Duffy, Daniel FOI# 14516

From: rothpashlaw@aol.com
Sent: Wednesday, January 08, 2014 1:55 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Dean
Last Name: Pashaian
Company: Rothenberg, Rubenstein, Berliner, Shinrod, LLC
Mailing Address 1: 14. E. Main Street
Mailing Address 2:
City: Clinton
State: NJ
Zip Code: 08809
Email Address: rothpashlaw@aol.com
Phone: 908-238-9991
Required copies of the records: Yes

List of specific record(s):
Lease agreement for 242 Calcutta Street, Newark, NJ Grid 86. Including all leases between PNCT, Ports America andor other company or entity for the leasing of the property described above from Port Authority NYNJ

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

March 10, 2014

Mr. Dean Pashaian
Rothenberg Rubenstein Berliner Shinrod LLC
14 E. Main Street
Clinton, NJ 08809

Re: Freedom of Information Reference No. 14516

Dear Mr. Pashaian:

This is in response to your January 8, 2014 request, which has been processed under the Port Authority's Freedom of Information Code, for a copy of the lease agreement for 242 Calcutta Street, Newark, NJ, Grid 86, including all leases between PNCT, Ports America and any other company or entity for the leasing of the property described above from the Port Authority.

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/14516-LPA.pdf. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to exemptions (1) and (4) of the Code.

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

Very truly yours,

Daniel D. Duffy
FOI Administrator

225 Park Avenue South, 17th Floor
New York, NY 10003
T: 212 435 3642
F: 212 435 7555

EXECUTION VERSION

Lease No. L-PN-264

AMENDED AND RESTATED AGREEMENT OF LEASE

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

PORT NEWARK CONTAINER TERMINAL LLC

Dated as of June 14, 2011

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THIS AMENDED AND RESTATED AGREEMENT OF LEASE ("Agreement"), made as of the 14th day of June, 2011, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the "Port Authority"), a body corporate and politic created by compact between the States of New Jersey and New York, with the consent of the United States Congress, and having an office and place of business at 225 Park Avenue South, 15th Floor, New York, New York 10003-1604; and PORT NEWARK CONTAINER TERMINAL LLC ("Lessee"), a limited liability company organized under the laws of the State of Delaware and having an office and place of business at 241 Calcutta Street, Port Newark, New Jersey 07114, whose representative is: David F. Adam.

WHEREAS, as of December 1, 2000, the Port Authority and Lessee entered into that certain "Agreement" known as Lease No. L-PN-264 for the Existing Terminal Facility (as defined below), which was later amended and supplemented by certain Supplemental Agreements between the Port Authority and Lessee numbered 1 through 10, i.e. Supplement No. 1, dated as of August 31, 2001, Supplement No. 2, dated as of November 26, 2001, Supplement No. 3, dated as of March 25, 2002, Supplement No. 4, dated as of December 1, 2000, Supplement No. 5, dated as of October 1, 2002, Supplement No. 6, dated as of February 15, 2003, Supplement No. 7, dated as of May 31, 2005, Supplement No. 8, dated as of August 31, 2005, Supplement No. 9, dated as of March 13, 2007 and Supplement No. 10, dated as of December 31, 2006 (collectively, as so amended and supplemented, the "Existing Lease");

WHEREAS, contemporaneously with the execution of this Agreement (1) the parties are entering into a Railroad Operating Agreement (as defined herein), dated as of the date hereof and (2) Mediterranean Shipping Company has delivered a Port-Wide Throughput Guaranty Agreement, dated as of the date hereof, to the Port Authority, relating to a guaranteed number of Qualified Containers which shall be loaded onto or discharged from vessels berthing within the Port during any Lease Year and, in addition, and the Port Authority and Lessee acknowledge and agree that the execution of each of the Railroad Operating Agreement and Port-Wide Throughput Guaranty Agreement, together with the execution of this Agreement, shall be a condition precedent to the effectiveness of this Agreement;

WHEREAS, the Port Authority and Lessee intend to amend and restate the Existing Lease in its entirety on the terms set forth in this Agreement.

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

Section 1. Definitions

The following terms, as used herein, shall have the meaning set forth below:

"Acceptable Accounting Firm" shall have the meaning set forth in Section 11(d).

"Added Parcels" shall mean the Polaris Street Property, the Marsh Street Property, the Development Parcels, the Starboard Street Property and the Waterfront-Shimizaki Property, to the extent that each such parcel of land shall become a part of the Premises (and for so long as each such parcel of land shall remain a part of the Premises) in accordance with the provisions of this Agreement.

"Additional Terminal Facilities" shall have the meaning set forth in Section 10(a)(2).

"Adjustment Period" shall mean, as the context requires, the calendar month of May, 2010 and the calendar month of May in each calendar year which thereafter occurs during the Term.

"Affiliate" shall mean , with respect to any Person, any other Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" shall mean this Amended and Restated Agreement of Lease between the Port Authority and Lessee known as Lease Number LPN-264, together with all schedules and exhibits hereto, and as may be amended or supplemented in writing by the parties hereto from time to time.

"Agreed Rental Terms" shall have the meaning set forth in Section 53(a).

"Analyzed Item" shall mean (i) with respect to the ground water all of the constituents for which the groundwater samples described in the Initial Environmental Survey were tested, and (ii) with respect to soil all of the constituents for which the soil samples described in the Initial Environmental Survey were tested.

"Analyzed Item Increases" shall have the meaning set forth in Section 13(s).

"Applicable Rental Rate" shall have the meaning set forth in Section 7(a).

"Assignee" shall have the meaning set forth in Section 22(a).

"Assignment" shall have the meaning set forth in Section 22(a).

"Audit Findings" shall have the meaning set forth in Section 52(a).

"Base Cost" shall have the meaning set forth in Section 20(e)(2).

"Base Period" shall mean, as the context requires, the calendar month of May, 2009 and the calendar month of May in each calendar year which thereafter occurs during the term of the letting under this Agreement.

"Base Rent" shall mean the rent payable on the land from time to time comprising the Premises at the rates set forth in, and otherwise in accordance with, Section 4, and during the Extended Term, Section 7 (i.e. the product of the number of acres from time to time constituting the Premises multiplied by the then applicable Base Rental Rate, paid in advance in monthly installments).

"Base Rental Rate" shall mean, with respect to the Initial Term, the per acre rates set forth on Schedule A, and during the Extended Term, the Initial Extended Term Base Rental Rate as escalated annually accordance with Section 7.

"Basic Lease" shall mean that agreement of lease respecting marine and air terminals entered into with the Port Authority by the City of Newark (New Jersey) under date of October 22, 1947, and recorded in the Office of the Register of the County of Essex on October 30, 1947, in Book E-110 of Deeds, on pages 242 et seq. as the said agreement of lease has been heretofore or may be hereafter from time to time supplemented and amended.

"Building Debris Matter" shall have the meaning set forth in Section 13(k)(1).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.

"Certificate Period" shall have the meaning set forth in Section 11(b).

"Certification of Final Disposal" shall have the meaning set forth in Section 13(h).

"Change of Control" shall mean the occurrence of any of the following:

(1) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) the result of which is that the Highstar Funds (i) cease to own and Control, directly or indirectly, at least 25.5% of either of (x) the outstanding voting securities and/or (y) the outstanding equity securities, of Lessee, (ii) cease to own equity securities entitling it to receive at least 25.5% of the economic interest (including the right to receive (directly or indirectly) at least 25.5% of the distributions and dividends) of Lessee, or (iii) cease to own and Control, directly or indirectly, at least 51% of the outstanding voting securities and outstanding equity of any kind of Ports America;

(2) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or

reorganization) the result of which is that Highstar Capital L.P. ceases to control the management and policies of the Highstar Funds; or the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) that result of which is that TIL Parent Ownership ceases to own, and control the management and policies of, TIL Parent;

(3) subject to paragraph 5 hereof, the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) the result of which is that Ports America ceases to directly own and Control 50% of the outstanding voting securities and outstanding equity of any kind of Lessee;

(4) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) the result of which is that TIL Parent (i) ceases to own and Control, directly or indirectly, at least 25.5% of either of (x) the outstanding voting securities and/or (y) the outstanding equity securities, of Lessee or (ii) ceases to own equity securities entitling it to receive at least 25.5% of the economic interest (including the right to receive (directly or indirectly) at least 25.5% of the distributions and dividends) of Lessee; provided, however, that this subsection (4) shall not apply to the extent that Ports America reacquires any or all of the outstanding voting securities and the outstanding equity securities in Lessee, owned by TIL;

(5) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) the result of which is that any Person or group (within the meaning of the Exchange Act and the rules of the SEC thereunder), other than the Highstar Funds and TIL Parent or any of their respective wholly owned subsidiaries owns or Controls, directly or indirectly, more than 10% of the outstanding voting securities or outstanding equity of any kind of Lessee; provided however, that notwithstanding the foregoing, the Highstar Funds may transfer up to 49% of its indirect ownership interest in Ports America to one or more Persons so long as (1) such transfer does not otherwise result in a Change of Control or a violation of Section 48, and (2) such transferee is neither an Affiliate of TIL or MSC, nor directly or indirectly owned or controlled by any principal, officer, director, owner, employee or any designee or family member of any principal, officer, director, owner or employee of TIL or MSC or their affiliates. For the avoidance of doubt, to the extent the Highstar Funds transfers 49% of Ports America to one or more Persons (thereby reducing the Highstar Funds indirect ownership of Lessee to 25.5%), Highstar shall no longer be permitted to transfer any direct or indirect interests in Lessee without such transfer resulting in a Change of Control;

(6) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) the result of which is that (i) Ports America and TIL, collectively, cease to maintain the ability to appoint a majority of the board of directors or similar governing body of Lessee or (ii) Ports America ceases to maintain the ability to appoint the senior

officers (with the exception of the Chief Operating Officer) of Lessee or (iii) Ports America ceases to provide the Services (as defined in that certain Amended and Restated Service Agreement between Ports America and Lessee or any similar agreement) to Lessee or (iv) TIL and any Affiliate, together with MSC and any Affiliate or any principal, officer, director, owner, employee or any designee or family member of any principal, officer, director, owner or employee of TIL or MSC or their Affiliates, in the aggregate, directly or indirectly, owns or Controls more than 50% of the outstanding voting securities or outstanding equity of any kind of Lessee; or

(7) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) the result of which a Prohibited Person, either (i) has the power to direct or cause the direction of the management and policies of Lessee, (ii) owns or Controls directly, any of the outstanding voting securities or outstanding equity securities of any kind of Lessee or (iii) owns or Controls indirectly, 5% or more of any of the outstanding voting securities or outstanding equity securities of any kind of Lessee (any of (i), (ii) or (iii) a "Prohibited Person Threshold")

"Commencement Date" shall mean as of March 1, 2011.

"Completion Date" means, with respect to any particular phase of development contemplated herein, the first business day following the issuance of a certificate of completion by the Port Authority to Lessee for those improvements intended to be constructed by Lessee on such property, which certificate will allow Lessee to operate the subject acreage in the intended post development manner.

"Condemning Agency" shall have the meaning set forth in Section 23(a).

"Condition Exceptions" shall mean the following:

(i) Migrated Hazardous Substances;

(ii) The remediation or removal of the Existing Condition;

(iii) The remediation or removal of Hazardous Substances in the soil or groundwater in, on and under the Premises to the extent caused by the sole acts or omissions of the Port Authority (or its employees, agents or contractors) (x) on or after December 1, 2000 with respect to the Existing Terminal Facility and (y) with respect to any of the Added Parcels, on or after the commencement of the Term as to such Added Parcel as determined in accordance with Section 3 hereof;

(iv) Hazardous Substances contained in, or leaking into the soil or groundwater in, on or under the Premises from underground storage tanks (and contamination from the existence or use (other than by

Lessee) of such tanks) located (x) on the Existing Terminal Facility on or prior to December 1, 2000 and (y) on any of the Added Parcels on or prior to the commencement of the Term as to such Added Parcel as determined in accordance with Section 3 hereof; provided that Lessee never uses such tanks;

(v) Fines and penalties arising out of the Existing Condition if the fines and penalties are imposed due to the failure to have remediated or removed the Existing Condition or due to the failure to have a Deed Notice recorded with respect to the Existing Condition; and

(vi) The remediation or removal of Historic Fill material (as such term is defined in the New Jersey Technical Requirements for Site Remediation, set forth at N.J.A.C. 7:26E-1, et. seq.), provided that such presence of Historic Fill on the Premises was not caused by, nor arising out of, acts or omissions of Lessee or the Lessee's Representative.

"Consent Criteria" shall mean the Official Minutes of the Port Authority adopted February 22, 2007 entitled "Port Facilities – Consent to Transfers of Leases and Changes of Ownership Interests", as the same shall be amended or replaced by the Board of Commissioners of the Port Authority subsequent to the date hereof.

"Consent Fee" shall have the meaning set forth in Section 48(g).

"Construction Cost Index" shall mean the Construction Cost Index published by ENR Magazine.

"Construction Cost Percentage Change" shall mean the percentage of change in the Construction Cost Index on each Anniversary Date equal to a fraction the numerator of which shall be the difference between (a) the Construction Cost Index for the Adjustment Period immediately preceding such Anniversary Date minus (b) the Construction Cost Index for the Adjustment Period immediately preceding the Anniversary Date which immediately precedes such Anniversary Date, and the denominator of which shall be the Construction Cost Index for the Adjustment Period immediately preceding the Anniversary Date which immediately precedes such Anniversary Date.

"Container Throughput Rental" shall have the meaning set forth in Section 6(a).

"Contractor" shall mean any contractor and subcontractor at any tier of construction at or related to the Premises.

"Control" shall mean the direct or indirect power through contract, arrangement, understanding, relationship, ownership of other business entities or

otherwise to dispose of or to direct the disposal of, or to vote or to direct the voting of, voting securities or voting membership of any Person.

"Cost" means and includes: (1) payroll costs, including contributions to any retirement system, or the cost of participation in other pension plans or systems, insurance costs, sick-leave pay, holiday, vacation and authorized-absence pays; (2) cost of materials and supplies used; (3) payments to contractors; (4) any other direct costs; and (5) 30% of the sum of the foregoing.

"Delinquent User" shall have the meaning set forth in Section 16(d).

"Development Parcels" shall mean collectively the Phase 1 Development Parcel, the Phase 2 Development Parcel, the Phase 3 Development Parcel and the Phase 4 Development Parcel, as and when each such parcel is added to the Premises in accordance with this Agreement.

