the Port Authority under this Lease shall be due from the Lessee.

(f) In the event that any consent to assign this Lease to any third party (other than an affiliate of the Lessee, of which the Lessee owns a minimum of fifty one percent (51%) of the shares, membership interests or other ownership interests)(an "**Assignee**") is granted by the Port Authority, upon the terms and conditions set forth in the Consent to Assignment, the Lessee and the Assignee, as a joint and several obligation, shall pay to the Port Authority, a fee (the "**Assignment Consent Fee**"). The Assignment Consent Fee shall be equal to ten percent (10%) of the total amount of the present value of the Lease, as discounted at five percent (5%) of the gross rental payments over the remainder of the Term of the Lease (the "**Net Present Value**"). As an example only, in the event that the Lease is assigned at a time when the Net Present Value of the gross rental payments under the Lease is determined to be $1,000,000, the calculation shall be multiplied by 0.10 (representing the 10%), which results in an Assignment Consent Fee of $100,000.00.

(g) 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 Section 8 of this Agreement.

(h) The Lessee further covenants and agrees not to enter into any management agreement, services agreement or any other similar type of agreement for the Premises without the prior written consent of the Port Authority; provided, however, that such consent shall not be unreasonably withheld by the Port Authority. Any sublease, assignment or transfer, including without limitation any sale, assignment, transfer, mortgage, pledge, hypothecation, encumbrance or disposition of the Premises or of the rents, revenues or any other income from the Premises, or this Agreement or any part hereof, or any license or other interest of the Lessee herein in not made in accordance with the provisions of this Agreement shall be null and void *ab initio* and of no force or effect.

(i) If without the prior written consent of the Port Authority, the Lessee effects or permits any assignment, transfer or sublease, 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; but 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.

(j) Any consent granted by the Port Authority to any assignment, transfer or sublease pursuant to the provisions hereof shall not be construed or deemed to release, relieve or discharge the Lessee or any other Person claiming any right, title or interest in this Agreement from the requirement of obtaining the prior written consent of the Port Authority with respect to any other assignment, transfer or sublease.

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. If the Port Authority exercises this option, the Lessee shall have the same rights and remedies provided in subparagraph (a) above. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by the Lessee nor taking by the Port Authority pursuant to this paragraph, shall be construed to be an eviction of the Lessee or a breach of this Agreement or be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise. Further, the Port Authority's right to condemnation hereunder shall in no way be limited or restricted by the provisions of Section 25 hereof.

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

(d) In the event that the taking or conveyance covers less than fifty percent (50%) of the total useable area of the Premises, or in the event that the letting is terminated pursuant to paragraph (b) of this Section with respect to a part only of the Premises, then the letting as to such part shall, as of the date possession thereof is taken by such agency or agencies, or as of the effective date of such termination, cease and terminate in the same manner and with the same effect as if the Term had on that date expired, and Basic Rental and Additional Rental (as hereinafter defined) shall be abated as provided in Section 7 hereof.

(e) In the event that the taking or conveyance or the delivery by the Lessee or taking by the Port Authority pursuant to paragraph (b) of this Section covers fifty percent (50%) or more of the total usable area of the Premises, 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**". The Lessee's Construction Work shall be performed at the Lessee's sole cost and expense.

(b) With respect to the Lessee's Construction Work the Lessee shall procure, or cause to be procured, 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 or grossly negligent acts done by the Port Authority subsequent to commencement of the work:

(1) 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;

(2) 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;

(3) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, against and from all such claims and demands, and for all loss and expense incurred by it and by them in the defense, settlement or satisfaction thereof including without

limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential.

(c) Prior to the commencement of any of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval a Construction Application in the form supplied by the Port Authority pursuant to TAA requirements, and containing such terms and conditions as the Port Authority may include (the "**Construction Application**"), setting forth in detail by appropriate plans and specifications the work the Lessee proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Lessee shall identify each of the items constituting the Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this paragraph, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of the Lessee's complete Construction Application and complete plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor, and the contract such contractor is operating under, have been approved by the Port Authority. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Construction Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance

coverage as is described in paragraphs (j) and (k) of this Section 20 and such performance bonds as the Port Authority may specify. All of the Lessee's Construction Work shall be performed by the Lessee in accordance with the Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon final completion of all of the Lessee's Construction Work the Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and the Lessee shall supply the Port Authority with as-built drawings of the Lessee's Construction Work in such form and number requested by the Port Authority. The Lessee shall keep said drawings current during the Term under this Agreement. No changes or modifications to such work shall be made without prior Port Authority consent. Following its receipt of the Lessee's certificate, the Port Authority shall inspect the work and, unless such certification is not correct, or the Port Authority determines that the premises are unsuitable for occupancy and use by the Lessee, a certificate of final completion shall be delivered to the Lessee by the Port Authority.

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

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

specifications, drawings, and data with respect to such portion of the Lessee's Construction Work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's Construction Work are hereinafter referred to as the "**Partial Approval Work Plans**" with respect to such portion of the Lessee's Construction Work) setting forth in detail the work to be performed in connection with each such portion of the Lessee's Construction Work. The Port Authority shall use full and complete 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 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 City of Elizabeth or City of Newark, as

applicable, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

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

(4) No Partial Approval Work performed by the Lessee pursuant to the provisions of this paragraph shall affect or limit the obligations of the Lessee 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 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 approval in accordance with the provisions of this Agreement.

(g) Without limiting the generality of paragraph (c) of this Section, the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans and specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall 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 paragraph (c) of this Section the provisions of this Agreement shall control; provided, however, that the Lessee shall be obligated to pay any tenant construction review fee or other review fee charged by the Port Authority for its costs of administrating the 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 which does not adversely affect the efficient or proper utilization of any part of the Premises.

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

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

(1) Commercial General Liability Insurance including but not limited to Independent Contractor coverage and coverage for Premises Operations and Completed-Operations and for Broad Form Property Damage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $5,000,000 per occurrence, $5,000,000.00 aggregate.

(2) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined

single limit coverage for bodily injury and property damage of $5,000,000 per occurrence, $5,000,000.00 aggregate.

(3) 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 and specially endorsed to include coverage afforded by the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B- "Jones Act", maritime (including coverage for Masters or Members of the Crews of Vessels).

(k) With the exception of the Commercial Automobile Liability, Workers' Compensation and Employers' Liability Insurance policies each policy of insurance described in paragraph (j) of this Section shall include the Port Authority as an additional insured, in its coverages including, without limitation, coverage for Premises- operations and completed operations, and no such policy shall contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair the coverages resulting from the Port Authority's status as an additional insured, or the coverage under the contractual liability endorsement described in subdivision (1) of paragraph (j) of this Agreement. The certificates of such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured and/or loss payee, as applicable. 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. The requirements of the certificate of insurance evidencing these coverages shall be the same as specified in Section 15 (f), except that, instead of the certificate being delivered to the Port Authority on or before the Lease Commencement Date, the certificate must be delivered to The Port Authority before any work is to take place.

(l) Title to all improvements and fixtures placed, constructed or installed in or on the Premises as the Lessee's Construction Work shall vest immediately in the Port Authority 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, and otherwise during the Term of this Lease, the Lessee will not permit any situation or condition to arise or continue that causes any labor troubles at, or emanating from, the Lessee's Premises which interferes in any material respect with the operations (including any construction work) at the Lessee's Premises. The determinations of the Port Authority shall be conclusive on the Lessee, and upon written notice from the Port Authority, the Lessee will (or will cause its contractor to, as applicable) immediately rectify any condition causing or contributing to labor troubles as specified in such notice. In the event of failure by the Lessee (or any of its contractors, as applicable) to immediately comply with the requirements of this paragraph, the Port Authority will have the right, by notice from the Port Authority to the Lessee, 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 will thereupon immediately cease the same. When labor troubles will be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee will reinstate the permission to the Lessee to perform the Lessee's Construction Work on all the same terms and conditions as before the suspension. "**Labor troubles**" will mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, disputes or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

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

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

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

(1) The contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or

marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships and on-the-job training;

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

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

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

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

(q) Prior to the commencement of any repairs, replacements or alterations required to be performed by the Lessee during the Term pursuant to the terms of this Agreement, other than the Lessee's Construction Work (as defined in paragraph (a) of this Section 20), the Lessee shall submit to the Port Authority for its approval an Alteration Application in the form supplied by the Port Authority, and containing such

terms and conditions as the Port Authority may include (an "**Alteration Application**"), setting forth in detail by appropriate plans and specifications the work the Lessee proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Lessee shall identify each anticipated repair or alteration, and shall describe in detail any systems, improvements, fixtures and equipment to be installed by the Lessee. The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this paragraph, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of the Lessee's complete 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 reasonably approved by the Port Authority. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Alteration Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (j) and (k) of this Section 20 and such performance bonds as the Port Authority may specify. All of the Lessee's repairs, replacements, or alterations 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.

