THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

October 3, 2012

Mr. Thomas Foti
Garrity Graham Murphy
Garofalo & Flinn
P.O. Box 438, 72 Eagle Rock Avenue
East Hanover, NJ 07936

Re: Freedom of Information Reference No. 13498

Dear Mr. Foti:

This is a response to your September 26, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for copies of all leases between the Port Authority and Columbia Container Services, LLC for all empty container and intermodal chassis depots in operation in Port Newark and Elizabeth Port Authority Marine Terminal for storage of empty containers and intermodal chassis on Avenue P Roanoke Yard, Polaris Street and Marsh Street from 2003 to present.

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/13498-LPA.pdf. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to Exemption (1) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,

Daniel D. Duffy
FOI Administrator

Attachment

Ave e
212 435 7555

: For Port Authority Use Only :
:
: Permit Number: **MNS-341** :

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

PORT NEWARK
SPACE PERMIT

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

1. **PERMITTEE:** Columbia Container Services, LLC, a Delaware Limited Liability Company

2. **PERMITTEE'S ADDRESS:** 106 Allen Street
Liberty Corner, NJ 07938

3. **PERMITTEE'S REPRESENTATIVE:** Bruce Fenimore

4. **SPACE:** As set forth in Special Endorsement 1.

5. **PURPOSES:** As set forth in Special Endorsement 2.

6. **FEES:** As set forth in Special Endorsement 3.

7. **EFFECTIVE DATE:** ~~December 1, 2011~~ January 1, 2012

8. **EXPIRATION DATE:** December 31, 2016, unless sooner revoked or terminated as herein provided.

9. **ATTACHMENTS:** Standard Endorsement 19.4, Special, and Exhibit A.

Dated: As of December 1, 2011

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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

COLUMBIA CONTAINER SERVICES, LLC,
Permittee

By _____
(Name) Bruce Fenimore
(Please Print Clearly)
(Title) President

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

CONFORMED COPY

TERMS AND CONDITIONS

1. Certain Definitions.

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

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

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

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

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

(f) **"Manager of the Facility"** shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager by this Permit; but until further notice from the Port Authority to the Permittee it shall mean the Manager (or temporary or Acting Manager) of the Facility for the time being, or his or her duly designated representative or representatives.

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

2. Effectiveness.

~~(a) The permission granted by this Permit shall take effect upon the Effective Date. Notwithstanding any other term or condition hereof, it may at any time be revoked by the Port Authority without cause upon thirty (30) days' prior notice, and terminated by the Permittee without cause upon thirty (30) days' prior notice; provided, however, that it may be revoked on twenty-four (24) hours' notice if the Permittee fails to keep, perform and observe each and every promise, agreement, condition, term and provision contained in this Permit, including without limitation the obligation to pay fees. Further, in the event the Port Authority exercises its right to revoke or terminate this Permit for any reason other than "without cause", the Permittee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably~~

~~incurred by the Port Authority in connection with such revocation or termination, including without limitation any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of any space which may be used and occupied under this Permit (on failure of the Permittee to have it restored), preparing such space for use by a succeeding permittee, the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the space and putting the space in order (such as but not limited to cleaning and decorating the same). Unless sooner revoked or terminated, such permission shall expire in any event upon the Expiration Date. Revocation or termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation or termination.~~

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

3. Use of Space by Permittee.

(a) The Space shall be used, pursuant to the permission hereby granted,

(i) if the Permittee is a corporation, by the Permittee acting only through the medium of its officers and employees,

(ii) if the Permittee is an unincorporated association, or a "Massachusetts" or business trust, by the Permittee acting only through the medium of its members, trustees, officers and employees,

(iii) if the Permittee is a partnership, by the Permittee acting only through the medium of its general partners and employees, or

(iv) if the Permittee is an individual, by the Permittee acting only personally or through the medium of his employees; or

(v) if the Permittee is a limited liability company, by the Permittee acting only through the medium of its members, managers and employees;

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

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

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

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

4. Condition of Space.

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

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

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

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

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

5. Payment of Fees.

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

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

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
P.O. BOX 95000-1517
PHILADELPHIA, PENNSYLVANIA 19195-0001

or made via the following wire transfer instructions:

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

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

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

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

6. Late and Service Charges.

(a) If the Permittee should fail to pay any amount required under this Permit when due to the Port Authority or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (15) (but not less than thirteen (13)) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Audit Findings (as defined below) shall consist of each late charge period following the date the unpaid amount should have been paid under this Permit. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Permit, including without limitation the Port Authority's rights set forth in Section 2 hereof or (y) any obligations of the Permittee under this Permit. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Permit shall be payable instead at such legal maximum.

(b) (1) The Permittee shall permit and/or cause to be permitted in ordinary business hours during the effective period of this Permit and for one (1) year thereafter the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Permittee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant in connection with the Permittee's use and occupancy of the Space as permitted

hereunder) within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any such corporate records and books of account.

(2) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee (the "**Audit Findings**"), the Permittee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Permittee under this Permit or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Permit with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Permit, including, without limitation, the Port Authority's rights to revoke this Permit or (y) any obligations of the Permittee under this Permit.

7. Security Deposit.

(a) *Security Deposit.*

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

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

(3) *Use of Deposit.* In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Permittee. There shall be no obligation on the Port Authority

to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Permit on the part of the Permittee. With respect to any bonds deposited by the Permittee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Permittee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights of redemption of the Permittee. The Permittee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Permittee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Permittee. Any balance remaining shall be retained in cash toward bringing the deposit to the Required Security Amount. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the Required Security Amount, the Permittee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times at the full Required Security Amount, and such additional deposits shall be subject to all the conditions of this Section.

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

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

(6) *Return of Deposit.* After the expiration or earlier termination of the Term, and upon condition that the Permittee shall then be in no way in default under any part of this Permit, and upon written request therefor by the Permittee, the Port Authority will return the deposit to the Permittee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Permittee of this Permit.

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

(b) *Letter of Credit.*

(1) *Letter of Credit in Lieu of Security Deposit.* In lieu of the security deposit required pursuant to the preceding paragraph (a), the Permittee may deliver (if the Required Security Amount is less than Twenty Thousand Dollars and No Cents ($20,000.00)), and *must* deliver (if the Required Security Amount is Twenty Thousand Dollars and No Cents ($20,000.00) or greater) to the Port Authority, as security for all obligations of the Permittee under this Permit, a clean irrevocable letter of credit issued by a banking institution satisfactory

to the Port Authority and having its main office within the Port of New York and New Jersey District, in favor of the Port Authority in the amount of the Required Security Amount.

(2) *Form and Terms.* The form and terms of each letter of credit delivered under this Section, as well as the institution issuing it (which shall be an investment-grade rated bank), shall be subject to the prior and continuing approval of the Port Authority; the form of any proposed letter of credit shall be submitted to the Port Authority in advance for review and approval by its Credit, Collection and Accounts Receivable unit. Such letter of credit shall provide that it shall continue throughout the Term and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit.

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

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

(5) *Failure to Provide Letter of Credit.* Following the Port Authority's acceptance of a letter of credit in lieu of the security deposit required pursuant to the foregoing paragraph (a), any failure to provide such letter of credit at any time during the Term which is valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit, shall be deemed to be a breach of this Permit on the part of the Permittee.