"Disposal" shall have the meaning set forth in Section 13(k)(1).

"Environmental Damages" shall mean any one or more of the following:

(i) the presence in, on, or under the premises of any Hazardous Substance, except for a Migrated Hazardous Substance, whether such presence occurred prior to or during the term of the letting under this Agreement or resulted from any act or omission of Lessee or others, and/or

(ii) the disposal, discharge, release or threatened release of any Hazardous Substance from the Premises or of any Hazardous Substance from under the Premises, and/or

(iii) the presence of any Hazardous Substance in, on or under other property at the Port Newark Facility as a result of (x) Lessee's use and occupancy of the Premises or the performance of Lessee's Construction Work, the Phase 1 Development Work, the Phase 2 Development Work, the Phase 3 Development Work, the Phase 4 Development Work, the Starboard Street Property Development Work, the Marsh Street Development Work or the Waterfront-Shimizaki Property Development Work, or (y) a migration of a Hazardous Substance, except for a Migrated Hazardous Substance, from the Premises, or from under the Premises, and/or

(iv) any personal injury including wrongful death or property damage arising out of or related to any Hazardous Substance described in (i), (ii) or (iii) above (except for a Migrated Hazardous Substance), and/or

(v) the violation of any Environmental Requirement pertaining to any Hazardous Substance described in (i), (ii) or (iii) above (except for a Migrated Hazardous Substance), at the Premises and/or the activities thereon.

"Environmental Requirements" shall mean in the plural and "Environmental Requirement" shall mean in the singular, all applicable, common law and 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 voluntary programs adopted and agreements made by the Port Authority with any governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements, in each case relating to the protection of human health or the environment, the foregoing to include without limitation:

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

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

"Estimated Cubic Yard Cost" shall have the meaning set forth in Section 20(e)(2).

"Event of Default" shall have the meaning set forth in Section 29(a).

"Exacerbation" shall have the meaning set forth in Section 13(b)(2)(ii).

"Existing Condition" shall mean the levels of Analyzed Items in the soil and ground water on or at the Existing Terminal Facility on or before December 1, 2000, or any Added Parcel on or before the commencement of the Term as to such parcel as determined in accordance with Section 3 of this Lease, as derived by applying the methodology set forth in Section 13(j) to the test results in the Initial Environmental Survey, as such test results may be superseded and supplemented by subsequent test results and in each Remediation Completion Report in accordance with the provisions of Section 13(m); provided, however, that notwithstanding any other term or provision of

this Agreement, the "Existing Condition" shall in no event include any Hazardous Substance to the extent the presence of the same in, on or under the Existing Terminal Facility or any Added Parcel was caused by or resulted from (i) an Exacerbation of the Existing Condition by Lessee or Lessee's Representative, or (ii) the acts or omissions of the Lessee, Lessee's Representative, or any affiliated company of the Lessee, which act or omission creates a clean-up, removal or remediation obligation as to such Hazardous Substance where one previously did not exist. Nor shall the "Existing Condition" include any Hazardous Substance that was added to or under the Existing Terminal Facility and/or Added Parcel on or after December 1, 2000 (as to the Existing Terminal Facility) or after the commencement of the Term as to such Added Parcel as determined in accordance with Section 3 hereof unless such Hazardous Substance is either (x) a Condition Exception, including without limitation, a Migrated Hazardous Substance or (y) such Hazardous Substance was added by the sole acts or omissions of the Port Authority (or its employees, agents or contractors). Nor shall an Existing Condition include Building Debris Matter.

"Existing Depth" shall have the meaning set forth in Section 20(e)(1).

"Existing Lease" shall have the meaning set forth in first Whereas clause above.

"Existing Terminal Facility" shall have the meaning set forth in Section 2 (a).

"Exit Baseline" shall have the meaning set forth in Section 13(v)(2).

"Expiration Date" means the Initial Expiration Date of November 30, 2030, or during the Extended Term, if applicable, the Extended Expiration Date of November 30, 2050 or such earlier date as determined in accordance with Section 11.

"Extended Expiration Date" means November 30, 2050 or such earlier date as determined in accordance with Section 11.

"Extended Term" means the period from and after the Initial Expiration Date through the Extended Expiration Date.

"FAA" shall mean the Federal Aviation Administration.

"FMC" shall mean the Federal Maritime Commission.

"Facility" shall mean the land and premises in the City of Newark, in the County of Essex and State of New Jersey, which are easterly of the right-of-way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the Basic Lease and marked "Exhibit A", as contained within the limits of a line of crosses appearing on the said Exhibit A and marked (by means of the legend) "Boundary of Terminal Area in City of Newark", and lands contiguous thereto within the County of

Essex which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes

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

"Guaranteed Rental" shall have the meaning set forth in Section 56(a)

"Hazardous Substances" shall mean and include in the plural and "Hazardous Substance" shall mean and include in the singular 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 other substances which have been or in the future shall be declared to be hazardous or toxic, or the removal, containment or restriction of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or-ownership of which have been or in the future shall be restricted, prohibited, regulated or penalized by any Environmental Requirements now or at any time hereafter in effect as amended or supplemented.

"Highstar Funds" shall mean, subject to Section 48(h)(1), collectively, Highstar Capital Fund III, L.P., Highstar Capital III Prism Fund, L.P., and Highstar Capital III Prism Fund I-A, L.P.

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

"Initial Environmental Survey" shall mean each of (i) the reports attached hereto, hereby made a part hereof and marked "Exhibit G" entitled (x) "Surface Baseline Report Port Newark Container Terminal, LLC" and dated October 2000 and (y) "Subsurface Baseline Report Former Naporano Iron and Metal Company and Hugh Neu Schnitzer East Facilities" and dated September, 2002, and (ii) prior to the commencement of the Term as to each Added Parcel as determined in accordance with Section 3 hereof, or at such other time as may be agreed upon by the Port Authority and Lessee, the Port Authority shall cause to be performed by an environmental professional selected by the Port Authority, and reasonably acceptable to Lessee, a baseline environmental assessment

of Environmental Damages (if any) on or from such Added Parcel and deliver to Lessee a report of such environmental professional describing in reasonable detail the results of such assessment and identifying any Environmental Damages present on such Added Parcel (each such report is hereinafter referred to as an "Added Parcel Baseline Environmental Assessment Report"), subject to the following conditions. Each Added Parcel Baseline Environmental Assessment Report shall be reasonably acceptable to the Lessee. In the event an Added Parcel Baseline Assessment Report is unacceptable to Lessee in its reasonable opinion, Lessee shall have the right to cause to be performed by an environmental professional selected by Lessee such additional assessment or investigation work as to the relevant Added Parcel as it deems necessary and to produce and deliver to the Port Authority a written report of the findings of such additional assessment or investigation (each such report is hereinafter referred to as a "Lessee's Supplemental Added Parcel Baseline Assessment Report"). Provided that such Lessee's Supplemental Added Parcel Baseline Assessment Report is acceptable to the Port Authority, then the Added Parcel Baseline Assessment Report(s), as supplemented by Lessee's Supplemental Added Parcel Baseline Assessment Report(s), if any, together with the report identified in clause (i) hereof, will be collectively referred to herein as the "Initial Environmental Survey".

"Initial Expiration Date" means November 30, 2030, unless earlier terminated in accordance with the terms of the Agreement.

"Initial Extended Term Base Rental Rate" shall mean the annual rate of Base Rental Rate for the first year of the Extended Term, in an amount equal to (i) Eighty Thousand Dollars and No Cents ($80,000.00) per acre escalated on a year by year basis by the Percentage Increase over the period from May 2009 through May 2030 in accordance with Section 7 of this Agreement; provided that in no event shall the Initial Extended Term Base Rental Rate be less than $121,253 per acre nor more than $156,596 per acre.

"Initial Term" shall mean the period commencing on the Commencement Date and ending on the Initial Expiration Date.

"LSRP" shall mean a Licensed Site Remediation Professional.

"Labor Troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, disputes or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any, which materially interferes with operations or construction at any facility within the Premises.

"Lease Year" shall mean any twelve (12) month period commencing on December 1 and ending on the following November 30 throughout the Term provided that the first Lease Year shall be the period commencing on the Commencement Date and ending on November 30, 2011.

"Lessee" shall mean Port Newark Container Terminal LLC, or any permitted successor or assign as provided in Section 22 or 48.

"Lessee's Added Parcels Environmental Liability" shall have the meaning set forth in Section 13(a).

"Lessee's Construction Application" shall have the meaning set forth in Section 10(e).

"Lessee's Construction Work" shall have the meaning set forth in Section 10(c)(1).

"Lessee's Parent" shall mean Ports America, Inc., a corporation organized and existing under the laws of the State of Delaware and Terminal Investment Limited, a company duly organized and existing under the laws of the Bailiwick of Guernsey.

"Lessee's Representative" shall mean Lessee's officers, employees, shareholders, members, agents, representatives, contractors, customers, guests, invitees, or other Persons who are doing business with the Lessee or are on the Premises with the Lessee's consent or knowledge, or are on the Premises without Lessee's consent but due to Lessee's failure to undertake adequate security measures.

"Major Stock Exchange" shall mean any of the following: the London Stock Exchange, the Amsterdam Stock Exchange, the American Stock Exchange, the New York Stock Exchange, the NASDAQ Stock Market, the Singapore Stock Exchange or the Tokyo Stock Exchange.

"Marine Container Terminal Facility" shall have the meaning set forth in Section 9(a).

"Marsh Street Property" shall have the meaning set forth in Section 2(c).

"Marsh Street Property Development Work" shall have the meaning set forth in Section 10(c)(2)(vii).

"Matter" shall have the meaning set forth in Section 13(k)(1).

"MBE" shall mean Minority Business Enterprise.

"Mean Low Water" shall mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey.

"Migrated Hazardous Substance" shall mean (i) any Hazardous Substance which is an Analyzed Item and which is a part of the Existing Condition which has migrated from or from under the Existing Terminal Facility or an Added Parcel (as the case may be) in, on, or under property at the Port Newark Facility other than the Existing

Terminal Facility or an Added Parcel (as the case may be) if and only if such migration was not a result in whole or in part from the use and occupancy of the Existing Terminal Facility or an Added Parcel (as the case may be) by Lessee, Lessee' Representative, or by any affiliated company of Lessee, or the performance of Lessee's Construction Work, the Phase 1 Development Work, the Phase 2 Development Work, the Phase 3 Development Work, the Phase 4 Development Work, the Starboard Street Property Development Work, the Marsh Street Development Work or the Waterfront-Shimizaki Property Development Work, or the acts or omissions of Lessee or Lessee's Representative, or by any Affiliate of Lessee, and (ii) any Hazardous Substance which has migrated in, on, or under the Existing Terminal Facility or an Added Parcel (as the case may be) from outside of the Existing Terminal Facility or an Added Parcel (as the case may be) if and only if such migration was not a result in whole or in part from the use and occupancy of the Existing Terminal Facility or an Added Parcel (as the case may be) by Lessee, Lessee's Representative, or by any Affiliate of Lessee, or the performance of Lessee's Construction Work, the Phase I Development Work, the Phase II Development Work, the Phase III Development Work, the Phase IV Development Work, the Starboard Street Property Development Work, the Marsh Street Development Work or the Waterfront-Shimizaki Property Development Work, or the acts or omissions of Lessee or Lessee's Representative, or with the permission of an Affiliate of Lessee. Notwithstanding the foregoing, Lessee shall be responsible for such Migrated Hazardous Substance if any clean-up, remediation or other response action, or indemnification or other action under this Section 13 is required with respect to such Environmental Damage as a result of any Exacerbation by Lessee or Lessee's Representative.

"Minimum Capital Expenditure Requirement" shall have the meaning set forth in Section 11(a).

"Minimum Investment" shall have the meaning set forth in Section 11(d).

"Minimum Investment Date" shall have the meaning set forth in Section 11(d)

"Minority" shall have the meaning set forth in paragraph II (c) of Part I of Schedule C.

"Non-container Cargo" shall mean cargo, including without limitation breakbulk cargo, not in cargo containers loaded onto or discharged from vessels berthing at the Premises.

"Non-container Cargo Throughput Rental" shall have the meaning set forth in Section 8(b).

"PAH" shall mean Ports America Holdings, Inc. (formerly known as Ports America, Inc.), a corporation organized and existing under the laws of the State of Delaware.

"Partial Approval Work" shall have the meaning set forth in Section 10(g).

"Partial Approval Work Plans" shall have the meaning set forth in Section 10(g).

"Percentage Increase" shall mean the percentage of increase in the Index on each December 1, equal to: (x) with respect to December 1, 2010, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding December 1, 2010 (i.e., May 2010) less the Index for the Base Period preceding such Adjustment Period by one year (i.e., May 2009), and the denominator shall be the Index for the Base Period preceding such Adjustment Period by one year (i.e., May 2009), and (y) with respect to each December 1 thereafter, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such date less the Index for the next Base Period preceding such Adjustment Period by one year, and the denominator shall be the Index the Base Period preceding such Adjustment Period by one year (for example, the Annual Index Increase for December 1, 2011 would be a fraction of which the numerator is the Index for May 2011 less the Index for May 2010 and the denominator is the Index for May 2010).

"Person" shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture or other entity.

"Phase 1 Development Parcel" shall have the meaning set forth in Section 2(d)(1).

"Phase 2 Development Parcel" shall have the meaning set forth in Section 2(d)(2).

"Phase 3 Development Parcel" shall have the meaning set forth in Section 2(d)(3).

"Phase 4 Development Parcel" shall have the meaning set forth in Section 2(d)(4).

"Phase 1 Development Work" shall have the meaning set forth in Section 10(c)(2)(ii).

"Phase 2 Development Work" shall have the meaning set forth in Section 10(c)(2)(iii).

"Phase 3 Development Work" shall have the meaning set forth in Section 10(c)(2(iv)).

"Phase 4 Development Work" shall have the meaning set forth in Section 10(c)(2(v)).

"Polaris Street Property" shall have the meaning set forth in Section 2(b).

"Port" shall mean the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session;

"Port Authority" shall mean The Port Authority of New York and New Jersey.

"Port Authority's Added Parcels Environmental Liability" shall have the meaning set forth in Section 13(a).

"Port Leases" shall have the meaning set forth in Section 53(c).

"Port Newark Facility" shall mean the Facility.

"Ports America" shall mean Ports America, Inc., a corporation organized and existing under the laws of the State of Delaware.

"Premises" shall have the meaning set forth in Section 2.

