

Agreement No. MNS333

**RAILROAD OPERATING AGREEMENT**

**Between**

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

**and**

**FAPS, INC.**

Dated as of: October 1, 2010

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**THIS RAILROAD OPERATING AGREEMENT** (this "Agreement"), 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 Operator") 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 Operator to the Port Authority.

WITNESSETH, THAT:

The Port Authority and the Operator, 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 Operator 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") dated as of October 1, 2010, the Port Authority and the Operator 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 that certain Agreement of Lease L-PN-309 by and between the Port Authority and Operator dated as of October 1, 2010, ("Lease 309") (as such premises is more

particularly defined in Lease 309), and this Agreement, as set forth below.

(c) Pursuant to the Surrender Agreement, the Operator has surrendered approximately 96.84 acres located in the Lease 293 Premises, the Surrendered Premises, as such term is defined in the Surrender Agreement (the "Surrendered Premises").

(d) As set forth on "Exhibit A", attached hereto and made a part hereof, the Operator will retain the following space: certain terminal area also known as Parcel 8, FAPS Lots B and C and certain railroad tracks, said premises being more particularly defined in Section 1A, subsection (a) below, and the parties are entering into this Agreement to govern the occupancy and use by Operator of those certain railroad tracks and related terminal area.

Section 1A.     Letting

(a) Subject to and in accordance with the terms and conditions of this Agreement, the Port Authority hereby lets to the Operator and the Operator 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: Fourteen and 83/100ths (14.83) acres as marked in cross-hatching on "Exhibit A" (also known as Parcel 8, FAPS Lots B and C), together with the buildings, structures, fixtures, improvements, terminal area ("Terminal"), railroad tracks 3 and 4 located thereon (the "Terminal Railroad Tracks"), 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 Terminal Space"; provided, however, that while portions of railroad tracks 1 and 2 (the "Non-Terminal Railroad Tracks") are located on the Terminal Space, they shall not constitute a part of the Terminal Space for purposes of this Agreement, except that the Operator shall be obligated to provide free access to the Non-Terminal Railroad Tracks to third parties, and shall not in any way obstruct access or the use of the Non-Terminal Railroad Tracks by third parties. The parties agree that the Terminal Space constitutes non-residential property.

(b) Nothing contained in this Agreement shall grant to the Operator 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 Terminal Space (except to the extent required in either case for the performance of any of

the obligations of the Operator 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 Terminal Space (except to the extent required for the installation and operation of information technology communications and security systems).

Section 2. Term; Commencement Date

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

Section 3. Operating Fee/Rental

All operating fee/rental due and payable to the Port Authority under this Agreement (the "Rental") shall include the following items:

(a) The Intermodal Rental (as defined in Section 4 of this Agreement), escalated in accordance with Section 5 of this Agreement;

(b) Additional Rental (as defined in Section 21 of this Agreement);

(c) This Agreement is a triple net operating agreement, and, except as expressly provided to the contrary in this Agreement, the Operator 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 Operator is or shall become liable by reason of its respective estate, right, title or interest in the Terminal Space, or which are connected with or arise out of the possession, use, occupancy, maintenance, addition to, repair of or construction on the Terminal Space, including, without limitation, those specifically referred to in this Agreement; provided, however, that Operator shall not be liable for the repair, maintenance, replacement or upgrade of underground utilities; and

(d) The Operator further agrees to pay promptly upon demand as Rental (as hereinafter defined) 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. Intermodal 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 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 handling operation, which vehicle is either imported or exported via railcars at the Terminal Space, and (ii) "Heavy Cargo" as defined in the next sentence, which Heavy cargo is imported or exported via railcars or otherwise handled at the Terminal Space. "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 imported or exported via a railcar at the Terminal Space. For purposes of the calculation of the "Annual Intermodal Rental" as defined in Paragraph (b) of this Section 4, each boat, aircraft, bus or other item or Heavy Cargo shall be deemed equivalent to three (3) FAPS Vehicles. The calculations of the Annual Intermodal Rental (as defined below) shall not include a vehicle that is solely stored on the Terminal Space and provided said vehicle does not fall within the definition of a "FAPS Vehicle" under this Section 4.

"Guaranteed Minimum FAPS Vehicles" shall mean Twenty Thousand (20,000) FAPS Vehicles per year.

(b) Commencing on October 1, 2010, Operator shall pay, as Rental under this Agreement, a FAPS Vehicle/Heavy Cargo intermodal rental (hereinafter called the "Annual Intermodal Rental") for each Calendar Year running from October 1, 2010 through the expiration of the Term of this Agreement as follows: during each Calendar Year, the Operator shall pay the Port Authority, in accordance with subsection (c) below, an Annual Intermodal Rental calculated by multiplying (i) the amount of Seven and 50/100 Dollars (\$7.50) per FAPS Vehicle (the "Vehicle Intermodal Charge") imported or exported via railcars at the

Terminal Space during that Calendar Year by (ii) the actual number of FAPS Vehicles entering the Terminal Space imported or exported via railcars at the Terminal Space during such Calendar Year.

(c) The Annual Intermodal Rental shall be reported and payable as set forth below in this paragraph, based on the number of FAPS Vehicles and/or Heavy Cargo imported or exported via railcars at the Terminal Space, per Calendar Year:

(1) On or before October 20, 2010, and on the twentieth (20<sup>th</sup>) 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 Agreement, the Operator shall render to the Port Authority a statement (a "FAPS Vehicles Railroad Monthly Report") certified by a responsible officer of the Operator showing (i) the number of railcars arriving at the Terminal Space during the preceding month, date of arrival and duration of stay of each such railcar onto which FAPS Vehicles are imported or exported at the Terminal Space, (ii) the total number of FAPS Vehicles, imported or exported via railcars, at the Terminal Space, and (iii) the cumulative number of FAPS Vehicles imported or exported via railcars arriving at the Terminal Space, from the date of the commencement of the Calendar Year for which the FAPS Vehicle Railroad Monthly Report is made through the last day of the preceding month.

(2) As Annual Intermodal Rental the Operator will be billed the guaranteed minimum amount of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the "Guaranteed Minimum Intermodal Rental"), payable on the first day of each calendar month in equal monthly installments of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00), which amount represents an amount equal to one-twelfth (1/12<sup>th</sup>) of the Guaranteed Minimum FAPS Vehicles, multiplied by the Vehicle Intermodal Charge per FAPS Vehicle, plus any additional amounts payable in accordance with subsection (3) below; provided, however, that for the partial Calendar Year of 2010, the Guaranteed Minimum Intermodal Rental shall be a total of Thirty Seven Thousand and 00/100 Dollars (\$37,000), payable in equal monthly installments of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00), beginning on October 1, 2010, and continuing on the first (1<sup>st</sup>) day of each subsequent month for the remainder of the Calendar Year of 2010.

(3) The Operator shall render to the Port Authority on the 20<sup>th</sup> day of each January of each Calendar Year, the FAPS Intermodal Vehicle Annual Report (the "Final FAPS Vehicle Intermodal Monthly Report") which shall include a reconciliation of the amount of the Annual Intermodal Rental payable for the preceding Calendar Year. In the event that the Final FAPS Vehicle Intermodal Monthly Report indicates that the actual numbers of FAPS Vehicles imported or exported via railcars at the Terminal Space during such Calendar Year exceeded the Guaranteed Minimum FAPS Vehicles, the Port Authority will bill the Operator the difference between the Guaranteed Minimum Intermodal Rental already paid and the amount of Annual Intermodal Rental actually due (calculated by subtracting the Guaranteed Minimum FAPS Vehicles from the actual number of FAPS Vehicles imported or exported via railcars at the Terminal Space, and multiplying the result by the Vehicle Intermodal Charge), and the Operator'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 Operator that, except as provided herein with regard to the partial Calendar Year of 2010, Operator shall be responsible for payment of the Guaranteed Minimum Intermodal Rental of \$150,000 per annum (equating to 20,000 vehicles X \$7.50), payable at \$12,500.00 per month on the first day of each month during the Term commencing on October 1, 2010, regardless of whether less than 20,000 vehicles are throughput by Operator during a Calendar Year.