(r) For any Construction Work, alterations, modifications or improvements requiring the Port Authority's approval, the Lessee shall be obligated to pay to the Port Authority a tenant alteration review fee (the "**Review Fee**") as compensation for its costs of reviewing and administrating the Tenant Alteration Application Process or construction process, equal to the greater of (i) one percent (1%) of the actual costs of the construction work (and/or alteration work), or (ii) the rate of the fee, if any, payable to the Port Authority for review of tenant work at the Facility under the Port Authority's Tenant Alteration Process at the time the Lessee submits any Construction Application or Alteration Application required under this Section. Upon final completion of all of the work under each specific contract to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof certifying that all such work has been completed and the final cost of such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee's certificate. The Port Authority shall have the right (but shall not be obligated) to conduct an interim inspection and audit in connection with the work performed under the specific contract certified as completed and shall have the rights in the conduct of such interim inspection and audit as are set forth below in this paragraph with regard to the final inspection and audit. Upon receipt of the Lessee's certification, or following the aforesaid audit by the Port Authority, the Port Authority shall render a bill to the Lessee setting forth the Review Fee for the specific contract, and the Lessee shall pay the Review Fee to the Port Authority within fifteen (15) days of receipt of said bill. No payment made by the Lessee on account of the cost under a specific contract as set forth in the immediately preceding sentence shall be considered final until the final determination of the cost of the Lessee's Construction Work as set forth below in this paragraph. Upon final completion of all of the Lessee's Construction Work, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof certifying that all such work has been completed and the final cost of such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee's certificate. Upon receipt of

the Lessee's certification, the Port Authority shall render a bill to the Lessee setting forth the Review Fee for each specific contract for which the Lessee has not previously made payment under the provisions of this paragraph, and the Lessee shall pay the Review Fee for each such specific contract to the Port Authority within fifteen (15) days of receipt of said bill. No payment made by the Lessee on account of the cost of the Lessee's Construction Work pursuant to the provisions of this paragraph, including, without limitation, any payment made by the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be considered final until the final determination of the cost of the Lessee's Construction Work as set forth below in this paragraph. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Lessee's Construction Work to examine and audit the records and other documentation of the Lessee that pertain to and will substantiate such cost.

(s) The Lessee agrees that in the performance of any work that is subject to this Section 20, 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 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) 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 at all reasonable times, 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, at all reasonable times, to enter upon the Premises 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, the Port

Authority shall not unreasonably interfere with the use and occupancy of, and access to and from, 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(e) hereof, nothing in this Section shall impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the Premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Premises or for any injury or damage to the Premises or to any property of the Lessee or of any other person located therein or thereon (other than those occasioned by the intentional tortious acts or gross negligence of the Port Authority).

(e) At any time and from time to time during ordinary business hours within the six (6) 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 six-month period the Port Authority may place and maintain on the Premises, the usual "To Let" signs, which signs the Lessee shall permit to remain without molestation.

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

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

Section 23. Limitation of Rights and Privileges Granted

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

(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 a "**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 (i) the Lessee is a corporation, by any of its stockholders, or, (ii) if the Lessee is a limited liability company, by any of its members, or (iii) if the Lessee is a general or

limited partnership, by any of its general partners, 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, partnership, corporation, or other business entity; or

(5) The Lessee fails to immediately provide the Port Authority with written notice upon the occurrence of any "Change in Control" in Lessee, as provided in Section 40 hereof; 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 all or substantially all of the Premises or discontinue its operations at the Premises for over for over thirty (30) days (except in connection with a casualty, in accordance with Section 16 hereof) 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

(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 paragraph (a) of this Section shall occur prior to the commencement of the letting of this Lease, 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. Additional Termination Rights

(a) Beginning as of September 1, 2014, either party shall have the right to terminate this Lease as to the entire Premises without cause, upon at least one (1) year's prior written notice to the other party, such termination to be effective as of the following annual anniversary date of the Lease Commencement Date. For example, for any such termination to be effective as of September 1, 2014 (the earliest possible termination date under this Section 25(a)), notification must be received on or before August 31, 2013.

(b) Termination under the provisions of this Section 25 shall have the same effect as if the effective date of termination stated in the notice delivered hereunder was the Lease Expiration Date set forth in Section 2(a) of this Lease.

Section 26. Right of Re-entry Upon Termination

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 surviving 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 Upon Termination

(a) In the event that (i) the letting shall have been terminated in accordance with a notice of termination as provided in Section 24 of this Agreement, or (ii) the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 26 of this Agreement, then all of the obligations under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession, including repair and maintenance obligations. Upon such termination, 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, and, notwithstanding anything appearing in this Section to the contrary, the Port Authority does not waive any rights it may have against Lessee under any performance bonds or any other agreements.

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

(1) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including, without limitation thereto, all sums constituting Additional Rental under Section 21 of this Agreement, and all sums constituting the Basic Rental under Sections 3 - 6 of this Agreement, accrued prior to the effective date of termination, and the cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the Term or on the expiration date originally fixed or within a stated time after expiration or termination; and

(2) an amount equal to all costs and expenses incurred by the Port Authority in connection with such termination, cancellation, regaining or resumption of

possession, collection of all amounts due to the Port Authority, the restoration of the Premises, the reletting of the Premises, the care and maintenance of the Premises during any period of vacancy of the Premises, the foregoing to include without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of outside counsel), brokerage fees and commissions, repairing and altering the Premises and putting the Premises in order (such as but not limited to cleaning and decorating the Premises) to the condition of the Premises as of the commencement of Lease 154, ordinary wear and tear excepted.

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, costs and 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 29A. 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 under such bankruptcy or insolvency code, statute or law or under 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 or intended

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

Section 30. Remedies to Be Nonexclusive

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

Section 31. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Section 16(d) hereof regarding the condition of the Premises at the expiration or termination of the letting hereunder, reasonable wear and tear excepted. Upon the expiration or earlier termination of this

Lease, the Port Authority shall have the option, exercisable by written notice delivered on or before the date of such expiration or termination of the Term of the letting hereunder, or within sixty (60) days after such expiration or termination, to require the Lessee to remove any or all structures constructed on the Premises since the commencement of Lease 154 (including without limitation, buildings, alterations, improvements, or additions), and to restore the Premises to the condition thereof prior to the construction of such structures (or the marking of such alterations, improvements or additions), ordinary wear and tear excepted.

(b) Unless required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the Premises, all its equipment, removable fixtures and other personal property (including office equipment and furniture), and in the event that the Lessee chooses to remove all of its removable equipment, removable fixtures and other personal property (including office equipment and furniture), 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' written 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.

(c) Upon the expiration or earlier termination of the Lease, in the event that the Lessee chooses to remove the equipment installed on the Premises, including without limitation, all tanks, piping, pumps, test equipment, scales, and refrigeration equipment, located on the Premises, the Lessee shall purchase the same for One Dollar ($1.00).

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 by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar reputable overnight courier service. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office, the address of which is set forth in the first page of this Agreement, as their respective offices where notices and requests may be served.

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

Section 34. General

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

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

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

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

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

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

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

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

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

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

(f) All payments required of the Lessee by this Agreement shall be made by either mail to the Port Authority at P. O. Box 95000, Philadelphia, Pennsylvania 19195-1517 or via wire transfer to TD Bank, Bank ABA Number: 031201360, Account Number: [redacted], or to such other address or account number 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, notwithstanding the fact that all or a portion of the Rental to be paid hereunder may be determined by gross receipts from the operations of the Lessee hereunder.

(h) As used in Sections 13 and 16 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, catch basins, storm grates, storm drains, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, 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. The phrase "utility, mechanical, electrical and other systems" shall specifically exclude any underground utilities, including storm water underground utilities in accordance with Section 16(f).

(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 Jersey 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 paragraph (m) 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 [redacted].