"Previously Contaminated Matter" shall have the meaning set forth in Section 13(k)(2).

"Prohibited Person" shall mean shall mean any Person or any Person that is controlled by a Person, or any Person who is an Affiliate of a Person:

(1) that is currently under indictment for or has been convicted of a felony (or an equivalent offense, as applicable) or such lesser offense as would preclude such Person from doing business with a state or federal governmental agency within the United States or any United States controlled territory, in the preceding ten (10) years;

(2) that has had a development agreement with the Port Authority terminated for willful default or breach, has had a contract terminated by a state or federal governmental agency in the States of New York or New Jersey for willful breach or default or has had a contract terminated for any cause relating to a current indictment or a conviction of such Person or its principals for a felony (or an equivalent offense, as applicable) or such lesser offense as would preclude such Person from doing business with a state or federal governmental agency within the United States or any United States controlled territory, in the preceding ten (10) years;

(3) that is in material default beyond any applicable grace period, under any agreement with the Port Authority or has been, within the preceding five (5) years, in material default, beyond any applicable grace period, under any agreement with the Port Authority;

(4) that has been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any state or federal

governmental agency in the United States or any United States controlled territory, in the preceding ten (10) years;

(5) that has had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition;

(6) that is organized in or controlled from a country which is subject to any of the following: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (ii) the International Emergency Economic Powers Act of 1976, 50 U.S.C. § 1701, et seq., as amended; and (iii) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405, as amended;

(7) that engages in any dealings or transactions or is blocked or subject to blocking pursuant to Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"), or is otherwise associated with any such Person in any manner violative of the Executive Order or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (7);

(8) that is on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order ("OFAC") and/or with whom the Port Authority is restricted from doing business with under OFAC or under any statute, executive order, or other governmental action or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (8);

(9) that has currently (i) filed a petition under any insolvency statute, (ii) made a general assignment for the benefit of its creditors, (iii) commenced a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (iv) filed a petition seeking reorganization or liquidation or similar relief under any applicable law or statute, or is the subject to any of foregoing;

(10) that is involved or has been involved in a material litigation or similar proceeding adverse to the Port Authority or any subsidiary thereof;

(11) whose involvement, presence or ownership of any interest, in the Premises is deemed by the Port Authority to be unsuitable, in a manner consistent with the Consent Criteria;

(12) whose involvement or presence in the Premises would create any conflict of interest as defined under the Public Officers Law of the State of New York between any Commissioner of the Port Authority and itself or its chief executive officer, chief operating officer, chief financial officer, president, chairman of the board, other similar senior executive, or any Person or entity which controls, is controlled by, or is under common control with it; and

(13) that shall not subject or submit itself to the jurisdiction of the courts of the State of New York or New Jersey or the courts of federal jurisdiction in the State of New York or New Jersey, in the event that such Person is named as a party to any actions relating to this Agreement.

"Publicly Owned Entity" shall be and mean one that has any class of securities subject to the registration and reporting requirements of the Securities Exchange Act of 1934, or any successor or substitute therefor, and any entity that has met any equivalent legal registration or listing requirement of Great Britain, the Netherlands, Singapore or Japan, as the circumstances require.

"Qualified Containers" shall mean cargo containers (or similar cargo conveyances, if any, which shall generally replace, succeed or are functionally equivalent to present cargo containers) loaded onto or discharged from vessels berthing at the Premises (whether or not stuffed or stripped at the Premises, whether or not so loaded or discharged by means of container cranes, and whether or not empty or containing cargo), including without limitation any specialized cargo containers such as flat-racks (flat-racks when empty and bundled together as one unit shall be counted as one container), mafis, trailers and vehicles (provided that every five vehicles shall be counted as one container); but shall not mean containers arriving on shipboard and departing on the same ship and the same voyage if such containers are merely unloaded from the ship at the Premises and reloaded in the course of a restowing operation or are merely moved from one location to another location on the same ship in the course of a shifting operation. A container discharged from a vessel berthing at the Premises and loaded onto another vessel berthing at the Premises in the course of a transshipment operation shall be deemed to have been discharged and loaded in one discrete operation and counted as one (1) Qualified Container for purposes of the computation of the rental payable under Section 6. Every eighteen (18) Revenue Tons of Non-container Cargo shall be counted as one container for purposes of the computation of the rental payable under Section 6 of this Agreement, but shall not be counted as cargo for purposes of Section 56 of this Agreement.

"Qualifying Expenditures" shall mean expenditures made by or on behalf of Lessee in connection with the Premises and the operation thereon from and after the Commencement Date, that, in the opinion of Lessee's Acceptable Accounting Firm as provided in Section 11(d) hereof, constitute capital expenditures or any expenditure that, but for a financing vehicle or structure such as a capital lease, would be considered a capital expenditure, under "generally accepted accounting principles" ("GAAP") or such other standard form of accounting as reasonably approved by the Port Authority.

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.

"Rail Credit" shall have the meaning set forth in Section 6(e).

"Rail Fly-Over Completion Date" shall have the meaning set forth in Section 54.

"Railroad Operating Agreement" shall mean that certain Railroad Operating and Space Permit (Permit No. MNS-338), dated as of the date hereof, between the Port Authority and Lessee.

"Releasors" shall mean, collectively, Lessee and Lessee's Parent.

"Remediation Completion Report" shall have the meaning set forth in Section 13(m).

"Rent" shall mean collectively Base Rent, Container Throughput Rental, Non-container Cargo Throughput Rental and any other sums payable by Lessee to the Port Authority under this Agreement.

"Revenue Ton" shall mean one long ton (a weight of 2,240 pounds), one metric ton (a weight of 2,207 pounds) or a measurement ton (40 cubic feet) as by the Port Authority in its sole discretion.

"Review Fee" shall have the meaning set forth in Section 10(r).

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

"Security Deposit" shall have the meaning set forth in Section 46(h).

"Shipping Act" shall mean the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.), as amended and as may be further amended, modified, succeeded or replaced, from time to time.

"Starboard Street Property" shall have the meaning set forth in Section 2(e).

"Starboard Street Property Development Work" shall have the meaning set forth in Section 10(c)(2)(vi).

"Sublease" shall have the meaning set forth in Section 22(a).

"Sublessee" shall have the meaning set forth in Section 22(a).

"TIL" shall mean Terminal Investment Limited, a company duly organized and existing under the laws of the Bailiwick of Guernsey.

"TIL Parent shall mean the 100% owner of TIL as of the date hereof.

"TIL Parent Ownership" shall mean the 100% ownership and control of TIL Parent as of the date hereof.

"Tariff" shall mean the Port Authority's tariff, as incorporated in FMC SCHEDULE PA-10, as the same or any successor tariff may be amended from time to time.

"Term" shall have the meaning set forth in Section 3.

"Terminal Guarantee Number" shall mean the number of Qualified Containers calculated by multiplying the number of acres comprising the Existing Terminal Facility, as increased by each of the Development Parcels or any other property added to the Premises that is or becomes contiguous with the Existing Terminal Facility or the Development Parcels upon the Completion Date for each such Development Parcel or other property (and for so long as each such Development Parcel or other property is included in the Premises), during the applicable Lease Year by 2500. Solely for the purposes of calculating Guarantee Rental as specified in Section 56 of this Agreement, prior to the Rail Fly-over Completion Date, the calculation of the Terminal Guarantee Number shall not include any acres comprising the Phase 1 Development Parcel.

"Throughput Threshold Number" shall mean one hundred forty thousand nine hundred and sixty eight (140,968) Qualified Containers. The Throughput Threshold Number shall increase by (1) one thousand seven hundred and five (1,705) Qualified Containers per acre upon the Completion Date with respect to each acre of each of the Development Parcels or any other property added to the Premises that is or becomes contiguous with the Existing Terminal Facility or the Development Parcels, completed by Lessee and (2) eight hundred (800) Qualified Containers per acre upon the Completion Date with respect to each acre of the Starboard Street Property and the Waterfront-Shimizaki Property completed by Lessee.

"Tier 1 Number of Containers" shall mean the number of Qualified Containers exceeding the Throughput Threshold Number through and including the number of Qualified Containers calculated by multiplying the number of acres then comprising the Existing Terminal Facility, as increased by each of the Development Parcels or any other property added to the Premises that is or becomes contiguous with the Existing Terminal Facility or the Development Parcels upon the Completion Date for

each such Development Parcel or other property (and for so long as each such Development Parcel or other property is included in the Premises), by 2200.

"Tier 2 Number of Containers" shall mean the number of Qualified Containers in excess of the number calculated by multiplying the number of acres then comprising the Existing Terminal Facility, as increased by each of the Development Parcels or any other property added to the Premises that is or becomes contiguous with the Existing Terminal Facility or the Development Parcels upon the Completion Date for each such Development Parcel or other property (and for so long as each such Development Parcel or other property is included in the Premises), by 2200.

"Tier 1 Rental Rate" shall mean, (i) from the Commencement Date through November 30, 2030, the per Qualified Container charge as set forth on Schedule B attached hereto, and (ii) from December 1, 2030 through the Expiration Date, a rate for the first year of the Extended Term equal to $21.00 escalated on a year by year basis by the Percentage Increase over the period from May 2009 through May 2030 as set forth in Section 7 of this Agreement, and thereafter increased annually as set forth in Section 7 of this Agreement, per Qualified Container.

"Tier 2 Rental Rate" shall mean seventy five percent (75%) of the Tier 1 Rental Rate then in effect.

"User Fee" shall have the meaning set forth in Section 16(d).

"User Fee Notice" shall have the meaning set forth in Section 16(d).

"WBE" shall mean Women-owned Business Enterprise.

"Waterfront-Shimizaki Property" shall have the meaning set forth in Section 2(f).

"Waterfront-Shimizaki Property Development Work" shall have the meaning set forth in Section 10(c)(2)(viii).

Section 2. Letting

The Port Authority hereby lets to Lessee and Lessee hereby hires and takes from the Port Authority, at the premises located in Port Newark (in whole or in part, as applicable, the "Premises"), in the City of Newark, in the County of Essex and the State of New Jersey, the following:

(a) (1) the open area, and enclosed spaces shown in diagonal cross-hatching, as so shown on the sketches hereto attached, hereby made a part hereof, and marked "Exhibit A" and "Exhibit A-1", containing approximately 176.21 acres of land, located in Port Newark and presently operated as a marine container terminal, together with all easements, rights of way, tideland rights, riparian rights or riparian grants benefiting the above described land, together with any buildings, structures, fixtures,

improvements located thereon, and (2) the open area as so shown on the sketches hereto attached, hereby made a part hereof, and marked "Exhibit A-2", containing approximately 4.27 acres of land, located in Port Newark and presently used for the storage of chassis and such other equipment as shall have the prior consent of the Port Authority and used in connection with Lessee's marine container terminal operations, subdivisions (1) and (2) hereinafter collectively referred to as the "Existing Terminal Facility";

(b) the open area, and enclosed spaces shown in diagonal cross-hatching, as so shown on the sketches hereto attached, hereby made a part hereof, and marked "Exhibit B", containing approximately 37.67 acres of land, located on Polaris Street, in Port Newark, together with all easements, rights of way, tideland rights, riparian rights or riparian grants benefiting the above described land, together with any buildings, structures, fixtures, improvements located thereon, and specifically including that certain building known as Building 1100 located thereon, hereinafter collectively referred to as the "Polaris Street Property", provided, however, the Port Authority in its sole discretion reserves the right to substitute up to three (3) acres contiguous to the Polaris Street Property and substantially similar to the three (3) acres being substituted, on written notice to Lessee, in order to accommodate the Port Authority's construction needs;

(c) the open area, and enclosed spaces shown in diagonal cross-hatching, as so shown on the sketches hereto attached, hereby made a part hereof, and marked "Exhibit C", containing approximately 26.62 acres of land, located between Marsh Street and Tyler Street, in Port Newark, together with all easements, rights of way, tideland rights, riparian rights or riparian grants benefiting the above described land, together with any buildings, structures, fixtures, improvements located thereon, hereinafter collectively referred to as the "Marsh Street Property", provided, however, the Port Authority in its sole discretion reserves the right not to deliver possession of the Marsh Street Property to Lessee;

(d) the land described below collectively referred to as the "Development Parcels", marked "Exhibit D-1", "Exhibit D-2" and "Exhibit D-3" and "Exhibit D-4" together with all easements and rights of way, tideland rights, riparian rights or riparian grants, buildings, structures, fixtures, improvements and other property owned by the Port Authority and benefiting the Development Parcels:

(1) the open area and the enclosed spaces shown in diagonal cross-hatching, all as so shown on sketches hereto attached, hereby made a part hereof, and marked "Exhibit D-1", containing approximately 32.98 acres of land located adjacent to and contiguous with the Existing Terminal Facility, together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority, collectively the "Phase 1 Development Parcel";

(2) the open area and the enclosed spaces shown in diagonal cross-hatching, all as so shown on sketches hereto attached, hereby made a part hereof, and marked "Exhibit D-2", containing approximately 18.06 acres of land located adjacent to and contiguous with the Existing Terminal Facility, together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority, collectively the "Phase 2 Development Parcel";

(3) the open area and the enclosed spaces shown in diagonal cross-hatching, all as so shown on sketches hereto attached, hereby made a part hereof, and marked "Exhibit D-3", containing approximately 16.49 acres of land located adjacent to and contiguous with the Existing Terminal Facility, together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority, collectively the "Phase 3 Development Parcel; and

(4) the open area and the enclosed spaces shown in diagonal cross-hatching, all as so shown on sketches hereto attached, hereby made a part hereof, and marked "Exhibit D-4", containing approximately 12.02 acres of land located adjacent to and contiguous with the Existing Terminal Facility, together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority, collectively the "Phase 4 Development Parcel"; and

(e) the open area, and enclosed spaces shown in diagonal cross-hatching, as so shown on the sketches hereto attached, hereby made a part hereof, and marked "Exhibit E", containing approximately 0.83 acres of land adjacent to the Existing Terminal Facility, located on Starboard Street, in Port Newark, together with all easements, rights of way, tideland rights, riparian rights or riparian grants benefiting the above described land, together with any buildings, structures, fixtures, improvements located thereon, hereinafter collectively referred to as the "Starboard Street Property"; and

(f) the open area, and enclosed spaces shown in diagonal cross-hatching, as so shown on the sketches hereto attached, hereby made a part hereof, and marked "Exhibit F", containing approximately 2.93 acres of land adjacent to the Existing Terminal Facility, located on Tyler Street, in Port Newark, together with all easements, rights of way, tideland rights, riparian rights or riparian grants benefiting the above described land, together with any buildings, structures, fixtures, improvements located thereon and specifically including those certain buildings known as Building 117 "Waterfront Commission" and Building 121 "Shimizaki" located thereon, hereinafter collectively referred to as the "Waterfront-Shimizaki Property".

