Lease No. LPN-309

AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

and

FAPS, INC.

Dated as of: October 1, 2010

CONFORMED COPY

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THIS AGREEMENT OF LEASE (this "Agreement" or "Lease"), made as of October 1, 2010, 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 **FAPS, INC.**, a New Jersey corporation (hereinafter called "the Lessee") with an office and place of business at 371 Craneway Street, Port Newark, Newark, New Jersey 07114, whose representative is Gary LoBue, 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 June 1, 2009, the Port Authority and the Lessee entered into that certain Agreement of Lease L-PN-293 ("Lease 293)", which Lease 293 terminated and replaced three prior leases, Agreement Number L-PN-265, dated December 1, 2000 ("Lease 265"), Agreement Number L-PN-266, dated December 1, 2000 ("Lease 266"), and Agreement Number L-PN-291, dated February 15, 2009 ("Lease 291"), for certain premises (the "Lease 293 Premises") located at Port Newark (hereinafter called the "Facility"), on the north side of the Port Newark Channel ("Port Newark North") and on the south side of the Port Newark Channel ("Port Newark South").

(b) Pursuant to a Surrender and Termination Agreement (the "Surrender Agreement") of even date herewith, the Port Authority and the Lessee have agreed to: (i) the termination of Lease 293, and (ii) the surrender of certain portions of the Lease 293 Premises. The parties have further agreed that those portions of the Lease 293 Premises that were not surrendered in accordance with the Surrender Agreement shall be the premises that are the subject of this Lease as more particularly set forth on "Exhibit A," attached hereto and made a part hereof (the "Premises"), and the terminal space that is the subject of the Operating Agreement (as hereinafter defined), also as more particularly set forth on "Exhibit A" attached hereto.

(e) Simultaneously with the execution of this Lease and pursuant to the Surrender Agreement, the Lessee is surrendering the following space located in the Lease 293 Premises: approximately 96.84 acres shown on "Exhibit A" attached hereto and as such term is defined in the Surrender Agreement (the "Surrendered Premises").

(f) As set forth on "Exhibit A", the Premises, the Lessee will retain the following space: (i) Parcel 5 (also known as FAPS Lots E & L), consisting of approximately 75.04 acres and including the two (2) eastern sections of Building 263 and its surrounding open area; (ii) Parcel 8 (also known as FAPS Lot D), consisting of approximately 15.09 acres; (iii) the eastern half of Parcel 4 (also known as FAPS Lot S), consisting of approximately 13.61 acres; and (iv) Building 371, with the associated open area, consisting of approximately 10,514 square feet, said premises being more particularly defined in Section 1A, subsection (a) below.

(g) Simultaneously with the execution of this Lease, the Port Authority and the Lessee have agreed to enter into a Railroad Operating Agreement governing the use of certain railroad tracks and related terminal area shown on "Exhibit A" (the "Operating Agreement").

Section 1A. Letting

(a) Subject to and in accordance with the terms and conditions of this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at Port Newark, in the City of Newark, in the County of Essex and the State of New Jersey, the following: One Hundred Three and Ninety-Eight/One Hundredths (103.98) acres as marked in checkered hatching on "Exhibit A", together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Premises". The parties agree that the Premises constitute non-residential property.

(b) 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, including the installation

and operation of information technology communications and security systems), or more than twenty (20) feet above the present ground level of any open area included in the Premises (except to the extent required for the installation and operation of information technology communications and security systems).

Section 2. Term; Lease Commencement Date

The term of the letting under this Agreement shall commence at 12:01 o'clock A.M. as of October 1, 2010 (the "Lease Commencement Date") and shall expire if not sooner terminated, at 11:59 o'clock P.M on December 31, 2019 (the "Term").

Section 3. Basic Rental

(a) Beginning on the Lease Commencement Date, the Lessee shall pay a basic rental to the Port Authority at the annual rate of Six Million One Hundred Fifty Nine Thousand Nine Hundred Forty Two and 00/100 Dollars ($6,159,942.00) for the entire Premises, payable in advance on the first day of each calendar month in equal monthly installments of Five Hundred Thirteen Thousand Three Hundred Twenty Eight and 00/100 Dollars ($513,328.00), representing a rate of One Dollar and Thirty Six Cents ($1.36) per square foot (the "Basic Rental"). Commencing January 11, 2012, the Basic Rental set forth in this Section shall be adjusted during the Term under this Agreement only in accordance with the provisions of paragraph (b) of Section 4 hereof.

(b) 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; provided, however, that Lessee shall not be liable for the repair, maintenance or upgrade of any underground utilities.

(c) 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); provided, however, that such fees must be simultaneously imposed upon all users of public berths.

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 November 2011 and the same calendar month in each calendar year thereafter during the Term.

(ii) "Anniversary Date" shall mean, as the context requires, January 1, 2012 (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 January 1, 2012 would be a fraction of which the numerator is the Index for November 2011 less the Index for November 2010 and the denominator is the Index for November 2010. As a further example, the Annual Index Increase for the Anniversary Date that is January 1, 2013 would be a fraction of which the numerator is the Index for November 2012 less the Index for November 2011 and the denominator is the Index for November 2011.

(iv) "Base Period" shall mean the calendar month of November 2010.

(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 four and one half percent (4 1/2%), in which case the Percentage Increase shall be four and one half percent (4 1/2%).

(b) *Annual Increases*. Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date and continuing through to the day preceding the next Anniversary Date for each year thereafter, or the expiration date of the Term under this Agreement, as the case may be, the Lessee shall pay a 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) All Basic Rentals shall be paid in advance on the first day of each calendar month in equal monthly installments.

(d) *Adjustments*.

(i) In the event the Index to be used in computing any adjustment referred to in 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 Vehicle Throughput 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:

"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.

"FAPS Vehicle" shall mean (i) an automobile, truck, sports utility vehicle, trailer, motorcycle, or other such vehicle as is commonly processed or otherwise handled as part of a privately-owned vehicle stevedoring operation, whether such vehicle is rolled on or off a vessel or railcar independently or on a flat-bed trailer, or is moved by container crane, which vehicle is handled by the Lessee at the Premises or at any of

the Port Authority's marine terminal facilities, whether domestic, import or export vehicles; and (ii) "Heavy Cargo," as defined in the next sentence, which Heavy Cargo is handled by the Lessee at the Premises or at any of the Port Authority's marine terminal facilities. "Heavy Cargo" shall mean boats, aircraft, buses, farm and construction equipment, cranes, machinery, and any other heavy item requiring utilization of wheeled equipment in order to be discharged from or loaded onto a vessel or railcar. For purposes of the calculation of the "Annual Vehicle Throughput Rental," as defined in Paragraph (b) of this Section 5, each boat, aircraft, bus or other item of Heavy Cargo shall be deemed equivalent to three (3) FAPS Vehicles.

Further, each FAPS Vehicle that arrives at or ships from any of the Port Authority's marine terminal facilities in a container shall be counted as one (1) FAPS Vehicle for the purpose of calculating the Annual Vehicle Throughput Rental (as hereinafter defined).

(b) In addition to all other rentals payable under this Agreement, commencing on January 1, 2011, Lessee shall pay, as additional Basic Rental under this Lease, a FAPS Vehicle/Heavy Cargo throughput rental (hereinafter called the "Annual Vehicle Throughput Rental") for each Calendar Year running from January 1, 2011 through the expiration of the Term of this Lease as follows: during each Calendar Year, the Lessee shall pay the Port Authority, in accordance with subsection (c) below, an Annual Vehicle Throughput Rental by multiplying (i) the amount of Three and 50/100 Dollars ($3.50) per FAPS Vehicle (the "Pre-Change Rate") up to the Two Hundred Thousandth (200,000th) FAPS Vehicle handled by the Lessee during that Calendar Year (the "Vehicle Charge Change Threshold"), with the amount adjusting downwards to Two and 50/100 Dollars ($2.50) (the "Post-Change Rate") for each FAPS Vehicle handled by the Lessee in excess of the Two Hundred Seventy Five Thousandth (275,000th) FAPS Vehicle during that Calendar Year (the "Excess Vehicle Charge Threshold"), for the remainder of such Calendar Year (the "FAPS Vehicle Charge") by (ii) the actual number of FAPS Vehicles entering the leasehold Premises or loaded onto or discharged from vessels berthing or railcars stopping at any of the Port Authority's marine terminal facilities handled by the Lessee during such Calendar Year; provided, however, that no FAPS Vehicle Charge shall be due on any FAPS Vehicles handled by the Lessee during such Calendar Year that fall between the Vehicle Charge Change Threshold and the Excess Vehicle Charge Threshold.

The Annual Vehicle Throughput Rental is not subject to the Basic Rental Escalation as set forth in Section 4.

(c) The Annual Vehicle Throughput Rental shall be reported and payable as set forth below in this paragraph, based on the number of FAPS Vehicles and/or Heavy Cargo loaded onto or discharged from vessels berthing at or railcars stopping at any of the Port Authority's marine terminal facilities handled by the Lessee, per Calendar Year:

(1) On or before February 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 end of the Term of this Lease, the Lessee shall render to the Port Authority a statement (a "FAPS Waterborne Vehicles Monthly Report") certified by a responsible officer of the Lessee showing (i) the names of vessels berthing at any of the Port Authority's marine terminal facilities during the preceding month, date of entry/arrival and duration of stay of each such vessel or railcars from which FAPS Vehicles are discharged or onto which FAPS Vehicles are loaded, (ii) the total number of FAPS Vehicles loaded onto or discharged from vessels berthing at any of the Port Authority's marine terminal facilities or from railcars at any of the Port Authority's marine terminal facilities, (iii) the number of those FAPS Vehicles received or shipped in containers; and (iv) the cumulative number of FAPS Vehicles loaded onto or discharged from vessels berthing at any of the Port Authority's marine terminal facilities or railcars arriving at any of the Port Authority's marine terminal facilities, from the date of the commencement of the Calendar Year for which the FAPS Waterborne Vehicle Monthly Report is made through the last day of the preceding month.