(p) The Lessee is not acquiring an ownership interest in the Premises under this Agreement. Capital expenditures in connection with the Premises have been, or are expected to be made, in whole or in part by the Port Authority from "exempt facility bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986, as amended) issued by the Port Authority from time to time (such capital expenditures are hereinafter called the "**Property**"). The Lessee hereby irrevocably elects not to claim for purposes of federal, state or local taxation of income any depreciation or investment credits, for which it may be eligible with respect to the Property. The Lessee further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under this Agreement, and as a condition of any permitted sale or assignment of the interest of the Lessee under this Agreement, every successor in interest shall furnish an executed irrevocable election in the form of the immediately preceding sentence to the Port Authority. The foregoing shall not grant or be deemed to grant to the Lessee the right to sell or assign, in any manner, its interest under this Agreement.

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

(r) It is understood that the election set forth in paragraph (p) of this Section 34 shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the Premises leased to the Lessee pursuant to this Agreement which are installed by the Lessee in or on the Premises leased to the Lessee pursuant to this Agreement and which shall be deemed to be and remain the property of the Lessee.

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

(t) This Lease and any and all claims, controversies or disputes arising out of or relating to this Lease 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; provided, however, that the Lessee further agrees that any actions involving the nonpayment of Rental hereunder shall be subject to the jurisdiction of the state courts of the State of New Jersey and it shall not seek to remove the same to federal courts in the State of New Jersey.

(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**" condition and the Lessee agrees to and shall take the Premises in its "**as is**" "where is" condition, without any representations or warranties of any kind whatsoever, 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 154, it has been in continuous occupancy of all of the Premises prior to the commencement of this Lease 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 obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, subject to the provisions of paragraph (m) of Section 20, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, or its contractors or subcontractors), embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior or applicable 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 such party 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 represents and warrants 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 shall indemnify and save the Port Authority 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 for services in connection with the negotiation and execution of this Agreement.

Section 38. Non-Liability of Individuals

No Commissioner, director, officer, agent or employee of either party to this Agreement shall be held personally liable to the other party under any term or provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach thereof.

Section 39. Services

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

(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. Where sewage is contained in tanks periodically cleaned by a contractor paid by the Port Authority, the Lessee shall pay such portion of the contract charge as may be reasonably determined by the Port Authority, on demand.

(c) The Lessee agrees to maintain the enclosed portions of the Premises at a sufficient temperature, or to bleed pipes, so that the plumbing, fire-protection and sprinkler systems will not be damaged by reason of low temperatures.

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

(e) No failure, delay or interruption (collectively, an "Interruption") in any water or gas service, whether supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder or shall be or be constructed 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.

(f) Without in any way affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of Section 16 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), whether master meters or not, are located at or on the Premises.

Section 40. Right of Termination - Ownership and Control

(a) 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 Delaware, and that the requisite corporate consents to enter into this Agreement have been obtained.

(b) The Lessee hereby agrees and acknowledges that the Lessee shall immediately provide the Port Authority with written notice upon the occurrence of any "Change in Control" in Lessee (as hereinafter defined), and upon its receipt of notice of such Change in Control, or upon its determination that such a Change in Control has occurred, the Port Authority shall have the right, in its sole and absolute discretion, to terminate this Lease upon ninety (90) days' prior written notice to the Lessee. Failure of the Lessee to so provide the Port Authority with notice of such a Change in Control shall constitute an Event of Default hereunder. A "Change in Control" shall be defined as a transfer of a majority of the issued and outstanding Securities (as defined hereinafter in Section 40(e)) of the Lessee, however accomplished, whether in a single transaction or in a series of related transactions which aggregate fifty percent (50%) or more of the outstanding shares of the Securities; provided, however, that (i) in no event shall the intra-family transfer of Securities or interests among current shareholders of the Lessee, regardless of the percentage of Securities or interests transferred between such shareholders of the Lessee (including without limitation, transfers to trusts and foundations created by such shareholders of Lessee, and to their estates, executors, heirs and beneficiaries), constitute a Change in Control for

purposes of this Agreement; and (ii) in no event shall the transfer of Securities or interests among affiliated entities or other entities within the Cargill corporate family, constitute a Change in Control for purposes of this Agreement.

(c) The Lessee recognizes the fact that entry into any management, services agreement 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 (except as expressly provided in Section 18 or in this Section 40), is for practical purposes a transfer or disposition of the rights obtained by the Lessee through this Agreement; provided, however, that in no event shall a transfer of Securities that does not rise to the level of a Change in Control constitute an transfer for purposes of this Section 40(c). 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 upon the occurrence of a Change in Control, by any 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 to any other Person, the Port Authority shall have the right to terminate this Agreement in accordance with Section 40(b) above, which right, if exercised by the Port Authority, shall constitute a termination of this Agreement under Section 24 hereof.

(d) 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.

(e) 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.

(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.

Section 41. Condition Precedent.

Intentionally Deleted.

Section 42. Security

(a) The Lessee and the Port Authority hereby agree that all sums deposited by the Lessee as security under this Lease 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 EP-275. Upon the execution of this Agreement by the Lessee and delivery hereof to the Port Authority, the Lessee shall have delivered 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 an investment grade banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of $55,000.00, allowing for partial and complete draws upon presentation of a site draft.

(b) 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 six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit. If requested by the Port Authority, said letter of credit shall be accompanied by a letter explaining the opinion of counsel for the banking institution that the issuance of said letter of credit is an appropriate and valid exercise by the banking institution of the corporate power conferred upon it by law. Upon notice of cancellation of a letter of credit, the Lessee agrees that unless, 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 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.

(c) 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.

(d) The Lessee acknowledges and agrees that the Port Authority reserves the right, at its sole discretion, to adjust at any time and from time to time upon fifteen (15) days' notice to the Lessee, the security deposit amount set forth in paragraph (a). Not later than the effective date set forth in said notice, the Lessee shall deposit with the Port Authority the new security deposit amount as set forth in and in such form as requested by said notice which new amount (including without limitation, an amendment to or a replacement of the letter of

credit) shall thereafter constitute the security deposit subject to this Section 42.

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

Notwithstanding anything appearing to the contrary in this Agreement, in the event the Port Authority exercises its right of termination under the provisions of Section 24 of this Agreement, 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 the legal services of outside counsel), repairing and altering the Premises and putting the Premises in working order.

Section 46. Holdover Rent

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 Lease, in the event that the Lessee remains in possession of the Premises after the expiration or earlier termination of the Term of the Lease, the Lessee shall be deemed a "holdover tenant" and upon notice from the Port Authority shall be obligated to pay holdover rental in the amount of 200% of the last due annual Rental all as in accordance with law as a result of the Lessee's status as a holdover tenant; provided, however, that in the event that the Term of the Lease has expired without earlier termination, and prior to the expiration of the Term of the Lease, the parties have agreed in writing to substantially all of the terms and conditions of a renewal or extension of the Lease and are in the process of obtaining the appropriate organizational consents,

such holdover rental shall not be due and payable for the first three (3) months following the expiration of the Term of this Lease. Nothing herein contained will be deemed to give the Lessee any right to remain in possession of the Premises after the expiration or earlier termination of the Term of the Lease.

Section 47. Audit Fee

In the event that upon conducting an examination and audit under the provisions of the Lease (and as it may be hereinafter amended), the Port Authority determines that unpaid amounts are due to the Port Authority by the Lessee (the **"Audit Findings"**), the Lessee will 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 will be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) will be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Lessee under the Lease or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge will be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of the Lease with respect to such unpaid amount. Each such service charge will be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the Rentals to be paid. Nothing in this section is intended to, or will be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under the Lease, including, without limitation, the Port Authority's rights to terminate the Lease or (ii) any obligations of the Lessee under the Lease. This provision shall not apply to security matters.