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

Section 3. Term

(a) The initial term of the letting of the Premises under this Agreement (the "Term") shall be as follows:

(1) Lessee, prior to the date of this Agreement, has occupied, and currently continues to occupy, the Existing Terminal Facility pursuant to the Existing Lease and will continue to so occupy the Existing Terminal Facility, and pursuant to the terms of this Agreement, uninterruptedly, on and after the date hereof. For purposes of this Agreement, the Term with respect to the Existing Terminal Facility, shall commence at 12:01 A.M., on which date this Agreement has been fully executed by the Port Authority and Lessee and all consents necessary for the effectiveness of the Agreement by the Port Authority shall have been obtained and, unless sooner terminated, shall expire at 11:59 P.M. on the Initial Expiration Date.

(2) With respect to the Polaris Street Property, the Term shall commence, and the Polaris Street Property shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on March 1, 2011. The Term with respect to the Polaris Street Property shall expire at 11:59 P.M. on the Initial Expiration Date; provided, however, if the Port Authority delivers possession of the Marsh Street Property to Lessee, then the Term with respect to the Polaris Street Property shall expire on the Completion Date of the Marsh Street Property Development Work.

(3) With respect to the Marsh Street Property, the Term shall commence, and the Marsh Street Property shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on the date on which possession of the Marsh Street Property is delivered to Lessee by the Port Authority which is anticipated to occur on or about September 30, 2013 and which is subject to the Port Authority's reserved right not to deliver possession of the Marsh Street Property to Lessee. Subject to the preceding sentence, the Term with respect to the Marsh Street Property shall expire at 11:59 P.M. on the Initial Expiration Date.

(4) With respect to the Phase 1 Development Parcel, the Term shall commence, and the Phase 1 Development Parcel shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on the date on which possession of the Phase 1 Development Parcel is delivered to Lessee by the Port Authority which in no event shall be later than March 15, 2011, except with respect to the building known as Building 196 located on the Phase 1 Development Parcel, the Term for which shall commence no later than September 1, 2011. Tenant agrees that it shall provide the current tenant at Building 196 with access to such building until such tenant's lease has expired and has vacated Building 196. The Term with respect to the Phase 1 Development Parcel shall expire at 11:59 P.M. on the Initial Expiration Date.

(5) With respect to the Phase 2 Development Parcel, the Term shall commence, and the Phase 2 Development Parcel shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on the date on which possession of the Phase 2 Development Parcel is delivered to Lessee by the Port Authority following nine (9) months' notice to Lessee, which delivery in no event shall be later than January 1, 2014. The Term with respect to the Phase 2 Development Parcel shall expire at 11:59 P.M. on the Initial Expiration Date.

(6) With respect to the Phase 3 Development Parcel, the Term shall commence, and the Phase 3 Development Parcel shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on the date on which possession of the Phase 3 Development Parcel is delivered to Lessee by the Port Authority following nine (9) months' notice to Lessee, which delivery in no event shall be later than October 31, 2017. Upon the demolition of the improvements located on Phase 3 Development Parcel including the removal of all foundations, Lessee shall surrender (and the same shall no longer constitute a portion of the Phase 3 Development Parcel or of the Premises) to the Port Authority the land shown on "Exhibit D-3(i)" (the "New Roadway Parcel") attached hereto, and made a part hereof, on which the Port Authority will construct a 50-foot access roadway (the "New Roadway") running north to south connecting Calcutta Street to Starboard Street. Lessee shall, until such time as the Port Authority notifies Lessee in writing that such 50-foot access roadway has been completed and is open to the public, maintain and leave open to the public those portions of Export Street and Starboard Street lying within the Phase 3 Development Parcel as in existence on the date of this Agreement. In the event that the Port Authority has not completed construction of New Roadway by the later of the Rent commencement date for the Phase 3 Development Parcel and the date that is 18 months from Lessee's completion of demolition, foundation removal and surrender of the New Roadway Parcel by Lessee to the Port Authority, Base Rent for the acreage comprising the portions of Export Street and Starboard Street lying within the Phase 3 Development Parcel will abate until the completion of the New Roadway. The Term with respect to the Phase 3 Development Parcel shall expire at 11:59 P.M. on the Initial Expiration Date.

(7) With respect to the Phase 4 Development Parcel, the Term shall commence, and the Phase 4 Development Parcel shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on the date on which possession of the Phase 4 Development Parcel is delivered to Lessee by the Port Authority following nine (9) months' notice to Lessee, which delivery in no event shall be later than January 1, 2019, provided, however, that if the Port Authority is able to deliver possession of the Phase 4 Development Parcel as of January 1 2014, then the Phase 4 Development Parcel shall become part of the Premises and subject to the terms of this Agreement as of January 1, 2014. The Term with respect to the Phase 4 Development Parcel shall expire at 11:59 P.M. on the Initial Expiration Date.

(8) With respect to the Starboard Street Property, the Term shall commence, and the Starboard Street Property shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on the date on which possession of

the Starboard Street Property is delivered to Lessee by the Port Authority which is anticipated to occur on or about September 1, 2011. The Term with respect to the Starboard Street Property shall expire at 11:59 P.M. on the Initial Expiration Date.

(9) With respect to the Waterfront-Shimizaki Property (or each portion thereof as described below), the Term shall commence, and the Waterfront-Shimizaki Property shall become part of the Premises and subject to the terms of this Agreement, at 12:01 A.M. on the date on which possession of such property is delivered to Lessee by the Port Authority which is anticipated to be delivered on or about June 30, 2012. The Term with respect to the Waterfront-Shimizaki Property shall expire at 11:59 P.M. on the Initial Expiration Date. The Port Authority, prior to delivery of the Waterfront-Shimizaki Property, shall demolish the existing improvements thereon, including the removal of the existing building foundations, and remove all demolished material and debris from the Waterfront-Shimizaki Property, however the Port Authority does not intend to perform any rough grading, any back filling of any holes or trenches left after the removal of the existing building foundations or any paving or resurfacing, all of which are the responsibility of Lessee pursuant to Section 10.

(b) Promptly following each of above specified commencement dates the Port Authority and Lessee shall enter into a letter agreement in a form reasonably satisfactory to both parties setting forth the applicable commencement date for the relevant portion of the Premises. The failure of the parties to execute any such letter agreement shall not affect the validity of this Agreement or the commencement date of the relevant portion of the Premises, which shall be as set forth above.

(c) The Port Authority shall deliver possession of each Added Parcel free of all tenants or other occupants. The Port Authority agrees that it shall use commercially reasonable efforts to cause the current tenants at each of the Added Parcels to comply with the applicable provisions in their lease agreements with respect to vacation and surrender of the relevant Added Parcel. The Port Authority agrees that it shall not extend or renew any leases of the current tenants at each of the Added Parcels and that it shall not enter into any new lease with any Person with respect to each of the Added Parcels. The Port Authority further represents and warrants that none of the currently existing leases for portions of the Added Parcels expire by their terms on dates that are later than the anticipated delivery dates for each such portion of the Added Parcels as indicated in Section 3(a). In the event that the Port Authority, after the use of commercially reasonable efforts, is unable to cause a tenant at an Added Parcel to vacate and surrender such Added Parcel within twelve (12) months following the expiration of such tenant's lease agreement, the Port Authority agrees to institute and diligently prosecute legal action against such tenant as is necessary to cause such tenant to vacate and surrender the relevant premises.

(d) Provided Lessee shall not be in default of its obligations under this Agreement and subject to (i) the reductions in the Term resulting from Lessee's failure to timely invest the required Capital Expenditures in accordance with Section 11 and (ii) the adjustment of each Applicable Rental Rate in accordance with Section 7, Lessee shall

have the option, subject to Section 11 of this Agreement, by notice to the Port Authority given no less than six (6) months prior to the Initial Expiration Date, to extend the Term of the Lease for the Extended Term. Upon delivery of notice from Lessee exercising the option to extend the Term for the Extended Term, the Term of the Lease with respect to the Premises (excluding the Polaris Street Property, which will expire as set forth above) will be extended for a period of twenty (20) years, expiring on the Extended Expiration Date.

(e) If on the date set forth as the commencement of the term of the letting in paragraph (a) above, with respect to any one or more of the parcels described in subparagraphs (2) through (9), the Premises are not available or ready for occupancy or use by Lessee, by reason of the fact that the Premises or any part thereof, are in the course of construction, repair, alteration or improvement or by reason of the fact that the occupant of the Premises, or a part thereof, failed or refused to deliver possession, or by reason of any causes or conditions beyond the control of the Port Authority, the Port Authority may postpone the letting and the Port Authority shall not be subject to any liability for such postponement or failure to give possession on such date, provided, however, that in no event shall the Port Authority fail to deliver the Phase 1 Development Parcel (other than the building known as Building 196 located thereon) on or before March 15, 2011, and with respect to all of the other Added Parcels shall take all commercially reasonable actions to enable the Added Parcels to be delivered as anticipated by Lessee on the date set forth in this Agreement or as soon thereafter as possible. Subject to the terms of this Agreement, no such postponement or failure to give possession on such date shall affect the validity of this Agreement or the obligations of Lessee hereunder. In the event of such postponement, the commencement date of the Term of the relevant parcel (other than the Phase 1 Development Parcel) shall not occur, and rental shall not commence, until possession of the Premises is tendered by the Port Authority to Lessee, such tender to be effective upon five (5) business days' prior notice from the Port Authority to Lessee. Notwithstanding any postponement in the date set forth in paragraph (a) as the commencement of the Term of the relevant parcel, however, the Expiration Date shall in no event be postponed. For the avoidance of doubt, this paragraph (e) shall not modify, supersede or diminish in any way the Port Authority's agreement in paragraph (c) above not to extend or renew any currently existing leases for portions of the Added Parcels or to use commercially reasonable efforts and if necessary legal action to cause any existing tenants to vacate the Added Parcels.

(f) Notwithstanding the foregoing, if at any time prior to the delivery of possession of the Marsh Street Property to Lessee, the Port Authority determines, in its sole discretion, that (1) it requires the Polaris Street Property for other purposes and (2) it shall not deliver possession of the Marsh Street Property to Lessee pursuant to Section 2(c) above, the Port Authority shall deliver possession to Lessee of another parcel of land that is either adjacent to the Existing Terminal Facility and Added Parcels or located somewhere else on the Port Newark peninsula, that is in all respects substantially similar to the Marsh Street Property, including with respect to the cost to develop such substitute property. The parties recognize that Lessee estimates the Marsh Street Property

Development Work will cost approximately $6,000,000 to complete, however, in the event that the Marsh Street Property becomes part of the Premises, Lessee shall be responsible for the cost to complete the Marsh Street Property Development Work in accordance with this Agreement, regardless of the cost.

Section 4. Base Rent

(a) Lessee shall pay, with respect to the land from time to time comprising the Premises, Base Rent to the Port Authority, during the Term until the Initial Expiration Date, at the annual per acre rate of Forty-Eight Thousand Four Hundred Fifty Five Dollars and No Cents ($48,455.00), subject to annual increases of 2% as specified on Schedule A attached hereto, in equal monthly installments, and commencing on the dates specified below, as follows:

(1) For the Existing Terminal Facility, beginning on the Commencement Date.

(2) For the Polaris Street Property, commencing on March 1, 2011 and ending on that date on which the Port Authority delivers the Marsh Street Property.

(3) For the Marsh Street Property (or a substitute property delivered pursuant to Section 3(f)), payment of Base Rent shall commence thirty-three (33) months after the Port Authority delivers the Marsh Street Property (or a substitute property delivered pursuant to Section 3(f)).

(4) For the Development Parcels, commencing as follows:

(i) Payment of Base Rent with respect to the acreage in the Phase 1 Development Parcel will commence on June 1, 2013 (regardless of whether the Phase 1 Development Work is complete on such date).

(ii) Payment of Base Rent with respect to the acreage in the Phase 2 Development Parcel will commence on the earlier to occur of (i) the Completion Date with respect to the Phase 2 Development Work; and (ii) twenty-four (24) months after such property is delivered to Lessee (regardless of whether the Phase 2 Development Work is complete on such date).

(iii) Subject to Section 3(a)(6), Payment of Base Rent with respect to the acreage in the Phase 3 Development Parcel will commence on the earlier to occur of (i) Completion Date with respect to the Phase 3 Development Work; and (ii) twenty-four (24) months after such property is delivered to Lessee (regardless of whether the Phase 3 Development Work is complete on such date).

(iv) Payment of Base Rent with respect to the acreage in the Phase 4 Development Parcel will commence on the earlier to occur of (i) Completion Date with respect to the Phase 4 Development Work; and (ii) twenty-four (24) months after such property is delivered to Lessee (regardless of whether the Phase 4 Development Work is complete on such date).

(5) For the Starboard Street Property, payment of Base Rent will commence on the earlier to occur of (i) Completion Date with respect to the Starboard Street Property Development Work and (ii) twelve (12) months after such property is delivered to Lessee (regardless of whether the Starboard Street Property Development Work is complete on such date).

(6) For the Waterfront-Shimizaki Property, payment of Base Rent will commence on the earlier to occur of (i) Completion Date with respect to the Waterfront-Shimizaki Property Development Work and (ii) twelve (12) months after such property is delivered to Lessee (regardless of whether the Waterfront-Shimizaki Property Development Work is complete on such date).

(b) All Rent payments due and payable under this Agreement shall be payable by Lessee to the Port Authority, (and with respect to Base Rent and Container Throughput Rental without notice and demand), and without any set-off, counterclaim, abatement or deduction whatsoever, except as may be expressly set forth in this Agreement, in lawful money of the United States which is legal tender in payment of all debts and dues, public and private, at the time of payment. Base Rent shall be payable in equal monthly installments, in advance, on the first day of each month, however the first month's payment of Base Rent for each applicable portion of the Premises, shall be appropriately prorated if the Base Rent is not due and payable on the first day of a month. All other Rent due hereunder shall be payable at the times and in the manner as set forth in this Agreement.

(c) From and after the Initial Expiration Date until the Extended Expiration Date, Base Rent will be reset and calculated, or continue to escalate, in accordance with Section 7 of this Agreement..