(2) As Annual Vehicle Throughput Rental the Lessee will be billed the guaranteed minimum amount of Seven Hundred Thousand Dollars ($700,000.00) (the "Guaranteed Minimum Throughput Rental"), payable on the first day of each calendar month in equal monthly installments of Fifty Eight Thousand Three Hundred Thirty Three and 33/100 Dollars ($58,333.33), which amount represents the guaranteed minimum required number of FAPS Vehicles equal to one-twelfth ($1/12^{th}$) of the Vehicle Charge Change Threshold multiplied by the Pre-Change Rate per FAPS Vehicle, plus any additional amounts payable in accordance with subsection (3) below.

(3) The Lessee shall render to the Port Authority on the 20th day of each January of each Calendar Year, the FAPS Waterborne Vehicle Annual Report (the "Final Annual Waterborne Monthly Report") which shall include a reconciliation of the amount of the Annual Vehicle Throughput Rental payable for the preceding Calendar Year. In the event that the Final Annual Waterborne Monthly Report indicates that the actual numbers of FAPS Vehicles handled by the Lessee during such Calendar Year exceeded the Excess Vehicle Charge Threshold, the Port Authority will bill the Lessee the difference between the Guaranteed Minimum Throughput Rental already paid and the amount of Annual Vehicle Throughput Rental actually due (calculated by subtracting the Excess Vehicle Charge Threshold from the actual number of FAPS Vehicles handled by the Lessee, and multiplying the result by the Post-Change 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 $700,000 per annum (equating to 200,000 vehicles X $3.50), payable at $58,333.33 per month on the first day of each month during the Term commencing on January 1, 2011, regardless of whether less than 200,000 vehicles are throughput by Lessee during a Calendar Year.

(e) The computation of the Annual Vehicle Throughput 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 Vehicle Throughput Rental, at a minimum, the Guaranteed Minimum Throughput 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 FAPS Vehicles handled on the Premises or loaded onto or discharged from vessels berthing at any of the Port Authority's marine terminal facilities or from railcars stopping at any of the Port Authority's marine terminal facilities from the

commencement of the Calendar Year through the effective date of termination, the names of vessels berthing at any of the Port Authority's marine terminal facilities during such Calendar Year, the date of arrival/entry and of stay of each such vessel or railcars from which FAPS Vehicles are discharged or onto which FAPS Vehicles are loaded. The statement shall also set forth the number obtained by (a) multiplying (i) a fraction, the numerator of which shall be the Excess Vehicle Charge Threshold, 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 Number of FAPS Vehicles"). Then, the Projected Number of FAPS Vehicles, rounded to the nearest whole number, shall be subtracted from the actual number of FAPS Vehicles handled during the partial Calendar Year. In the event that the result is positive, the result shall be multiplied by the Post-Change Rate, and the Lessee shall pay this amount to the Port Authority as Annual Vehicle Throughput 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 2011, and the Lessee has handled 150,000 FAPS Vehicles at that time, the calculation shall be (275,000/365) x 180 = 135,616.44 (the Projected Number of FAPS Vehicles). Then, the equation shall be reflected as follows: 150,000-135,616= 14,384. As the Lessee has paid the Annual Vehicle Throughput Rental for up to 135,616 FAPS Vehicles at this point, but handled 150,000 Vehicles, the Lessee will pay to the Port Authority the amount of 14,384 x $2.50=$35,960.00.

(g) Subject to Section 6 herein, the Lessee shall be required to handle and process vehicles that are substantially waterborne.

Section 6. <u>Non-Waterborne Vehicle Wharfage Rate</u>

(a) Up to and including twenty five percent (25%) of the FAPS Vehicles handled at the Premises in a Calendar Year may be non-waterborne to the Port Authority's marine terminal facilities, or not intended to be waterborne therefrom ("Non-Waterborne Vehicle"). In the event that the total number of Non-Waterborne Vehicles in a Calendar Year exceeds twenty five percent (25%) of the total FAPS Vehicles handled at the Premises

during such Calendar Year (the "Non-Waterborne Vehicle Threshold"), on a one-time basis, within twenty (20) days after the end of the applicable Calendar Year, the Lessee shall pay to the Port Authority as additional Basic Rental an amount equal to the product obtained by multiplying each such Non-Waterborne Vehicle in excess of the Non-Waterborne Vehicle Threshold by the "Non-Waterborne Vehicle Wharfage Rate" as hereinafter defined (the "Non-Waterborne Vehicle Wharfage Rental"). The "Non-Waterborne Vehicle Wharfage Rate" shall be Seven Dollars and Fifty Cents ($7.50) and shall be adjusted during the Term of this Lease proportionately to such adjustments as may be made from time to time in the per ton wharfage charge for unboxed automobiles discharged at public berths located at the Port Authority's marine terminal facilities, as set forth in the Tariff, during the Term.

(b) On or before October 20, 2010, and or before the 20th day of each and every month occurring thereafter during the Term of the letting of this Agreement, the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of FAPS Vehicles released from the Port Authority's marine terminal facilities during the preceding month (a "Non-Waterborne Vehicle Monthly Report"). The Non-Waterborne Vehicle Monthly Report made on the 20th day of each January of each Calendar Year (the "Final Annual Non-Waterborne Monthly Report") shall include the total number of Non-Waterborne Vehicles handled by the Lessee during the preceding Calendar Year, the total number of FAPS Vehicles actually handled by the Lessee during the preceding Calendar Year, and the percentage of such FAPS Vehicles that were Non-Waterborne Vehicles (such percentage calculated by dividing the number of Non-Waterborne Vehicles by the total number of FAPS Vehicles handled by the Lessee and multiplying the result by 100).

(c) No penalties, incentives or credits for the dwell time of Non-Waterborne Vehicles will be assessed or granted.

Section 7. <u>Abatement</u>

(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 October 1, 2010 to December 31, 2011 both dates inclusive, for each square foot of usable area, the use of which is denied the Lessee, at the annual rate of One Dollar and Thirty Six Cents ($1.36), the rate thereafter to be adjusted during the Term proportionately to the adjustment in

Basic Rental in accordance with the provisions of paragraph (b) of Section 4 hereof. Notwithstanding the foregoing, no rent abatement shall be allowed in connection with any areas of the Premises that are currently or are in the future encumbered by jersey barriers.

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

Section 8. Rights of User

The Lessee shall use the Premises for the following purposes and in full compliance with all applicable laws, rules and regulations: (i) receipt, preparation, storage incidental to distribution, and distribution of FAPS Vehicles and Heavy Cargo substantially waterborne to or from the Facility or the Elizabeth Port Authority Marine Terminal, for the benefit of third parties and (ii) uses incidental to the foregoing (i), including without limitation uses and operations relating to the security of the Premises and, as necessary, the Facility. Any other use not specifically authorized in this Section 8 shall require the prior written consent of the Port Authority, in its sole and absolute discretion. Nothing herein shall prevent Lessee from allowing the use of the Premises by security personnel or federal or state law enforcement in fulfilling their law enforcement responsibilities; provided, however, that any Sublease (as defined herein in Section 18) shall require the prior consent of the Port Authority.

Section 9. Ingress and Egress

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

Lessee hereby releases and discharges the Port Authority and its successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area whether within or outside the Facility; provided, that, a reasonably equivalent means of ingress and egress remains available. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in, along, across or through any streets, ways and walks near the Premises.

Section 10. Governmental and Other Requirements

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

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items now or at any time during the occupancy of the Premises by the Lessee which as a matter of law are applicable to or which affect (i) the Premises, (ii) the operations of the Lessee at the Premises or the Facility, (iii) the use and occupancy of the Premises and/or (iv) any Hazardous Substance 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 that may reasonably have a material effect on the Premises, the

Facility, the Port Authority or the Lessee (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. Notwithstanding the foregoing in this Section 10, the Lessee shall not be deemed in breach or violation of its obligations hereunder and to the Port Authority for not complying with any license, certificate, permit, or other authorization, so long as (i) the Lessee is pursuing a good faith challenge or amendment to such license, certificate, permit, or other authorization; (ii) such non-compliance does not result in criminal liability; (iii) such non-compliance does not cause a lien to be incurred on the Premises or the Facility; (iv) such non-compliance will not adversely affect any other tenant at the Facility; (v) will not cause the Port Authority to breach any agreement; and (vi) that such non-compliance does not pose a potential or actual danger to person or property in the discretion of 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, and every proposed change or amendment as provided for by Section IX of the Port Authority's By-Laws, but at least five (5) days before the Lessee shall be required to comply therewith.

(b) Intentionally Deleted

(c) No statement or provision in the Rules and Regulations shall be deemed a representation or promise by the Port

Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

Section 12. Operational Obligations of the Lessee

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

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

(c) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Premises and the Lessee shall remove from the Premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles in a concealed location, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. Said receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as are first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority for the removal of such material except with the prior consent of the Port Authority in its sole discretion; provided, however, that such garbage shall be collected and removed from the Premises a minimum of three (3) times weekly.

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

(e) The Lessee shall permit the use of and provide reasonable access to the Premises 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; provided, however, that reasonable prior written notice shall be afforded to the Lessee.

(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).

(g) Intentionally Deleted.

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. Notwithstanding the foregoing, such services may be temporarily interrupted for the purposes of repairing or upgrading same, if approved by the Port Authority and undertaken by the Lessee in accordance with Section 20(q) hereof.