(e) The computation of the Annual Intermodal 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 Intermodal Rental, at a minimum, Guaranteed Minimum Intermodal Rental or, for partial Calendar Years, the pro-rated Guaranteed Minimum Intermodal Rental.

(f) Upon any termination of the letting (even if stated to have the same effect as expiration), no later than the twentieth (20<sup>th</sup>) day of the month following the month in which the effective date of termination occurs, the Operator shall render to the Port Authority a statement certified by a responsible officer of the Operator setting forth the total actual number of FAPS Vehicles imported or exported via railcars at the Terminal

Space from the commencement of the Calendar Year through the effective date of termination, such Calendar Year, and the date of arrival/entry of each such railcar by which FAPS Vehicles are imported or exported. The statement shall also set forth the number obtained by (a) multiplying (i) a fraction, the numerator of which shall be the Guaranteed Minimum FAPS Vehicles, 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 imported or exported via railcars at the Terminal Space during the partial Calendar Year. In the event that the result is positive, the result shall be multiplied by the Vehicle Intermodal Charge, and the Operator shall pay this amount to the Port Authority as Annual Intermodal Rental, with the Port Authority to bill the Operator for such amount, and the Operator 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 Operator has handled 15,000 FAPS Vehicles at that time, the calculation shall be  $(20,000/365) \times 180 = 9,863.01$  (the Projected Number of FAPS Vehicles). Then, the equation shall be reflected as follows:  $15,000 - 9,863 = 5,137$ . As the Operator has paid the Annual Intermodal Rental for up to 9,863 FAPS Vehicles at this point, but handled 15,000 Vehicles, the Operator will pay to the Port Authority the amount of  $5,137 \times \$7.50 = \$38,527.50$ .

#### Section 5. Annual Intermodal 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 Operator shall pay an Intermodal Rental at a rate per annum equal to the sum of: (x) the Intermodal Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Intermodal Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

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

(iii) If any adjustment in Intermodal 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 Intermodal Rental equal to 1/12th of the increment of annual Intermodal 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 6. Railroad Terminal Operations.

(a) In connection with the operation of the Terminal Space, the Operator shall be responsible for and shall maintain the interchange gate complex located on the Terminal Space (the "Gate") and provide access to and accept railcar traffic by the users of the Terminal, including various railroads and/or shippers, on a twenty four (24) hour per day, seven (7) day per week basis.

(b) The Non-Terminal Railroad Tracks shall be open and accessible to all railroads and outside shippers for the pass-through of rail cars on such Non-Terminal Railroad Tracks, the import and export of cargo, and the Operator, except as set forth in (h) below, is required to provide such access through the Terminal Space to the Non-Terminal Railroad Tracks located on the Terminal Space to all customers without a fee for such pass-through; provided, however, that the third parties utilizing the Non-Terminal Railroad Tracks shall not be permitted to load or unload cargo on the Terminal Space. The Operator shall be responsible for the maintenance of the Gate, in accordance with Section 16 hereof.

(c) The parties agree and acknowledge that a principal purpose of the Port Authority in granting the permission under this Agreement is to have available for users of the Facility the access which the Operator is required to permit hereunder, all for the better accommodation and convenience of such entities and in fulfillment of the Port Authority's obligation to operate facilities for the use and benefit of the public.

(d) Operator will furnish all fixtures, equipment (including without limitation, computer systems and software), personnel (including without limitation, licensed personnel as necessary), supplies, materials and other facilities necessary and proper for the operation and management of the Terminal. The Operator shall furnish all services hereunder on a fair, equal and non-discriminatory basis and shall operate the

Terminal as a first class operation. Without limiting the provisions of the immediately preceding sentence, the Operator shall operate the Gate so as to allow access to the Terminal Space on a fair, equal and non-discriminatory basis.

(e) Intentionally Deleted

(f) Without limiting the generality of any provision of this Agreement, the Operator shall be responsible, at its sole cost and expense, for providing all necessary security for the protection and safeguarding of the Terminal Space and persons and property at or on the Terminal Space, including but not limited to the maintenance of security guards at the Gate and at guard booths at other appropriate locations on the Terminal Space and such other measures as may be prescribed by the Port Authority.

(g) Notwithstanding the provisions of this Section 6, it is understood and agreed that Operator's obligations with respect to the Non-Terminal Railroad Tracks located at the Terminal Space shall be limited to (i) providing pass-through access to and accepting railcar traffic by the users of the Terminal, including various railroads and/or shippers and (ii) maintaining and repairing the switch that controls access to the Terminal Railroad Tracks.

(h) Notwithstanding the provisions of subparagraph (b) above, the prohibition on Operator charging a fee for use of/access to the Gate and/or Terminal Space shall not apply to those customers of Operator that have entered into a service agreement with Operator that provides for a handling fee to be charged by the Operator.

#### Section 7. Abatement of Rental

(a) If during the Term of the Agreement, the Port Authority shall take any action that prevents the Operator from loading or unloading FAPS Vehicles from railcars arriving at or departing from the Terminal Space, subject to the satisfaction of the conditions set forth below, the Operator shall be entitled to an abatement of Rental as follows: for the period during which the Operator is prevented from loading or unloading FAPS Vehicles, from railcars at the Terminal Space, the Annual Intermodal Rental shall be abated, and the Guaranteed Minimum Intermodal Rental for the Calendar Year shall be pro-rated accordingly, provided, however, the foregoing solely applies if:

(i) FAPS does less than 20,000 vehicles for the Calendar Year in issue; and

(ii) the burden of proof shall be on FAPS to demonstrate that the Port Authority was responsible for any action that prevented FAPS from operating.

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

#### Section 8. Rights of User

(a) The Operator shall use the Terminal Space for the following purposes and in full compliance with all applicable laws, rules and regulations: (i) operation and management of a intermodal railroad terminal as a public, multi-user rail interchange terminal; (ii) the ingress and egress of railroad cars and locomotives to and from areas adjacent to the Terminal Space; and (iii) the receipt and delivery of FAPS Vehicles which have arrived or will be departing through the Facility, to and from such railroad cars. 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 Operator from allowing the use of the Terminal Space 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 Operator shall have the right of ingress and egress between the Terminal Space 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 Operator. The

Operator 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 Operator 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 Operator 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 Terminal Space or in, along, across or through any streets, ways and walks near the Terminal Space.

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 Operator shall procure from all governmental authorities having jurisdiction over the operations of the Operator 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. Operator 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 Operator 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 Terminal Space by the Operator which as a matter of law are applicable to or which affect (i) the Terminal Space, (ii) the operations of the Operator at the Terminal Space or the Facility, (iii) the use and occupancy of the Terminal Space and/or (iv) any Hazardous Substance on, at or migrating from the Terminal Space, in accordance with Section 50 hereof. The Operator, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the Terminal Space 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(o) hereof.

(c) The Operator 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 Terminal Space, the Facility, the Port Authority or the Operator (collectively, a "Notice").

(d) The obligation of the Operator 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 Operator. Notwithstanding the foregoing in this Section 10, the Operator 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 Operator 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 Terminal Space 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 Operator covenants and agrees to observe and obey (and to compel its officers, employees, guests, invitees, agents, representatives, and others on the Terminal Space 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 Operator 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 Terminal Space, 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 Operator 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 Operator 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 Operator

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

(b) The Operator 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 Operator 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 Operator or of any such others on the Terminal Space with the consent of the Operator.

(c) The Operator shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Terminal Space and the Operator shall remove from the Terminal Space 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 Operator therein. Said receptacles shall be provided and maintained by the Operator and shall be kept covered except when being filled or emptied. The Operator 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 Terminal Space a minimum of weekly.

(d) The Operator shall take all reasonable measures to eliminate vibrations tending to damage the Terminal Space or the Facility or any part thereof, taking into account the normal operations of a locomotive on the Terminal Space.

(e) The Operator shall permit the use of and provide reasonable access to the Terminal Space 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 Operator.