Section 5. Port Throughput Rental Adjustment

(a) Simultaneously with the execution of this Agreement, MSC Mediterranean Shipping Company S.A. ("MSC"), has entered into a certain Throughput Guaranty Agreement for the benefit of the Port Authority (the "MSC Guaranty"). The MSC Guaranty requires MSC to transport to or from the Port a certain minimum number of "qualified containers" (as such term is defined in the MSC Guaranty), failing which MSC has agreed to pay to the Port Authority, on a bi-annual basis, an amount equal to the shortfall below such minimum number of containers multiplied by the then applicable Tier 2 Rental Rate (the "MSC Port Guaranty Payment").

(b) In the event that (i) MSC becomes liable to the Port Authority for a MSC Port Guaranty Payment at any time, or from time to time, under the MSC Guaranty, (ii) the Port Authority is unable to collect a MSC Guaranty Payment following its written procedure for maintaining accounts receivable, which requires certain communications and legal notices at prescribed intervals for a period of 105 calendar days, or any successor to such procedure (the "Port Authority Collection Procedure"); then, on the 106th day following the date on which the MSC Port Guaranty Payment was due and payable, the amount of the MSC Port Guaranty Payment shall become Rent under this Agreement, payable by PNCT in twelve equal monthly installments due each month during the Lease Year in which such MSC Guaranty Payment is due and payable; provided that payment for each month elapsed since the beginning of that Lease Year shall be due in full on such 106th day, with the remainder to be paid monthly thereafter until paid in full at the end of such Lease Year.

(c) Lessee's obligation to pay the MSC Port Guaranty Payment shall be a contingent Rent obligation on the date that the MSC Guaranty Payment is due and payable, subject to MSC's timely payment of the same. The Port Authority will provide to Lessee contemporaneous copies of all correspondence, and notify Lessee of any other communications with MSC, regarding the MSC Guaranty generally and any MSC Port Guaranty Payment. Lessee shall have the option, in Lessee's sole discretion, to pay any unpaid MSC Guaranty Payment prior to the expiration of the 105 day period following the date that MSC Guaranty Payment is due and payable.

(d) To the extent that Lessee pays in full the outstanding MSC Guaranty Payment pursuant to paragraph (b) or (c) above, Lessee shall be subrogated to the rights of the Port Authority against MSC for any unpaid MSC Guaranty Payment under the MSC Guaranty. The Port Authority agrees to reasonably cooperate with Lessee in Lessee's collection efforts against MSC for the MSC Guaranty Payment in the event that Lessee elects to pursue MSC directly.

(e) Following Lessee's payment in full of the outstanding MSC Guaranty Payment pursuant to paragraph (b) or (c) above, the Port Authority will, at the written direction of Lessee or any member of Lessee, take commercially reasonable actions (including the commencement of litigation) in its own name against MSC to attempt to collect the MSC Guaranty Payment. The out-of-pocket costs and expenses of such collection actions, including costs of litigation and attorney's fees, shall be at the sole cost and expense of Lessee or, if applicable, the member of Lessee so directing the Port Authority to take such action, with an expense deposit in such amount as is reasonably acceptable to the Port Authority to be held by the Port Authority in advance of the commencement of any such action. Any amounts so collected, up to the full amount of the unpaid MSC Guaranty Payment together with any collection costs awarded to the Port Authority (to the extent such amounts were in fact paid to the Port Authority by Lessee or its member), will be paid to Lessee (or with respect to collection costs, to Lessee or its member, as applicable) promptly upon receipt by the Port Authority of the same. The Port Authority and Lessee (or its member, if applicable) will mutually agree

upon suitable and appropriate collection actions, with outside counsel selected by Lessee (or its member, if applicable) and reasonably acceptable to the Port Authority.

(f) In the event that a court of competent jurisdiction shall determine that the Port Authority was not entitled to all or a portion of any MSC Guaranty Payment paid by Lessee to the Port Authority pursuant to this Section as a result solely from either the Port Authority's failure to meet its obligations under the MSC Guaranty or an error in the calculation of the applicable Port Throughput Shortfall Number or Port Throughput Fee (including any adjustment in MSC Guaranty Payment amount as a result of such failure to meet obligations or error in calculation), but for no other reason, and subject to any right the Port Authority may have to appeal such decision, the Port Authority shall refund (net of any outstanding Rent then due under this Agreement) to Lessee the amount that such court determines was not rightfully due from MSC to the Port Authority.

(g) Lessee, subject to the consent of the Port Authority, which shall not be unreasonably withheld, shall have the right to procure a guaranteed throughout commitment for the benefit of the Port Authority from a new ocean carrier in order to potentially mitigate Lessee's obligations under this Section 5. Such additional throughput guaranty shall be in the form of the MSC Guaranty, or as otherwise approved by the Port Authority in its discretion, but shall only reduce Lessee's obligations under this Section from and after the date on which such additional throughput guaranty is executed and consented to by the Port Authority and only to the extent that such new ocean carrier does, in fact, satisfy the throughput and/or payment obligations under the MSC Guaranty. Nothing contained in this paragraph (g), or in any additional throughput guaranty, shall in any way reduce of diminish the direct obligations of MSC to the Port Authority under the MSC Guaranty. The Port Authority shall not be obligated to consent to any additional throughput guaranty that the Port Authority determines represents a commitment of throughput volume that already substantially exists within the Port or that has already been otherwise committed to the Port Authority.

(h) In the event that the Port Authority receives payment from or on behalf of MSC for all or a portion of any particular MSC Guaranty Payment previously paid by Lessee, provided no further MSC Guaranty Payment shall be outstanding at the time of receipt by the Port Authority of such payment, the Port Authority shall refund such amount to Lessee.

(i) The Port Authority shall, upon the request of Lessee, promptly provide Lessee with copies of all information and documentation provided to the Port Authority by MSC relating to all Carrier's Containers for any Throughput Year (as defined in the MSC Guaranty) and copies of all notices or invoices sent by the Port Authority to MSC relating to any claimed shortfall in any Throughput Year as defined in the MSC Guaranty.

(j) Except as otherwise provided herein, Lessee expressly waives any and all suretyship defenses. Lessee's obligations under this Section 5 shall not be released or discharged, in whole or in part, or otherwise affected by: (i) the failure of the

Port Authority to assert any claim or demand or to enforce any right or remedy against MSC with respect to their obligations, except as provided in paragraphs (b) and (e) above, (ii) any lack of validity or enforceability of the MSC Guaranty or the consideration therefore; (iii) bankruptcy or insolvency of MSC; (iv) any change in the existence, structure or ownership of MSC; or (v) the existence of any claim, set-off or other rights which Lessee may have at any time against MSC. Lessee acknowledge that it will receive substantial direct and indirect benefits from the transactions contemplated by this Agreement and the MSC Guaranty and that the waivers set forth herein are knowingly made in contemplation of such benefits and after the advice of counsel.

(k) The Port Authority shall not waive any right or remedy under the MSC Guaranty nor amend the MSC Guaranty without the written approval of Lessee.

Section 6. Container Throughput Rental

(a) Lessee shall pay to the Port Authority a container throughput rental (the "Container Throughput Rental") for each Lease Year from the Commencement Date through the Expiration Date equal to the sum of (1) the product obtained by multiplying the Tier 1 Rental Rate applicable for the relevant Lease Year by the Tier 1 Number of Containers loaded onto or discharged from vessels berthing at the Premises during such Lease Year; and (2) the product obtained by multiplying the Tier 2 Rental Rate applicable for the relevant Lease Year by the Tier 2 Number of Containers loaded onto or discharged from vessels berthing at the Premises during such Lease Year.

(b) The computation of the Container Throughput Rental for each Lease Year, or a portion of a Lease Year, shall be individual to such Lease Year, or such portion of a Lease Year, and without relation to any other Lease Year, or any other portion of any Lease Year. The Container Throughput Rental shall be payable on a monthly basis, as set forth in paragraph (d) of this Section, based on the number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the month.

(c) Lessee shall pay the Container Throughput Rental in arrears as follows: on the twentieth (20) day of the first month following the Commencement Date, and on the twentieth (20) day of each and every month thereafter with such payments terminating on the last day of the month following the month in which the Expiration Date occurs. Simultaneously with each payment, Lessee shall render to the Port Authority a statement certified by a responsible officer of Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the preceding month and the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises from the date of the commencement of the Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports reasonably satisfactory to the Port Authority to substantiate the statement showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the month for which the report is made, and measures

relating to containers handled at and discharged to and from the Premises and such other information and documentation as may be reasonably required from time to time by the Port Authority. Whenever any monthly statement shall show that the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the Lease Year for which the report is made is in excess of the Throughput Threshold Number, Lessee shall pay to the Port Authority at the time of rendering such statement an amount equal to the applicable Container Throughput Rental.

(d) Upon any termination of the letting hereunder prior to the Expiration Date (even if stated to have the same effect as expiration), the number of Qualified Containers shall be reported and the Container Throughput Rental shall be paid on the last day of the first month following the month in which the effective date of such termination occurs, as follows: Lessee shall render to the Port Authority a statement certified by a responsible officer of Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the Lease Year in which the effective date of termination falls; the payment then due on account of all Container Throughput Rental for the Lease Year in which the effective date of termination falls shall be the excess of the Container Throughput Rental for such Lease Year, computed as follows, over the total of all Container Throughput Rental payments previously made by Lessee for such Lease Year: an amount equal to the sum of (1) the product obtained by multiplying the Tier 1 Rental Rate by the Tier 1 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during such Lease Year, and (2) the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during such Lease Year, after adjusting the Throughput Threshold Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers as follows: multiplying each number by a fraction, the numerator of which shall be the number of days from the commencement of such Lease Year to the effective date of termination and the denominator of which shall be 365. Any amount of the Container Throughput Rental determined to be owed to the Port Authority pursuant to such calculation shall be paid by Lessee at the time of rendering the statement.

(e) From the Commencement Date until the Rail Fly-over Completion Date, Lessee shall be entitled to a credit (the "Rail Credit") from the Port Authority against Container Throughput Rental in an amount equal to the Tier 1 Rental Rate for each Qualified Container moved by Lessee to or from the Facility via rail, up to a maximum of 125,000 Qualified Containers moved via rail per Lease Year, or such pro rata portion for any applicable partial Lease Year based on the number of days elapsed during the relevant Lease Year divided by 365 days. The Rail Credit will be calculated and applied as follows: Lessee shall indicate, on each monthly statement provided in accordance with paragraph (d) above, the number of Qualifying Containers moved by rail for such month as well as the aggregate number of Qualifying Containers moved by rail in each applicable Lease Year. For purposes of calculating the Container Throughput Rental due for each month in which the Rail Credit is applicable, the monthly number of Qualifying Containers and aggregate number of Qualifying Containers in any applicable

Lease Year and will be reduced by the number of Qualifying Containers moved by rail for each applicable month and in the aggregate for each applicable Lease Year, up to a maximum of 125,000 Qualified Containers (or pro rata portion thereof) per applicable Lease Year.

(f) Except as provided in paragraph (e) above, the Container Throughput Rental payable under this Section shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 7. Extended Term Rental Amounts

(a) In the event that the Term of this Agreement is extended pursuant to Section 3, on December 1, 2030 the Base Rental Rate with respect to the Existing Terminal Facility, the Development Parcels, the Starboard Street Property, the Waterfront-Shimizaki Property and any other property from time to time added to the Premises that is or becomes contiguous with the Existing Terminal Facility or the Development Parcels and the Tier 1 Rental Rate will be reset in accordance with this Section 7 and on each December 1 thereafter, continuing through the remainder of the Term, the Base Rental Rate and the Tier 1 Rental Rate (as applicable, the "Applicable Rental Rate") payable by Lessee will be increased by the Percentage Increase, i.e., the new Applicable Rental Rate will be the sum of the Applicable Rental Rate in effect immediately prior to such date (taking into account all prior increases pursuant to this subsection (a)) and the product of the Percentage Increase and Applicable Rental Rate in effect immediately prior to such date; provided, however, that in no event, except with respect to the new Applicable Rental Rate taking effect on December 1, 2030, will the new Applicable Rental Rate commencing as of December 1 during the Extended Term be less than one hundred and two percent (102%), or greater than one hundred and three and one quarter percent (103.25%), of the Applicable Rental Rate payable for the year immediately prior to each such December 1 date.

(b) In the event the Index to be used in computing any adjustment referred to in paragraph (a) of this Section is not available on the effective date of such adjustment, Lessee shall continue to pay the Base Rent and Container Throughput Rental at the annual or per unit, as applicable, rate then in effect subject to retroactive adjustment at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index, provided that the Port Authority is then using such substitute Index for all other facilities in the Port. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised or the United States Department of Labor shall cease to publish the Index then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine, provided that the Port Authority is then using such substitute Index for all other facilities in the Port.

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

(d) For the avoidance of doubt, in the event that the Term of this Agreement is extended pursuant to Section 3, the Base Rental Rate with respect to the Existing Terminal Facility, the Development Parcels, the Starboard Street Property, the Waterfront-Shimizaki Property and any other portion of the Premises that is or becomes contiguous with the Existing Terminal Facility or the Development Parcels, and the Tier 1 Rental Rate, will be reset based on the calculation set forth in this Section 7, which for the Lease Year beginning December 1, 2030 depending on each annual Percentage Increase, will result in, regardless of the rates in effect immediately prior thereto, (i) a per acre Base Rental Rate of between $121,253 and $156,596, and (ii) a per container Tier 1 Rental Rate of between $31.83 and $41.11. Each Applicable Rental Rate will then continue to escalate annually in accordance with this Section 7.

(e) Notwithstanding the foregoing, in the event that the Term of this Agreement is extended pursuant to Section 3, the Base Rental Rate with respect to the Polaris Street Property (until such time as the Polaris Street Property ceases to be a portion of the Premises) and the Marsh Street Property or any replacement parcel of land delivered to Lessee by the Port Authority pursuant to Section 3(f), to the extent that the Polaris Street Property, Marsh Street Property or replacement parcel is not contiguous with the Existing Terminal Facility or the Development Parcels, shall continue to escalate annually at the rate of 2% as specified on Schedule A.

Section 8. Non-Container Cargo Throughput Rental

(a) Lessee shall not be permitted to berth any vessel containing Non-container Cargo or handle Non-container Cargo at the Premises without in each such case, the prior written consent of the Port Authority, with the giving, withholding and withdrawing of such consent to be within the sole discretion of the Port Authority.