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

(c) *Obligations under other Agreements.*

If the Permittee is obligated by any other agreement to maintain a security deposit with the Port Authority to insure payment and performance by the Permittee of all fees, rentals, charges and obligations which may become due and owing to the Port Authority arising from the Permittee's operations at the Facility pursuant to any such other agreement or otherwise, then all such obligations under such other agreement and any deposit pursuant thereto also shall be deemed obligations of the Permittee under this Permit and as security hereunder as well as under any such other agreement and all provisions of such other agreement with respect to such

obligations and any obligations thereunder of the Port Authority as to the security deposit are hereby incorporated herein by this reference as though fully set forth herein and hereby made a part hereof. The termination, revocation, cancellation or expiration of any other agreement to which such security shall apply or any permitted assignment of such other agreement shall not affect such obligations as to such security which shall continue in full force and effect hereunder.

8. Indemnification of Port Authority.

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

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

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

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

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

10. Law Compliance.

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

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

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

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

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

12. Conduct of Operations.

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

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

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

(d) No signs, posters or similar devices shall be erected, displayed or maintained in view of the general public in or about the Space without the written approval of the Manager of the Facility; and any not approved by him may be removed by the Port Authority at the expense of the Permittee. The Permittee shall not display, or permit the display of, advertising of third parties in the Space.

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

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

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

13. Care of Space.

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

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

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

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

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

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

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

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

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

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

14. Permittee Property.

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

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

15. Prohibited Acts.

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

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

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

(ii) will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon, or

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

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

(v) may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire-protection system, sprinkler system, alarm system,

fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility, or

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

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

16. Specifically Prohibited Activities.

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

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

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

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

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

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

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

17. Labor Disturbances.

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

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

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

18. Duties under Other Agreements.

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

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

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

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

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

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

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

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

this Permit but each and every agreement, term, covenant and condition thereof shall continue in full force and effect with respect to any other existing or subsequent breach or default thereof.

25. Construction and Application of Terms.

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

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

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

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

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

For the Port Authority

Initialed:

For the Permittee

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

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

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

Special Endorsements

1. (a) Subject to and in accordance with all the terms and conditions of this Permit and the Endorsements annexed thereto, the Port Authority hereby grants the Permittee permission to use and occupy the paved and fenced open area upland of Berths 16/18/20/22 in Port Newark (the "Facility"), consisting of approximately 41 acres, with a useable operating footprint of approximately 27 acres, together with the fixtures, improvements and other property of the Port Authority located or to be located, as shown in diagonal cross-hatching on Exhibit A, attached hereto, and hereby made a part hereof (hereinafter the "Space"). It is hereby acknowledged that there is no existing building located on the Space.

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

2. The Permittee may use the Space for the receipt, discharge, storage, handling, and repair of loaded and empty containers and chassis, and the storage, repair and management of trailers.

3. (a) Subject to the provisions of this Special Endorsement, from and after the Effective Date, the Permittee shall pay to the Port Authority a Basic Fee for the Space in the amount of One Hundred Eleven Thousand Two Hundred Four Dollars and Twenty-Nine Cents ($111,204.29) per month. The Basic Fee is calculated off a useable operating footprint of approximately 27 acres. The Permittee shall start paying the Basic Fee as of ~~February~~ March 1, 2012.

(b) Effective on each anniversary of the Effective Date, the Basic Fee set forth in paragraph 3(a) of this Special Endorsement shall by 100% the increase of the percentage increase in the CPI, compounded annually, at a minimum increase of 2%, and a maximum increase of 6%. The first basic rent increase shall be effective ~~December 1, 2013~~ January 1, 2014 and every January thereafter.

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

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

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

Adjustment Period, then, in such event, the last Adjustment Period shall expire on the Expiration Date.

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

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

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

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

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

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

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

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

5. (a) Notwithstanding Section 13 of the Terms and Conditions, the Permittee shall maintain and make repairs and replacements, structural or otherwise, to all improvements located on the Space, all utilities related to the Premises, and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with the Space or the Permittee's operations being conducted thereon. Such repairs and maintenance shall include, without limitation, all maintenance repair and replacement of the following items: (1) gas and electric meters; (2) the electrical system, equipment and fixtures; (3) plumbing; (4) signs; (5) fire extinguishers; (6) all painting; (7) security measures (including cameras and jersey barriers not installed by the Port Authority); (8) catch basins and storm sewer drains, which are to be kept fully functional, clear of obstruction and free of damage at all times; (9) any and all paving required on the Space. The Permittee shall maintain all the above-described improvements, utilities, fixtures, machinery and equipment in good condition, and shall perform all necessary preventative maintenance during the term of the Permit.

(b) The Port Authority shall maintain, service and repair the water distribution system, underground sanitary system, sewer system, and storm water system servicing the Space, including all drains, pipes and conduits below grade level. The Permittee is liable for any damage to any of those systems based on, arising out of or relating to the acts or omissions of the Permittee, or its employees, agents, representatives, members, directors, officers, or managers.

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

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

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

8. (a) Upon the execution of this Permit by the Permittee and delivery thereof to the Port Authority, the Permittee shall deposit with the Port Authority (and shall keep deposited throughout the effective period of the permission under this Permit) the sum of Two Hundred Twenty Thousand Dollars and No Cents ($220,000.00), either in cash, or bonds of the United States of America, or of the State of New Jersey, or of the State of New York, or of the Port Authority of New York and New Jersey, having a market value of that amount, as security for the full, faithful and prompt performance of and compliance with, on the part of the Permittee, all of the terms, provisions, covenants and conditions of this Permit on its part to be fulfilled, kept,

performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Permittee may deposit such bonds or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Permittee) in a manner satisfactory to the Port Authority. The Permittee may request the Port Authority to accept a registered bond in the Permittee's name and if acceptable to the Port Authority the Permittee shall deposit such bond together with an irrevocable bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Permittee any expenses incurred by the Port Authority in re-registering a bond to the name of the Permittee shall be borne by the Permittee. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Permittee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of the Permittee. With respect to any bonds deposited by the Permittee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Permittee, to sell the same in whole or in part, at any time, and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights of redemption of the Permittee. The Permittee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Permittee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Permittee. Any balance remaining shall be retained in cash toward bringing the deposit to the sum specified above. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the above-mentioned amount, the Permittee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times to the full amount above stated, and such additional deposits shall be subject to all the conditions of this Special Endorsement. After the expiration or earlier revocation or termination of the effective period of the permission under this Permit, and upon condition that the Permittee shall then be in no wise in default under any part of this Permit, and upon written request therefor by the Permittee, the Port Authority will return the deposit to the Permittee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Permittee of this Permit or any part thereof. The Permittee agrees that it will not assign or encumber the deposit. The Permittee may collect or receive any interest or income earned on bonds and interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise; provided, however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(b) The Permittee may at any time during the effective period of the permission under this Permit offer to deliver to the Port Authority, as security for all obligations of the Permittee under this Permit, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of Two Hundred Twenty Thousand Dollars and No Cents ($220,000.00). The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such letter of credit shall provide that it shall continue throughout the effective period of the permission under this Permit and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter. Upon notice of cancellation of a letter of credit, the Permittee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in accordance with paragraph (a) of this Special Endorsement or another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under paragraph (a) of this Special Endorsement. Failure to provide such a letter of credit at any time during the effective period of the permission, under this Permit, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit shall be deemed to be a breach of this Permit on the part of the Permittee. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Permittee made thereafter, the Port Authority will return the security deposit, if any, theretofore made under and in accordance with the provisions of paragraph (a) of this Special Endorsement. The Permittee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the permission under this Permit and fulfillment of the obligations of the Permittee hereunder. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Permittee on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to its full amount.