(f) From time to time and as often as reasonably required by the Port Authority and upon prior notice to the Port Authority, the Operator shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment on the Terminal Space, to the extent such equipment exists on the Terminal Space, whether furnished by the Port Authority or by the Operator, without cost to the Port Authority. To the extent such equipment exists on the Terminal Space, the Operator 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 Operator 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 Terminal Space. 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 Operator in accordance with Section 20(o) hereof.

(b) The Operator 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 Terminal Space, if any, 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 Operator in accordance with Section 20(o) hereof.

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

(d) The Operator shall not cause or permit to be caused, created or produced upon the Terminal Space, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors or odors, taking into account the use of diesel locomotives on the Terminal Space.

(e) The Operator 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 Terminal Space 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 Operator shall not operate any engine or any item of automotive equipment in any enclosed space on the Terminal Space 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 Operator shall not install, maintain or operate, or permit the installation, maintenance or operation on the Terminal Space 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, Operators 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 Terminal Space for the sale of merchandise of all types or for the rendering of services. The Operator 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 Terminal Space pursuant to the provisions of paragraph (g)(2) of this Section.

(2) Subject to all of the terms and provisions of this Agreement, the Operator 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 Operator may use an independent contractor, operator or supplier for such machines selected by the Operator 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 Operator's officers, employees, members, contractors, customers, guests and invitees. The Operator's agreement with any contractor, operator or supplier of vending machines shall permit cancellation by the Operator on short term notice in the event that the Port Authority notifies the Operator that such contractor, operator or supplier fails to meet the standards set forth in this paragraph (g)(2). The Operator 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 Operator, and the Operator and the contractor, operator or supplier shall be jointly and severally responsible therefor to the Port Authority only.

(h) The Operator shall not place a load upon any floor or paved area of the Terminal Space that exceeds one hundred (100)

pounds per square foot in any office area, if any, located on the Terminal Space, or five hundred (500) pounds per square foot for any other portion of the Terminal Space, 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 Operator 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(o) hereof.

(i) The Operator shall not fuel or defuel its vehicles or equipment in the enclosed portions of the Terminal Space, if any, without the prior approval of the Manager of the Facility (as hereinafter defined).

(j) The Operator shall not keep or store in the Terminal Space, explosives, inflammable liquids or solids or oxidized materials or use any cleaning materials having a harmful corrosive effect on any part of the Terminal Space, except for those materials normally used in the operations permitted at the Terminal Space 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 Operator 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 Operator 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 Operator shall not do or permit to be done any act or thing on the Terminal Space or at the Facility which (i) will invalidate or conflict with any fire insurance policies covering the Terminal Space 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 Operator 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 Operator on the Terminal Space, and the Operator shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Operator, make all improvements, alterations and repairs of the Terminal Space that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction; provided, however, that the Operator shall not be obligated to make such improvements, alterations or repairs to (i) the portion of the Non-Terminal Railroad Tracks located on the Terminal Space, other than the switch that controls access to the Terminal Railroad Tracks, or (ii) underground utilities. If by reason of any failure on the part of the Operator to comply with the provisions of this paragraph or by reason of any act by Operator, any rate for fire insurance, extended coverage or rental insurance on the Terminal Space 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 Operator 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 Operator.

(n) The Operator 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 Operator 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 Terminal Space, 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 Operator (or permitted by the Operator to be disposed of, released or discharged) on or from the Terminal Space or at the Facility, shall upon notice by the Port

Authority to the Operator and subject to the provisions of Section 50 hereof, be completely removed, cleaned up and/or remediated by the Operator. The obligations of the Operator pursuant to this paragraph shall survive the expiration or termination of this Agreement.

(p) The Operator may store wooden pallets on the open areas of the Terminal Space strictly in accordance with the requirements and restrictions of the Port Authority which are disclosed to Operator. 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 Terminal Space not less than on a weekly basis.

#### Section 14. Signs

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

(b) Upon demand by the Port Authority, the Operator shall remove or paint out any and all advertising, signs, posters, and similar devices placed by the Operator on the Terminal Space or elsewhere at the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the Terminal Space 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 Operator so to remove or paint out each and every such piece of advertising, sign, poster or device and so to restore the Terminal Space and the Facility after receipt of written notice from the Port Authority, the Port Authority may perform the necessary work and the Operator shall pay the costs thereof to the Port Authority on demand.

#### Section 15. Indemnity and Liability Insurance

(a) The Operator 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 Terminal Space by the Operator or by its officers, agents, employees, customers, vendors, or representatives, contractors, subcontractors or their employees, or by others on the Terminal

Space with the consent or invitation of any of the foregoing persons, or out of any other acts or omissions of the Operator, its officers, agents and employees on the Terminal Space or elsewhere at the Facility, excepting only (i) claims and demands which result solely from the intentional tortious acts or gross negligence of the Port Authority, and (ii) claims and demands relating solely to, resulting solely from, or arising solely out of accidents including, but not limited to derailments, caused by the operation of railcars or trains on the Non-Terminal Tracks by the Port Authority or third parties, provided, that such accidents are not caused, in whole or in part, by the acts or omissions of the Operator.

(b) If so directed by the Port Authority, the Operator 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 Operator, 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 Operator's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Operator 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 Operator 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 Operator thereunder with respect to any claim or action against the Operator by a third party shall pertain and apply with like effect with respect to any claim or action against the Operator by the Port Authority and against the Port Authority by the Operator, 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 Operator 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 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 Operator 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) Subject to the provisions of subparagraph(f) of this Section 16, the Operator shall at all times keep the Terminal Space clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Operator located in or on the Terminal Space, 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 Operator with respect to the Terminal Space, but subject to subparagraph (f) of this Section 16, the Operator agrees that upon the commencement of the letting and during the Term it shall place and keep the Terminal Space in good operating condition. Notwithstanding anything appearing to the contrary in this Section 16, the Operator shall be under no obligation to upgrade any systems or items at the Terminal Space, but shall be obligated only to maintain, repair and replace the systems or other items as applicable at the Terminal Space.

(b) Subject to the provisions of subparagraph (f) of this Section 16, the Operator shall repair, replace, rebuild and paint all or any part of the Terminal Space which may be damaged or destroyed by the acts or omissions of the Operator or by those of its officers or employees, or of other persons on or at the Terminal Space. Any repair, replacement or rebuilding required under this Section shall be conducted pursuant to the terms and conditions set forth in Section 20(o).

(c) Subject to the provisions of subparagraph (f) of this Section 16 and Section 20(o) of this Agreement, throughout the Term, the Operator 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 Terminal Space, 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 Operator shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the Terminal Space, all utilities related to the Terminal Space (except as provided below), and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Terminal Space or the Operator's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items, as applicable: (1) sprinkler systems, if any (provided, however, that (i) the Operator shall be required to maintain in full force and effect throughout the Term of this Agreement 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 Operator 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 Terminal Space 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, if any, 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 Terminal Space; (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; (11) any paving required on the Terminal Space; (12) the Terminal Railroad Tracks and all related ties and switches; and (13) the Gate; provided, however, that the Operator shall not be

responsible for the maintenance of any underground utilities. The Operator 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 Terminal Space 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 Operator (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 Terminal Space (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 Operator) ("Condition Survey") and, to the extent the Operator is in possession of the Terminal Space, the Port Authority's agent or representative shall have all rights of entry to the Terminal Space 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 Terminal Space, in which case the Condition Survey shall be completed as to the re-let portion of the Terminal Space prior to such re-letting. The Port Authority will provide the Operator with a list of all items that demonstrate Operator's failure to maintain the Terminal Space in accordance with the obligations of this Section 16 (a "Condition Survey Report," and the date upon which such list is provided to Operator being hereinafter known as the "Report Date"). All obligations relating to the items identified by the Condition Survey Report arising out of Operator'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 Operator's obligation with respect to the maintenance and repair of the Terminal Space pursuant to this Section 16. In no event shall any other obligation under this Agreement be affected by the Condition Survey Report, including, but in no event, limited to any

environmental conditions with respect to the Terminal Space. 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 Operator 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 Operator's maintenance, repair or other obligations, duties or responsibilities under this Agreement and the Operator shall diligently continue the same or cause the same to be continued to completion; provided, however, that the Operator 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 Operator 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, Operator 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 Operator 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 Operator 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 Operator's part to maintain a switch associated with the Terminal Railroad Tracks, all such repairs and/or replacements shall be the sole and absolute responsibility of Operator 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 Operator or (ii) be paid for by either a draw against the Operator's security deposit or a direct payment by the Operator 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 Operator under this Agreement.