Section 48. Waiver of Jury Trial

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

Section 49. Counterparts

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

Section 50. Environmental Responsibilities

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

(1) **"Environmental Damage"** and **"Environmental Damages"** shall mean any one or more of the following: (i) the presence on, about, under or migrating from the Premises of any Hazardous Substance (a) whose presence occurred during the "Term" which definition of "Term" shall for purposes of this Section include periods prior to the letting under this Agreement during which the Lessee was in occupancy of the Premises under Lease 154; (b) resulting from any act or negligent omission of the Lessee or Lessee's Representative (as defined herein) during the Term; (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; (iii) the presence of any Hazardous Substance on, about or under other property at the Facility or elsewhere as a result of the Lessee's use and occupancy of the Premises or a migration of a Hazardous Substance 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; (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, appropriate and applicable guidance documents, permits, orders, approvals, plans, authorizations, concessions, franchises, requirements, and similar items of all Governmental Authorities 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, 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," "hazardous constituents," or words of similar import, under or pursuant to any Environmental Requirement and inclusive of any mixture or solution thereof, urea formaldehyde foam insulation, polychlorinated byphenyls (**"PCBs"**), chemicals known to cause cancer or reproductive toxicity, petroleum, petroleum products and petroleum based derivatives, and other substances which have been or in the future shall be declared to be hazardous or toxic, or the regulation or removal of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have been or in the future shall be restricted, prohibited, regulated or penalized by

any Environmental Requirement. When an Environmental Requirement defines any of the foregoing terms more broadly than another, the broader definition shall apply.

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

(b) Without limiting the generality of any of the other terms and provisions of this Agreement, the Lessee hereby expressly agrees to assume responsibility for the conditions of the Premises and all matters arising therefrom from and after the commencement of the Term, including without limitation all Environmental Requirements and all Environmental Damages arising out of or resulting from any act or negligent omission of the Lessee or the Lessee's Representative (as defined herein). Except for Environmental Damages arising from the gross negligence or intentional tortious acts of the Port Authority, 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 (including, without limitation, all losses, damages, judgments, fines, penalties, payments in lieu of penalties, settlements, 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, 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. Lessee shall not be liable for nor required to indemnify the Port Authority for, (i) the condition of the Premises under this Section existing or created prior to the commencement of the Term or (ii) for Hazardous Substances that migrate onto, about

or under the Premises from off the Premises, unless with respect to (i) and (ii) above, the Lessee exacerbates such conditions or is responsible for such conditions under this Section as further described in paragraphs (e) and (g) of this Section 50.

(c) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall at its sole cost and expense, upon notice from the Port Authority, promptly take all actions to completely remove and remediate: (1) any Hazardous Substance present on, about, under or migrating from the Premises whose presence occurred during the Term or arising out of or resulting from any act or negligent omission of the Lessee or Lessee's Representative (as defined herein) during the Term, (2) any Hazardous Substance disposed of or released on the Premises arising out of or resulting from an act or negligent omission of the Lessee or Lessee's Representative (as defined herein) 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 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, provided that Lessee's obligations under this paragraph (c) shall only apply where a Governmental Authority or any Environmental Requirements or any violation thereof require such Hazardous Substances to be removed and/or remediated, or which in the sole opinion of the Governmental Authority and Port Authority are necessary to mitigate Environmental Damages (which determination in the case of the Port Authority shall not be made in an arbitrary or capricious manner). 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 including but not limited to all post-No Further Action Letter or post-Response Action Outcome work required as to monitoring or operations. 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, and subject to subsection (j) herein, Lessee shall be permitted to utilize institutional and/or engineering controls 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. or any successor statute or regulation, "**Historic Fill**"), to the extent that it is determined that such Historic Fill is located on the Premises and such presence was not caused by, nor arising out of, acts or omissions of Lessee or Lessee's Representatives. Lessee further agrees to execute any declaration of environmental restrictions, institutional control, permit application, or other document necessary to effectuate the implementation or recordation of institutional or engineering controls, as applicable, and, in the event institutional or engineering controls are placed on the Premises, Lessee shall be fully responsible for and shall (i) maintain such controls, (ii) conduct any compliance monitoring as required under all applicable Environmental Requirements, (iii) obtain any permits in connection with such controls required by applicable Environmental Requirements, (iv) establish all required funding sources in connection with the maintenance of such institutional or engineering controls; and (v) file with applicable Governmental Agencies all applicable certifications and reports. 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 Elizabeth and/or the City of Newark (as applicable) and/or the State of New Jersey for contribution under any Environmental Requirement. Notwithstanding the foregoing, the Lessee shall not be responsible for any Hazardous Substance that migrates onto, about, or under the Premises from off-Premises, except as provided in paragraph (e) of this Section. 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. 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.

(d) Without limiting any other of the Lessee's obligations under this Agreement, the Lessee agrees unless directed otherwise by the Port Authority, to provide the Manager of the

Facility with copies of all information, documentation, records, correspondence, certifications, reports, test results, and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, and as may be necessary for the preparation of any application, registration, statement, certification or notice. Lessee shall further provide 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. 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 Requirements 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 in the event Lessee fails to sign and file same, after reasonable notice to Lessee and Lessee's failure to cure. Lessee shall also provide the Port Authority with copies of any permits utilized by Lessee in accordance with any Environmental Requirements.

(e) Notwithstanding any other provision of this Section 50, Lessee shall be responsible for 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 (which determination shall not be arbitrary or capricious) 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 act or negligent omission by the Lessee or the Lessee's Representative

with respect to such Hazardous Substance. For purposes of this Section 50, "Lessee's Representative" shall mean its officers, employees, shareholders, members, agents, representatives, contractors, customers, guests, invitees, sublessees, or other persons who are doing business with the Lessee or are on the Premises with the Lessee's consent or knowledge, or are on the Premises without Lessee's consent but due to Lessee's failure to undertake adequate security measures.

(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. 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) Lessee's obligations, undertakings and responsibilities under this Section 50 shall not apply to any Hazardous Substance which migrated or shall migrate onto the Premises prior to or during the Term (hereinafter called the "Migrated Hazardous Substance"), except that Lessee shall be responsible for such Migrated Hazardous Substance if any clean-up, remediation or other response action, or indemnification or other action under this Section 50 is required with respect to such Hazardous Substance as a result of (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) the failure by the Lessee or the Lessee's Representative (which determination shall not be arbitrary or capricious) 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 submitted to the Lessee; and/or (3) any act or negligent

omission of the Lessee or the Lessee's Representative with respect to such Migrated Hazardous Substance.

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

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

(j) (1) In the event that a Governmental Authority and/or an Environmental Requirement requires that an institutional control be recorded with respect to the Premises by the fee owner of the Premises, it is acknowledged that the recording of such institutional control may further require that the agreement of lease 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 said agreement of lease has been heretofore or may be hereafter from time to time supplemented and amended (the "**Basic Lease**") be amended to permit the recording of such institutional control. Further, Lessee acknowledges the fee owner of the Premises is the City of Newark and that the Port Authority has advised Lessee that the City of Newark is not obligated to record any institutional control with respect to the Premises or execute a supplement to the Basic Lease permitting the recording of such institutional control. Lessee, in executing this Agreement, agrees that neither the Port Authority nor the City of Newark shall have any obligation to Lessee under this Agreement or otherwise with

respect to the recording of or failure to record such institutional control or to the entering into or failure to enter into any amendment to the Basic Lease, except, however, the Port Authority shall not object to Lessee making a petition to the municipal council of the City of Newark to adopt an ordinance which would authorize appropriate officials to execute on behalf of the City of Newark a Supplemental Agreement to the Basic Lease and to record a institutional control which has the approval of the New Jersey Department of Environmental Protection and if required the approval of the United States Environmental Protection Agency, relating to the Premises and no other portion of the Facility, to implement the provisions of the New Jersey Brownfields and Contaminated Site Remediation Act, N.J.S.A. 58:20B-1 et. seq., provided, however, Lessee shall have consulted with the Port Authority on the content and requirements of such proposed institutional control and shall have given the Port Authority an opportunity to provide Lessee, the New Jersey State Department of Environmental Protection, the United States Environmental Protection Agency and the City of Newark the Port Authority's comments on such proposed institutional control and that the terms, provisions and requirements of any such proposed Supplemental Agreement and institutional control shall be acceptable to the Port Authority, provided, further, however, that such institutional control shall not permit the presence on, include or be required by any Hazardous Substance whose presence in, on or under the Premises was caused by or resulted from the use and occupancy of the Premises by Lessee, Lessee's Representative, or by any affiliated company of Lessee, or the performance of any work by any of them, or the acts or negligent omissions of Lessee, Lessee's Representative, of any affiliated company of Lessee or others who occupied the Premises with the permission of Lessee, Lessee's Representative, or with the permission of an affiliated company of Lessee or their officers, agents or employees, or whose presence in, on or under the Existing Terminal Facility occurred after the commencement of Lease 154. The Port Authority and the Lessee further agree that neither the failure to record any such institutional control (in the event that the consent of the City of Newark to such institutional control cannot be obtained despite commercially reasonable efforts to obtain such consent) or the execution of a supplement to the Basic Lease permitting such recording or failure of such institutional control to be recorded or failure of the Basic Lease to be supplemented to permit such recording, shall be or shall be deemed to be a breach of this Agreement by either the Port Authority or the Lessee, including without limitation, any breach of any implied or express covenant of quiet enjoyment.