(c) The Permittee hereby attests that its federal taxpayer identification number is (Ex. 1)

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

engaging in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. The Permittee acknowledges that the Port Authority is entering into this Permit in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Permit.

(b) *Permittee's Covenant.* Permittee covenants that (i) during the term of the Permit it shall not become a Blocked Person, and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of the aforesaid covenant, the same shall constitute an event of default and, accordingly, a basis for termination of this Permit by the Port Authority, in addition to any and all other remedies provided under this Permit or at law or in equity, which does not constitute an acknowledgement by the Port Authority that such breach is capable of being cured.

(c) *Permittee's Indemnification Obligation.* The Permittee shall indemnify and hold harmless under this Special Endorsement 9 the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the Permittee's breach of any of its representations and warranties made under this Special Endorsement. Upon the request of the Port Authority, the Permittee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

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

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

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

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

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

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

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

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

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

the applicable governmental entities, in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation, to the extent for which Permittee is responsible under this Agreement:

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

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

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

13. The following changes have been made to the Terms and Conditions:

(a) Paragraph 2(a) is hereby deleted and replaced with the following Paragraph 2(a):

"(i) The permission granted by this Permit shall take effect upon the Effective Date. Notwithstanding any other term or condition hereof, it may at any time be revoked by the Port Authority without cause upon thirty (30) days' prior notice, and terminated by the Permittee without cause upon thirty (30) days' prior notice.

(ii) In addition, this Permit may be revoked on twenty-four (24) hours' notice if the Permittee fails to keep, perform and observe each and every promise, agreement, condition, term and provision contained in this Permit, including without limitation the obligation to pay fees. Notwithstanding the foregoing, upon notification by the Port Authority of the occurrence of an event of default, the Permittee shall have ten (10) days to correct said default (but, if said default shall take more than ten (10) days to cure, the time period for The Permittee to cure said default shall be extended so long as The Permittee has commenced to cure said default within said ten (10) day period, and thereafter diligently pursues said cure without interruption). The Permittee shall not have ten (10) days to cure a failure to pay fees, and the Permit may be revoked upon 24 hours' notice for a failure to pay fees.

(iii) Further, in the event the Port Authority exercises its right to revoke or terminate this Permit for any reason other than "without cause", the Permittee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably incurred by the Port Authority in connection with such revocation or termination, including without limitation any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of any space which may be used and occupied under this Permit to the condition that existed on the date hereof, ordinary wear and tear excepted (on failure of the Permittee to have it restored), the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to

the Port Authority of in-house legal services), repairing and altering the space and putting the space in order (such as but not limited to cleaning). Unless sooner revoked or terminated, such permission shall expire in any event upon the Expiration Date. Revocation or termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation or termination."

(b) The following Paragraph 2(c) shall be added to the Terms and Conditions hereof:

(i) In the event that:

(x) at any time during the term of the Permit the Port Authority terminates the agreement "without cause," pursuant to the thirty-day termination provision in paragraph (a) above and the Space is vacated by the Permittee in strict accordance with and pursuant to such termination, and

(y) the Permittee has completed the construction work performed pursuant to a TAA,

then, in such event, the Port Authority shall reimburse the Permittee for the Permittee's Unamortized Improvement Capital Investment (as defined below) in the Premises as of the effective date of the termination. The Port Authority may elect to credit any amount due the Permittee pursuant to this provision against any amounts owing from the Permittee to the Port Authority under this Permit.

(ii) For purposes of this Permit, the Permittee's Improvement Capital Investment shall be the lesser of One Hundred Fifty Thousand Dollars and No Cents ($150,000.00) or an amount equal to the sum of the amounts described in subparagraphs (x) and (y) of the definition of Improvement Capital Investment, below.

(iii) <u>Certain Definitions</u>.

(x) "Improvement Capital Investment" shall mean:

1. the amounts paid by the Permittee to independent contractors for work actually performed and labor

and materials actually furnished, inclusive of sales, use and like taxes, where applicable, in connection with the Improvement Work; and

2. the payments made and expenses incurred by the Permittee in connection with the Improvement Work for engineering, architectural, professional and consulting services, and the supervision of construction, inclusive of sales, use and like taxes where applicable; it being understood that payments under this item (2) shall not exceed fifteen percent (15%) of the sum of the amounts described in the foregoing item (1);

and further, the Improvement Capital Investment shall be documented to the Port Authority in the Port Authority's TAA submittal. The Improvement Capital Investment shall not include the Permittee's moving expenses or the Permittee's Review Fees to the Port Authority. The Port Authority, at its option, may audit the costs documented under the TAA, subject to the audit provisions of Term and Condition 6(b). The Permittee shall keep a separate accounting of the Permittee's Improvement Capital Investment, which accounting shall be kept at all times within the Port of New York District for a period of two (2) years after the final costs of all the Improvement Work have been submitted by the Permittee to the Port Authority or the end of the Term, whichever is later, and shall be subject to the audit and inspection of the Port Authority, its representatives and employees.

(y) "Unamortized Improvement Capital Investment" shall mean, for purposes of this Permit, the amount of the Permittee's Improvement Capital Investment in the Premises arising out of the performance by the Permittee of the Improvement Work, after deduction therefrom of an amount to be computed on a straight-line basis from the Rent Commencement Date to the end of the average useful life thereof (as determined under generally accepted accounting principles) or the Expiration Date, whichever is the shorter. In no event shall the Permittee's Unamortized Improvement Capital Investment include any amounts paid

for in connection with any equipment, trade fixtures or other personal property of the Permittee. The foregoing computation to be made shall not take into consideration the effect of accelerated amortization, if any, granted to or taken by the Permittee on its books and otherwise under the provisions of Section 168(a) of Title 26 USCA or similar legislation hereafter enacted.

(c) Paragraph 3(a) is amended to reflect that permission for the Permittee to use the Space through the medium of any other person, corporation, or legal entity shall not be arbitrarily or capriciously withheld by the Port Authority.

(d) Paragraph 4(a) is hereby deleted and replaced with the following Paragraph 4(a):

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

(e) Paragraph 4(d) is amended to add the following to the end of Paragraph 4(d):

", except for the repair obligations of the Port Authority provided for in Special Endorsement 5(b)."

(f) The following Paragraph 7(b)(7) shall be added to the Terms and Conditions hereof:

"(7)(b)(7) *Return of the letter of credit*

After the expiration or earlier termination of the Term, and upon written request therefor by the Permittee, the Port Authority, in its sole and absolute discretion, may return the letter of credit within ninety (90) days of the expiration of the Permit."