Upon the expiration of this Agreement, the Terminal Space must be in as good condition as at the time of the installation or construction thereof, except for reasonable wear and tear. The Operator shall make periodic inspections of the Terminal Space and subject to Section 20(o) 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 Operator shall be in quality and class not inferior to the original in materials and workmanship.

(d) Without limiting the obligations of the Operator stated elsewhere in this Agreement, the Operator shall be solely responsible to the Port Authority for any damage caused by Operator, 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 Terminal Space 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 Operator shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption). The Operator 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 Operator 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 Operator's officers, employees, agents, and representatives which may arise from the condition of the Terminal Space or any part thereof, or from the failure of the Operator to make timely corrections of dangerous or potentially dangerous conditions in or on the Terminal Space; provided, however, that the Operator's obligation hereunder to indemnify and hold the Port Authority harmless shall not apply to any claims or demands resulting from (i) the intentional tortious acts or gross negligence of the Port Authority or (ii) any conditions caused by an accident relating solely to or arising solely from the Non-Terminal Railroad Tracks, including, but not limited to derailments, except if such accident is caused, in whole or in part, by the acts or omissions of the Operator. Except as set forth above, the Operator hereby

releases and discharges the Port Authority, its Commissioners, officers, employees, agents and representatives from any liability for damages to the Operator, consequential or otherwise, in connection with any of the provisions of this paragraph concerning repairs or replacements to any portion of the Terminal Space, 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 Agreement to the contrary, the Operator shall not be obligated, responsible, or liable for any repairs or maintenance to: (i) underground utilities on, under, or near the Terminal Space or the Facility, including storm water underground utilities; provided, however, that the Operator 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 Operator's responsibility; and the portion of the Non-Terminal Railroad Tracks located on the Terminal Space, other than the railroad switch that provides access to the Terminal Railroad Tracks. It being understood and agreed that the Operator's obligation with respect to the Non-Terminal Railroad Tracks is limited to (i) providing pass-through access to and accepting traffic by the users of the Terminal, including various railroads and/or shippers, and (ii) maintaining and repairing the switch that provides access to the Terminal Railroad Tracks.

#### Section 17. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the Terminal Space is damaged, the Operator shall rebuild the same with due diligence in accordance with the procedures set forth in Section 20(o) hereof.

(b) In the event of damage to or a partial or total destruction of the Terminal Space, the Operator shall within thirty (30) days after the occurrence commence to remove from the Terminal Space 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 Operator or to any third person whatsoever, and thereafter shall diligently continue such removal, and if the Operator 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 Operator'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 Operator to the Port Authority, with any balance remaining to be paid to the Operator. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Operator shall pay such excess to the Port Authority on demand. Without limiting any term or provision of this Agreement, the Operator 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 Operator's interest in this Agreement 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 Operator'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 Terminal Space or any portion thereof, and shall include any arrangement whereby a substantial portion of the Operator'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 Operator or in any direct or indirect constituent entity of the Operator, where such disposition (whether by itself or cumulatively with other transactions) produces any change in the Control (as hereinafter defined) of the Operator, 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 Operator; (2) the issuance of additional stock or membership interests in, respectively, any corporation or limited liability company that is the Operator or that is the general partner of any partnership that is the Operator, 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 Operator, or that a general or limited partner of any partnership that is the Operator.

(b) The Operator 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 Operator shall not enter into any management agreement, services agreement or similar type of agreement governing the operations or management of the Terminal Space 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 Terminal Space or of the rents, revenues or any other income from the Terminal Space, or this Agreement or any part hereof, or any license or

other interest of the Operator 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 Operator effects or permits any Assignment, Transfer or Sublease, or if the Terminal Space is occupied by any person, firm or corporation other than the Operator, 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 Terminal Space, 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 Operator by the Port Authority from the further performance by the Operator 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 Operator 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 Operator further covenants and agrees that it will not use or permit any Person whatsoever to use the Terminal Space 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 Operator shall not permit the Terminal Space 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 Operator shall be permitted to license certain limited portions of the Terminal Space as office space to its clients (and/or such clients' service providers) as may be deemed necessary or desirable to facilitate the processing of cargo at the Terminal Space. The Provisions of this Section 18 shall not be applicable to such licensed space. Operator 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 Operator not producing any change in Control of the

Operator does not constitute a Transfer hereunder and accordingly does not require the consent of the Port Authority, the Operator 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 Terminal Space, 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 Operator 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 Operator; provided, however, that this paragraph shall not be construed to prevent the Operator 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 Operator to the extent that such fixtures and improvements are owned by the Operator and have been paid for by the Operator, 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 Operator'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 Operator, in compliance with N.J.S.A. 32:2-11, terminate the letting with respect to all or such portion of the Terminal Space so required. Such termination shall be effective on the date specified in the notice. The Operator hereby agrees to deliver possession of all or such portion of the Terminal Space so required upon the effective date of such termination in the same condition as that required for the delivery of the Terminal Space upon the date originally fixed by this Agreement for the

expiration of the Term. If the Port Authority exercises this option, the Operator 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 Operator nor taking by the Port Authority pursuant to this paragraph, shall be construed to be an eviction of the Operator or a breach of this Agreement or be made the basis of any claim by the Operator 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, Operator's obligations with respect to the Terminal Space (or such portion(s) of the Terminal Space 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 Terminal Space, or in the event that the letting is terminated with respect to the entire Terminal Space 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 Terminal Space, or in the event that the letting is terminated pursuant to paragraph (b) of this Section with respect to a part only of the Terminal Space, 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.

(e) Subject to the provisions of paragraphs (a) and (b) above, in the event that the taking or conveyance or the delivery by the Operator 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 Terminal Space, then the Operator 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. Repairs, Replacements or Alterations by the Operator

(a) Any repairs, replacements or alterations conducted under this Agreement except as expressly set forth herein to the contrary, shall be performed at the Operator's sole cost and expense (the "Operator's Alterations").

(b) With respect to any Alterations, undertaken by Operator, the Operator 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 Operator, any contractors of the Operator, 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 Operator's Alterations prior to the completion thereof. In the event of such loss or damage, the Operator shall forthwith repair, replace and make good the Operator's Alterations 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 Operator's Alterations. The Operator 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 Operator's Alterations. The Operator 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 Operator's Alterations to be performed by the Operator during the Term of this Agreement, the Operator 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 Operator 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, in accordance with subsection (o) of this Section 20.

(d) Without limiting the generality of any of the provisions of this Agreement, the Operator's Alterations 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 Operator 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.

(e) Without limiting the generality of paragraph (b) of this Section, the Operator 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 Operator's Alterations or for the contracts for the performance thereof entered into by the Operator. Any warranties extended or available to the Operator in connection with the aforesaid Operator's Alterations shall be for the benefit of the Port Authority as well as the Operator.

(f) Without limiting or affecting any other term or provision of this Agreement, the Operator shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Terminal Space by the Operator and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Operator in the Terminal Space 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 Terminal Space.

(g) The Operator 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 Operator's Alterations, 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 Terminal Space or any part thereof, nor to prevent the Operator from contesting claims in good faith.

(h) In addition to all policies of insurance otherwise required by this Agreement, the Operator shall procure and maintain or cause to be procured and maintained in effect during the performance of the Operator'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 Operator 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.