(2) In the event that the installation and maintenance of engineering controls may be required and other conditions imposed in connection with any permission to record and the recording of an institutional control, without limiting any other term or provision of this Agreement, the Port Authority shall have the right to enter upon the Premises for the purpose of installing any such engineering controls or for the taking of any other action necessary to record, as a condition of or required by, such institutional control, provided, however, nothing in this paragraph (j) is intended to nor shall relieve Lessee of any of its obligations under this Agreement. Further, it is hereby agreed that this Agreement and Lessee's letting and use and occupancy of the Premises shall be subject to the requirements of any institutional control recorded with respect to the Premises and Lessee shall comply with all the requirements of any such institutional control to the extent of Lessee's obligations set forth elsewhere in this Agreement other than in this subparagraph (j)(2).

(k) Notwithstanding the foregoing, in the event an engineering control is necessary to be placed against the Premises in order to satisfy an Environmental Requirement due to Hazardous Substances on the Premises that are solely not the responsibility of Lessee under this Agreement, in the event the engineering control substantially interferes with Lessee's use and occupancy of the Premises so as to make Lessee's use and occupancy of the area of the engineering control totally not useable by Lessee, Lessee shall be entitled to an abatement in accordance with Section 7, herein but only as to solely that portion of the leasehold totally not useable by Lessee upon ninety (90) days notice to the Port Authority and only after giving the Port Authority a reasonable opportunity to revise the engineering control so as to not substantially interfere with Lessee's use and occupancy.

Section 51. Record-Keeping Obligations

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

Except as otherwise provided herein, 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 shall supersede and replace Lease 154 in its entirety. This Agreement 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

(a) Lessee hereby represents and warrants to the Port Authority that the Lessee (i) 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 or other regulation relating to national security or foreign policy (including, but not limited to, the 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, 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 (ii) is not engaging in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement.

(b) Lessee covenants that (i) during the Term of this Agreement 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 by Lessee, the same shall constitute an event of default, and, accordingly, a basis for termination of this Agreement in accordance with Section 24 hereof, in addition to any and all other remedies provided under this Agreement 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) 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 covenants, representations and warranties made under this Section 53. Upon the request of the Port Authority, the Lessee shall at its own expense defend any suit based on any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) and in handing 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 respects suits against the Port Authority.

(d) The provisions of this Section 53 shall survive the expiration or earlier termination of the Term of this Agreement.

Section 54. Estoppel Certificate.

Lessee agrees to periodically furnish within ten (10) days after so requested by the Port Authority a certificate signed by Lessee certifying (a) that this Lease is in full force and effect and unmodified (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) as to the Lease Commencement Date and the date through which Base Rental and Additional Rental have been paid, (c) that Lessee has accepted possession of the Premises, (d) that except as stated in the certificate no Rental has been paid more than thirty (30) days in advance of its due date, (e) that the address for notices to be sent to Lessee is as set

forth in this Lease (or has been changed by notice duly given and is as set forth in the certificate), (f) that except as stated in the certificate, Lessee, as of the date of such certificate, has no charge, lien, or claim of offset against rent due or to become due, (g) that except as stated in the certificate, the Port Authority is not then in default under this Lease, (h) that there are no renewal or extension options in favor of Lessee, and (i) as to such other matters as may be reasonably requested by the Port Authority.

Section 55. Termination of Lease 154; Survival of Obligations; Release.

(a) Lease 154 is hereby terminated, as if the expiration date of Lease 154 is the date of this Lease. The Port Authority and the Lessee acknowledge that the Lease 154 Premises, as reorganized by this Lease, are the subject of and are incorporated into the leasehold Premises created by this Lease, and are subject to the terms and conditions of, and governed by, this Lease.

(b) Any and all obligations, claims, liabilities, damages, losses, causes of action, suits, demands and expenses arising out of any environmental matters relating to the Lease 154 Premises shall survive the termination of Lease 154, and shall not be deemed released hereunder. All other obligations and rights of the Port Authority and the Lessee set forth in Lease 154 have been terminated, are null and void and of no further force and effect with the execution of this Lease.

(c) Notwithstanding the provisions of paragraph (b) of this Section 55, any lease provisions or obligations that would have survived the expiration date of Lease 154 shall advance and survive from the date hereof unless otherwise noted, including any environmental matters relating to the Lease 154 Premises.

Section 56. Negotiated Agreement.

This Lease has been negotiated by the parties and their respective counsel, and the parties agree that no presumption against the drafter can be applied against either party.

Signatures appear on following page

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

ATTEST:

Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By

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

~~ATTEST~~: WITNESS:

EDWARD W DITTMAN
CARGILL, INC.
SITE MANAGER

CARGILL, INCORPORATED

By

(Name)
(Title) Vice President
(Corporate Seal)

APPROVED:

FORM	TERMS
CVA	

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

On the 10 day of Nov., 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared

Richard M. Larrabee, Director, Port Commerce Dept.

of the PORT AUTHORITY OF NEW YORK AND NEW JERSEY, 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 instruments, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

MARGARET M FINUCANE
NOTARY PUBLIC STATE OF NEW YORK
NASSAU COUNTY
LIC. #01FI5052167
COMM. EXP. 11-20-13

Margaret M. Finucane
(notarial seal and stamp)

STATE OF Minnesota)
: ss. :
COUNTY OF Hennepin)

On the 9th day of Sept., 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared John Geisler, Vice President of CARGILL INCORPORATED, 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 the executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JENNIFER LYNN YOUNG
Notary Public
State of Minnesota
My Commission Expires
January 31, 2016

Jennifer L. Young
(notarial seal and stamp)