(b) Subject to the consent rights in subsection (a) above, Lessee shall pay to the Port Authority, as Non-container Cargo throughput rental for each Lease Year from the Commencement Date through the Expiration Date, the wharfage rates (as set forth in the Port Authority's tariff, as incorporated in FMC SCHEDULE PA-10, as the same or any successor tariff may be amended from time to time) for all Non-container Cargo handled at the Premises ("Non-container Cargo Throughput Rental").

(c) Notwithstanding the foregoing subsections (a) and (b), Lessee may, without the consent of the Port Authority and without payment of Non-container Cargo Throughput Rental, permit the berthing and handling of military vessels (or commercial vessels carrying exclusively military cargo) and such ancillary cargo carried aboard a container vessel as is customarily carried by container vessels and handled by container terminal operators.

Section 9. Rights of User

(a) Lessee shall use the Premises exclusively for the operation of a marine terminal facility which use shall be for activities relating to the receipt, handling and storage of loaded or empty containers ("Marine Container Terminal Facility"). The following activities, and no others, shall be permitted at the Premises: (i) the loading and unloading predominately of cargo housed in containers, and also of non-containerized cargo, such bulk cargo as, subject to Section 8(a) of this Agreement, shall have the prior and continuing consent of the Port Authority, and ships' stores, supplies and gear on or from seagoing vessels and other craft permitted to be berthed in the berthing area; (ii) the receipt, handling, delivery, and storage incidental to the transportation of cargo (whether or not in cargo containers) transported or to be transported by seagoing vessels permitted to be berthed in the berthing area, and of ships, stores, supplies and gear for such vessels; (iii) the storage and repair of cargo-containers, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of Lessee under this Agreement; (iv) the parking of motor vehicles owned or operated by Lessee or by the employees of Lessee or by persons doing business with it at the Premises for the purposes set forth in this Section; and (v) the maintenance of office space solely for purposes incidental to the operations of Lessee set forth in this Section.

(b) Lessee shall have the right to berth in the berthing area seagoing vessels for which Lessee acts as stevedore or terminal operator, and operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority, carrying or about to carry general cargo, and tugboats, barges, lighters and other harbor craft serving such seagoing vessels, for loading or discharge of cargo, ships' stores, supplies and gear. Such loading and discharge from seagoing vessels may be accomplished in the berthing area through the medium of barges, lighters, and other harbor craft moored inshore or offshore. Lessee shall have the exclusive right to collect dockage and wharf usage charges from seagoing vessels and all other craft, subject to all the terms and provisions of this Agreement. Lessee shall not use or permit the use of the berthing area except as hereinabove provided.

Section 10. Lessee's Construction Work

(a) Except as expressly provided in this Section 10, Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the Term, or install any fixtures

without the prior written consent of the Port Authority, which consent shall not be unreasonably withheld, conditioned or delayed. The procedures for such construction work shall be the same as for Lessee's Construction Work as set forth in this section.

(b) Except for Lessee's personal property, trade fixtures and equipment (including, without limitation, any cranes, regardless of whether such cranes are affixed to the Premises), in the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and Lessee shall have no right to remove the same either during the Term or at the expiration thereof unless the Port Authority, at any time prior to or upon the expiration of the Term, shall give notice to Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of Lessee to comply with such notice, the Port Authority may effect the removal or change, and Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

(c) (1) Lessee and the Port Authority understand that development and construction work is required with respect to Lessee's occupancy of and operations on the Premises, and Lessee agrees to and shall perform such development and construction work with respect to the Premises ("Lessee's Construction Work") described below. Lessee shall perform Lessee's Construction Work at its sole cost and expense and the Port Authority shall have no obligation to pay for any of Lessee's Construction Work.

(2) Lessee shall develop and construct improvements on the Added Parcels for use as a Marine Container Terminal Facility as permitted under Section 9 of this Agreement (such facilities, the "Additional Terminal Facilities") including, without limitation, the removing, rerouting, rebuilding and/or replacement of underground utilities to support such operations and all asbestos abatement at and in existing structures, subject to Section 13 of this Agreement, but in no event in connection with cold ironing except as provided in this Agreement. Such development and construction of Additional Terminal Facilities shall be contiguous with and/or complementary to the Marine Container Terminal Facility presently located on the Existing Terminal Facility portion of the Premises and shall be performed in phases, in accordance with plans and specifications approved by the Port Authority in its discretion, not to be unreasonably withheld, conditioned or delayed, as follows:

(i) Lessee has delivered to the Port Authority, prior to the date of this Agreement, conceptual plans for Lessee's development of the Marine Container Terminal Facility, including the Existing Terminal Facility and the Added Parcels, together with an estimated timeline for phased completion of all of Lessee's Construction Work, which conceptual plans have been reviewed and approved by the Port Authority.

(ii) Upon delivery by the Port Authority of the Phase 1 Development Parcel, Lessee shall develop and construct improvements on the Phase 1 Development Parcel for use as a Marine Container Terminal Facility (the "Phase 1 Development Work"). Lessee shall submit plans and specifications for the Phase 1 Development Work to the Port Authority, for its approval no later than twelve (12) months after the Commencement Date.

(iii) Lessee shall develop and construct improvements on the Phase 2 Development Parcel for use as a Marine Container Terminal Facility (the "Phase 2 Development Work"). Lessee shall submit plans and specifications for the Phase 2 Development Work to the Port Authority for its approval no later than six (6) months after the Phase 2 Development Parcel is delivered to Lessee.

(iv) Lessee shall develop and construct improvements on the Phase 3 Development Parcel for use as a Marine Container Terminal Facility (the "Phase 3 Development Work"). Lessee shall submit plans and specifications for the Phase 3 Development Work to the Port Authority for its approval no later than six (6) months after the Phase 3 Development Parcel is delivered to Lessee.

(v) Lessee shall develop and construct improvements on the Phase 4 Development Parcel for use as a Marine Container Terminal Facility (the "Phase 4 Development Work"). Lessee shall submit plans and specifications for the Phase 4 Development Work to the Port Authority for its approval no later than six (6) months after the Phase 4 Development Parcel is delivered to Lessee.

(vi) Lessee shall develop and construct improvements on the Starboard Street Property for use as a Marine Container Terminal Facility (the "Starboard Street Property Development Work"). Lessee shall submit plans and specifications for the Starboard Street Property Development Work to the Port Authority for its approval no later than six (6)) months after the Starboard Street Property is delivered to Lessee.

(vii) Lessee shall develop and construct improvements on the Marsh Street Property for use as a Marine Container Terminal Facility (the "Marsh Street Property Development Work"). Lessee shall submit plans and specifications for the Marsh Street Property Development Work to the Port Authority for its approval no later than six (6) months after the Marsh Street Property is delivered to Lessee.

(viii) Lessee shall develop and construct improvements on the Waterfront-Shimizaki Property for use as a Marine Container Terminal Facility (the "Waterfront-Shimizaki Property Development

Work"). Lessee shall submit plans and specifications for the Waterfront-Shimizaki Property Development Work to the Port Authority for its approval no later than six (6) months after the Waterfront-Shimizaki Property is delivered to Lessee.

(ix) The Completion Date for completion of all of the development work to be done on the Added Parcels as set forth above, shall be December 31, 2023, unless any portion of the Added Parcels is delivered to Lessee by the Port Authority after January 1, 2019, then with respect to such portion only, the Completion Date shall be four (4) years after the date of delivery of such portion of such Added Parcel.

(3) In the event that the Port Authority shall, in its reasonable judgment, require all other marine container terminal tenants in the Port to develop and install such infrastructure as may be necessary to support the provision of cold-ironing services at the berths, Lessee agrees that it will retro-fit the berth adjacent to the Premises with such necessary infrastructure and/or provide such cold-ironing services, as so required of the other marine container terminal tenants in the Port. The Port Authority shall enforce such requirement against all marine container terminal tenants in a non-discriminatory manner.

(d) With respect to Lessee's Construction Work, Lessee shall indemnify and hold harmless the Port Authority, and its Commissioners, officers, agents and employees against the following distinct and several risks and all injuries, damages and loss suffered by reason thereof, whether they arise from acts or omissions of Lessee, any contractors of Lessee, the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, excepting only risks which result solely from affirmative negligent or willful acts of the Port Authority, its Commissioners, officers, agents or employees subsequent to commencement of the work:

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

(2) The risk of death, injury or damage, direct or consequential, to the Port Authority, and its Commissioners, officers, agents and employees, and to its or their property, arising out of or in connection with the performance of Lessee's Construction Work; and

(3) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of Lessee's Construction Work.

(e) Prior to the commencement of any of Lessee's Construction Work, Lessee shall submit to the Port Authority for its written approval a construction

application ("Lessee's Construction Application") in the form supplied by the Port Authority, and containing such terms and conditions consistent within this Agreement as the Port Authority may include, setting forth in detail by appropriate plans and specifications the work Lessee proposes to perform and the manner of and estimated time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by Lessee shall identify each of the items constituting Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by Lessee. Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for Lessee's Construction Work. The plans and specifications to be submitted by Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of Lessee's submissions under this Section, Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of Lessee's Construction Application and plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find reasonably necessary. Each Lessee Construction Application and plans and specifications and/or revision or modification thereof shall be prepared in accordance with the highest professional standards, of uniformly high quality and well coordinated with respect to all engineering and architectural disciplines. Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor, and the contract such contractor is operating under, have been approved by the Port Authority. Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and Lessee's Construction Application approved by the Port Authority. Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (m) and (n) of this Section and performance bonds standard in the industry and reasonably acceptable to the Port Authority with respect to completion of the work. All of Lessee's Construction Work shall be performed by Lessee in accordance with Lessee's Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon final completion of all of Lessee's Construction Work, Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of Lessee and by the architect or engineer who sealed Lessee's plans pursuant to the provisions of this paragraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and Lessee shall supply the Port Authority with one (1) set of as-built drawings of Lessee's Construction

Work in such form as the Port Authority shall determine. Lessee shall keep said drawings current during the Term. No changes or modifications to Lessee's Construction Work shall be made without the prior written consent of the Port Authority. Following its receipt of Lessee's certificate, the Port Authority shall promptly inspect Lessee's Construction Work and unless such certification is not correct, or the Port Authority determines that the Premises is unsuitable for occupancy and use by Lessee, a certificate of final completion shall be delivered to Lessee by the Port Authority.

(f) Except as set forth in Section 10(g) below, Lessee shall not commence any portion of Lessee's Construction Work until Lessee's Construction Application and plans and specifications covering such work, referred to in Section 10(c), have been finally approved by the Port Authority.

(g) If Lessee desires to commence construction of portions of Lessee's Construction Work prior to the completion of and approval by the Port Authority of Lessee's Construction Application and plans and specifications covering all of such Lessee's Construction Work, Lessee shall submit to the Port Authority a separate Lessee's Construction Application for each portion of Lessee's Construction Work Lessee so desires to commence (each such portion of Lessee's Construction Work a "Partial Approval Work") which shall be executed by an authorized officer of Lessee and shall be accompanied by plans, specifications, drawings, and data with respect to such portion of Lessee's Construction Work (the plans, specifications, drawings, and data covering each such portion of Lessee's Construction Work, the "Partial Approval Work Plans" with respect to such portion of Lessee's Construction Work) setting forth in detail the work to be performed in connection with each such portion of Lessee's Construction Work. The Port Authority shall have full and complete discretion as to whether to permit Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review Lessee's Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of Lessee's Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

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

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the City of Newark, which may pertain to the Partial Approval Work to be performed and which Lessee is required to comply with pursuant to this Agreement.

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

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

(5) The fact that Lessee has performed any item of Partial Approval Work and that the Port Authority has consented to the performance thereof shall not affect or limit the obligations of Lessee under this Agreement with respect to any of Lessee's Construction Work. Lessee specifically understands that neither the Port Authority's approval of any Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work nor the performance by Lessee of any item of Partial Approval Work pursuant to such approval shall obligate the Port Authority to approve a construction application and plans and specifications submitted by Lessee for the balance of any Lessee Construction Work or shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent Partial Approval Work to be performed. Without limiting the generality of the provisions of this paragraph (g), it is specifically understood that the Port Authority may withhold its approval of a construction application and Partial Approval Work Plans covering any item of Partial Approval Work if the Port Authority determines that review of subsequent items of Partial Approval Work is required before the Port Authority can approve, reject, or comment upon such Partial Approval Work Plans.

(6) In the event that in the good faith opinion of the Port Authority Lessee at any time during the performance of any portion of any item of Partial Approval Work under the approval granted by the Port Authority pursuant to this paragraph shall fail to comply with all of the provisions of this Agreement with respect to such work or shall fail to comply with the provisions of Lessee's Construction Application covering such work and the plans and specifications forming a part thereof, or shall fail to comply with any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the performance of such item of Partial Approval work,

or if in the Port Authority's opinion Lessee shall be in breach of any of the provisions, of this Agreement covering such work or shall be in breach of any of the provisions of Lessee's Construction Application and plans and specifications covering the performance of such work, or shall be in breach of any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the work, the Port Authority shall have the right to require Lessee to cease all or such part of such item of the Partial Approval Work as is being performed in violation of this Agreement, Lessee's Construction Application and plans and specifications, or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, Lessee shall promptly cease performance of the portion of the Partial Approval Work specified. Lessee shall thereupon submit to the Port Authority for its written approval Lessee's proposal for making modifications, corrections or changes in or to the item of Partial Approval Work that has been or is to be performed so that the same will comply with the provisions of this Agreement, Lessee's Construction Application and plans and specifications, or the conditions of the Port Authority's approval covering such work. Lessee shall not commence construction of the portion of the Partial Approval Work that has been halted until it has received written approval of the proposed modifications, corrections or changes.

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

(h) Without limiting the generality of any of the provisions of this Agreement, Lessee's Construction Work (including any Partial Approval Work performed by Lessee) shall be performed in such a manner that there will be at all times during construction a minimum of air pollution, water pollution or any other type of pollution, and a minimum of noise emanating from, arising out of, or resulting from construction work generally, taking into account the nature of the work to be performed and the status of the Premises as a pre-existing industrial property.

(i) Subject to the provisions of this Agreement, Lessee shall construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth in this paragraph, and,

without limiting the generality of the foregoing, such construction shall be subject to the Port Authority's review and approval in accordance with the provisions of this Section.