(b) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Premises or elsewhere at the Facility, including without limitation, systems for the supply of heat, hot and cold water, gas, electricity and fuel, and for the furnishing of air-conditioning, telephone, telegraph, teleregister, internet,

fiber optic cable, and intercommunications services including any lines, pipes, mains, wire, conduits and equipment connected with or appurtenant to all such systems. Notwithstanding the foregoing, such services may be temporarily interrupted for the purposes of repairing or upgrading same, if approved by the Port Authority and undertaken by the Lessee in accordance with Section 20(q) hereof.

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

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

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

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

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

(1) Subject to the provisions of paragraph (g)(2) of this Section, 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. The Lessee shall have the right to receive and retain the revenues from all coin-operated or other vending machines or devices which it may install on the Premises pursuant to the provisions of paragraph (g)(2) of this Section.

(2) Subject to all of the terms and provisions of this Agreement, the Lessee may install vending machines or devices designed to dispense or sell food, beverages, tobacco or tobacco products, subject to the Port Authority's approval of the type and method of installation thereof. The Lessee may use an independent contractor, operator or supplier for such machines selected by the Lessee unless the Port Authority determines, in its reasonable discretion, that said contractor, operator or supplier will adversely affect or interfere with operations of the Facility or will cause or contribute to the causing of labor problems or disturbances thereat. Such machines shall be installed and operated solely for use by the Lessee's officers, employees, members, contractors, customers, guests and invitees. The Lessee's agreement with any contractor, operator or supplier of vending machines shall permit cancellation by the Lessee on short term notice in the event that the Port Authority notifies the Lessee that such contractor, operator or supplier fails to meet the standards set forth in this paragraph (g)(2). The Lessee shall be fully responsible for insuring that its contractor, operator or supplier shall comply with all of the applicable provisions of this Agreement and all acts and omissions of such contractor, operator or supplier shall be deemed acts or omissions of the Lessee, and the Lessee and the contractor, operator or supplier shall be jointly and severally responsible therefor to the Port Authority only.

(h) The Lessee shall not place a load upon any floor or paved area of the Premises that exceeds one hundred (100) pounds per square foot in any office area, or five hundred (500) pounds per square foot for any other portion of the Premises, and shall repair any floor, including supporting members, and any paved

area damaged by overloading. Nothing in this paragraph (h) or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear. The Lessee shall also not overload any roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility and shall repair, replace or rebuild any such roof, land surface, bulkhead, pavement, landing, pier or wharf, 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 National Fire Protection Association ("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; provided, however, that the Lessee shall not be obligated to make such improvements, alterations or repairs involving underground utilities. 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; (ii) pallets shall be sheltered from public view; and (iii) pallets shall be removed from the Premises not less than on a weekly basis.

(q) The Lessee shall use good faith efforts to prevent staging outside of its leasehold Premises exclusive of the public berths and point of first rest.

Section 14. Signs

(a) Except 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, excepting only claims and demands which result solely from the intentional tortious acts or gross negligence of the Port Authority.

(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, no general 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, 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.

(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) The Lessee shall also maintain and pay the premiums on a Garagekeepers Legal Liability policy in limits not less than $2,000,000.

(f) 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. A policy shall be deemed satisfactory to the Port Authority if it (i) meets all the terms and conditions of this Agreement, and (ii) has an AM Best (or its successors' and/or assigns' or its

industry equivalent's) rating of A-:VII or better. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

Section 16. Maintenance and Repair

(a) The Lessee shall at all times keep the Premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Lessee located in or on the Premises, and shall comply with all applicable governmental statutes, rules and regulations 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. Notwithstanding anything appearing to the contrary in this Section 16, the Lessee shall be under no obligation to upgrade any systems or items at the Premises, but shall be obligated only to maintain, repair and replace the systems or other items as applicable at the Premises.

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the Premises which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees, or of other persons on or at the Premises. 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) sprinkler systems (provided, however, that (i) the Lessee shall be

required to maintain in full force and effect throughout the Term of this Lease a valid contract with a licensed contractor to maintain the fire protection systems, including without limitation, the sprinkler systems and the alarm systems, and shall promptly replace such contractor with a similar licensed contractor in the event that the current contractor is terminated during the Term of this Agreement, based on similar contractual terms and provisions, and (ii) provided, further, that the Lessee shall provide the Port Authority with (x) monthly reports certifying that the fire alarm systems are inspected, tested and have met NFPA standards and (y) on an annual basis, certified documentation from a licensed contractor that all buildings on the Premises comply with NFPA standards); (2) gas and electric from the meter (utility companies are responsible up to the meter); (3) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (4) the plumbing system, fixtures and equipment, and all finished plumbing; (5) buildings and all parts thereof; (6) signs; (7) fire extinguishers; (8) all painting; (9) any security measures (including without limitation fencing, guard booths, crash gates, and/or jersey barriers) implemented on the Premises; (10) catch basins and storm sewer system drains, which are to be kept fully functional, clear of obstruction and free of damage at all times; and (11) any paving required on the Premises; provided, however, that the Lessee shall not be responsible for the maintenance of any underground utilities. 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.

In the event that the Port Authority reenters, regains or resumes possession of the Premises in accordance with the provisions of this Agreement, or upon the expiration or earlier termination of this Agreement, except in connection with the termination of this Agreement based upon an Event of Default of Lessee (as defined in Section 24 hereof), the following procedure will be undertaken: The Port Authority, its agent, representative or the like, will conduct an inspection of the Premises (including without limitation of the then current state of cleaning, maintenance and repairs, janitorial services, painting, structural and nonstructural conditions, lighting of buildings and open areas, the condition of utilities and utilities systems, fire-fighting and fire protection equipment and systems, communications and communications systems,

antipollution systems and devices, fuel facilities and systems, and fixtures, equipment and personal property of the Lessee) ("Condition Survey") and, to the extent the Lessee is in possession of the Premises, the Port Authority's agent or representative shall have all rights of entry to the Premises during all reasonable times as appropriate or required to perform the Condition Survey. The Condition Survey shall be conducted no less than six (6) months and no more than twelve (12) months after the effective date of such termination, except in the event that the Port Authority re-lets all or a portion of the Premises, in which case the Condition Survey shall be completed as to the re-let portion of the Premises prior to such re-letting. The Port Authority will provide the Lessee with a list of all items that demonstrate Lessee's failure to maintain the Premises in accordance with the obligations of this Section 16 (a "Condition Survey Report," and the date upon which such list is provided to Lessee being hereinafter known as the "Report Date"). All obligations relating to the items identified by the Condition Survey Report arising out of Lessee's failure to maintain, repair, replace or rebuild, shall survive such termination or cancellation, reentry, regaining or resumption of possession. The Condition Survey Report shall solely address the Lessee's obligation with respect to the maintenance and repair of the Premises pursuant to this Section 16. In no event shall any other obligation under this Lease be affected by the Condition Survey Report, including, but in no event, limited to any environmental conditions with respect to the Premises. At the Port Authority's sole option, within ninety (90) days after the Report Date, the Port Authority shall have the following options, (i) require Lessee to commence or cause to be commenced all required or recommended items and actions contained in such Condition Survey Report that are necessary or required to meet Lessee's maintenance, repair or other obligations, duties or responsibilities under this Agreement and the Lessee shall diligently continue the same or cause the same to be continued to completion; provided, however, that the Lessee shall promptly commence or cause to be commenced any and all items, actions or work related to, affecting or involving fire safety, health, structural integrity, life safety, security or emergency response or (ii) draw against the letter of credit maintained by Lessee pursuant to Section 42 hereof to remedy such conditions. To the extent the amount of security is insufficient to cover the costs set forth on the Condition Survey Report, Lessee shall be responsible for and shall, within five (5) days of demand of the Port Authority, remit the shortfall to the Port Authority or, (iii) direct the Lessee to make direct payment to the Port Authority in an amount

equal to the cost of the items set forth on the Condition Survey Report and Lessee shall be responsible for and shall, within five (5) days of demand of the Port Authority make payment to the Port Authority.

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

In no event shall the Condition Survey procedure be applicable in the event of a termination based on an Event of Default by Lessee under this Agreement.

Upon the expiration of this Lease, the Premises must be in as good condition as at the time of the installation or construction thereof, except for reasonable wear and tear. 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.

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

(e) 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.

(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. Further, notwithstanding anything in this Agreement, the maintenance and repair obligations of the Lessee with regard to railroad tracks 3 and 4 located on the Premises

and set forth on "Exhibit J," annexed hereto and made a part hereof, shall be governed by the Operating Agreement between the Port Authority and Lessee of even date herewith. The Lessee shall not be responsible for the maintenance and repair of tracks 1 and 2 as shown as Exhibit J, except Lessee shall be responsible for the switches located on track 2, all as more particularly described in the Operating Agreement.

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, and, if the Port Authority so requests, also covering nuclear property losses and contamination (if said coverage regarding nuclear property losses and contamination is or becomes available).

(2) Unless otherwise directed by the Port Authority, the property damage insurance policy required by this

paragraph shall name the Port Authority and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide that 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. A policy shall be deemed satisfactory to the Port Authority if it (i) meets all the terms and conditions of this Agreement, and (ii) has an AM Best (or its successors' and/or assigns' or its industry equivalent's) rating of A-:VII or better.

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; provided, however, that such indemnity obligation shall not apply to claims or demands arising from the intentional tortious acts or gross negligence of the Port Authority.

Section 18. Assignment and Sublease

(a) The following terms shall have the respective meanings set forth below:

"Assignment" shall mean any sale, conveyance, transfer, exchange, mortgage, assignment or other disposition of any or all portion of the Lessee's interest in this Lease or the leasehold estate created hereby, whether by operation of law or otherwise, and shall include any arrangement whereby all or substantially all of the Lessee's operations hereunder are managed or performed by another Person.