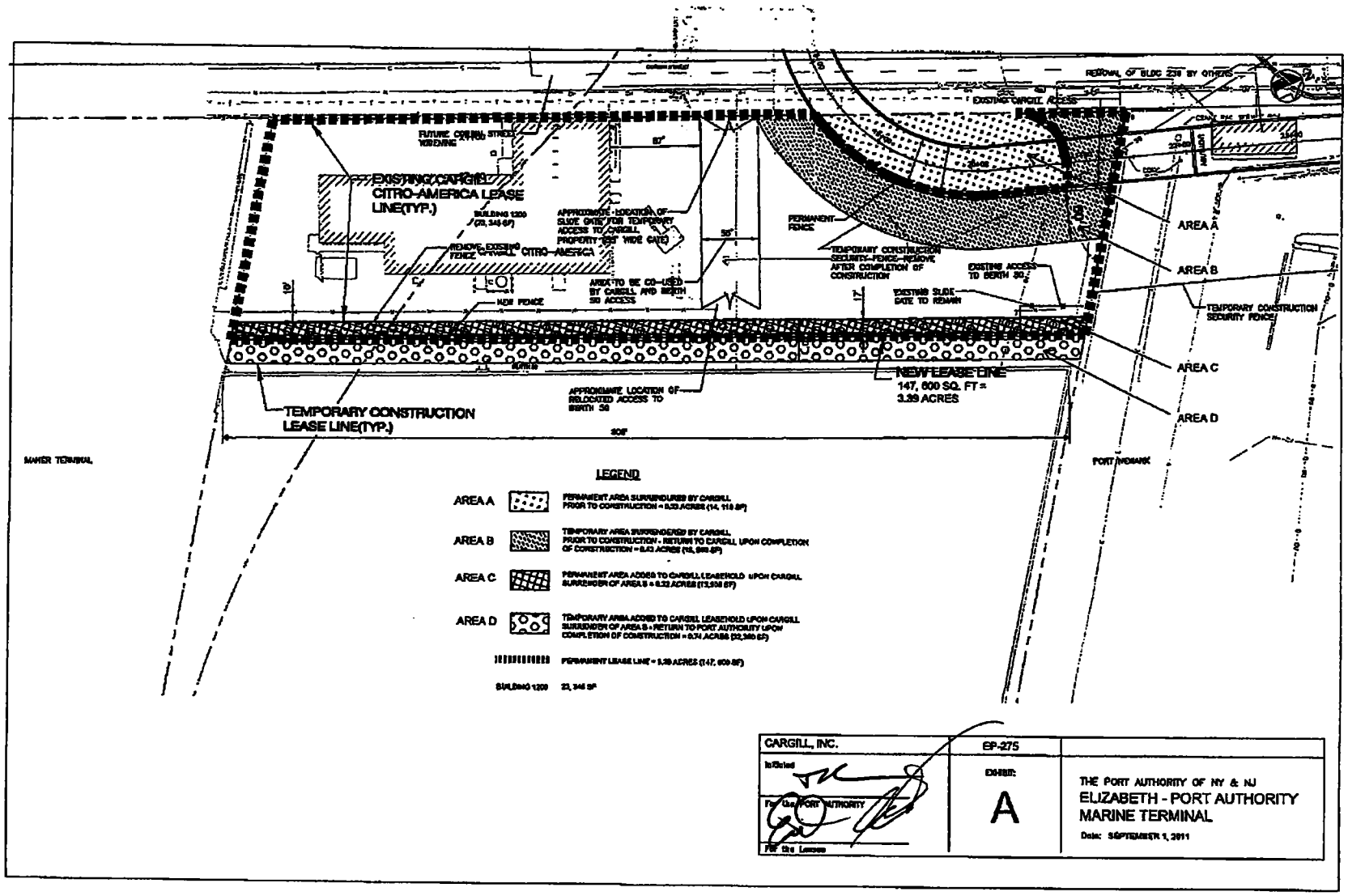

EXISTING CARGILL ACCESS
REMOVAL OF BLDG 239 BY OTHERS
FUTURE CORBIN STREET WIDENING
EXISTING CARGILL
CITRO-AMERICA LEASE LINE(TYP.)
BUILDING 1200 (23,346 SF)
APPROXIMATE LOCATION OF SLIDE GATE FOR TEMPORARY ACCESS TO CARGILL PROPERTY (35' WIDE GATE)
REMOVE EXISTING FENCE
CITRO-AMERICA
NEW FENCE
AREA TO BE CO-USED BY CARGILL AND BERTH 30 ACCESS
PERMANENT FENCE
TEMPORARY CONSTRUCTION SECURITY FENCE REMOVE AFTER COMPLETION OF CONSTRUCTION
EXISTING ACCESS TO BERTH 30
EXISTING SLIDE GATE TO REMAIN
AREA A
AREA B
TEMPORARY CONSTRUCTION SECURITY FENCE
AREA C
AREA D
NEW LEASE LINE
147,600 SQ. FT ±
3.39 ACRES
APPROXIMATE LOCATION OF RELOCATED ACCESS TO BERTH 30
TEMPORARY CONSTRUCTION LEASE LINE(TYP.)
MAHER TERMINAL
PORT NEWARK
LEGEND
AREA A
PERMANENT AREA SURRENDERED BY CARGILL PRIOR TO CONSTRUCTION = 0.33 ACRES (14,110 SF)
AREA B
TEMPORARY AREA SURRENDERED BY CARGILL PRIOR TO CONSTRUCTION - RETURN TO CARGILL UPON COMPLETION OF CONSTRUCTION = 0.43 ACRES (18,999 SF)
AREA C
PERMANENT AREA ADDED TO CARGILL LEASEHOLD UPON CARGILL SURRENDER OF AREA B = 0.33 ACRES (13,938 SF)
AREA D
TEMPORARY AREA ADDED TO CARGILL LEASEHOLD UPON CARGILL SURRENDER OF AREA B - RETURN TO PORT AUTHORITY UPON COMPLETION OF CONSTRUCTION = 0.74 ACRES (32,360 SF)
PERMANENT LEASE LINE = 3.39 ACRES (147,600 SF)
BUILDING 1200 23,346 SF
CARGILL, INC.
EP-275
Initialed
For the PORT AUTHORITY
For the Lessee
EXHIBIT:
A
THE PORT AUTHORITY OF NY & NJ
ELIZABETH - PORT AUTHORITY MARINE TERMINAL
Date: SEPTEMBER 1, 2011

EXHIBIT B
CONSENT TO SUBLEASE

Port Authority Lease No. EP-275
(said Lease being dated as of September 1, 2011)
Port Authority Facilities - Elizabeth Port-Authority Marine Terminal and Port Newark

THIS AGREEMENT, made as of _____ ____, 20___ by and among THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the "Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America and having an office at 225 Park Avenue South, New York, New York 10003, in the Borough of Manhattan, City, County and State of New York, CARGILL, INCORPORATED (hereinafter called "the Lessee"), a Delaware corporation having an office and place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391-2399, and _____ (hereinafter called "the Sublessee"), a _____ [type of entity] organized and existing under the laws of the State of _____, and having offices at _____ [address], and whose representative is _____ [name of representative].

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee have entered into a lease identified above by Port Authority as Lease Number EP-275 covering premises at the abovementioned Port Authority Facilities (which lease, as the same may have been supplemented and amended, is hereinafter called the "Lease"); and

WHEREAS, the Lessee has requested the consent of the Port Authority to a proposed sublease with _____("Sublessee"), a copy of which is attached hereto and made a part hereof (hereinafter called "the Sublease").

WHEREAS, the Port Authority is willing to consent thereto on certain terms and conditions as hereinafter set forth.

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

1. On the terms and conditions hereinafter set forth, and for the consideration set forth in Section 18(e) of the Lease (the "Sublease Consent Fee"), the Port Authority consents to the Sublease.

2. Notwithstanding any provision of the Sublease to the contrary, both this Consent and the Sublease shall terminate, without notice to the Lessee or Sublessee, on the earliest to occur of (i) the day preceding

the date of expiration or earlier termination of the Lease, (ii) the date of the expiration or earlier termination of the Sublease; (iii) on the effective date of any revocation of this Consent by the Port Authority; or (iv) on such earlier date as the Lessee and Sublessee may agree upon. The Sublessee shall cease its use and occupancy of the Subleased Premises (as hereinafter defined) and shall quit such area and remove its property and property for which it is responsible therefrom on or before the expiration or earlier revocation or termination of the Sublease or the Consent.

3. If the Lessee shall at any time be in default under the Lease, the Sublessee shall on demand of the Port Authority pay directly to the Port Authority any rental, fee or other amount due to the Lessee under the Sublease. No such payment shall relieve the Lessee from any obligations under the Lease or under this Consent, but all such payments shall be credited against the obligations of the Lessee or of the Sublessee, as the Port Authority may determine for each payment or part thereof in its discretion. The payment of such rent directly to the Port Authority shall not be implied.

4. In any case of difference between the provisions of the Lease and those of the Sublease, the Lease shall be controlling, it being the intention of the Port Authority merely to permit the exercise of the Lessee's rights (to the extent permitted by the Sublease) by the Sublessee, and not to enlarge, expand or otherwise change the rights granted by the Lease. All of the terms, provisions, covenants and conditions of the Lease shall be and remain in full force and effect.

5. Neither this Consent nor anything container herein nor the consent granted hereunder shall constitute or be deemed to constitute a consent to, nor shall they create an inference or implication that there has been consent to, any enlargement, variation or change in the rights and privileges granted to the Lessee under the Lease, nor consent to the granting or conferring of any rights, powers or privileges to the Sublessee as may be provided by the Sublease if not granted to the Lessee under the Lease, nor shall they impair or affect any of the duties, liabilities and obligations imposed on the Lessee under the Lease. The Sublease is an agreement between the Lessee and the Sublessee with respect to the various matters set forth therein. Neither this Consent nor anything contained herein nor the consent granted hereunder shall constitute an agreement between the Port Authority and the Lessee that the provisions of the Sublease shall apply and pertain between the Port Authority and the Lessee, it being understood that the terms, provisions, conditions and agreements of the Lease shall, in all respects, be controlling, effective and determinative. The specific mention of or any reference to the Port Authority in any part of the Sublease, including without limitation thereto any mention of any consent or approval of the

Port Authority now or hereafter to be obtained, shall not be or be deemed to create an inference that the Port Authority has granted its consent or approval thereto or that the subject matter as to which the consent or approval applies has been or shall be approved or consented to in principle or in fact or that the Port Authority's discretion as to granted any such consents or approvals shall be in any way affected or impaired. The lack of any specific reference in any provision of the Sublease to Port Authority approval or consent shall not be deemed to imply that no such approval or consent is required.