(g) The following sentence is hereby added to the end of Paragraph 8(a):

", provided that the Permittee has no obligation hereunder to indemnify and hold harmless the Port Authority's gross negligence or willful misconduct."

(h) The following shall hereby be added to the end of Paragraph 15(a):

"When possible, the Port Authority shall provide written notice to the Permittee of its failure to comply with provisions of this section. The Permittee agrees and acknowledges that the Port Authority is under no obligation to give said notice."

(i) The following sentence is hereby added to the end of Paragraph 22:

"provided, that, the Permittee's assumption of the risk of, responsibility and payment for and indemnification of the Port Authority for consequential injury, damage or loss shall not be effective unless and until the Permittee's holdover exceeds one-hundred twenty (120) days."

(j) The following sentence shall hereby be added to the end of Paragraph 23:

"No agent or employee of the Permittee shall be charged personally by the Port Authority with any liability, or held liable to it, under any term or provision of this Permit, or because of its execution or attempted execution, or because of any breach hereof. This provision shall not apply to members, directors or officers of the Permittee."

For the Port Authority

Initialed:

For the Permittee

INSURANCE SCHEDULE

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

Minimum Limits

Commercial General Liability Insurance Combined single limit per occurrence for death, bodily injury and property damage liability:	$5,000,000.00
Commercial Automobile Liability Insurance Combined single limit per occurrence for death, Bodily injury and property damage liability:	$2,000,000.00
Workers' Compensation and Employers Liability Insurance Permittee's obligations under the applicable State Workers' Compensation Law for those employees of the Permittee employed in operations conducted pursuant to the Permit at or from the Facility:	Statutory

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

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

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

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

(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement that the insurer "shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority." The foregoing provisions or endorsements shall be recited in each policy or certificate to be delivered pursuant to the following paragraph (e).

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

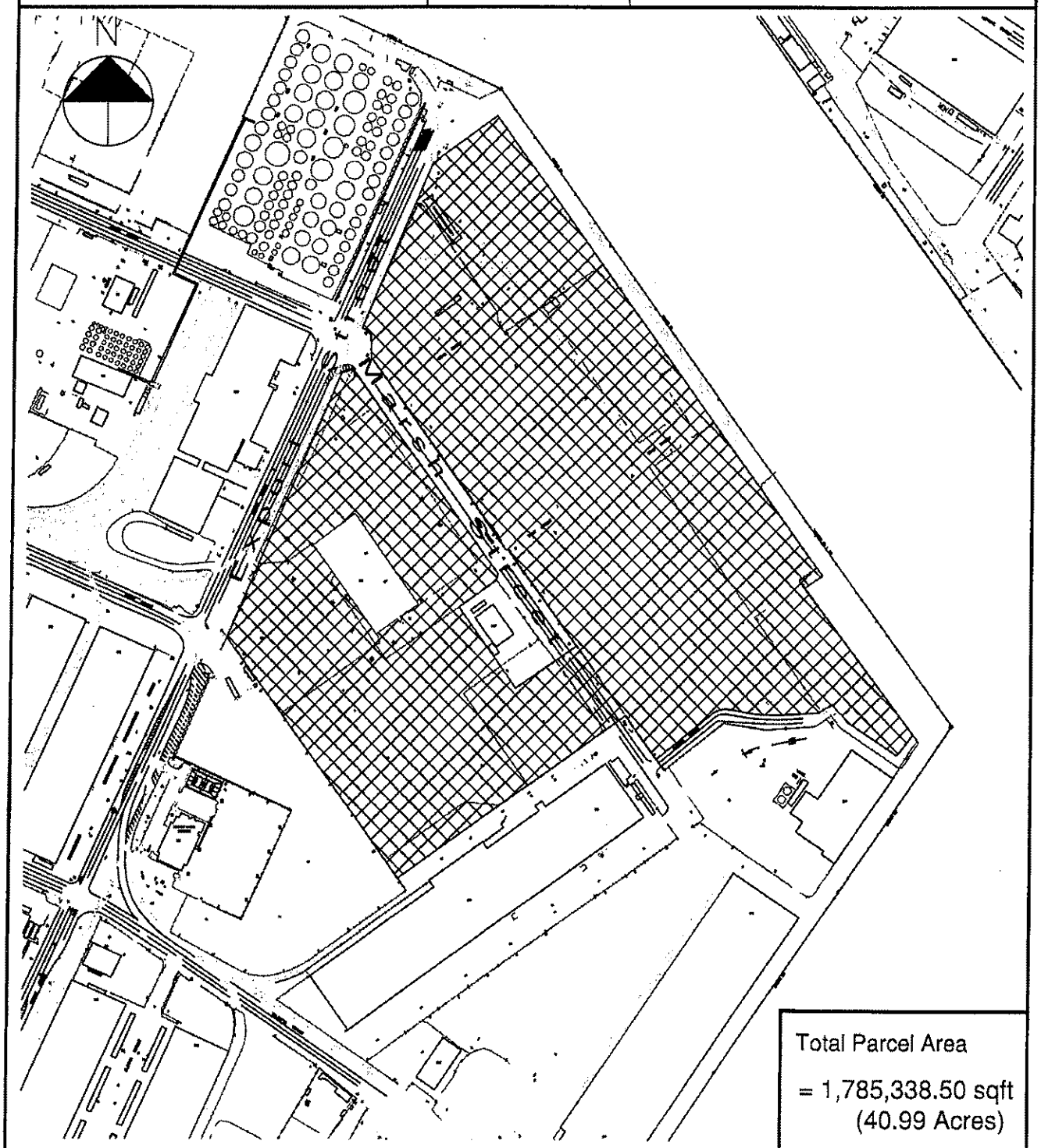
(f) The foregoing insurance requirements shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Permittee under the Permit. The foregoing insurance requirements shall not constitute a representation or warranty as to the adequacy of the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

For the Port Authority

Initialed:

For the Permittee

Columbia Container Services, LLC	MNS-341	



Initialed: For the PORT AUTHORITY / For the Permittee	EXHIBIT : A	THE PORT AUTHORITY OF NY & NJ PORT NEWARK Date : December 1, 2011

For Port Authority Use Only

Permit Number: **PEP-071**

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

ELIZABETH-PORT AUTHORITY MARINE TERMINAL
SPACE PERMIT

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

1. **PERMITTEE:** Columbia Container Services, LLC, a Delaware Limited Liability Company

2. **PERMITTEE'S ADDRESS:** 106 Allen Street
Liberty Corner, NJ 07938

3. **PERMITTEE'S REPRESENTATIVE:** Bruce Fenimore

4. **SPACE:** As set forth in Special Endorsement 1.

5. **PURPOSES:** As set forth in Special Endorsement 2.

6. **FEES:** As set forth in Special Endorsement 3.

7. **EFFECTIVE DATE:** On or about January 15, 2011.

8. **EXPIRATION DATE:** November 30, 2016, unless sooner revoked or terminated as herein provided.

9. **ATTACHMENTS:** Standard Endorsement L 19.11, Special, and Exhibit A.