"Control" (including the terms "controlling," "controlled by" and "under common control with") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or membership interests, by contract or otherwise.

"Person" shall mean a natural person, corporation, limited liability company, or other legal entity, and also two or more natural persons, corporations or other legal entities acting jointly as a firm, general or limited partnership, unincorporated association, consortium, joint venture or otherwise.

"Sublease" shall mean any sublease (including a sub-sublease or any further level of subletting) and any occupancy, license, franchise, or concession agreement applicable to the Premises or any portion thereof, and shall include any arrangement whereby a substantial portion of the Lessee's operations hereunder are managed or performed by another Person.

"Transfer" shall mean the transfer, sale, assignment, pledge, hypothecation or other disposition of any interest in the Lessee or in any direct or indirect constituent entity of the Lessee, where such disposition (whether by itself or cumulatively with other transactions) produces any change in the Control (as hereinafter defined) of the Lessee, and shall include, without limitation, (1) the sale, assignment, redemption or transfer of outstanding stock of or membership interests in, respectively, in any corporation or limited liability company that is the Lessee; (2) the issuance of additional stock or membership interests in, respectively, any corporation or limited liability company that is the Lessee or that is the general partner of any partnership that is the Lessee, and (3) the sale, assignment, redemption or transfer of any general or limited partner's interest in, or the admission of a new partner to, a partnership that is the Lessee, or that a general or limited partner of any partnership that is the Lessee.

(b) The Lessee shall not effect or permit any Assignment, Transfer or Sublease without the prior written consent of the Port Authority, which consent may be given or withheld by the Port Authority in its sole and absolute discretion. The Lessee shall not enter into any management agreement, services agreement or similar type of agreement governing the operations or management of the Premises without the prior written consent

of the Port Authority, which consent can be withheld by the Port Authority in its sole and absolute discretion.

(c) 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.

(d) 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 paragraphs (a) and (b) of this Section, nor an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as tenant, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained in this Agreement.

(e) 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.

(f) The Lessee further covenants and agrees that it will not use or permit any Person whatsoever to use the Premises or any portion thereof for any purpose other than in accordance with Section 8 of this Agreement. Except as provided in this Agreement or otherwise permitted in writing by the Port Authority, the Lessee shall not permit the Premises to be used or occupied by any Person other than its own officers, employees, contractors and representatives.

(g) Notwithstanding anything in this Agreement to the contrary, the Lessee shall be permitted to license certain limited portions of the Premises as office space to its clients (and/or such clients' service providers) as may be deemed

necessary or desirable to facilitate the processing of waterborne cargo at the Premises. The Provisions of this Section 18 shall not be applicable to such licensed space. Lessee shall not permit such license to rise to the level of a Sublease, as determined in the Port Authority's reasonable discretion.

(h) Notwithstanding that the disposition of any interest in the Lessee not producing any change in Control of the Lessee does not constitute a Transfer hereunder and accordingly does not require the consent of the Port Authority, the Lessee covenants to provide the Port Authority with notice of any such disposition not later than fourteen (14) days thereafter.

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 the Port Authority exercises its powers to acquire Lessee's interest hereunder by condemnation, as authorized by specific legislation enactment, codified at N.J.S.A. 32:2-10, the Port Authority may by notice given to the

Lessee, in compliance with N.J.S.A. 32:2-11, 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; provided, however, that in the event the Port Authority terminates this Agreement pursuant to this Section 19, Lessee's obligations with respect to the Premises (or such portion(s) of the Premises so taken) shall cease as of the date of such termination. 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) Subject to the provisions of paragraphs (a) and (b) above, 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) Subject to the provisions of paragraphs (a) and (b) above, 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) Subject to the provisions of paragraphs (a) and (b) above, 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 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, within a reasonable period but no later than ninety (90) days following submittal of all required information, 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, within a reasonable period but no later than ninety (90) days following submittal thereof, 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 Newark, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

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

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

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

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

(7) It is hereby expressly understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of any Partial Approval Work by the Lessee and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Port Authority has not exercised its right to require the Lessee to cease performance of all or any part of the Partial Approval Work shall not be, or be deemed to be, an agreement or acknowledgment on the part of the Port Authority that the Lessee has in fact performed such work in accordance with the terms of this Agreement,

the Construction Application and plans and specifications covering such work, or the conditions of the Port Authority's approval of such work. Nor shall such fact be or be deemed to be a waiver by the Port Authority of any of the requirements of this Agreement with respect to such work, or any of the requirements of the Construction Application and plans and specifications covering such work, or any of the conditions of the Port Authority's approval of such work.

(f) Without limiting the generality of any of the provisions of this Agreement, the Lessee's Construction Work (including any Partial Approval Work performed by the Lessee) shall be performed in such a manner that there will be at all times during construction reasonable efforts made to minimize the effects of any air pollution, water pollution or any other type of pollution, and to minimize the noise emanating from, arising out of, or resulting from construction. Subject to the provisions of this Agreement, the Lessee shall construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth in this paragraph, and, without limiting the generality of the foregoing, such construction shall be subject to the Port Authority's review and 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 pursuant to paragraph (c) of this Section 20 and which shall be given in a reasonable period, but not later than ninety (90)

days. 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 $10,000,000 per occurrence, no general aggregate. The policy will also include x,c,u coverage

(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 $10,000,000 per occurrence, no general aggregate.

(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, to the extent within its reasonable control, 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. Upon written notice from the Port Authority (and provided the Port Authority has obtained a corresponding understanding and agreement from the New York Shipping Association with respect to the actions requested in such notice), the Lessee will (or will cause its contractor to, as applicable) take such actions as are within its control and commercially reasonable under the circumstances to 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 timely comply with the requirements of this paragraph, the Port Authority, after consultation with, and approval by, the New York Shipping Association, will have the right, by notice from the Port Authority to the Lessee, to require the Lessee to: (a) suspend the Port Authority's permission to the Lessee to proceed with the applicable portion of each specific construction project of the Lessee's Construction Work being performed by or on behalf of the Lessee (i.e. the portion to which the underlying labor trouble relates, or suspend the Port Authority's permission to the Lessee to continue such other specific operations as reasonably necessary to immediately terminate such labor troubles, and the Lessee will thereupon

immediately cease the same, and/or (b) take such other actions, supported by the New York Shipping Association, as reasonably necessary to terminate such labor troubles. When labor troubles will be so settled that such interference no longer exists and the danger thereof has been substantially mitigated, the Port Authority by notice to the Lessee will (i) reinstate the permission to the Lessee to perform the subject specific construction project of the Lessee's Construction Work on all the same terms and conditions as before the suspension and/or (ii) permit the Lessee to resume such other suspended activities at the Lessee's Premises or the Facility. "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, which materially interferes with operations or construction within the Facility.

(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 demolitions, repairs, replacements or alterations to be performed by the Lessee during the Term, 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, no later than ten (10) business days following submittal of all required information, 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. The Lessee shall be obligated to pay a three percent (3%) tenant alteration review fee or other review fee charged by the Port Authority for its costs of administrating the Tenant Alteration Application Process.

(r) 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.

(s) Notwithstanding anything to the contrary in this Section 20 or this Agreement, the Port Authority shall give its written approval or rejection, or shall request such revisions or modifications as the Port Authority deems necessary, no later than ten (10) calendar days following the Lessee's submittal of any Construction Application or Alteration Application relating to security on the Premises, including without limitation installation of fencing, jersey barriers, or other related similar improvements within or bordering the Premises. In the event the Port Authority requests revisions or modifications to any Construction Application or Alteration Application relating to security, the Port Authority shall give its written approval or rejection thereof within ten (10) days of its receipt of such revisions or modifications.

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.

(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, upon reasonable advance notice, 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; provided, however, that in the exercise of such rights of access, the Port Authority shall not materially interfere with the use and occupancy of the Premises by the Lessee.

(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, upon reasonable advance notice, 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 materially interfere with the use and occupancy of the Premises by the Lessee.

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

(d) Except as described in Section 16(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 three (3) months next preceding the expiration of the letting, the Port Authority, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same, and during such three-month period the Port Authority may place and maintain on the Premises, the usual "To Let" signs, which signs the Lessee shall permit to remain without molestation.

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

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

Section 23. Limitation of Rights and Privileges Granted

(a) The Premises are let to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Premises may be subject, and rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private, which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the municipality and State in which the Premises are located; (iii) permits, licenses, regulations and restrictions, if any, of the United States the municipality or State in which the Premises are located, or other governmental authority 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 ninety (90) 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, without the prior approval of the Port Authority, merges, consolidates, dissolves or experiences a change in Control as defined herein; 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 ninety (90) 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 sixty (60) 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 sixty (60) 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 thirty (30) days; or

(9) The Lessee shall fail duly and punctually to pay the Rental or to make any other payment required under this Agreement when due to the Port Authority, and such failure shall not be corrected within fifteen (15) days of the due date of any such payment; or

(10) The Lessee shall fail to (i) obtain any insurance policy required under this Lease, or, (ii) following the lapse, termination or expiration of any such insurance policy, fail to replace the same with a policy complying with the terms and conditions set forth in this Lease, and Lessee fails to correct this lapse within thirty (30) days following such lapse, termination or expiration; or

(11) The Lessee shall fail to perform its repair and maintenance obligations under this Lease with regard to any of the leasehold Premises and fails to commence such repairs within thirty (30) days after receipt of notice thereof from the Port Authority, or, if such repairs cannot be completed within thirty (30) days, to commence such repairs during the thirty (30) day period and continue to perform such repairs in a diligent and timely manner until completed; or

(12) The Lessee shall fail to keep, perform and observe any other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within thirty (30) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have

commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice, and diligently continues such performance without interruption to completion.