No provision of the Sublease, including but not limited to those imposing obligations on the Sublessee with respect to laws, rules, regulations, taxes, assessments and liens, shall be construed as a submission or admission by the Port Authority that the same could or does lawfully apply to the Port Authority, nor shall the existence of any provision of the Sublease covering action which may be undertaken by the Lessee or the Sublessee including but not limited to those involving signs, construction, insurance, assignment or subletting, be deemed to imply or infer that Port Authority consent or approval thereto has or will be given or that the Port Authority discretion with respect thereto will in any way be affected or impaired. References in this Paragraph to specific matters and provisions as contained in the Sublease shall not be construed as indicating any limitation upon the rights of the Port Authority with respect to its discretion as to granting or withholding approvals or consent as to other matters and provisions in the Sublease which are not specifically referred to herein.

6. The Sublessee, in its operations under or in connection with the Sublease and in its occupancy of the premises, pursuant to the Sublease ("Subleased Premises"), agrees to assume, observe, be bound by and comply with all the terms, provisions, covenants and conditions of the Lease.

7. (a) Without in any way affecting the obligations of the Lessee under the Lease and under this Consent, and notwithstanding the terms and provisions of the Sublease, the Sublessee shall make repairs and replacements as if it were the Lessee under the Lease. In addition, the Sublessee shall indemnify the Port Authority, its Commissioners, officers, employees, representatives, agents, contractors, customers, guests, invitees and others who are doing business with the Sublessee at the Subleased Premises, or out of any other acts or omissions of the Sublessee, its officers and employees at the Facilities. However, all acts and omissions of the Sublessee shall be deemed to be acts and omissions of the Lessee under the Lease and the Lessee shall also be severally responsible therefor, including but not limited to the obligations of indemnification, replacement and repair.

(b) If so directed, the Sublessee 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 provisions of any statutes respecting suits against the Port Authority.

8. (a) The Sublessee agrees that it will conduct a first-class operation, will furnish all fixtures, equipment, personnel (including licensed personnel as necessary or as required by law), supplies, materials and other facilities and replacements necessary or proper therefore and shall maintain its fixtures, equipment and personal property in the Subleased Premises in first class operating order, conditions and appearance at all times, making all repairs and replacements necessary therefor.

(b) Nothing herein contained shall relieve the Lessee of its obligations to secure Port Authority approval before permitting the Sublessee to install any fixtures in or upon or making any alterations, decorations, additions or improvements to the Subleased Premises.

9. In addition to all other remedies available to the Port Authority under the Lease or otherwise, this Consent may be revoked by the Port Authority by notice to the Lessee and the Sublessee in the event of any breach by the Sublessee of any term or provision of the Lease or of this Consent, and no such revocation shall be deemed to affect the Lease or the continuance thereof. Any notice given to the Sublessee shall be sufficient if given in accordance with the Section of the Lease entitled "Notices", for the purpose of which the Sublessee hereby designates the person named as representative on the first page hereof as its officer or representative upon whom notices may be served and the Sublessee designates its office at the address stated on the first page hereof as the office where such notices may be served.

10. The Lessee and Sublessee represent and warrant that the attached Sublease sets forth the full and entire rental or other consideration payable to the Lessee by the Sublessee for or in connection with the subletting hereunder or use or occupancy of the Subleased Premises.

11. If the Lessee or the Sublessee should fail to pay any amount required under this Consent 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 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 Consent. 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 (i) any rights of the Port Authority under this Consent or (ii) any obligations of the Lessee or the Sublessee under this Consent. 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 Consent shall be payable instead at such legal maximum.

12. The granting of this Consent by the Port Authority shall not be or be deemed to operate as a waiver of the rights of the Port Authority, or as a consent to any subsequent subleasing (by the Lessee or by the Sublessee) or to any assignment of the Lease or the Sublease or of any rights under either of them, whether in whole or in part.

13. Reference herein to the Lessee or the Sublessee shall mean and include each of the Lessee and the Sublessee, their respective officers, agents, employees, representatives and also others on the Subleased Premises, the Premises or the Facility with the consent of either the Lessee or the Sublessee.

14. Neither the Commissioners of the Port Authority nor any of them, nor any of its officers, agents, employees or representatives thereof shall be held personally liable to the Lessee or to the Sublessee under any term or provision of this Consent or because of its execution or because of any breach or alleged breach thereof.

15. The Lessee and Sublessee hereby represent to the Port Authority that they have complied with and will comply with all laws, governmental rules, regulations and orders which as a matter of law are applicable to or which affect the operations of the Lessee and the Sublessee under the Lease or its or their use of the Subleased Premises. The obligations of the Lessee and the Sublessee hereunder to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property. Such provision is not to be construed as a submission by the Port Authority to the application to itself of such

requirements or any of them.

16. The Sublessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Sublessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by such subpart. The Sublessee assures that it will require that its covered suborganizations provide such assurances to the Sublessee that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

17. This Consent constitutes the entire agreement between the parties hereto on the subject matter contained herein, and may not be changed, modified, discharged or extended except by instrument in writing duly executed by all of the parties and only with the express prior written consent of the Port Authority.

18. The waiver of a breach of any provision of this Consent by the Port Authority shall not operate or be construed as a waiver of any other provision of this Consent or consent to any subsequent breach.

19. If any term or provision of this Consent shall be determined invalid or unenforceable to any extent or in any application, then the remainder of this Consent shall not be affected thereby, and such term or provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law and, except to the extent or in such application, shall not be affected thereby, and each and every term and provision of this Consent as so modified if necessary, shall be enforced to the fullest extent and in the broadest application permitted by law.

20. The Consent Agreement and the interpretation, validity and enforceability thereof shall be governed by 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; provided, however, that the Lessee and Sublessee each further agrees that any actions involving the nonpayment of the Sublease Consent Fee hereunder shall be subject to the jurisdiction of the state courts of the State of New Jersey and it shall not seek to remove the same to federal courts in the State of New Jersey.

IN WITNESS WHEREOF, the Port Authority, the Lessee and the Sublessee have executed these documents.

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

_____

By: _____

(Title) _____

(Seal)

ATTEST:

CARGILL, INCORPORATED

_____
Secretary

By: _____

(Title) _____

(Corporate Seal)

ATTEST:

_____

_____
Secretary

By: _____

(Title) _____

(Corporate Seal)

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

On the _____ day of _____, before me, the undersigned, _____ personally appeared _____, and 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.

_____
Notary seal and stamp

STATE OF)
) ss.
COUNTY OF)

On the _____ day of _____, before me, the undersigned, _____ personally appeared _____, and 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.

_____
Notary seal and stamp

STATE OF)
) ss.
COUNTY OF)

On the _____ day of _____, before me, the undersigned, _____ personally appeared _____, and 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.

_____
Notary seal and stamp

ASSIGNMENT OF LEASE
WITH ASSUMPTION AND CONSENT (Lease No. EP-275)

29, THIS AGREEMENT (the "Agreement"), made as of June 29, 2012 (the "Effective Date"), by THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States of America (hereinafter called the "Port Authority"), having an office for the transaction of business at 225 Park Avenue South, New York, New York 10003, CARGILL, INCORPORATED, a Delaware corporation (hereinafter called the "Assignor") with an office for the transaction of business at 15407 McGinty Road West, Wayzata, Minnesota 55391-2399, whose representative is Sergio Rial, and WILD FLAVORS, INC., a Delaware corporation (hereinafter called the "Assignee"), with an office for the transaction of business at 1261 Pacific Avenue, Erlanger, Kentucky 41018, whose representative is Michael H. Ponder.