(i) With the exception of the Commercial Automobile Liability, Workers' Compensation and Employers' Liability Insurance policies each policy of insurance described in paragraph (g) 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 Operator 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 (g) of this Agreement. The certificates of such insurance shall also contain an endorsement providing that the protection afforded the Operator thereunder with respect to any claim or action against the Operator by a third party shall pertain and apply with like effect with respect to any claim or action against the Operator by the Port Authority and against the Port Authority by the Operator, 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 Commencement Date, the certificate must be delivered to The Port Authority before any of Operator's Alterations are to take place.

(j) Title to all improvements and fixtures placed, constructed or installed in or on the Terminal Space as the Operator's Alterations 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 Terminal Space placed in or installed upon the Terminal Space as part of the Operator's

Alterations shall remain with the Operator. No such equipment or trade fixtures shall be removed by the Operator prior to the termination of this Agreement unless replaced with identical property of equal or greater value. Without limiting any other term of the Agreement 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 Terminal Space under this Agreement the Operator shall remove from the Terminal Space any improvements, fixtures, trade fixtures, or equipment as the Port Authority may specify in its notice, and shall repair any damage to the Terminal Space caused by such removal.

(k) In the performance of the Operator's Alterations, and otherwise during the Term of this Agreement, to the extent within its reasonable control, the Operator will not permit any situation or condition to arise or continue that causes any labor troubles at, or emanating from, the Operator's Terminal Space which interferes in any material respect with the operations at the Operator's Terminal Space. 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 Operator 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 Operator (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 Operator, to require the Operator to: (a) suspend the Port Authority's permission to the Operator to proceed with the applicable portion of each specific project of the Operator's Alterations being performed by or on behalf of the Operator (i.e. the portion to which the underlying labor trouble relates), or suspend the Port Authority's permission to the Operator to continue such other specific operations as reasonably necessary to immediately terminate such labor troubles, and the Operator 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 Operator will (i) reinstate the permission to the

Operator to perform the subject specific Operator's Alterations on all the same terms and conditions as before the suspension and/or (ii) permit the Operator to resume such other suspended activities at the Operator's Terminal Space 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.

(l) 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.

(m) Without limiting any of the terms and conditions hereof, the Operator understands and agrees that it shall put into effect prior to the commencement of the Operator's Alterations 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 Operator's contractors and subcontractors at any tier of construction as well as to the Operator with respect to the Operator's Alterations, and the Operator agrees to include the provisions of Schedule E in all of its contracts for Alterations 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 Operator 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 Operator and its contractors and subcontractors 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 Operator agrees to and shall also require that its contractors and subcontractors 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 Operator under this paragraph and Schedule E shall not be construed to impose

any greater requirements on the Operator than those which may be imposed on the Operator under applicable law.

(n) In addition to and without limiting any terms and provisions hereof, the Operator shall provide in all of its contracts and subcontracts covering the Operator's Alterations, 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 Operator, 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 Operator 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.

(o) The data to be supplied by the Operator in the Alteration Application shall identify each anticipated repair or alteration, and shall describe in detail any systems, improvements, fixtures and equipment to be installed by the Operator. The Operator 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 Operator 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 Operator's submissions under this paragraph, the Operator 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 Operator'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 Operator 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 Operator 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 Operator shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (g) and (h) of this Section 20 and such performance bonds as the Port Authority may specify. All of the Operator's Alterations shall be performed by the Operator 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 Operator shall redo or replace at its own expense any work not done in accordance therewith.

The Operator 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 administering the Tenant Alteration Application Process.

(o) 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 Operator's submittal of any Alteration Application relating to security on the Terminal Space, including without limitation installation of fencing, jersey barriers, or other related similar improvements within or bordering the Terminal Space. In the event the Port Authority requests revisions or modifications to any 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.

(p) The Operator agrees that in the performance of any work that is subject to this Section 20, it will comply with the Port Authority's policy on sustainable design as set forth in the sustainable design guidelines promulgated by the Port Authority Engineering Department from time to time.

#### Section 21. Additional Rent and Charges

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Operator 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 Operator 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 Operator contrary to the said conditions, covenants and agreements, the Operator 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 the Rental 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"). No payment made by the Operator to the Port Authority under this Section shall be or be deemed a waiver by the Operator 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 Operator 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 Operator 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 Terminal Space for the purpose of inspecting the same at all reasonable times, for observing the performance by the Operator 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 Terminal Space by the Operator.

(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 Operator, or for the benefit of others than the Operator at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and, upon reasonable advance notice, to enter upon the Terminal Space 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 Terminal Space new systems or parts thereof, and to use the Terminal Space 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 Terminal Space by the Operator.

(c) In the event that any property of the Operator 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 Operator 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 Operator 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 Operator 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. Subject to the rights of others to use the Terminal Space as set forth in Section 6 hereof, the Operator is and shall be in exclusive control and possession of the Terminal Space 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 Terminal Space or for any injury or damage to the Terminal Space or to any property of the Operator 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 Operators, occupiers or users of the Terminal Space, 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 Terminal Space, the usual "To Let" signs, which signs the Operator shall permit to remain without molestation.

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

(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 Operator 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 Terminal Space is let to the Operator and the Operator takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Terminal Space 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 Terminal Space is located; (iii) permits, licenses, regulations and restrictions, if any, of the United States the municipality or State in which the Terminal Space is located, or other governmental authority with appropriate jurisdiction.

(b) No greater rights or privileges with respect to the use of the Terminal Space or any part thereof are granted or intended to be granted to the Operator 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 Operator 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 Operator shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if (i) the Operator is a corporation, by any of its stockholders, or, (ii) if the Operator is a limited liability company, by any of its members, or (iii) if the Operator 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 Operator 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 Operator 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 Operator, 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 Operator, and such possession or control shall continue in effect for a period of ninety (90) days; or

(7) The Operator shall voluntarily abandon, desert or vacate all or substantially all of the Terminal Space or discontinue its operations at the Terminal Space 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 Operator shall be prevented for a period of sixty (60) days by action of any governmental agency from conducting its operations on the Terminal Space, regardless of the fault of the Operator; or

(8) Any lien shall be filed against the Terminal Space because of any act or omission of the Operator and shall not be discharged or bonded within thirty (30) days; or

(9) The Operator 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 Operator shall fail to (i) obtain any insurance policy required under this Agreement, 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 Agreement, and Operator fails to correct this lapse within thirty (30) days following such lapse, termination or expiration; or

(11) The Operator shall fail to perform its repair and maintenance obligations under this Agreement with regard to any of the leasehold Terminal Space 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 Operator 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 Operator 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 Operator 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 Operator shall not be entitled to enter into

possession of the Terminal Space, 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 Operator 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 Operator 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 Operator in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Operator 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 Operator, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

Section 25. Intentionally Deleted

Section 26. Right of Re-entry 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 Terminal Space 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 Operator under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 27. Waiver of Redemption

The Operator hereby waives any and all rights to recover or regain possession of the Terminal Space 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 Terminal Space in any lawful manner.

Section 28. Survival of the Obligations of the Operator 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 Terminal Space in accordance with the provisions of Section 26 of this Agreement, then all of the obligations under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession, including repair and maintenance obligations. Upon such termination, the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place, 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 Operator 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 Operator under this Agreement, including, without limitation thereto, all sums constituting Additional Rental under Section 21 of this Agreement, and all sums constituting the Annual Intermodal Rental under Sections 4-5 of this Agreement, and all other Rental 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 Operator 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 Terminal Space (on failure of the Operator to have restored), the reletting of the Terminal Space, the care and maintenance of the Terminal Space during any period of vacancy of the Terminal Space, 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 Terminal Space and putting the Terminal Space in order (such as but not limited to cleaning and decorating the Terminal Space).