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, the Lessee shall not be entitled to enter into possession of the Premises, and the Port Authority, upon the occurrence of any such event, or at any time thereafter during the continuance thereof may, by forty eight (48) hours' notice, cancel the interest of the Lessee under this Agreement, such cancellation to be effective upon the date specified in such notice.

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

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

Section 25. Additional Termination Rights

(a) Beginning on the Commencement Date of this Lease and continuing throughout the Term of this Lease, the Port Authority

shall have the right, on ninety (90) days' notice, to recapture an aggregate of three (3) acres of the Premises in any sixty (60) month period of the Term for the purpose of facilitating the efficient movement of vehicles and cargo in and around the Facility, for the purpose of enhancing ingress and egress to adjacent leaseholds and public berths, for the purpose of complying with any United States Coast Guard, Department of Homeland Security, Port Authority, or any other governmental requirements for the safety of the Facility, as determined in the sole discretion of the Port Authority or other governmental agency, or for the purpose of installation of utilities; provided, however, that the Port Authority shall provide a proportionate adjustment of the Rental. The Port Authority shall be responsible for those costs associated with redefining the Premises under this provision such as security requirements, but such costs shall not include costs expended in the Lessee's ordinary course of business operations, labor costs or any diminution in value.

Beginning on the Commencement Date of this Lease and continuing throughout the Term of this Lease, the Lessee shall also have the right, on ninety (90) days' notice to surrender an aggregate of three (3) acres of the Premises in any sixty (60) month period of the Term for any purpose; provided, however, that any notice given by the Lessee in accordance with the provisions of this Section 25 shall not be effective if the Lessee has been delivered a notice of default from the Port Authority as to which any applicable period to cure has passed, or has been delivered a notice of termination from the Port Authority. Lessee shall be responsible for those costs associated with redefining the Premises under this provision such as security requirements, but such costs shall not include costs expended in the Port Authority's ordinary course of business operations, labor costs or any diminution in value.

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 were the date of expiration of the Term of the letting of this Lease with regard to the specific portion of the Premises to which the termination applies.

(b) The parties may mutually agree to terminate or surrender any other acreage during the Term of the 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, provided, however, that any obligation of the Lessee hereunder relating to the Lessee's Construction Work shall only survive to the extent that such Lessee's Construction Work has been fully approved and has commenced, in accordance with Section 20 hereof. 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, subject to the Port Authority's right as provided in the next sentence to accelerate the amounts due and recover the full amount for the entire unexpired Term. 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 reasonable 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 (on failure of the Lessee to have restored), 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).

Section 29. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of a part of the Premises or of the entire Premises, and may be for any period of time (whether the same as

or different from the amount remaining in the Term hereunder), and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, have the right to repair and to make structural or other changes in the Premises, including changes which alter the character of the Premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the Premises (or portion thereof) during the balance of the Term as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the Premises as the Port Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance of a surrender. The Port Authority acknowledges that it has an obligation to mitigate its damages in accordance with applicable 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(c) hereof regarding the condition of the Premises at the expiration or termination of the letting hereunder.

(b) The Lessee shall have the right at any time during the letting to remove from the Premises, all its equipment, removable fixtures and other personal property, and all property of third persons for which the Lessee is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the Premises, repairing all damage caused by any removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, provided, however, that the Port Authority shall have given the Lessee twenty (20) days' 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. Notwithstanding the foregoing, Lessee shall not indemnify nor hold harmless the Port Authority, its Commissioners, officers, agents, employees or contractors for their respective intentional tortious acts or gross negligence.

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) if directed to the Lessee, delivered to the Premises at any time to the attention of the President; or (iv) 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 mail to the Port Authority at P. O. Box 95000, Philadelphia, Pennsylvania 19195-1517 or via wire transfer to TD Bank, Bank ABA Number: 031201360, Account Number: 5950011618, or to such other address as may be substituted therefor.

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

(h) As used in Sections 13 and 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, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment. 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) Intentionally Deleted.

(o) Intentionally Deleted.

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

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

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

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

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

(t) This Agreement 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 (in the District in which the Facility is located).

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

(v) The Lessee shall be responsible for the provision of parking facilities for all of Lessee's employees working in office buildings, processing buildings and yards located at the Facility; provided, however, that the Lessee shall not be responsible for providing parking facilities for ILA workers discharging or loading vessels or draying vehicles.

(w) Except as provided in subsection (x) below, the parties agree and acknowledge that the Port Authority will be under absolutely no obligation whatsoever to supply any additional property at the Facility to the Lessee during the Term of this Lease, and that no further discussions between the Port Authority and Lessee regarding consolidation will be entered into with the Lessee during the Term of this Lease.

(x) Notwithstanding subsection (w) above, should the Port Authority relocate the existing tenant at the premises set forth below during the Term of this Lease, which decision to relocate shall be in the sole and absolute discretion of the Port Authority, it being understood that the Port Authority has absolutely no obligation to relocate such existing tenant, Sections C and D of Building 263 and the associated open area (the "Building 263 Area"), and the open area yard located on Parcel 4 (also known as Lot S) (the "Open Area Property", and, when taken together with the "Building 263 Area," the "Potential Relocation Parcel"), shall be added to and integrated into the Premises under this Lease by execution of a spreader agreement. In the event the Potential Relocation Parcel becomes available, Lessee shall accept said Potential Relocation Parcel in "AS IS"/broom clean condition, it being agreed that the Port Authority shall have absolutely no obligations whatsoever to undertake any work to remove or replace any structures (including without limitation, offices, bathrooms, supply rooms, fencing, etc), equipment or infrastructure, fixed or unfixed, at the Potential Relocation Parcel. Upon integration of the Potential Relocation Parcel into the Premises, and into this Lease, the Basic Rental shall be adjusted as follows: Lessee shall pay for the entire footprint area of the Potential Relocation Parcel at the then-current open area rates being charged by the Port Authority, which rate shall be subject to adjustment in accordance with Section 4 herein, beginning on the first (1st) day of January in the calendar year following the integration of such Potential Relocation Parcel into the leasehold under this Lease, and using as the Base Period for such calculation the month in which the Potential Relocation Parcel was integrated into the leasehold hereunder (unless such Potential Relocation Parcel is integrated into the leasehold

hereunder in the month of December, in which case the Base Period shall be the November of the calendar year in which the Potential Relocation Parcel was integrated into the leasehold under this Lease and the adjustment shall not occur until January 1 in the calendar year following the first annual anniversary date of the integration of the Potential Relocation Parcel into the leasehold).

(y) The parties agree and acknowledge that at the time of the surrender and termination of Lease 293, Lessee was and continues to be in arrears in its Rental payments under Lease 293 in the amount of Three Million Four Hundred Thousand and 00/100 Dollars ($3,400,000.00) (the "Rental Arrears"). The parties further agree and acknowledge that, pursuant to the Surrender Agreement, the Lessee has agreed to pay a surrender fee to the Port Authority in the amount of One Million and 00/100 Dollars ($1,000,000.00) in connection with the termination of Lease 293 and the surrender of the Surrendered Premises (the "Surrender Fee"). Lessee acknowledges that the Rental Arrears and the Surrender Fee are currently due and owing to the Port Authority. Repayment of the Rental Arrears and the Surrender Fee has been taken into consideration in the calculation of the Annual Vehicle Throughput Rental payable in accordance with Section 5 of this Agreement. In the event that this Agreement is terminated for any reason prior to the expiration of the full Term set forth in Section 2 of this Agreement, in addition to all other rights and remedies set forth herein, the Port Authority shall have the right to recover the Rental Arrears and the Surrender Fee, to the extent unpaid at the time of such termination, as Additional Rental.

Section 35. Premises

(a) (i) 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 265, Lease 266 Lease 291 and Lease 293, 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.

Notwithstanding the foregoing, the Port Authority represents that at the time of entering into Lease 293 with Lessee, in June, 2009, the fire protection systems and sprinkler

systems in all buildings existing on the premises that were the subject of Lease 293, were in working condition and compliant with all applicable codes and regulations.

(ii) Notwithstanding Section 35(a)(i) above, as to former Building 291 specifically, the Port Authority shall grade the open area created by the demolition of Building 291 so that the resulting open area tapers down over fifty (50) feet to a twelve percent (12%) grade). The foundation of Building 291 will remain. All fencing and other related work shall be at the sole cost and expense of the Lessee.

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

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

Section 36. Force Majeure

(a) Neither the Port Authority nor the Lessee shall be liable for any failure, delay or interruption in performing its respective obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto,

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, the Lessee or their respective 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, neither party shall 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; provided, however, that the provisions of this paragraph shall not apply to failures by the Lessee to pay the Rental specified hereunder, and shall not apply to any other charges or money payments.

(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. Payment of water bills shall include any factor which may have been included by the appropriate governmental agency as a sewer-rent or other charge for the use of a sewer system. 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 New Jersey, and that the requisite corporate consents to enter into this Agreement have been obtained. The Lessee hereby represents that all of the common stock and other securities of the Lessee is owned by Gary LoBue and August LoBue.