Dated: As of January 15, 2011

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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

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

RR

COLUMBIA CONTAINER SERVICES, LLC,
Permittee

By _____
(Name) BRUCE FENIMORE
(Please Print Clearly)
(Title) President

TERMS AND CONDITIONS

1. Certain Definitions.

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

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

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

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

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

(f) **"Manager of the Facility"** shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager by this Permit; but until further notice from the Port Authority to the Permittee it shall mean the Manager (or temporary or Acting Manager) of the Facility for the time being, or his or her duly designated representative or representatives.

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

2. Effectiveness.

~~(a) The permission granted by this Permit shall take effect upon the Effective Date. Notwithstanding any other term or condition hereof, it may at any time be revoked by the Port Authority without cause upon thirty (30) days' prior notice, and terminated by the Permittee without cause upon thirty (30) days' prior notice; provided, however, that it may be revoked on twenty-four (24) hours' notice if the Permittee fails to keep, perform and observe each and every promise, agreement, condition, term and provision contained in this Permit, including without limitation the obligation to pay fees. Further, in the event the Port Authority exercises its right to revoke or terminate this Permit for any reason other than "without cause", the Permittee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably~~

~~incurred by the Port Authority in connection with such revocation or termination, including without limitation any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of any space which may be used and occupied under this Permit (on failure of the Permittee to have it restored), preparing such space for use by a succeeding permittee, the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the space and putting the space in order (such as but not limited to cleaning and decorating the same). Unless sooner revoked or terminated, such permission shall expire in any event upon the Expiration Date. Revocation or termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation or termination.~~

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

3. Use of Space by Permittee.

(a) The Space shall be used, pursuant to the permission hereby granted,

(i) if the Permittee is a corporation, by the Permittee acting only through the medium of its officers and employees,

(ii) if the Permittee is an unincorporated association, or a "Massachusetts" or business trust, by the Permittee acting only through the medium of its members, trustees, officers and employees,

(iii) if the Permittee is a partnership, by the Permittee acting only through the medium of its general partners and employees, or

(iv) if the Permittee is an individual, by the Permittee acting only personally or through the medium of his employees; or

(v) if the Permittee is a limited liability company, by the Permittee acting only through the medium of its members, managers and employees;

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

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

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

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

4. Condition of Space.

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

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

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

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

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

5. Payment of Fees.

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

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

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
P.O. BOX 95000-1517
PHILADELPHIA, PENNSYLVANIA 19195-0001

or made via the following wire transfer instructions:

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

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

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

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

6. Late and Service Charges.

(a) If the Permittee should fail to pay any amount required under this Permit when due to the Port Authority or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (15) (but not less than thirteen (13)) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Audit Findings (as defined below) shall consist of each late charge period following the date the unpaid amount should have been paid under this Permit. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Permit, including without limitation the Port Authority's rights set forth in Section 2 hereof or (y) any obligations of the Permittee under this Permit. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Permit shall be payable instead at such legal maximum.

(b) (1) The Permittee shall permit and/or cause to be permitted in ordinary business hours during the effective period of this Permit and for one (1) year thereafter the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Permittee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant in connection with the Permittee's use and occupancy of the Space as permitted

hereunder) within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any such corporate records and books of account.

(2) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee (the "**Audit Findings**"), the Permittee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Permittee under this Permit or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Permit with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Permit, including, without limitation, the Port Authority's rights to revoke this Permit or (y) any obligations of the Permittee under this Permit.

7. Security Deposit.

(a) *Security Deposit.*

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

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

(3) *Use of Deposit.* In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Permittee. There shall be no obligation on the Port Authority

to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Permit on the part of the Permittee. With respect to any bonds deposited by the Permittee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Permittee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights of redemption of the Permittee. The Permittee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Permittee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Permittee. Any balance remaining shall be retained in cash toward bringing the deposit to the Required Security Amount. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the Required Security Amount, the Permittee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times at the full Required Security Amount, and such additional deposits shall be subject to all the conditions of this Section.

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

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

(6) *Return of Deposit.* After the expiration or earlier termination of the Term, and upon condition that the Permittee shall then be in no way in default under any part of this Permit, and upon written request therefor by the Permittee, the Port Authority will return the deposit to the Permittee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Permittee of this Permit.

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

(b) *Letter of Credit.*

(1) *Letter of Credit in Lieu of Security Deposit.* In lieu of the security deposit required pursuant to the preceding paragraph (a), the Permittee may deliver (if the Required Security Amount is less than Twenty Thousand Dollars and No Cents ($20,000.00)), and *must* deliver (if the Required Security Amount is Twenty Thousand Dollars and No Cents ($20,000.00) or greater) to the Port Authority, as security for all obligations of the Permittee under this Permit, a clean irrevocable letter of credit issued by a banking institution satisfactory

to the Port Authority and having its main office within the Port of New York and New Jersey District, in favor of the Port Authority in the amount of the Required Security Amount.

(2) *Form and Terms.* The form and terms of each letter of credit delivered under this Section, as well as the institution issuing it (which shall be an investment-grade rated bank), shall be subject to the prior and continuing approval of the Port Authority; the form of any proposed letter of credit shall be submitted to the Port Authority in advance for review and approval by its Credit, Collection and Accounts Receivable unit. Such letter of credit shall provide that it shall continue throughout the Term and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit.

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

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

(5) *Failure to Provide Letter of Credit.* Following the Port Authority's acceptance of a letter of credit in lieu of the security deposit required pursuant to the foregoing paragraph (a), any failure to provide such letter of credit at any time during the Term which is valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit, shall be deemed to be a breach of this Permit on the part of the Permittee.

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

(c) *Obligations under other Agreements.*

If the Permittee is obligated by any other agreement to maintain a security deposit with the Port Authority to insure payment and performance by the Permittee of all fees, rentals, charges and obligations which may become due and owing to the Port Authority arising from the Permittee's operations at the Facility pursuant to any such other agreement or otherwise, then all such obligations under such other agreement and any deposit pursuant thereto also shall be deemed obligations of the Permittee under this Permit and as security hereunder as well as under any such other agreement and all provisions of such other agreement with respect to such

obligations and any obligations thereunder of the Port Authority as to the security deposit are hereby incorporated herein by this reference as though fully set forth herein and hereby made a part hereof. The termination, revocation, cancellation or expiration of any other agreement to which such security shall apply or any permitted assignment of such other agreement shall not affect such obligations as to such security which shall continue in full force and effect hereunder.

8. Indemnification of Port Authority.

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

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

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

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

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

10. Law Compliance.

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

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

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

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

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

12. Conduct of Operations.

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

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

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

(d) No signs, posters or similar devices shall be erected, displayed or maintained in view of the general public in or about the Space without the written approval of the Manager of the Facility; and any not approved by him may be removed by the Port Authority at the expense of the Permittee. The Permittee shall not display, or permit the display of, advertising of third parties in the Space.

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

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

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

13. Care of Space.

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

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

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

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

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

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

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

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

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

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

14. Permittee Property.

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

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

15. Prohibited Acts.

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

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

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

(ii) will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon, or

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

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

(v) may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire-protection system, sprinkler system, alarm system,

fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility, or

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

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

16. Specifically Prohibited Activities.

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

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

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

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

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

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

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

17. Labor Disturbances.

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

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

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

18. Duties under Other Agreements.

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

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

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

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

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

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

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

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

this Permit but each and every agreement, term, covenant and condition thereof shall continue in full force and effect with respect to any other existing or subsequent breach or default thereof.