(j) Without limiting the generality of the provisions of this Section, Lessee shall be solely responsible for the plans and specifications used by it and submitted with Lessee's Construction Application, and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of Lessee's Construction Work or for the contracts for the performance thereof entered into by Lessee. Any warranties extended or available to Lessee in connection with any of Lessee's Construction Work shall be for the benefit of the Port Authority as well as Lessee. Lessee shall conduct no public operations in the Premises with respect to any improvements, fixtures or equipment constituting Lessee's Construction Work or a portion thereof until the Port Authority shall have notified Lessee in writing that Lessee's Construction Work or such portion thereof has been completed or substantially completed to its satisfaction, which notice shall be promptly delivered to Lessee by the Port Authority after completion of such construction work. In the event of any inconsistency between the provisions of this Agreement and those of Lessee's Construction Application, the provisions of this Agreement shall control; provided however, that if the Port Authority specifically approves of any activity in connection with a Construction Application for which such approval is required in the Agreement, Lessee shall be allowed to rely on such approval.

(k) Without limiting or affecting any other term or provision of this Agreement but subject to Section 20(f), Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Premises by Lessee and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by Lessee in the Premises and shall do all preventive maintenance and make all repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear and tear which does not (i) adversely affect the efficient or proper utilization of any part of the Premises, or (ii) adversely affect the appearance of any part of the Premises.

(l) Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, material-men and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of any of Lessee's Construction Work, and shall use reasonable efforts to cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Premises or any part thereof, nor to prevent Lessee from contesting any such liens or claims in good faith.

(m) In addition to all policies of insurance otherwise required by this Agreement, Lessee shall procure and maintain or cause to be procured and maintained in effect during the performance of Lessee's Construction Work and any other construction work performed by Lessee at the Premises:

(1) Commercial General Liability Insurance including, but not limited to, coverage for Products Liability-Completed Operations and for Broad Form Property Damage and Independent Contractor coverage, with a contractual liability endorsement covering the obligations assumed by Lessee under Section 10(b), which coverage shall not exclude claims arising out of or in connection with work performed within fifty (50) feet of railroad property, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $25,000,000.00; said insurance shall also include coverage for explosion, collapse and underground property damage hazards.

(2) Protection and Indemnity Insurance, if Lessee's work involves the ownership, maintenance, operation, use, loading or unloading of watercraft, with a minimum combined single limit coverage for bodily injury and property damage of $25,000,000.00.

(3) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with minimum combined single limit coverage for bodily injury and property damage of $3,000,000.00.

(4) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5,000,000.00, including coverage for environmental clean-up on land, in air and on water.

(5) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (i) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - Jones Act, maritime (including coverage for Masters or Members of the Crew of Vessels) and (ii) Coverage - B under the Federal Employers' Liability Act.

(n) In addition to the insurance required pursuant to the provisions of Section 10(m), Lessee shall procure or cause to be procured prior to the commencement of any of Lessee's Construction Work, Builder's Risk Insurance (All Risk) covering loss or damage (including any loss or damage resulting from flood or earthquake) to any structures, improvements, fixtures and equipment and furnishing and materials or, the Premises during said construction, whether or not attached to the land, in an amount equal to their full replacement cost. Such insurance shall name the Port Authority as an insured and such policy shall provide that the loss shall be adjusted with the Port Authority, and that the proceeds thereof shall be paid to the Port Authority and shall be

made available to Lessee for and applied strictly and solely to the payment of the cost of the repair, replacement, rebuilding or other performance of Lessee's Construction Work.

(o) With the exception of the Workers' Compensation and Employers' Liability Insurance policy, each policy of insurance described in Section 10(m) shall include the Port Authority as an additional insured (including, without limitation, for purposes of Premises operations and completed-operation), and no such policy shall contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease or death of any employee of Lessee or of any of its contractors which would conflict with or in any way impair the coverage resulting from the Port Authority's status as an additional insured or the coverage under the contractual liability endorsement described in Section 10(m)(1). Such insurance shall also contain an endorsement providing that the protection afforded Lessee thereunder with respect to any claim or action against Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against Lessee by the Port Authority and against the Port Authority by Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured. Such insurance shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(p) Unless otherwise set forth herein, each policy of insurance described in paragraphs (m) and (n) of this Section shall be subject to the applicable provisions of Section 19 of this Agreement.

(q) Title to and property in all improvements and fixtures placed, constructed or installed in or on the Premises, including all such improvements and fixtures as shall constitute Lessee's Construction Work (but excepting all personal property, trade fixtures and equipment, including all cranes), shall vest in the Port Authority upon placement, construction, or installation thereof, provided, however, that title to and property in any and all equipment and trade fixtures removable without substantial injury to the Premises placed in or installed upon the Premises, the cost of which has been reimbursed by the Port Authority to Lessee, shall vest in Lessee upon installation thereof. No equipment or trade fixtures shall be removed by Lessee prior to the Expiration Date unless replaced with substantially similar property (unless such equipment or trade fixture is obsolete or otherwise unnecessary for operation of the Premises). Subject to the following sentence, upon notice given by the Port Authority prior to the expiration or earlier termination of the letting of the Premises under this Agreement, Lessee shall remove from the Premises any improvements, fixtures, trade fixtures, or equipment as the Port Authority may specify in its notice, and shall promptly repair any damage to the Premises caused by such removal.

(r) Lessee shall pay to the Port Authority a fee as compensation for its review and oversight of Lessee's Construction Work (the "Review Fee"). The Review Fee shall be an amount equal to one percent (1%) of the actual cost of Lessee's Construction Work. Upon final completion of Lessee's Construction Work to be performed by Lessee as set forth in Lessee's approved plans and specifications, Lessee shall certify to the Port Authority by final written certification signed by a responsible officer of Lessee certifying that Lessee's Construction Work has been completed and the final cost of such work. Upon receipt of Lessee's certification, the Port Authority shall, in good faith, make a final determination of the cost of Lessee's Construction Work after the Port Authority has examined and approved Lessee's final certificate of cost and such records and other documentation of Lessee as the Port Authority shall deem necessary to substantiate such cost; Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of Lessee's Construction Work to examine and audit the records and other documentation of Lessee which pertain to and will substantiate such cost. After such final determination, the Port Authority shall render a bill to Lessee setting forth the Review Fee for any such portion of Lessee's Construction Work and Lessee shall pay the Review Fee for such Lessee Construction Work to the Port Authority within fifteen (15) days of receipt of said bill.

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

(t) Without limiting any of the terms and conditions hereof, Lessee understands and agrees that it shall put into effect prior to the commencement of Lessee's Construction Work an affirmative action program and MBE program and WBE program in accordance with the provisions of Schedule C attached hereto and hereby made a part hereof. The provisions of Schedule C shall be applicable to Lessee's contractor or contractors and subcontractors at any tier of construction as well as to Lessee, and Lessee agrees to include the provisions of Schedule C in all of its construction contracts so as to make the provisions and undertakings set forth in Schedule C the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. Lessee agrees to and shall require its contractors and subcontractors to furnish to the Port Authority such data, including but not limited to compliance reports, relating to the operation and implementation of the affirmative action, MBE, and WBE programs of Lessee and its contractor, contractors, and subcontractors at any tier of construction called for under the provisions of this paragraph and Schedule C annexed hereto as the Port Authority may request at any time and from time to time and Lessee agrees to and shall also require that its contractors and subcontractors at any tier of construction make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions of this paragraph and Schedule C annexed hereto to effectuate the goals of affirmative action, MBE, and WBE programs. The

obligations imposed on Lessee under this paragraph and Schedule C annexed hereto shall not be construed to impose any greater requirements on Lessee than those which may be imposed on Lessee under applicable law.

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

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

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

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

(4) The contractor will include the provisions of subparagraphs (1), (2) and (3) of this paragraph (u) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract.

(v) Lessee shall cause all of Lessee's Construction Work to be performed in compliance with all applicable laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders.

Section 11. Minimum Capital Expenditure Requirement

(a) Lessee will invest: (i) prior to December 31, 2013, not less than an aggregate amount of $50,000,000 of Qualifying Expenditures and (ii) prior to November 30, 2029, not less than an additional aggregate amount of $450,000,000 of Qualifying

Expenditures for a total required aggregate investment of $500,000,000 for the construction of capital improvements and acquisition and installation or placement of capital fixtures, equipment or other capital items at the Premises (the "Minimum Capital Expenditure Requirement"). Lessee represents to the Port Authority that it currently intends to invest Six Hundred Eighteen Million Dollars and No Cents ($618,000,000.00) at and in the Premises in the following amounts and toward the following purposes: Site - $130 million, Wharf - $41 million, Buildings - $11 million, Technology - $16 million, and Equipment - $420 million. It is the understanding of the parties hereto that a significant portion of the Lessee's intended capital expenditures shall relate to the Development Parcels and other Added Parcels as part of the Premises and that the timing of such capital expenditures related to such Added Parcels is dependent upon the delivery of such Added Parcels by the Port Authority by the dates projected in Section 3 hereof.

(b) Any capital improvements to be performed by Lessee pursuant to this Section that involve construction shall be performed in accordance with Section 10 of this Agreement.

(c) In the event that $500,000,000 in Qualifying Expenditures has not been invested on or before November 30, 2029, the Extended Term of this Agreement (if so exercised by Lessee) shall be reduced by one (1) year for each $10,000,000, or any fraction thereof, of shortfall in required Qualifying Expenditures; provided, however, that Lessee may cure such shortfall and re-extend the term of this Agreement by investing all or a portion of such shortfall into the Premises no later than two (2) years prior to the expected lease expiration date assuming such shortfall investment had not been made, in which case the Extended Term will be re-extended by one (1) year for each $10,000,000 so invested up to the full amount required hereunder, up to (but in no event beyond) the Extended Expiration Date of November 30, 2050; and provided further, however, if Lessee has completed its Qualified Expenditures in all five areas as identified above, i.e. Site, Wharf, Buildings, Technology and Equipment, and Lessee's resulting construction and capital investments are satisfactory to the Port Authority in all material respects but, due to favorable pricing, conditions or efficiencies, said Qualified Expenditures do not equal the required $500,000,000, then the Port Authority in its sole and absolute discretion shall have the right not to enforce the term-reduction formula set forth in this paragraph (c).

(d) In the event that $320,000,000 ("Minimum Investment") in Qualifying Expenditures has not been invested on or before November 30, 2028 (the "Minimum Investment Date"), Lessee shall be in default of its obligations under this Section 11 and shall have twelve (12) months from the Minimum Investment Date to cure any such shortfall by investing additional Qualifying Expenditures to reach the aggregate amount of $320,000,000. If Lessee fails to timely and fully cure the shortfall, the Port Authority's exclusive remedies shall be (i) to terminate this Agreement as of November 30, 2030 (provided, that Lessee shall not be relieved from any of its other obligations under this Agreement, including, without limitation, the payment of Rent to the Port Authority, at any time prior to the termination of the Lease) and (ii) Lessee shall pay to the Port Authority liquidated damages in an amount equal to the difference between (1)

Lessee's total Qualifying Expenditures invested on or prior to such termination date and (2) $320,000,000 and Lessee will cooperate with the Port Authority's efforts to re-let the Premises. For clarification, in the event Lessee has made exactly the Minimum Investment on the Minimum Investment Date, or during the 12 month cure period ending November 30, 2029, the Term of this Agreement shall be extended to November 30, 2032, at Lessee's option and subject to further extension in accordance with paragraph (c) above.

(e) Lessee shall, on or before April 30, 2011, and on or before April 30 in each subsequent Lease Year throughout the Term of this Agreement, deliver to the Port Authority a statement detailing Lessee's aggregate investment in capital expenditures made by Lessee in connection with the Premises from and after the Commencement Date, together with the written opinion of an Acceptable Accounting Firm indicating the amount of such investment in or on the Premises is acceptable for treatment as a capital expenditure under GAAP or such other standard form of accounting as reasonably approved by the Port Authority, and indicating that the Port Authority may rely on such opinion. Upon delivery of such opinion, Lessee's obligation to make Qualifying Expenditures shall be reduced by the amount of Qualifying Expenditures identified in such statement. Acceptable Accounting Firm shall mean any or the largest four international accounting firms, or such other nationally recognized accounting firm as the Port Authority may approve in its reasonable discretion. For the avoidance of doubt, capital improvements shall exclude (1) the cost of any environmental remediation performed by or on behalf of Lessee for which it is responsible under this Agreement (except to the extent the same is acceptable for treatment as a capital expenditure under GAAP), (2) the cost of maintaining dredging during the term of this Agreement or the cost of any other item of maintenance and repair for which Lessee is obligated under this Agreement (except to the extent the same is acceptable for treatment as a capital expenditure under GAAP), (3) any payment of administrative or other overhead costs or payment to employees of Lessee except to the extent the same is acceptable for treatment as a capital expenditure under GAAP), and (4) any payment to an Affiliate of Lessee except that portion, if any, which represents the amount which would otherwise have been incurred absent such affiliation.

(f) The Port Authority and Lessee agree that the Port Authority shall be regarded as the owner of improvements and fixtures placed, constructed or installed in or on the Premises, except all personal property, trade fixtures and equipment, including all cranes.

(g) In the event that the Port Authority has not delivered all of the Added Parcels to Lessee in accordance with the terms of this Agreement by January 1, 2025, and such inability to deliver a portion of the Added Parcels results in a material inability for Lessee to timely achieve the Minimum Capital Expenditure Requirement or Minimum Investment, the parties agree to enter into good faith negotiations regarding a possible adjustment of the timing of the Minimum Capital Expenditure Requirement or Minimum Investment.

Section 12. Equipment

Lessee agrees to install and/or maintain on the Premises initially and continuously throughout the Term, all such equipment, including container cranes, as it deems necessary to operate the Premises as an efficient Marine Container Terminal Facility and, subject to the reasonable phasing-in of the installation of equipment, to allow for the full utilization of the Premises at all times for said purpose. With respect to container cranes and associated container crane equipment, Lessee shall give the Port Authority not less than one hundred eighty (180) days' notice of the manufacturer and specifications of such container cranes prior to the installation thereof, and shall submit to the Port Authority a construction or tenant alteration application covering any installation or construction work required in connection with any such container crane or associated crane equipment, including, without limitation, any such work required for its attachment, connection to, or integration with any mechanical, electrical or other system or any structure at the Premises. Notwithstanding anything to the contrary contained in this Agreement, all such container cranes and associated container crane equipment shall remain the property of Lessee.

Section 13. Environmental Responsibilities

(a) [Intentionally Omitted].