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 Terminal Space or may relet the Terminal Space and shall have the right to permit any person, firm or corporation to enter upon the Terminal Space and use the same. Such reletting may be of a part of the Terminal Space or of the entire Terminal Space, 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 Terminal Space, including changes which alter the character of the Terminal Space and the suitability thereof for the purposes of the Operator under this Agreement, without affecting, altering or diminishing the obligations of the Operator 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 Operator against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any Operator, licensee, permittee or other occupier in connection with the use of the Terminal Space (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

Terminal Space 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 Operator the Port Authority's interest in this Agreement in any proceeding commenced by or against Operator under the present or any future United States Bankruptcy Code or in a proceeding which is commenced by or against Operator 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 Terminal Space or any part thereof and adequately assure the complete and continuous future performance of Operator's obligations under this Agreement. Adequate protection of the Port Authority's right, title and interest in and to the Terminal Space, and adequate assurance of the complete and continuous future performance of Operator's obligations under this Agreement, shall include all of the following requirements:

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

(b) that Operator shall continue to use the Terminal Space only in the manner permitted by this Agreement; and

(c) that if Operator's trustee, Operator or Operator 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, Operator or Operator as debtor-in-possession of such offer, not later than twenty (20) days before the date that the trustee, Operator or Operator 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, Operator and Operator 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 Operator attempts to arrange such an assignment of this Agreement, then as an element of the required adequate assurance to the Port Authority, and as a further condition to Operator's right to make such an assignment, Operator'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 Operator covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Terminal Space 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 Terminal Space at the expiration or termination of the letting hereunder.

(b) The Operator shall have the right at any time during the letting to remove from the Terminal Space, all its equipment, removable fixtures and other personal property, and all property of third persons for which the Operator is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the Terminal Space, repairing all damage caused by any removal. If the Operator 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 Operator 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 Operator to the Port Authority, with any balance remaining to be paid to the Operator; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Operator 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 Operator 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, Operator 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 Agreement

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 Operator. 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 Operator, 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 Operator, delivered to the Terminal Space 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 Operator 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 Operator 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 Operator agrees or is required to do or has the right to do, any act or thing, the following shall apply:

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

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

(4) If the Operator 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 Operator 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 Terminal Space with its consent.

(b) If more than one individual or other legal entity is the Operator 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 Terminal Space the Operator 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 Operator's representative, hereinbefore specified in this Agreement (or such substitute as the Operator may hereafter designate in writing), shall have full authority to act for the Operator in connection with this Agreement and any things done or to be done hereunder, and to execute on the Operator'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 Operator 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: (Ex. 1) , or to such other address as may be substituted therefor.

(g) This Agreement does not render the Operator 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 Terminal Space is 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 Operator, 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 Operator shall pay all Rental provided for in this Agreement and shall observe and perform all the terms, covenants and conditions on the Operator's part to be

observed and performed under this Agreement, the Operator may peaceably and quietly enjoy the Terminal Space, 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 Terminal Space.

(m) This Agreement and the letting hereunder are and shall be subject and subordinate to all mortgages which may now or hereafter affect the Terminal Space 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 Operator, the Operator 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 Operator is not acquiring an ownership interest in the Terminal Space under this Agreement. Capital expenditures in connection with the Terminal Space 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 Operator 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 Operator 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 Operator 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 Operator the right to sell or assign, in any manner, its interest under this Agreement.

(q) Neither this Agreement nor a Memorandum of Operating Agreement 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 Operator (including equipment and trade fixtures) removable without material damage to the Terminal Space leased to the Operator pursuant to this Agreement which are installed by the Operator in or on the Terminal Space leased to the Operator pursuant to this Agreement and which shall be deemed to be and remain the property of the Operator.

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

#### Section 35. Terminal Space

(a) The Port Authority shall deliver the Terminal Space to the Operator in its presently existing "as is" condition and the Operator agrees to and shall take the Terminal Space 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 Terminal Space for the Operator's use. The Operator acknowledges that pursuant to Lease 293, it has been in continuous occupancy of all of the

Terminal Space prior to the commencement of this Agreement and is fully familiar with the Terminal Space.

(b) The Operator 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 Terminal Space or the suitability thereof for the operations permitted on the Terminal Space by this Agreement. The Operator, prior to the execution of this Agreement, has thoroughly examined the Terminal Space as existing and has found the same to be suitable and satisfactory for the operations of the Operator contemplated and permitted under this Agreement. Without limiting any obligation of the Operator to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Operator agrees that no portion of the Terminal Space 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 Operator, so that there is a likelihood of injury or damage to life or property, and the Operator 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 Operator for injury or death to any person or persons whomsoever, or for damage to any property whatsoever at any time in the Terminal Space 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 Operator 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 (k) of Section 20, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, the Operator 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 Operator 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 Operator, shall be claimed by or allowed to the Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator shall pay such portion of the contract charge as may be reasonably determined by the Port Authority, on demand.

(c) The Operator agrees to maintain the enclosed portions of the Terminal Space, if any are present on the Terminal Space, 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 Operator at the Terminal Space or the structures or buildings (if any), which, or a portion or

portions of which, are included in the Terminal Space, then the Operator shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Operator, 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 Terminal Space or to the operations of the Operator 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 Operator of any of its obligations hereunder or shall be or be construed to be an eviction of the Operator, or shall constitute grounds for any diminution or abatement of the Rental payable under this Agreement, or grounds for any claim by the Operator for damages, consequential or otherwise.

(f) Without in any way affecting the obligations of the Operator elsewhere stated in this Agreement, the Operator 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 Terminal Space.

Section 40. Right of Termination - Ownership and Control

(a) The Operator 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 Operator hereby represents that all of the common stock and other securities of the Operator is owned by Gary LoBue and August LoBue.

(b) The Operator recognizes the fact that a change in Control (as defined in Section 18 hereof), Transfer of securities in the Operator or of a substantial part thereof, entry into any management, services agreement or similar type of agreement for operations on the Terminal Space, or any other act or transaction involving or resulting in a change in the ownership or distribution of Operator's securities or with respect to the identity of the parties in Control of the

Operator or the Terminal Space, or the degree thereof (except as provided in Section 18), is for practical purposes a Transfer or disposition of the rights obtained by the Operator through this Agreement. The Operator further recognizes that because of the nature of the obligations of the Operator hereunder, the qualifications and identity of the Operator and its security holders are of particular concern to the Port Authority. The Operator 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 Operator for the faithful performance of all obligations and covenants hereunder. Therefore, the Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator shall be and remain as represented in paragraph (a) of this Section.

(c) The Operator acknowledges the Operator'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 Operator 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 Operator 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 Operator and the Port Authority acknowledge that in addition to this Agreement, the Port Authority and the Operator have recently entered into that certain Lease 309 for the premises described therein located at the Facility. Notwithstanding the actual date of execution of this Agreement and Lease 309, both shall be deemed to have a simultaneous commencement date as of October 1, 2010, and the execution and delivery of Lease 309 shall constitute a condition precedent to the execution and delivery of this Agreement.

#### Section 42. Security

(a) The parties acknowledge that the Operator has previously delivered to the Port Authority, as security for the Operator's full, faithful and prompt performance of and compliance with all of its obligations under Lease 309, 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 (the "Letter of Credit").

(b) The Operator and the Port Authority hereby agree that the Letter of Credit and any and all other security delivered by the Operator as security for Lease 309 shall be held and used by the Port Authority as security for the full, faithful and prompt performance of and compliance with, on the part of the Operator, all of the terms, provisions, covenants and conditions of this Agreement and no part of the security delivered by the Operator under Lease 309 (including without limitation, the Letter of Credit) shall be released, repaid or returned to the Operator until both Lease 309 and this Agreement shall have expired, and except in accordance with the provisions set forth in Section 42 of Lease 309.

#### Section 43. Late Charges

If the Operator 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 Operator 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. Port Authority Costs Following Termination

Notwithstanding anything appearing to the contrary in this Agreement, in the event the Port Authority exercises its right of termination under the provisions of Section 24 of this Agreement, the Operator 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 Terminal Space (on failure of the Operator to have it restored), the preparation of the Terminal Space for use and occupancy by a succeeding Operator, the care and maintenance of the Terminal Space during any period of nonuse of the Terminal Space; 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 Terminal Space and putting the Terminal Space 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 Agreement, in the event that the Operator remains in possession of the Terminal Space after the expiration or earlier termination of the Term of the Agreement, the Operator 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 Operator's status as a holdover tenant. Nothing herein contained will be deemed to give the Operator any right to remain in possession of the

Terminal Space after the expiration or earlier termination of the Term of the Agreement.