25. Construction and Application of Terms.

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

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

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

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

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

For the Port Authority

Initialed:

For the Permittee

(a) As used in this Agreement:

(1) "Elizabeth-Port Authority Marine Terminal", "Elizabeth-Port Authority Piers", "Facility" or "marine terminal" shall mean the land and premises in the City of Elizabeth, in the County of Union and State of new Jersey, title to which was vested in the Port Authority by an Order Vesting Title in and Directing Delivery of Possession to The Port Authority of New York Authority dated March 14, 1958, filed March 17, 1958 in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-2065-56, in the case of The Port Authority of New York Authority, plaintiff, vs. Edward J. Grassmann, et al., defendants, the lands title to which was so conveyed having been described fully in the Second Amended Complaint filed in said case on May 16, 1957, and lands contiguous or adjacent thereto within the County of Union in the said case on May 16, 1957, and lands contiguous or adjacent thereto within the County of Union which may have been heretofore or may hereafter be acquired by the Port Authority to use ofr marine terminal purposes.

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

(4) "Manager of the Facility", "Facility Manager" or "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager or in the Superintendent of the Facility by this Agreement; but until further notice from the Port Authority to the Lessee, it shall mean the Manager (or the Acting Manager) Port Authority Marine Terminals–New Jersey for the time being, or his duly designated representative or representatives.

(b) The rights of the Port Authority in the Facility are those acquired by it pursuant to the order described in subparagraph (1) of paragraph (a) of this Standard Endorsement, together with those which may be acquired by any subsequent order or orders, deed or deeds, leases or other instruments transferring or assigning additional adjacent property, and no greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power thereunder to grant.

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

(d) This Agreement and the letting hereunder are subject and subordinate to all mortgages which may now or hereafter affect the premises or the Facility and to all renewals, modifications, consolidations, replacements and extensions thereof, and the Lessee agrees to execute any instrument which may be deemed necessary or desirable further to effect the subordination of this Agreement and the letting hereunder to any and all such mortgages.

Special Endorsements

1. (a) Subject to and in accordance with all the terms and conditions of this Permit and the Endorsements annexed thereto, the Port Authority hereby grants the Permittee permission to use and occupy the area in Port Newark (the "Facility"), consisting of approximately 12.4 acres, with a useable operating footprint of approximately 11.3 acres, together with the fixtures, improvements and other property of the Port Authority located or to be located; the useable operating footprint is shown in diagonal cross-hatching on Exhibit A, attached hereto, and hereby made a part hereof (hereinafter the "Space"). The shaded area shown in Exhibit A is hereby designated non-useable area. It is hereby acknowledged that there is no existing building located on the Space.

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

2. The Permittee may use the Space for the receipt, discharge, storage, handling, and repair of loaded and empty containers and chassis.

3. Fees:

(a) The Permittee's fees are calculated based upon the amount of useable acres of land the Permittee will occupy in the Space, pursuant to this Permit.

(b) Subject to the provisions of this Special Endorsement, two months after the Effective Date, and continuing through November 30, 2012, the Permittee shall pay to the Port Authority a fixed fee in the amount of Forty-Six Thousand Five Hundred Forty-One Dollars and Six Cents ($46,541.06). The fee is payable two months after the Effective Date, and on the first day of each calendar month hereafter occurring during such period. Notwithstanding Item 7 on the cover page of this permit, the Permittee's Effective Date, for the purposes of this Permit, shall occur on the date that the Permittee moves into the Space, as determined by the Facility Manager.

(c) Effective December 1, 2012 and continuing through November 30, 2013, the Permittee shall pay to the Port Authority a fixed fee in the amount of Forty-Seven Thousand Four Hundred Seventy-One Dollars and Eighty-Eight Cents ($47,471.88). The fee is payable on December 1, 2012, and on the first day of each calendar month hereafter occurring during such period.

(d) Effective December 1, 2013 and continuing through November 30, 2014, the Permittee shall pay to the Port Authority a fixed fee in the amount of Forty-Eight Thousand Four Hundred Twenty-One Dollars and Thirty-Two Cents ($48,421.32). The fee is payable on December 1, 2013, and on the first day of each calendar month hereafter occurring during such

period.

(e) Effective December 1, 2014 and continuing through November 30, 2015, the Permittee shall pay to the Port Authority a fixed fee in the amount of Forty-Nine Thousand Three Hundred Eighty-Nine Dollars and Seventy-Five Cents ($49,389.75). The fee is payable on December 1, 2014, and on the first day of each calendar month hereafter occurring during such period.

(f) Effective December 1, 2015 and continuing through November 30, 2016, the Permittee shall pay to the Port Authority a fixed fee in the amount Fifty Thousand Three Hundred Seventy-Seven Dollars and Fifty-Four Cents ($50,377.54). The fee is payable on December 1, 2015, and on the first day of each calendar month hereafter occurring during such period.

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

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

5. (a) Notwithstanding Section 13 of the Terms and Conditions, the Permittee shall maintain and make repairs and replacements, structural or otherwise, to all improvements located on the Space, all utilities related to the Premises, and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with the Space or the Permittee's operations being conducted thereon. Such repairs and maintenance shall include, without limitation, all maintenance repair and replacement of the following items: (1) gas and electric meters; (2) the electrical system, equipment and fixtures; (3) plumbing; (4) signs; (5) fire extinguishers; (6) all painting; (7) security measures (including cameras and jersey barriers not installed by the Port Authority); (8) catch basins and storm sewer drains, which are to be kept fully functional, clear of obstruction and free of damage at all times; (9) any and all paving required on the Space. The Permittee shall maintain all the above-described improvements, utilities, fixtures, machinery and equipment in good condition, and shall perform all necessary preventative maintenance during the term of the Permit.

(b) The Port Authority shall maintain, service and repair the water distribution system, underground sanitary system, sewer system, and storm water system servicing the Space, including all drains, pipes and conduits below grade level. The Permittee is liable for any damage to any of those systems based on, arising out of or relating to the acts or omissions of the Permittee, or its employees, agents, representatives, members, directors, officers, or managers.

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

6. The Permittee acknowledges that the Port Authority is not responsible for providing rail services to or from the Permittee's Space under this Permit. The parties acknowledge that no rail services are currently provided to the premises.