WITNESSETH, THAT:

WHEREAS, the Assignor desires to assign to the Assignee that certain Agreement of Lease EP-275 dated as of September 1, 2011, made by and between the Port Authority and the Assignor (the "Lease"), covering certain premises at Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, in the County of Union and the State of New Jersey (as defined in the Lease, the "Premises"); and

WHEREAS, the Assignment Consent Fee provided for under Section 18(f) of the Lease has contemporaneously been sent by wire transfer to the Port Authority by Assignee in immediately available funds;

WHEREAS, the Chief Executive Officer of Assignee has certified to the Port Authority that, to the best of such officer's knowledge, (i) the Assignee does not appear on OFAC's Specially Designated and Blocked Persons list (as defined in Section 53 of the Lease); (ii) the Assignee is solvent and is in a sound financial condition; and (iii) the Assignee has an established record and reputation in the operation of a business similar to the business being operated by the Assignor on the Premises;

WHEREAS, the Port Authority is willing to consent to such assignment on certain terms, provisions, covenants and conditions:

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, the Port Authority, the Assignor and the Assignee hereby agree as follows:

1. The Assignor does hereby assign, transfer and set over to the Assignee and its successors, for its and their own proper use, benefit and behoof forever, the Lease, to have and to hold the same unto the Assignee and its successors from the Effective Date, for and during all the rest, residue, and remainder of the term of the letting under the Lease, subject nevertheless to all the terms, provisions, covenants and conditions therein contained. The Assignee has delivered to the Port Authority, as security for the Assignee's full, faithful and prompt performance of and compliance with all of its assumed obligations under the Lease, a clean irrevocable letter of credit issued by an investment grade banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of $55,000.00, and otherwise complying with the terms and conditions set forth in Section 42 of the Lease.

2. The Port Authority hereby consents to the foregoing assignment. Notwithstanding anything herein to the contrary, the granting of such consent by the Port Authority shall not be, or be deemed to operate as, a waiver of the requirement for consent (or consents) to each and every subsequent assignment by the Assignee or by any subsequent assignee, nor shall the Assignor be relieved of liability under the terms, provisions, covenants and conditions of the Lease by reason of this consent of the Port Authority or of one or more other consents to one or more other assignments thereof.

3. The Assignor agrees that this assignment of the Lease and this consent of the Port Authority thereto shall not in any way whatsoever affect or impair the liability of the Assignor to perform all the terms, provisions, covenants and conditions, including without limitation thereto, the obligation to pay rent contained in the Lease on the part of the lessee or tenant thereunder to be performed, and that the Assignor shall continue fully liable for the performance of all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, on the

part of the lessee or tenant thereunder to be performed. The liability of the Assignor as set forth in this paragraph shall remain and continue in full force and effect as to any modification of the Lease whether in accordance with the terms of the Lease, or by a separate or additional document, and notwithstanding any such modification, whether or not the Assignor has specifically consented to such modification; provided, however, that in the event that the Term under the Lease is extended or renewed after the Effective Date, or in the event that the Premises is broadened or additional land is incorporated into the Premises granted under the Lease after the Effective Date, the Assignor shall not be deemed liable under the Lease for such extension or renewal of the Term of the Lease after the Effective Date or grant of additional land to be leased to Assignee under the Lease after the Effective Date (however, in the event of such a grant of additional land, Assignor shall remain liable for the original Premises under the Lease); and provided further, upon the earlier of the Expiration Date (as defined in the Lease) or the earlier termination of the Lease as provided for in Section 25 of the Lease, the Assignor's obligations under the Lease shall terminate, except as to those obligations which expressly survive the termination of the Lease pursuant to the terms and conditions of the Lease. The liability of the Assignor hereunder shall in no way be affected by the failure of the Port Authority to obtain the Assignor's consent to any such modification notwithstanding that the Port Authority had previously obtained such consent with respect to a prior modification.

4. The Assignee does hereby assume the performance of and does hereby agree to perform all the terms, provisions, covenants and conditions, including without limitation thereto, the obligation to pay rent contained in the Lease, to be performed on the part of the lessee or tenant thereunder, as though the Assignee were the original signatory to the Lease. The execution of this instrument by the Port Authority does not constitute a representation by it that the Assignor has performed or fulfilled every obligation required by the Lease; as to such matters the Assignee agrees to rely solely upon the representation of the Assignor.

5. The liability of the Assignor hereunder shall in no way be affected by:

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

(b) The impairment, limitation or modification of the liability of the Assignee or its estate in bankruptcy, or of any remedy for the enforcement of the Assignee's said liability under the Lease, resulting from the operation of any present or future provision of the Bankruptcy Code or any other statute or from the decision of any court having jurisdiction over the Assignee or its estate; or

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

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

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

7. If any term or provision of this Agreement shall be determined to be invalid or unenforceable to any extent or in any application, then the remainder of this Agreement shall not be affected thereby, and such term or provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law and, except to such extent or in such application, shall not be affected thereby, and each and every term and provision of this Agreement, as so modified if necessary, shall be enforced to the fullest extent and in the broadest application permitted by law.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without regard to conflicts of law principles.

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

Signatures Appear on Following Page

IN WITNESS WHEREOF, the Port Authority, the Assignor and the Assignee have executed these presents as of the date first hereinabove set forth.

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

_____

By: _____
(Name)
(Title)
(Seal)

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

ATTEST:

ASSIGNOR:
CARGILL, INCORPORATED

_____

By: _____
(Name)
(Title)
(Seal)

ATTEST:

ASSIGNEE:
WILD FLAVORS, INC.

_____

By: _____
(Name): MICHAEL H. PONDER
(Title): Chief Executive Officer
(Seal)

WILD FLAVORS, INCORPORATED

IN WITNESS WHEREOF, the Port Authority, the Assignor and the Assignee have executed these presents as of the date first hereinabove set forth.

ATTEST:

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

_____

By: _____
(Name)
(Title)
(Seal)

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

ATTEST:

ASSIGNOR:
CARGILL, INCORPORATED

_____

By: _____
(Name) Sergio Rial
(Title) Executive Vice President and
(Seal) Chief Financial Officer

ATTEST:

ASSIGNEE:
WILD FLAVORS, INC.

_____

By: _____
(Name):
(Title): Chief Executive Officer
(Seal)

IN WITNESS WHEREOF, the Port Authority, the Assignor and the Assignee have executed these presents as of the date first hereinabove set forth.

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

_____

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

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

ATTEST:

ASSIGNOR:
CARGILL, INCORPORATED

_____

By: _____
(Name)
(Title)
(Seal)

ATTEST:

ASSIGNEE:
WILD FLAVORS, INC.

_____

By: _____
(Name):
(Title): Chief Executive Officer
(Seal)

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

On the _____ day of June, 2012, before me, the subscriber, personally appeared _____, the _____ of the Port Authority of New York and New Jersey, who I am satisfied is the person who has executed the within instrument, and I having first made known to him/her the contents thereof, s/he did acknowledge that s/he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

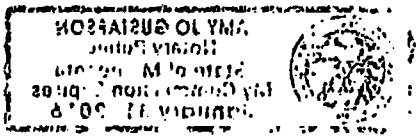
_____
Notary seal and stamp

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On the 25th day of June, 2012, before me, the undersigned, personally appeared SERGIO RIAL, the EVP AND CFO of Cargill, Incorporated, who I am satisfied is the person who has executed the within instrument and, I having first made known to him/her the contents thereof, s/he did acknowledge that s/he signed and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation.

Amy Jo Gustafson
Notary seal and stamp

AMY JO GUSTAFSON
Notary Public
State of Minnesota
My Commission Expires
January 31, 2016



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

On the 26th day of June, 2012, before me, the subscriber, personally appeared Richard Larrabee, the Director Port Commerce of the Port Authority of New York and New Jersey, who I am satisfied is the person who has executed the within instrument, and I having first made known to him/~~her~~ the contents thereof, ~~s/~~he did acknowledge that ~~s/~~he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

Nancy S. Niles

Notary seal and stamp

NANCY S. NILES
NOTARY PUBLIC STATE OF NEW YORK
No. 01NI4993233
Qualified in Bronx County
My Commission Expires March 09, 2014

STATE OF_____)
) ss.
COUNTY OF _____)

On the _____ day of June, 2012, before me, the undersigned, personally appeared _____, the _____ of Cargill, Incorporated, who I am satisfied is the person who has executed the within instrument and, I having first made known to him/her the contents thereof, s/he did acknowledge that s/he signed and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation.

_____
Notary seal and stamp

STATE OF Kentucky)
) ss.
COUNTY OF Kenton)

On the 22nd day of June, 2012, before me, the undersigned, personally appeared Michael H. Ponder, the Chief Executive Officer of Wild Flavors, Inc., who I am satisfied is the person who has executed the within instrument and, I having first made known to him/her the contents thereof, s/he did acknowledge that s/he signed and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation.

Rebecca A. Jones
Notary seal and stamp

Rebecca A. Jones
Notary Public, ID No. 442846
State at Large, Kentucky
My Commission Expires on May 25, 2015