Section 47. Audit Fee

In the event that upon conducting an examination and audit under the provisions of the Agreement (and as it may be hereinafter amended), the Port Authority determines that unpaid amounts are due to the Port Authority by the Operator (the "Audit Findings"), the Operator 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 Operator under the Agreement 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 Agreement 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 Agreement, including, without limitation, the Port Authority's rights to terminate the Agreement or (ii) any obligations of the Operator under the Agreement. This provision shall not apply to security matters.

Section 48. Waiver of Jury Trial

The Operator 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 Operator in respect of the Agreement 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 Agreement. The Operator 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 Terminal Space 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 Operator was in occupancy of the Terminal Space under Lease 265, Lease 266, Lease 291, or Lease 293 (as applicable) or (b) resulting from any act or omission of the Operator or Operator'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 Terminal Space during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space 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 Operator's use and occupancy of the Terminal Space or a migration of a Hazardous Substance from the Terminal Space during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space 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 Terminal Space 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 Operator 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 Terminal Space 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 Operator 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 Operator 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. Operator shall not be liable for the condition of the Terminal Space under this Section existing or created prior to the commencement of the

Term, unless the Operator 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 Operator set forth above and elsewhere in this Agreement, the Operator 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 Terminal Space whose presence occurred during the Term or resulted from any act or omission of the Operator or Operator's Representative (as defined herein) during the Term, (2) any Hazardous Substance disposed of or released on the Terminal Space during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space 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 Operator's use and occupancy of the Terminal Space or which migrated from the Terminal Space to such other property during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space 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 Terminal Space or the Facility for the purposes set forth in Section 8 hereof now or in the future. Operator 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 Terminal Space, Operator 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 Operator 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 Operator shall not be responsible for any Hazardous Substance that migrates onto, about, or under the Terminal Space 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 Terminal Space. The Operator 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 Operator 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 Operator 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 Operator's obligations under this Agreement, the Operator shall provide the Manager of the Facility at the cost and expense of the Operator 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 Operator 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 Terminal Space, the Operator shall give notice of such retention or dismissal to the Port Authority. The Operator 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 Operator agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Operator and at the Operator's cost and expense in the event Operator fails to sign and file same, after reasonable notice to Operator and Operator's failure to cure. Further, the Operator 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 Operator to a Governmental Authority at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Operator at the time the same are provided to the Operator with respect to any Environmental Requirements.

(e) Notwithstanding any other provision of this Section 50, Operator shall be responsible for all Environmental Damage involving any Hazardous Substance whose presence on, about, under or migrating from the Terminal Space occurred prior to the commencement of the Term as a result of (1) any violation by the Operator or the Operator's Representative, as hereinafter defined, of any Environmental Requirements pertaining to such Hazardous Substance, the Terminal Space and/or the activities thereon, or any failure by the Operator or the Operator'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 Terminal Space, 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 Operator or are subsequently provided to Operator 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 Terminal Space and submitted to the Operator, and/or are subsequently provided to Operator in the future, and/or (2) any grossly negligent act or omission by the Operator or the Operator's Representative with respect to such Hazardous Substance. For purposes of this Section 50, "Operator's Representative" shall mean its officers, employees, shareholders, members, agents, representatives, contractors, customers, guests, invitees, or other persons who are doing business with the Operator or are on the Terminal Space with the Operator's consent, or are on the Terminal Space

without Operator's consent but due to Operator'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 Operator with its environmental obligations under this Section. In the event the Operator 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 Operator 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 Operator'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 Terminal Space prior to or during the Term (hereinafter called the "Migrated Hazardous Substance"), except that Operator 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 Operator or the Operator's Representative of any Environmental Requirements pertaining to such Migrated Hazardous Substance, the Terminal Space and/or the activities thereon; (2) the failure by the Operator or the Operator'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 Terminal Space, 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 Operator or are subsequently provided to Operator 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 Operator; and/or (3) any act or omission of the Operator or the Operator's Representative with respect to such Migrated Hazardous Substance.

(h) The Operator agrees that in any legal action or proceeding in which the Port Authority and the Operator are opposing parties the Operator 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 Terminal Space occurred prior or subsequent to the commencement of the Term; (2) whether any Hazardous Substance disposed of or released from the Terminal Space or which migrated from the Terminal Space came to be present on, about or under the Terminal Space prior or subsequent to the commencement of the Term; and (3) whether the Operator 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 Operator under this paragraph shall survive the expiration or termination of this Agreement.

Section 51. Record-Keeping Obligations

(a) The Operator 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 Operator on a separate stand-alone basis from any other business operations of the principals of Operator 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 Operator, at the office of the Operator 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 Terminal Space leased under the Agreement or as may reasonably be required for the Port Authority to verify calculations relating to intermodal 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 Operator in connection with this Agreement, and the loss or destruction of documents by Operator

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 Operator with prior notice of such requirement so that the Operator 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 Operator 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. Entire Agreement

Except as otherwise provided herein, this Agreement, together with all schedules and exhibits hereto, constitutes the entire agreement between the Port Authority and the Operator 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 Operator. The Operator 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) Operator hereby represents and warrants to the Port Authority that the Operator (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. Operator 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) Operator covenants that (i) during the Term of this Agreement it shall not become a Blocked Person, and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of the aforesaid covenant by Operator, 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 Operator 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 Operator's breach of any of its covenants, representations and warranties made under this Section 53. Upon the request of the Port Authority, the Operator 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 handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port

Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes 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.

Operator agrees to periodically furnish within ten (10) days after so requested by the Port Authority a certificate signed by Operator certifying (a) that this Agreement 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 Commencement Date and the date through which Base Rental and Additional Rental have been paid, (c) that Operator has accepted possession of the Terminal Space, (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 Operator is as set forth in this Agreement (or has been changed by notice duly given and is as set forth in the certificate), (f) that except as stated in the certificate, Operator, 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 Agreement, (h) that there are no renewal or extension options in favor of Operator, 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 Agreement. The Operator hereby surrenders the Surrendered Premises (as defined in the Surrender Agreement) to the Port Authority. The Port Authority and the Operator acknowledge that the remainder of the Lease 293 Premises are the subject of and are incorporated into the Premises created by Lease 309 and the Terminal Space created by this Agreement, and are subject to the terms and conditions of, and governed by, this Agreement.

(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 Operator shall remain responsible therefor. All other obligations and rights of the Port Authority and the Operator set forth in Lease 293 have been terminated, are null and void and of no further force and effect with the execution of this Agreement and of Lease 309.

(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 Operator and the Port Authority confirm that the Annual Intermodal Rental provided for in this Agreement during the Term was 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) Operator acknowledges and agrees that Operator 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. Operator 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 Operator and the Port Authority have agreed.

(c) In accepting the concessions and benefits it is receiving hereunder Operator believes and expressly agrees that

the Annual Intermodal Rental is fair and not unreasonably or unduly discriminatory or preferential, and that any differences between the Annual Intermodal Rental and the rental or intermodal charges in the terms of other publicly-available leases and/or operating agreement 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, Operator 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 from any and all actions, causes of action and claims arising from or relating to any attempt to challenge or otherwise invalidate the Annual Intermodal Rental 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 Annual Intermodal Rental results in any undue or unreasonable prejudice or disadvantage to Operator when compared with the rental and intermodal 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 Operator hereby covenants and agrees not to sue the Port Authority on any legal theory challenging the Annual Intermodal Rental, including without limitation, the theory that such Annual Intermodal Rental constitutes an alleged violation of the Shipping Act or any other applicable statute and any regulations thereunder.

Section 57. Negotiated Agreement.