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

8. (a) Upon the execution of this Permit by the Permittee and delivery thereof to the Port Authority, the Permittee shall deposit with the Port Authority (and shall keep deposited throughout the effective period of the permission under this Permit) the sum of One Hundred Thousand Dollars and No Cents ($100,000.00), either in cash, or bonds of the United States of America, or of the State of New Jersey, or of the State of New York, or of the Port Authority of New York and New Jersey, having a market value of that amount, as security for the full, faithful and prompt performance of and compliance with, on the part of the Permittee, all of the terms, provisions, covenants and conditions of this Permit on its part to be fulfilled, kept, performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Permittee may deposit such bonds or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Permittee) in a manner satisfactory to the Port Authority. The Permittee may request the Port Authority to accept a registered bond in the Permittee's name and if acceptable to the Port Authority the Permittee shall deposit such bond together with an irrevocable bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Permittee any expenses incurred by the Port Authority in re-registering a bond to the name of the Permittee shall be borne by the Permittee. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Permittee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of the Permittee. With respect to any bonds deposited by the Permittee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Permittee, to sell the same in whole or in part, at any time, and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights of redemption of the Permittee. The Permittee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Permittee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and

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

(b) The Permittee may at any time during the effective period of the permission under this Permit offer to deliver to the Port Authority, as security for all obligations of the Permittee under this Permit, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of One Hundred Thousand Dollars and No Cents ($100,000.00). The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such letter of credit shall provide that it shall continue throughout the effective period of the permission under this Permit and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter. Upon notice of cancellation of a letter of credit, the Permittee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in accordance with paragraph (a) of this Special Endorsement or another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under paragraph (a) of this Special Endorsement. Failure to provide such a letter of credit at any time during the effective period of the permission, under this Permit, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit shall be deemed to be a breach of this Permit on the part of the Permittee. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Permittee made thereafter, the Port Authority will return the security deposit, if any, theretofore made under and in accordance with the provisions of paragraph (a) of this Special Endorsement. The Permittee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the permission under this Permit and fulfillment of the

obligations of the Permittee hereunder. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Permittee on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to its full amount.

(c) The Permittee hereby attests that its federal taxpayer identification number is (Ex. 1)

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

(b) *Permittee's Covenant.* Permittee covenants that (i) during the term of the Permit it shall not become a Blocked Person, and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of the aforesaid covenant, the same shall constitute an event of default and, accordingly, a basis for termination of this Permit by the Port Authority, in addition to any and all other remedies provided under this Permit or at law or in equity, which does not constitute an acknowledgement by the Port Authority that such breach is capable of being cured.

(c) *Permittee's Indemnification Obligation.* The Permittee shall indemnify and hold harmless under this Special Endorsement 9 the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the Permittee's breach of any of its representations and warranties made under this Special Endorsement. Upon the request of the Port Authority, the Permittee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the

Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

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

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

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

(b) In the event that any consent to sub-permit this Permit to any third party (a "Sub-Permittee") is granted by the Port Authority and the Sub-Permittee's fees to the Permittee are greater than the Permittee's fees due to the Port Authority as per Special Endorsement 3 hereof, the Port Authority shall receive fifty (50) percent of the incremental revenue above the fixed fee amount due under this Permit.

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

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

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

(c) Any Hazardous Substance disposed of, released or discharged by the Permittee or permitted by the Permittee to be disposed of, released or discharged at the Space or

at the Facility shall be completely removed and/or remediated by the Permittee by methods and procedures satisfactory to and approved by the Port Authority and in accordance with all applicable Environmental Requirements.

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

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

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

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

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

13. The following changes have been made to the Terms and Conditions:

(a) Paragraph 2(a) is hereby deleted and replaced with the following Paragraph 2(a):

"(i) The permission granted by this Permit shall take effect upon the Effective Date. Notwithstanding any other term or condition hereof, it may at any time be revoked by the Port Authority without cause upon thirty (30) days' prior notice, and terminated by the Permittee without cause upon thirty (30) days' prior notice.

(ii) In addition, this Permit may be revoked on twenty-four (24) hours' notice if the Permittee fails to keep, perform and observe each and every promise, agreement, condition, term and

provision contained in this Permit, including without limitation the obligation to pay fees. Notwithstanding the foregoing, upon notification by the Port Authority of the occurrence of an event of default, the Permittee shall have ten (10) days to correct said default (but, if said default shall take more than ten (10) days to cure, the time period for The Permittee to cure said default shall be extended so long as The Permittee has commenced to cure said default within said ten (10) day period, and thereafter diligently pursues said cure without interruption). The Permittee shall not have ten (10) days to cure a failure to pay fees, and the Permit may be revoked upon 24 hours' notice for a failure to pay fees.

(iii) Further, in the event the Port Authority exercises its right to revoke or terminate this Permit for any reason other than "without cause", the Permittee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably incurred by the Port Authority in connection with such revocation or termination, including without limitation any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of any space which may be used and occupied under this Permit to the condition that existed on the date hereof, ordinary wear and tear excepted (on failure of the Permittee to have it restored), the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the space and putting the space in order (such as but not limited to cleaning). Unless sooner revoked or terminated, such permission shall expire in any event upon the Expiration Date. Revocation or termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation or termination."

(b) The following Paragraph 2(c) shall be added to the Terms and Conditions hereof:

(i) In the event that:

(x) at any time during the term of the Permit the Port Authority terminates the agreement "without cause," pursuant to the

thirty-day termination provision in paragraph (a) above and the Space is vacated by the Permittee in strict accordance with and pursuant to such termination, and

(y) the Permittee has completed the construction work performed pursuant to a TAA,

then, in such event, the Port Authority shall reimburse the Permittee for the Permittee's Unamortized Improvement Capital Investment (as defined below) in the Premises as of the effective date of the termination. The Port Authority may elect to credit any amount due the Permittee pursuant to this provision against any amounts owing from the Permittee to the Port Authority under this Permit.

(ii) For purposes of this Permit, the Permittee's Improvement Capital Investment shall be the lesser of Seventy-Five Thousand Dollars and No Cents ($75,000.00) or an amount equal to the sum of the amounts described in subparagraphs (x) and (y) of the definition of Improvement Capital Investment, below.

(iii) Certain Definitions.

(x) "Improvement Capital Investment" shall mean:

1. the amounts paid by the Permittee to independent contractors for work actually performed and labor and materials actually furnished, inclusive of sales, use and like taxes, where applicable, in connection with the Improvement Work; and

2. the payments made and expenses incurred by the Permittee in connection with the Improvement Work for engineering, architectural, professional and consulting services, and the supervision of construction, inclusive of sales, use and like taxes where applicable; it being understood that payments under this item (2) shall not exceed fifteen percent (15%) of the sum of the amounts described in the foregoing item (1);

and further, the Improvement Capital Investment shall be documented to the Port Authority in the Port Authority's TAA submittal. The Improvement Capital Investment shall not include the Permittee's moving expenses or the Permittee's Review Fees to the Port Authority. The Port Authority, at its option, may audit the costs documented under the TAA, subject to the audit provisions of Term and Condition 6(b). The Permittee shall keep a separate accounting of the Permittee's Improvement Capital Investment, which accounting shall be kept at all times within the Port of New York District for a period of two (2) years after the final costs of all the Improvement Work have been submitted by the Permittee to the Port Authority or the end of the Term, whichever is later, and shall be subject to the audit and inspection of the Port Authority, its representatives and employees.

(y) "Unamortized Improvement Capital Investment" shall mean, for purposes of this Permit, the amount of the Permittee's Improvement Capital Investment in the Premises arising out of the performance by the Permittee of the Improvement Work, after deduction therefrom of an amount to be computed on a straight-line basis from the Rent Commencement Date to the end of the average useful life thereof (as determined under generally accepted accounting principles) or the Expiration Date, whichever is the shorter. In no event shall the Permittee's Unamortized Improvement Capital Investment include any amounts paid for in connection with any equipment, trade fixtures or other personal property of the Permittee. The foregoing computation to be made shall not take into consideration the effect of accelerated amortization, if any, granted to or taken by the Permittee on its books and otherwise under the provisions of Section 168(a) of Title 26 USCA or similar legislation hereafter enacted."