(b) The Lessee recognizes the fact that a change in Control (as defined in Section 18 hereof), Transfer of securities in the Lessee or of a substantial part thereof, 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 provided in Section 18), is for practical purposes a Transfer or disposition of the rights obtained by the Lessee through this Agreement. The Lessee further recognizes that because of the nature of the obligations of the Lessee hereunder, the qualifications and identity of the Lessee and its security holders are of particular concern to the Port Authority. The Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Lessee for the faithful performance of all obligations and covenants hereunder. Therefore, the Lessee represents and agrees for itself, its present owners and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, there shall be no Transfer of any securities in the Lessee by its present owners to any other Person; nor shall the present owners suffer any transfer of such securities to be made; nor shall there be or be suffered to be made by the Lessee or by any owner of securities therein, any other change in the ownership of such securities or in the relative distribution thereof, or with respect to the identity of the parties in Control of the Lessee or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional new securities or classification of securities or otherwise; and the Lessee further represents and agrees for itself and its present owners, and any successor in interest thereof, respectively, that the direct ownership and Control of the Lessee shall be and remain as represented in paragraph (a) of this Section.

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

(d) The foregoing right of termination shall be in addition to all other rights of termination the Port Authority

has under this Agreement and the failure of the Port Authority to exercise its right of termination under this Section at any time in which it may have such right shall not affect, waive or limit its right to exercise said right of termination at any subsequent time.

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

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

(g) The Lessee shall promptly advise the Port Authority of any change in the representations made in this Section 40 not later than fourteen (14) days thereafter.

Section 41. Condition Precedent.

The Lessee and the Port Authority acknowledge that, simultaneously with the execution of this Agreement, the Lessee and the Port Authority shall execute and deliver the Surrender Agreement, which execution and delivery shall constitute a condition precedent to the execution and delivery of this Agreement. The Lessee and the Port Authority further acknowledge that, simultaneously with the execution of this Agreement, the Lessee shall execute and deliver a General Release and Covenant Not To Sue, in a form acceptable to the Port Authority General Counsel, which execution and delivery shall constitute a condition precedent to the execution and delivery of this Agreement.

Section 42. Security

(a) 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 a banking institution reasonably satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of $2,400,000.00, allowing for partial and complete draws upon presentation of a site draft.

(b) The letter of credit shall be replaced with a replacement or amended letter of credit in an adjusted amount each time the parties execute any supplements, amendments or spreaders to this Lease that add to or surrender portions of the Premises, which adjusted amount shall increase upon addition of property and decrease upon surrender of property.

(c) 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 until the completion of a final inspection to be conducted by the Port Authority of the Premises, which inspection shall be not less than six (6) months and not more than twelve (12) months following the expiration or termination of this Agreement (the "Inspection"), and provision of a letter from the Port Authority directly to the banking institution requesting the continuation of the letter of credit (such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit), provided, however, that in the event any portion of the Premises are re-let by the Port Authority to another tenant, the Inspection shall be conducted as to that portion of the Premises prior to such re-letting. Subsequent to such Inspection, the Port Authority agrees to provide a punch list of those certain objectionable items with respect to the Inspection of each portion of the Premises. Following the Inspection, the Port Authority agrees to release the letter of credit less the aggregate cost (whose determination shall be in the opinion of the Port Authority) of the objectionable items on the punch list and less any other due costs due the Port Authority under this Agreement. Notwithstanding the foregoing, in the event of a termination based upon an Event of Default under this Agreement, all of the Port Authority's rights and remedies in accordance with this Agreement with respect to such Default shall control. Upon notice of cancellation of a letter of credit, the Lessee agrees that unless, by a date not less than twenty (20) days prior to the scheduled expiry thereof, the letter of credit is replaced by another letter of credit reasonably satisfactory to the Port

Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under this Agreement.

(d) 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 five (5) business 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.

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

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. Intentionally Deleted.

Section 45. <u>Port Authority Costs Following Termination</u>

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 Rental all as in accordance with law as a result of the Lessee's status as a holdover tenant. Nothing herein contained will be deemed to give the Lessee any right to remain in possession of the Premises after the expiration or earlier termination of the Term of the Lease.

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

The Lessee hereby waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Lessee in respect of the Lease and/or in any action that may be brought by the Port Authority 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 265, Lease 266, Lease 291, or Lease 293 (as applicable) or (b) resulting from any act or omission of the Lessee or Lessee's Representative (as defined herein) during the Term, and/or (ii) the disposal, release or threatened release of any Hazardous Substance on, about, under or migrating from the Premises during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, and/or (iii) the presence of any Hazardous Substance on, about or under other property at the Facility or elsewhere as a result of the 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, and/or (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 all responsibility for, any and all risks of any kind whatsoever caused by, arising out of or in connection with, the conditions of the Premises from and after the commencement of the Term, including without limitation all Environmental Requirements and all Environmental Damages. Except for Environmental Damages arising from the sole 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 such risks and responsibilities and 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 the condition of the Premises under this Section existing or created prior to the commencement of the Term, unless the Lessee exacerbates such condition as further described in paragraph (e) 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 resulted from any act or 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 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, which any Governmental Authority or any Environmental Requirements or any violation thereof require 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. Any soil remediation may be to applicable limited restricted and/or restricted (nonresidential-industrial) soil standards set forth in the applicable Environmental Requirements, and may utilize institutional and engineering controls, provided that none of the foregoing controls would either prohibit nor limit the use of the Premises or the Facility for the purposes set forth in Section 8 hereof now or in the future. Lessee further agrees to execute any declaration of environmental restrictions, deed notice, remedial action, 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 any permits associated therewith, 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 Newark 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 shall provide the Manager of the Facility at the cost and expense of the Lessee with such

information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, and as may be necessary for the preparation of any application, registration, statement, certification, notice, non-applicability affidavit, communication, negative declaration, clean-up plan or other information, documentation or communication required by the Environmental Requirements, and the Lessee shall promptly swear to, sign or otherwise fully execute the same. Prior to retaining or dismissing any consultant or LSRP in connection with remediation of the Premises, the Lessee shall give notice of such retention or dismissal to the Port Authority. The Lessee shall comply with any and all timeframes set forth in any Environmental 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. Further, 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, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Lessee at the time the same are provided to the Lessee with respect to any Environmental Requirements.

(e) Notwithstanding any other provision of this Section 50, Lessee shall be responsible for all Environmental Damage involving any Hazardous Substance whose presence on, about, under or migrating from the Premises occurred prior to the commencement of the Term as a result of (1) any violation by the Lessee or the Lessee's Representative, as hereinafter defined, of any Environmental Requirements pertaining to such Hazardous Substance, the Premises and/or the activities thereon, or any failure by the Lessee or the Lessee's Representative to observe and comply with any Port Authority requirements, directives and procedures (which 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 grossly negligent act or 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, or other persons who are doing business with the Lessee or are on the Premises with the Lessee's consent, or are on the Premises without Lessee's consent but due to Lessee's failure to undertake adequate security measures.

(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) Notwithstanding any other provision of this Section, and without limiting the generality of subparagraph (e) of this Section, the Lessee's obligations, undertakings and responsibilities under this Section 50 shall not apply to any Environmental Damage involving 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 Environmental Damage 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 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 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.

Section 51. Record-Keeping Obligations

(a) The Lessee will, for the Term of this Agreement and for three (3) years thereafter: (i) maintain books, records and accounts with respect to the business and operations of the Lessee on a separate stand-alone basis from any other business operations of the principals of Lessee and any other direct or indirect subsidiaries thereof, in accordance with good business practice and applicable law; and (ii) make available to the Port Authority, during normal business hours upon the Port Authority's reasonable prior notice to the Lessee, at the office of the Lessee or one of its agents or advisors solely for review

by the Port Authority and its agents at such location and without taking any copies, that portion of such books, records and accounts relating to operations and exclusive of security matters, at the Premises leased under the Lease or as may reasonably be required for the Port Authority to verify calculations relating to throughput rentals and reimbursement requests made from time to time. In no event shall this provision be deemed to constitute a statute of limitations or a restriction on the Port Authority's right to commence suit against the Lessee in connection with this Agreement, and the loss or destruction of documents by Lessee or its agents or representatives shall not constitute a defense to any such suit.

(b) The Port Authority agrees that (i) all information delivered pursuant to this paragraph (b), including, without limitation, the documents delivered pursuant to clause (a) above, and (ii) all notes, reports and analyses prepared by the Port Authority, its representatives or its advisors in connection with their review of materials provided or made available pursuant to this section, including, without limitation, the books and records and other materials provided or made available pursuant to paragraph (a) above, will, to the fullest extent permitted by applicable law, be treated confidentially and protected from disclosure by the Port Authority, including, without limitation, pursuant to any available exceptions or exemptions under the Port Authority's "Freedom of Information Policy and Procedure". If the Port Authority receives any request to disclose any of the information provided hereunder, the Port Authority agrees to provide the Lessee with prior notice of such requirement so that the Lessee may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this provision. If such protective order or other remedy is not obtained, or if the Lessee waives compliance with the provisions hereof, the Port Authority agrees to disclose only that portion of the information that it is advised by counsel is legally required and it will exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such information.

Section 52. <u>Entire Agreement</u>

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 293 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 to the best of its knowledge, 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 knowingly 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 293; Survival of Obligations.

(a) Pursuant to the Surrender Agreement, Lease 293 is hereby terminated, as if the expiration date of Lease 293 is the date of this Lease. The Lessee hereby surrenders the Surrendered Premises (as defined in the Surrender Agreement) to the Port Authority. The Port Authority and the Lessee

acknowledge that the remainder of the Lease 293 Premises are the subject of and are incorporated into the Premises created by this Lease and the terminal space created by the Operating Agreement, and are subject to, and governed by, this Lease and the Operating Agreement, respectively.

(b) Any and all obligations, claims, liabilities, damages, losses, causes of action, suits, demands and expenses arising out of the Condition Survey pursuant to the Surrender Agreement, and any environmental matters relating to the Lease 265 Premises, the Lease 266 Premises the Lease 291 Premises, and/or the Lease 293 Premises (including without limitation, environmental matters governed by Special Endorsement 17 of Lease 265, Special Endorsement 12 of Lease 266, Special Endorsement 13 of Lease 291, and/or Section 50 of Lease 293, as the same may have been supplemented and amended) shall survive the termination of Lease 265, Lease 266, Lease 291 and Lease 293, and shall not be deemed released hereunder and the Lessee shall remain responsible therefor. All other obligations and rights of the Port Authority and the Lessee set forth in Lease 293 have been terminated, are null and void and of no further force and effect with the execution of this Lease and the Operating Agreement.