This Agreement 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 follow page*

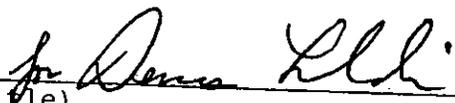
IN WITNESS WHEREOF, the Port Authority and the Operator have executed this Agreement as of the date first above written.

ATTEST:

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

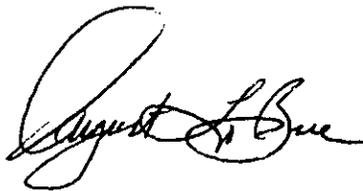


SECRETARY

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

ATTEST:

FAPS, INC.



By   
(Title) Gary LoBue  
President  
(Corporate Seal)

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



**RELEASE AND COVENANT NOT TO SUE**

***THIS RELEASE AND COVENANT NOT TO SUE*** ("Release"), dated as of October 1, 2010, made by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter referred to as the "Port Authority") and **FAPS, INC.** (hereinafter referred to as the "Lessee").

**WITNESSETH:**

***WHEREAS***, effective as of June 1, 2009, the Port Authority and the Lessee entered into that certain Agreement of Lease Number L-PN-293 ("Lease 293"), for certain 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"), comprised of portions of the premises previously leased to the Lessee pursuant to Agreement Number L-PN-265, dated December 1, 2000 ("Lease 265") at the Facility ("Lease 265 Premises"), portion of the premises previously leased to the Lessee pursuant to Agreement Number L-PN-266, dated December 1, 2000 ("Lease 266") at the Facility ("Lease 266 Premises"), and portions of the premises previously leased to the Lessee pursuant to Agreement Number L-PN-291, dated February 15, 2009 ("Lease 291") at the Facility (the "Lease 293 Premises"), such premises being hereinafter known as the "Lease 293 Premises", and pursuant to Lease 293 and to a related Surrender and Termination Agreement entered into on even date therewith (the "Lease 293 Surrender Agreement"), Lease 265, Lease 266 and Lease 291 were terminated;

***WHEREAS***, 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 "Surrendered Premises");

***WHEREAS***, the Port Authority and the Lessee 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 located at the Facility that are the subject of Agreement Number L-PN-309 ("Lease 309"), contemporaneously entered into, as demised pursuant to and described more specifically in said Lease 309 (the "Lease 309 Premises"), and the terminal space that is the subject of the Railroad Operating Agreement (the "Operating Agreement"), governing the use of certain railroad tracks and related terminal area at the Facility (the "Terminal Space"); and

***WHEREAS***, this Release does not include any claims that may arise under Lease 309 or the Operating Agreement.

**NOW, THEREFORE**, in consideration of the covenants contained in this Release and other good and valuable consideration, the adequacy and sufficiency of which are acknowledged by the parties hereto, the parties hereby covenant and agree as follows:

1. All aforementioned "Whereas Clauses" set forth above are incorporated and made a part hereof and shall have the full force and effect, as if each were fully set forth herein.

2. The Lessee for itself and on behalf of its shareholders, officers, directors, employees, representatives, agents, successors, and assigns, does hereby release the Port Authority, and its Commissioners, officers, directors, employees, representatives, agents, successors, and assigns (collectively, the "PA Released Parties") of and from any and all actions, causes of action, suits, debts, dues, sums of money, claims, controversies, damages and/or demands whatsoever, of any kind and nature whatsoever, fixed or contingent, known or unknown, whether at law, admiralty/maritime law or in equity, which the Lessee ever had or now has or hereafter can, shall or may have, against the PA Released Parties, for, upon, or by reason of any matter, cause or thing resulting from, arising out of, or incurred with respect to, or alleged to result from, arise out of, or be incurred with respect to, or arising under Lease 265, Lease 266, Lease 291, Lease 293, the Lease 265 Premises, the Lease 266 Premises, the Lease 291 Premises, or the Lease 293 Premises (such claims, as defined in this Section 2, collectively, the "Released Claims"). The Released Claims do not include any claims that may arise under Lease 309 and/or the Operating Agreement.

3. The Lessee for itself and on behalf of its shareholders, officers, directors, employees, representatives, agents, successors, and assigns, covenants and agrees not to assert any Released Claims against the PA Released Parties, either directly or indirectly, by way of summons, complaint, counterclaim, interpleading or any other proceeding, or derivatively, in any court or forum whatsoever. The Lessee further agrees that this Release shall be a complete bar to all Released Claims, or any suits or actions of any kind or nature arising out of, relating to, or in connection with any of the Released Claims. In addition, the Lessee further covenants and agrees to forever refrain from participating in, initiating, filing or prosecuting any action of any kind or nature, past, present or future, in connection with the Released Claims, and agree not to make any voluntary statement, oral or written, to any person or entity of any kind or nature, against the PA Released Parties with respect to any of the Released Claims.

4. This Release and any and all claims, controversies or disputes arising out of or relating to this Release shall be governed by, and construed in accordance with, the laws of the State of New Jersey without regard to conflict of law principles. The parties irrevocably and unconditionally consent and submit to the exclusive jurisdiction and venue of the state and federal courts in the State of New Jersey.

5. This Release may be amended, modified, superseded or canceled only by a written instrument executed by the parties hereto.

6. The parties have participated jointly in the negotiation and drafting of this Release. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Release shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Release. The deletion of language from this Release prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption,

canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse or opposite of the deleted language.

7. This Release, Lease 309, the Surrender Agreement, and the Operating Agreement, dated October 1, 2010, constitute the entire understanding of the parties regarding the surrender of the Surrendered Premises, the termination of Lease 293, the letting of the Lease 309 Premises and the Terminal Space, and the entry into Lease 309 and the Operating Agreement. Any oral representations, undertakings or agreements, other than the aforementioned agreements, dated October 1, 2010, regarding the surrender of the Surrendered Premises, the termination of Lease 293, the letting of the Lease 309 Premises and the Terminal Space, and the entry into Lease 309 and the Operating Agreement, are expressly merged herein. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing.

8. No Commissioner, officer, director, employee, representative, agent, successor, or assign of the Port Authority, nor any shareholder, officer, director, employee, representative, agent, successor, or assign of the Lessee, shall be held personally liable to the other parties under any term or provision of this Release or because of its execution or attempted execution or because of any breach or alleged breach thereof.

9. The Lessee shall reimburse the Port Authority for all costs, losses and expenses (including all reasonable legal, consultant and expert fees and the cost to the Port Authority for its own "in-house" legal services, and all other Port Authority professional staff services), incurred by the Port Authority, if the Port Authority takes legal action to enforce this Release.

10. This Release 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.

11. The waiver of a breach of any provision of this Release by either party shall not operate or be construed as a waiver of or breach of any other provision of this Release or consent to any subsequent breach.

Signatures on Following Page

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals or have caused their corporate seals to be hereunto affixed and these presents to be signed and attested by their proper officers thereunto duly authorized, the day and year first above written.

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

ATTEST:

*Richard M. Larrabee*

By:

*[Signature]*

SECRETARY

Name:

RICHARD M. LARRABEE

DIRECTOR, PORT COMMERCE DEPT.

Title:

WITNESS:

*[Signature]*

**FAPS, INC.,**

**A New Jersey corporation**

By:

*[Signature]*

Name Gary LoBue

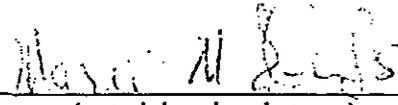
(Title) President



(Port Authority Acknowledgment)

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

On the 20th day of October, in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard M. Larrabee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity as Director, Port Commerce Dept. for the **PORT AUTHORITY OF NEW YORK AND NEW JERSEY**, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
(notarial seal and stamp)

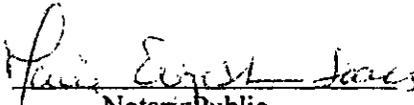
(FAPS Acknowledgment)

Marie M. Edwards  
Notary Public, State of New York  
No. 01ED4959693  
Qualified in Kings County  
Commission Expires 2/04/2012

STATE OF NEW JERSEY )  
 :  
COUNTY OF Essex )

ss. :

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**

(EX. 4)