(c) Paragraph 3(a) is amended to reflect that permission for the Permittee to use the Space through the medium of any other person, corporation, or legal entity shall not be arbitrarily or capriciously withheld by the Port Authority.

(d) Paragraph 4(a) is hereby deleted and replaced with the following Paragraph 4(a):

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

(e) Paragraph 4(d) is amended to add the following to the end of Paragraph 4(d):

", except for the repair obligations of the Port Authority provided for in Special Endorsement 5(b)."

(f) The following Paragraph 7(b)(7) shall be added to the Terms and Conditions hereof:

"(7)(b)(7) *Return of the letter of credit*

After the expiration or earlier termination of the Term, and upon written request therefor by the Permittee, the Port Authority, in its sole and absolute discretion, may return the letter of credit within ninety (90) days of the expiration of the Permit."

(g) The following sentence is hereby added to the end of Paragraph 8(a):

", provided that the Permittee has no obligation hereunder to indemnify and hold harmless the Port Authority's gross negligence or willful misconduct."

(h) The following shall hereby be added to the end of Paragraph 15(a):

"When possible, the Port Authority shall provide written notice to the Permittee of its failure to comply with provisions of this section. The Permittee agrees and acknowledges that the Port Authority is under no obligation to give said notice."

(i) The following sentence is hereby added to the end of Paragraph 22:

"provided, that, the Permittee's assumption of the risk of, responsibility and payment for and indemnification of the Port Authority for consequential injury, damage or loss shall not be effective unless and until the Permittee's exceeds one-hundred twenty (120) days."

(j) The following sentence shall hereby be added to the end of Paragraph 23:

"No agent or employee of the Permittee shall be charged personally by the Port Authority with any liability, or held liable to it, under any term or provision of this Permit, or because of its execution or attempted execution, or because of any breach hereof. This provision shall not apply to members, directors or officers of the Permittee."

For the Port Authority

Initialed:

For the Permittee

INSURANCE SCHEDULE

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

Minimum Limits

Commercial General Liability Insurance Combined single limit per occurrence for death, bodily injury and property damage liability:	$5,000,000.00
Commercial Automobile Liability Insurance Combined single limit per occurrence for death, Bodily injury and property damage liability:	$2,000,000.00
Workers' Compensation and Employers Liability Insurance Permittee's obligations under the applicable State Workers' Compensation Law for those employees of the Permittee employed in operations conducted pursuant to the Permit at or from the Facility:	Statutory

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

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

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

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

(d) Each policy must be specifically endorsed to provide that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each policy shall contain a provision or endorsement that the insurer "shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority." The foregoing provisions or endorsements shall be recited in each policy or certificate to be delivered pursuant to the following paragraph (e).

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

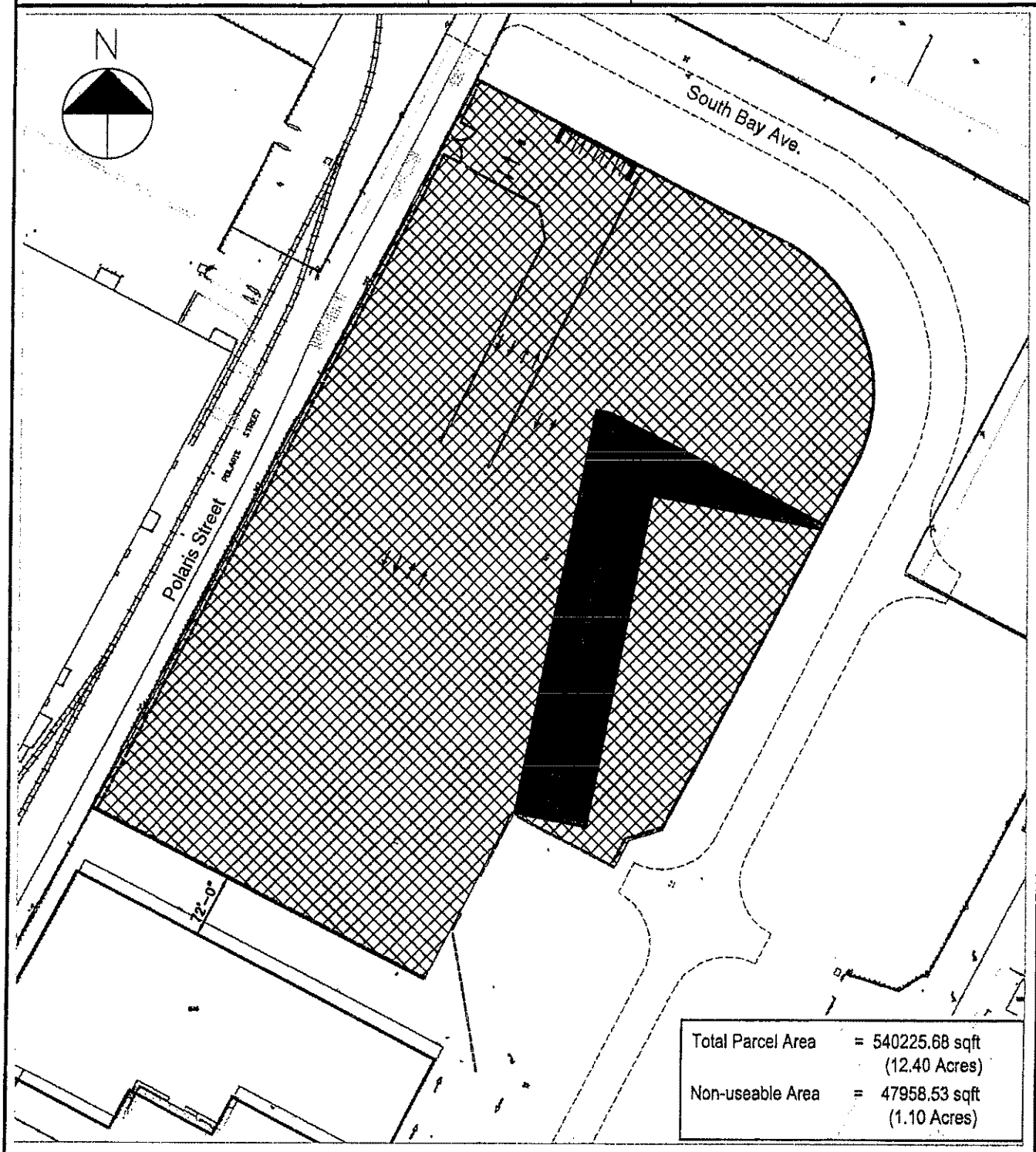
(f) The foregoing insurance requirements shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Permittee under the Permit. The foregoing insurance requirements shall not constitute a representation or warranty as to the adequacy of the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

For the Port Authority

Initialed:

For the Permittee

COLUMBIA CONTAINER SERVICES, LLC	PEP-071	



Initialed:

For the PORT AUTHORITY

For the Permitee

EXHIBIT :

A

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Dec. 1, 2011