(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 293 shall advance and survive from the date hereof unless otherwise noted, including any environmental matters relating to the Lease 293 Premises.

Section 56. Release; Covenant Not to Sue.

(a) The Lessee and the Port Authority confirm that the Basic Rental, the Annual Vehicle Throughput Rental, and the Non-Waterborne Vehicle Wharfage Rental provided for in this Agreement during the Term (the "Agreed Rental Rates") were determined by the parties in arms-length negotiations on the basis of the unique circumstances of the transactions contemplated in this Agreement, including, without limitation, the surrender of the Surrendered Premises.

(b) Lessee acknowledges and agrees that Lessee will derive substantial benefits from the Port Authority's agreement to enter into this Agreement, that the terms hereof represent significant and costly concessions by the Port Authority, and that without the release, agreements and acknowledgements set forth in this Section, the Port Authority likely would not have obtained the

approval of its Board to enter into this Agreement. Lessee acknowledges and agrees that were it to violate the terms of this Section it would be depriving the Port Authority of a material benefit of the bargain to which Lessee and the Port Authority have agreed.

(c) In accepting the concessions and benefits it is receiving hereunder Lessee believes and expressly agrees that the Agreed Rental Rates are fair and not unreasonably or unduly discriminatory or preferential, and that any differences between the Agreed Rental Rates and the rental or throughput charges in the terms of other publicly-available leases with other tenants at marine terminals owned and/or operated by the Port Authority are justified by legitimate transportation considerations, policy objectives and reasonable business judgments.

(d) In consideration of the foregoing, Lessee for itself and on behalf of its shareholders, officers, directors, employees, representatives, agents, successors, and assigns, hereby releases and forever discharges the Port Authority and its Commissioners, officers, directors, employees, representatives, agents, successors, and assigns solely from any and all actions, causes of action and claims arising from or relating to any attempt to challenge or otherwise invalidate the Agreed Rental Rates pursuant to the Shipping Act of 1984, as amended (the "Shipping Act") or any other applicable statute and any regulations thereunder or legal theory, on the ground that such Agreed Rental Rates result in any undue or unreasonable prejudice or disadvantage to Lessee when compared with the rental and throughput charges payable to the Port Authority by other marine terminal tenants in the New York/New Jersey harbor.

(e) In agreeing to the release set forth in this Section, the Lessee hereby covenants and agrees not to sue the Port Authority on any legal theory challenging the Agreed Rental Rates, including without limitation, the theory that such Agreed Rental Rates constitute an alleged violation of the Shipping Act or any other applicable statute and any regulations thereunder.

Section 57. 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 (Seal)
DIRECTOR, PORT COMMERCE DEPT.

ATTEST:

FAPS, INC.

By _____
Gary LoBue

(Title) President
(Corporate Seal)

APPROVED:
FORM | TERMS

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

On the _____ day of _____, 2010, 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.

Notary Public

Notary Public, State of New York
No. 01ED4959693
Qualified in Kings County
Commission Expires 3/09/2014

STATE OF NEW JERSEY)
: ss.
COUNTY OF ESSEX)

On the 30 day of Sept, 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared Gary LoBue, President of FAPS, INC., 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.

Notary Public

MARIA ELIZABETH SOARES
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 12, 2012

Material Exempt Under Exemption 4

LEASE NO. L-PN-309

FIRST SUPPLEMENTAL AGREEMENT

To

LEASE NO. LPN-309

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

And

FAPS, INC.

Dated as of DECEMBER 1, 2012

FAPS, INC.

LEASE NO. LPN-309

FIRST SUPPLEMENTAL AGREEMENT

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THIS AGREEMENT SHALL NOT BE BINDING UPON THE PORT AUTHORITY UNTIL DULY EXECUTED BY AN EXECUTIVE OFFICER THEREOF AND DELIVERED TO THE LESSEE BY AN AUTHORIZED REPRESENTATIVE OF THE PORT AUTHORITY

Lease No.LPN-309
Supplement No. 1
Port Newark

THIS SUPPLEMENTAL AGREEMENT (this "Agreement" or this "Supplemental Agreement"), made as of the 1st day of December, 2012 by and between the **PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter referred to as the "Port Authority"), and **FAPS, INC.,** (hereinafter called the "Lessee"),

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee heretofore entered into an agreement of lease dated October 1, 2010 bearing Port Authority Lease number L-PN-309 and covering the letting by the Port Authority to the Lessee of certain premises at Port Newark (the "***Facility***"), as more fully described therein, (said agreement of lease as amended, supplemented and extended referred to herein as the "***Lease***", and said premises referred to herein as the "***Premises***"); and

WHEREAS, the Lessee has secured a commitment from Seacoast Capital Partners III, L.P. ("Seacoast") for the refinancing of a portion of the indebtedness owed by the Lessee to Wells Fargo Bank, N.A. ("Bank") and a recapitalization of the Lessee ("Seacoast Total Investment"); the proceeds of which shall be used by the Lessee to retire certain of its loan obligations and to provide working capital. In connection therewith, the Bank has agreed to settle the Lessee's obligations for less than the full amount of the obligations ("Wells Fargo Settlement and Release Transaction"). The Seacoast Total Investment and the Wells Fargo Settlement and Release Transaction shall both be executed on such a date (the "Closing") as shall be agreed upon by the Lessee, Seacoast and the Bank.

WHEREAS, the Port Authority and the Lessee desire to extend the term of the letting under the Lease and to amend the Lease in certain other respects; and

WHEREAS, unless the context clearly indicates otherwise, any capitalized term not defined herein shall have the same meaning given thereto in the Lease.

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

of the date hereof, as follows:

Section 1. Option to Extend the Term of the Letting

(a) The Lessee shall have the right to extend the term of the letting under the Lease, as herein amended, as to the entire Premises only, for a single five (5)-year period to commence upon the expiration of the term provided for in Section 2 of the Lease entitled "*Term; Lease Commencement Date*" and expiring on December 31, 2024 (such five-year period being hereinafter called the "***Extension Period***"); provided, however, that the Lessee shall give written notice to the Port Authority of its desire to do so not earlier than January 1, 2018 and not later than December 31, 2018, and provided, further that (i) Seacoast or an investor or purchaser other than Seacoast (Substitute Investor), approved by the Port Authority, which approval shall not be unreasonably withheld, is invested in the Lessee, and (ii) the Lessee agrees to make a Capital Investment, as hereinafter defined, in the Premises, subject to Port Authority approval, in an amount no less than One Million Dollars and No Cents ($1,000,000.00) at any time from and after the date of this Agreement through December 31, 2019. No notice by the Lessee purporting to extend the term of the letting of the Premises as provided in this Section shall be effective if on the date of the giving of said notice or on the effective date of the extension the Lessee is in default beyond any applicable grace or cure period under any of the terms or provisions of the Lease, as herein amended, or if on either of such dates the Lessee has been served with a written notice of termination of the Lease by the Port Authority in accordance with Section 24 of the Lease entitled "*Termination*", or if the Lease is not in full force and effect on either of such dates.

(b) During the Extension Period, the Lessee shall continue to pay to the Port Authority the Basic Rental theretofore payable under Section 3 of the Lease, subject to escalation as provided in Section 4 of the Lease.

(c) As used herein, "Capital Investment" shall include, but not be limited to improvements to paving, buildings and other associated infrastructure, all as shall be subject to the approval of the Port Authority, prior to the commencement of such work. If the Lessee has not commenced the work on or before December 31, 2018, the last day on which the Lessee may exercise the option to extend the term of the letting, the Lessee must provide to the Port Authority a preliminary statement showing the nature of the work proposed to be performed, the reasons for the work and the estimated expenditure therefore. The Lessee may not thereafter commence such work without the approval of the Port Authority. Upon the approval of the Port Authority, all such improvements must be substantially completed, in the reasonable determination of the Port Authority, by the Lessee on or before December 31, 2019. Failure on the part of the Lessee to perform such work in accordance with the provisions of this Section: (i) shall be deemed an Event of Default in accordance with Section 24 of the Lease entitled "*Termination*", and the Port Authority may, by written notice, terminate the letting and the rights of the Lessee under the Lease, as herein amended, and (ii) the Lessee shall be obligated to pay to the Port Authority One Million Dollars and No Cents ($1,000,000.00) upon demand by the Port Authority less a credit for the actual costs of the Capital Investment completed on or before December 31, 2019.

Section 2. Amendment of Annual Vehicle Throughput Rental

(a) The Port Authority and the Lessee hereby acknowledge that the Lessee is in arrears in the payment to the Port Authority of the Annual Vehicle Throughput Rental in the amount of Three Million Six Hundred Thirty-Four Thousand Six Hundred Fifty-Seven Dollars and Seventy Cents ($3,634,657.70). The Lessee hereby agrees to make a payment to the Port Authority on account of such arrearage in the amount of Two Million Dollars and No Cents ($2,000,000.00) on or before December 31, 2012.

(b) Upon receipt of the payment set forth in Paragraph (a) of this Section by the Port Authority, effective from and after January 1, 2013 and continuing through December 31, 2019, the Annual Vehicle Throughput Rental, set forth in Section 5 of the Lease, shall be computed, for such period (hereinafter the "**Amended Annual Vehicle Throughput Rental**") by multiplying the amount of One Dollar and Fifty-Three Cents ($1.53) per FAPS Vehicle (the "**Pre-Change Rate**") handled by the Lessee from and after such date up to the Two Hundred Thousandth (200,000th) FAPS Vehicle handled by the Lessee during that Calendar Year (the "**Vehicle Charge Change Threshold**"). During the period from and after January 1, 2013, and continuing through December 31, 2019, both dates inclusive, the Lessee shall pay to the Port Authority the greater of the Amended Vehicle Throughput Rental, or Three Hundred Six Thousand Dollars and No Cents ($306,000.00) per annum. Effective from and after January 1, 2020 and continuing throughout the Extension Period, if any, the Pre-Change Rate and the Vehicle Charge Change Threshold shall be deemed deleted and shall no longer be in effect in connection with the computation of the Annual Vehicle Throughput Rental thereafter payable by the Lessee. Nothing hereinabove provided shall affect the Post-Change Rate set forth in Paragraph (b) of Section 5 of the Lease, which rate shall continue to be effective throughout the balance of the term of the Lease, as extended.

Section 3. Guaranteed Minimum Throughput

Effective from and after January 1, 2013 and continuing throughout the balance of the term of the letting, as extended, in addition to all other rentals payable under the Lease, the Lessee shall guarantee an annual minimum throughput of One Hundred Seventy-Five Thousand Two Hundred (175,200) FAPS Vehicles ("**Guaranteed Minimum Throughput**") per Calendar Year. In the event of a shortfall during any Calendar Year, the Lessee shall pay to the Port Authority an additional rental derived by multiplying (i) the difference between the Guaranteed Minimum Throughput and the actual amount of FAPS Vehicles that arrived at or shipped from any of the Port Authority's marine terminal facilities during such Calendar Year by (ii) the amount of .Fifteen Dollars and Twenty-Three Cents ($15.23) per FAPS Vehicle ("**Unit Rate**"). The Unit Rate shall be adjusted at the times and pursuant to the percentage increase in the Port Authority Marine Terminals Tariff – Federal Maritime Commission Schedule No, PA-10 (tariff) wharfage rate for unboxed vehicles.

Section 4. Consent Fee

Notwithstanding the provisions of Section 40 of the Lease, entitled "*Right of Termination-Ownership and Control*", in the event the Lessee effectuates a change in Control,

(as defined in Section 18 of the Lease), the Lessee shall pay to the Port Authority a fee (hereinafter called the "**Consent Fee**") in accordance with paragraphs (a) and (b) below.

(a) If a change in Control occurs during the term of the letting under the Lease, including the Extension Period, if any, the Lessee shall pay to the Port Authority a Consent Fee in an amount equal to ten percent (10%) of the Net Proceeds, as hereinafter defined, paid or payable by the Lessee to the equity owners of the Lessee identified at the time of such change in Control, such percentage amount derived using the same methodology used to compute the percentage amount paid or payable to all other equity owners.

(b) If a change in Control occurs in connection with the (i) extension of the term of the Lease beyond the Extension Period, or (ii) authorization by the Port Authority Board of Commissioners of a new lease agreement between the Port Authority and another third party, for a term of lease commencing after December 31, 2024, the Lessee shall pay to the Port Authority a Consent Fee in an amount to be negotiated by the Port Authority and the Lessee at the time of such change in Control, but in no event shall the Consent Fee be less than an amount equal to ten percent (10%) of the Net Proceeds paid or payable by the Lessee to the equity owners of the Lessee identified at the time of such change in Control, such percentage amount derived using the same methodology used to compute the percentage amount paid or payable to all other equity owners.

(c) As used herein, "**Net Proceeds**" shall mean the amount received by the seller of its ownership interests or membership interests, by contract or otherwise, after deducting the outstanding debt of such owner payable by such seller at the time of the sale.

Section 5. Dismissal of the Lawsuits by the Lessee and Release; Covenant Not to Sue

(a) It is hereby recognized and acknowledged that the Lessee commenced the following actions in Superior Court of New Jersey, Essex County: (i) FAPS, Inc. v. Port Authority of New York and New Jersey, et. al., N. J. Superior Court Docket No. L-3933-12 (declaratory judgment action and related claims); and (ii) FAPS, Inc. v. Port Authority of New York and New Jersey, et. al., N.J. Superior Court, Docket No.L-4079-12 (alleging violations of the Open Public Records Act, the Freedom of Information Policy of the Port Authority, and common law rights of access to public records) collectively the "Lawsuits"). Delivery of this supplemental agreement by the Port Authority to the Lessee shall be subject to receipt by the Port Authority of all necessary documentation to dismiss the Lawsuits brought by the Lessee against the Port Authority, said dismissal to be with prejudice, and without costs as to either of the parties.

(b) The Lessee acknowledges and agrees that in consideration of the Port Authority granting to the Lessee the rights and privileges set forth in this Agreement, the Lessee will derive substantial benefits from the Port Authority's agreement to enter into this Agreement, that the terms hereof represent significant and costly concessions by the Port Authority, and that without the release, agreements and acknowledgments set forth in this Section, the Port Authority likely would not have obtained the approval of its Board of Commissioners to enter into this Agreement. The Lessee further acknowledges and agrees that were it to violate the terms of this

Section, it would be depriving the Port Authority of a material benefit of the bargain to which the Lessee and the Port Authority have agreed.

(c) In consideration of the foregoing, the Lessee for itself and on behalf of its shareholders, officers, directors, employees, representatives, agents, successors, and assigns, hereby releases and forever discharges the Port Authority and its Commissioners, officers, directors, employees, representatives, agents, successors, and assigns solely from any and all actions, causes of action and claims arising from or relating to any attempt to challenge or invalidate the rates set forth in Sections 2 and 3 hereof pursuant to the Shipping Act of 1984, as amended (the "Shipping Act") or any other applicable statute and any regulations thereunder or legal theory, on the ground that such agreed upon rates set forth in Sections 2 and 3 result in any undue or unreasonable prejudice or disadvantage to the Lessee when compared with the rental and throughput charges payable to the Port Authority by other marine terminal tenants in the New York/New Jersey harbor.

Section 6. Replenish Letter of Credit and Payment of Arrearages

(a) The Lessee hereby acknowledges that prior to the date hereof, and pursuant to Section 42 of the Lease entitled "*Security*", the Port Authority made a drawing under the letter of credit held by the Port Authority in the amount of Two Million Four Hundred Thousand Dollars and No Cents ($2,400,000.00). Upon the Closing, 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 the Lease, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of Two Million Four Hundred Thousand Dollars and No Cents ($2,400,000.00). The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority and shall be in accordance with the terms and provisions of Section 42 of the Lease.

(b) The Lessee further acknowledges that it is in arrears in the payment of the sum of Two Hundred Ninety-Four Thousand Three Hundred Ninety-One Dollars and Twenty-Four Cents ($294,391.24) to the Port Authority. Upon the Closing, the Lessee shall deliver such amount to the Port Authority.

Section 7. Effect of Amendments

Except as hereby amended, all of the terms, covenants, provisions, conditions and agreements of the Lease shall be and remain in full force and effect.

Section 8. No Broker

Each party represents and warrants to the other that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. Each party shall indemnify and save harmless the other party of and from any and all claims for commissions or brokerage made by any and all persons, firms or corporations whatsoever for services provided to or on behalf of the indemnifying party in connection with the negotiation and execution of this Agreement.

Section 9. No Personal Liability

No Commissioner, officer, agent or employee of the Port Authority shall be charged personally by the Lessee or held contractually liable under any term or provision of this Agreement or because of its execution or alleged or attempted breach thereof.

Section 10. Construction and Application of Terms

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

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

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

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

(e) Except as otherwise provided in the Lease, nothing contained herein shall be deemed or construed to be an undertaking or covenant for the benefit of any third party.

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

(g) This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by the laws of the State of New York, without reference to the conflicts of law provision thereof.

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Section 11. Reciprocal Estoppel

The Port Authority and the Lessee each certify that, as of the date of the Closing, the Lease, as herein amended, is a valid lease and in full force and effect and represents the entire agreement between the parties; that there is no Event of Default, as defined in Section 24 of the Lease, on the part of the Lessee in any of the terms and conditions thereof; and, to the parties' knowledge, no event has occurred or failed to occur, which, after the giving of notice and the expiration of any applicable cure period, would constitute an Event of Default.

Section 12. Entire Agreement

This Agreement constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Lessee and the Port Authority. It is expressly agreed that any and all prior correspondence between or among the parties, or any of them, covering the terms hereof shall be deemed superseded by this Agreement except that all written requirements of the Port Authority given in connection therewith prior to the execution of this Agreement shall continue in full force and effect. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the date above written.

ATTEST:

Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: Richard M. Larrabee

Title: Director, Port Commerce Dept.

ATTEST:

Secretary

FAPS, INC.

By:

Title: President

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

For the Port Authority

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

On this 14th day of December, 2012, before me, the subscriber, a notary public of New York, personally appeared the Director, Port Commerce Department of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument: and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of the Board of Commissioners.

Nancy S. Niles
(notarial seal and stamp)

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

For the Lessee

STATE OF)
)ss.
COUNTY OF)

On this day of , 2012, before me, the subscriber, a notary public of , personally appeared

the President of

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

(notarial seal and stamp)

For the Port Authority

STATE OF)
)ss.
COUNTY OF)

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

_____
(notarial seal and stamp)

For the Lessee

STATE OF N. J.)
)ss.
COUNTY OF Essex)

On this 14 day of Nov. , 2012, before me, the subscriber, a notary public of, personally appeared the President of who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of the Board of Directors.

Maria Elizabeth Soares
(notarial seal and stamp)

MARIA ELIZABETH SOARES
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug.12, 2017