(b) (1) Except as set forth in paragraph (b)(2) below, Lessee hereby expressly agrees to assume all responsibility for and to relieve the Port Authority from and reimburse the Port Authority for any and all risks, claims, penalties, costs and expenses of any kind whatsoever(including without limitation, natural resource damages and/or LSRP expenses) relating to, caused by, arising out of or in connection with the conditions of the Existing Terminal Facility and/or the Added Parcels, whether any aspect of such conditions existed prior to, on or after the effective date of the letting of the Existing Terminal Facility and/or the Added Parcels, as applicable, to Lessee hereunder, including without limitation, all Environmental Requirements which Lessee is obligated to comply with pursuant to this Agreement and all Environmental Damages.

(2) (i) It is hereby agreed and understood that except as set forth in this paragraph and paragraph (k)(1) of this Section 13, Lessee shall not be responsible for the Condition Exceptions on the Premises. To the extent that a clean-up or remediation obligation arises under an Environmental Requirement with regard to a Condition Exception, the Port Authority shall be responsible for such remediation or clean-up. Once such remediation or clean-up obligation arises under an Environmental Requirement, the Port Authority shall, at its option, have the right to either undertake such remediation itself (or by and through its agents, representatives, employees or contractors), at its cost and expense, or shall require that the Lessee undertake such remediation (through its agents, representatives, employees or contractors), in which case the Port Authority shall reimburse the Lessee for all reasonable and acceptable costs and expenses associated with such remediation, to the extent that the costs and expenses are solely associated with a Condition Exception.

(ii) Lessee shall not be liable for the condition of the Premises under this Section 13 existing or created prior to (x) December 1, 2000 (as to the Existing Terminal Facility) or (y) the commencement of the Term as to any Added Parcel as determined in accordance with Section 3 hereof (as to any Added Parcels), unless the Lessee exacerbates such condition as follows: Lessee shall be responsible for all Environmental Damage involving any Hazardous Substance whose presence on, about, under or migrating from the Premises occurred prior to the commencement of the Term as a result of (1) any violation by the Lessee or the Lessee's Representative of any Environmental Requirements pertaining to such Hazardous Substance, the Premises and/or the activities thereon, or any failure by the Lessee or the Lessee's Representative to observe and comply with any Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including specifically those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities, or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Port Newark Facility and/or the Premises and submitted to the Lessee, and/or are subsequently provided to Lessee in the future, which violation creates a clean-up, removal or remediation obligation as to such Hazardous Substance where one previously did not exist, or (2) any act or omission by the Lessee or the Lessee's Representative with respect to such Hazardous Substance, which act or omission creates a clean-up, removal or remediation obligation as to such Hazardous Substance where one previously did not exist (an "Exacerbation"). An Exacerbation does not include the Lessee's Construction Work (as such term is defined in Section 10 of this Agreement) but only provided that Lessee's Construction Work is not performed by Lessee in a negligent or careless manner , so as to create a clean-up, removal or remediation obligation as to such Hazardous Substance where one previously did not exist. Lessee shall be fully responsible for having caused an Exacerbation if Lessee's Construction Work undertaken pursuant to Section 10 of this Agreement is performed negligently or carelessly so as to create a clean-up, removal or remediation obligation as to such Hazardous Substance where one previously did not exist. Notwithstanding anything herein to the contrary, as to any construction activity undertaken by Lessee at the Premises that is other than Lessee's Construction Work pursuant to Section 10, Lessee shall be responsible at its cost and expense for any required remediation, cleanup and removal of the Hazardous Substances or environmental condition at, under or about the Premises, in connection with such construction activity, regardless of whether the contamination is an Existing Condition or a Condition Exception and regardless of whether the Lessee receives approval from the Port Authority to undertake such construction activity.

(iii) In connection with any remediation hereunder undertaken by the Port Authority, the Lessee and the Port Authority shall each reasonably cooperate with the other in order to efficiently comply with the applicable Environmental Requirements in a cost effective manner, including without limitation, (x) the Lessee providing the Port Authority with access to the Premises for remediation purposes in accordance with paragraph (l) hereunder, and (y) both parties making available to each other such documents, reports, information and materials necessary for the completion of the other party's portion of the remediation.

(3) Notwithstanding anything to the contrary, the obligations of the Port Authority under this Section 13 with respect to the Condition Exceptions shall not apply, and Lessee shall be fully liable, in the event that the Lessee conducts soil borings on the Premises that are not in connection with the Initial Environmental Survey or construction in accordance with this Agreement (the Initial Environmental Survey and construction exception shall only apply provided such soil borings are not undertaken by Lessee in a negligent manner), discovers contamination requiring remediation under any Environmental Requirement, regardless of whether such contamination is an Condition Exception or not. The Lessee shall be solely responsible for the clean-up or remediation of any such contamination that is discovered as a consequence of such soil borings.

(c) Compliance with Environmental Requirements. Without limiting Lessee's obligations elsewhere under this Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which were or at any time are in effect during the Term of this Agreement, Lessee understands and agrees that, except with respect to the Condition Exceptions which Lessee is not responsible for pursuant to paragraph (b)(2) of this Section, Lessee shall be obligated, at its cost and expense, to comply with and relieve the Port Authority from compliance with all Environmental Requirements which are applicable to or which affect (i) the Premises, (ii) the operations of Lessee or others with the consent of Lessee at the Premises, (iii) the occupancy and use of the Premises by Lessee or by others with its consent, (iv) any Hazardous Substance which has migrated from the Premises that is not a part of the Condition Exceptions, and (v) any Hazardous Substance located above the surface (including on or within all structures and improvements) of the Premises. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of Lessee. Without limiting the generality of the foregoing and as part of Lessee's fulfillment of the foregoing obligations, except with respect to the Condition Exceptions, Lessee shall be responsible, at its sole cost and expense and subject to the direction of the Port Authority, for:

(1) the preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, remedial action workplan,

no further action letter, remediation agreement or any other documentation or information;

(2) the obtaining of any surety bond or the giving of any other financial assurances;

(3) the obtaining from any Governmental Authority, if applicable, of an approval of a negative declaration or no further action letter, response action outcome (or other final remediation document) or other form of release or mitigation; and

(4) complying with the provisions of all Environmental Requirements becoming effective on or relating to the termination, expiration or surrender of the letting of the Premises or of any portion thereof under this Agreement, or on the closure or transfer of Lessee's operations at the Premises.

(d) In addition to and without limiting the generality of the obligations of Lessee set forth above and elsewhere in this Agreement, Lessee shall, at its sole cost and expense and in accordance with and subject to the provisions of Section 10 of this Agreement, upon notice from the Port Authority, promptly take all actions to:

(1) completely remove and remediate all Hazardous Substances in, on or under the Premises resulting from or in connection with the use and occupancy of the Premises by Lessee, Lessee's Representative or any affiliated company of Lessee or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Premises by Lessee, Lessee's Representative, or any affiliated company of Lessee or which have been disposed of, released, discharged or otherwise placed in, on or under the Premises during the Term of this Agreement or during the term of the Existing Lease with respect to the Existing Terminal Facility or during the term of any other agreement between Lessee and the Port Authority for the use and occupancy of any portion of the Premises;

(2) except with respect to the Condition Exceptions (including Migrated Hazardous Substances) which Lessee is not responsible for pursuant to paragraph (b)(2) of this Section 13, remove and remediate all Hazardous Substances in, on or under the Premises or which have migrated from or from under the Premises to any other property which any Governmental Authority or any Environmental Requirement or any violation thereof required to be remediated or removed;

(3) except with respect to the Condition Exceptions (including Migrated Hazardous Substances) which Lessee is not responsible for pursuant to paragraph (b)(2) of this Section 13, remove and remediate all Hazardous Substances in, on or under the Premises or which have migrated from or from under the Premises necessary to mitigate any Environmental Damages; and

(4) remove and remediate all Hazardous Substances in, on or under the Premises or which are related to any and all improvements, buildings or other structures including, but not limited to asbestos, lead paint and any other building materials that are Hazardous Substances; provided, however, the Port Authority will use commercially reasonable efforts to enforce any and all provisions relating to surrender of Premises and remediation of Hazardous Substances in any agreements with current or former tenants or occupants of any of the Added Parcels.

(e) The obligations set forth in paragraph (d) of this Section shall include but not be limited to the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans and the performance of any removal, remediation, containment, operation, maintenance, monitoring or restoration work to the applicable environmental standards in accordance with this Agreement and shall be performed in a good, safe and workmanlike manner. Prior to retaining or dismissing any consultant or LSRP in connection with remediation of the Premises, the Lessee shall give notice of such retention or dismissal to the Port Authority. The Lessee shall comply with any and all timeframes set forth in any Environmental Requirements in connection with the filing of remediation documents and/or completion of remediation.

(f) Without limiting the Port Authority's remedies under this Agreement or at law or in equity the Port Authority shall have the right during and after the term of the letting of the Premises under this Agreement to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by Lessee of its environmental obligations under this Agreement including without limitation all Lessee's obligations under this Section 13. In the event that Lessee fails to comply with or perform any of such obligations, the Port Authority (subject to the application of the provisions of Section 29 to the extent such application would not result in the violation of any Environmental Requirement by the Port Authority or by Lessee) at any time during the Term, or subsequent to the termination or expiration of this Agreement, or surrender of the Premises or any portion thereof, may elect (but shall not be required) to perform such obligations and upon demand Lessee shall pay to the Port Authority as additional rent its Costs thereof, as determined by the Port Authority.

(g) Without limiting any other of Lessee's obligations under this Agreement and except with respect to the Condition Exceptions which Lessee is not responsible for pursuant to paragraph (b)(2) of this Section, Lessee agrees, unless otherwise directed by the Port Authority, to provide the Manager of the Port Newark Facility, at the cost and expense of Lessee and at any time during or subsequent to the Term of this Agreement, with such information, documentation, records, correspondence, notices, reports, test results, certifications and any other information as the Port Authority shall request in connection any Environmental Damages for which Lessee is responsible hereunder or as shall be required to comply with or discharge any Environmental Requirement which Lessee is obligated to comply with under this Agreement, and Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same when and as directed by the Port Authority. Lessee agrees that any of the foregoing may be filed by

the Port Authority with the appropriate Governmental Authority on behalf of Lessee at Lessee's cost and expense.

(h) Without limiting the generality of any other provision contained in this Agreement and except with respect to Condition Exceptions which Lessee is not responsible for pursuant to paragraph (b)(2) of this Section, Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, employees and representatives from all claims, demands, penalties, fines, liabilities (including strict liability), settlements, attorney and consultant fees, investigation and laboratory fees, removal and remediation costs, court costs and litigation expenses, damages (including natural resource damages), judgments, losses, costs and expenses of whatsoever kind or nature and whether known or unknown, contingent or otherwise, just or unjust, groundless, unforeseeable or otherwise, arising or alleged to arise out of or in any way related to any Environmental Damages for which Lessee is responsible hereunder or any Environmental Requirement which Lessee is obligated to comply with pursuant to this Agreement, or the risks and responsibilities assumed hereunder by Lessee for the condition of the Premises or a breach or default of Lessee's obligations under this Section 13. If so directed, Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(i) (1) Without limiting the generality of any provision of this Agreement, in the event that Environmental Requirements set forth more than one compliance standard, Lessee agrees that the standard or standards to be applied in connection with any obligation it may have under this Agreement with respect to any remediation hereunder shall be the most stringent applicable cleanup standards required pursuant to applicable Environmental Requirements that will not involve the use of any restriction on the possible use of the Premises or such other property and which will not require the use of any institutional or engineering controls. Without limiting the foregoing obligation of Lessee to remediate to the most stringent standards, in the event institutional or engineering controls are utilized at the Premises in order for Lessee to satisfy its obligations hereunder, Lessee further agrees, subject to paragraph (t)(1) of this Section 13, to execute any declaration of environmental restrictions, Deed Notice, permit application, or other document necessary to effectuate the implementation or recordation of institutional or engineering controls, as applicable, to the extent such an institutional or engineering control is sought to be placed against the Premises, and, in such event, Lessee shall be fully responsible for and shall (i) maintain such controls, (ii) conduct any compliance monitoring as required under all applicable Environmental Requirements, (iii) obtain any permits in connection with such controls required by applicable Environmental Requirements, (iv) establish all required funding sources in connection with the maintenance of such institutional or engineering controls, and (v) file with

applicable Governmental Authorities all applicable certifications and reports. Lessee's compliance obligations under (i) through (v) above to maintain such institutional and/or engineering controls located on the Premises shall be limited to the Term of this Agreement except if in the determination of the Port Authority (which determination shall not be arbitrary or capricious), an institutional or engineering control placed on the Premises by Lessee and/or the obligations associated therewith are extraordinary (i.e., such control is not customarily utilized), in which case, Lessee shall have a continuing obligation subsequent to the Term of this Agreement to continue, to be obligated to comply with the obligations of (i) through (v) above, or such portion of these obligations as required by the Port Authority, and further provided the required establishment of a funding source shall not be limited to the Term of this Agreement, but shall be the full amount required for the term of the control.

(2) Lessee further agrees that, notwithstanding the terms and conditions of subparagraph (i)(1) above, but subject to paragraph (i)(3) below, the Port Authority shall have the right at any time and from time to time, to designate any other level or levels or standard or standards of remediation for the Premises, to the extent that (i) such standard is required under any Environmental Requirement and (ii) such standard is applied to all similarly situated tenants on the Port Newark Facility, and such designation shall be binding upon Lessee with respect to its obligations under this Agreement with respect to Environmental Requirements.

(3) Nothing in this paragraph (i) shall require or be construed to require Lessee to remediate any Analyzed Item below the Existing Condition.

(j) The methodology to be used for the purpose of this Section to determine for any Existing Condition the level of an Analyzed Item at any location in, on or under the Premises shall be for ground water straight line interpolation methodology utilizing principles of hydrogeologic interpretation, and for soil, the EPA geostatistical software system applicable at any particular time and, notwithstanding any other evidence to the contrary, the Existing Condition as so determined shall set forth and constitute for all purposes as between Lessee and the Port Authority the levels of the Analyzed Items in the soil and ground water in, on and under the Premises, except, however, for each location from which soil and/or water samples have been taken and the tests results thereof constitute a part of the Existing Condition, for each Analyzed Item that was tested at such location and the test result for such Analyzed Item is a part of the Existing Condition, the level of such Analyzed Item at such location shall be the test result of such Analyzed Item at such location.

(k) (1) It is expressly understood and agreed that, the proper handling, delivery, treatment, storage, transportation, disposal and depositing, whether on or off the Port Newark Facility (all of the foregoing being hereinafter collectively called "Disposal"), of any asbestos, lead, PCBs, demolition or construction debris, soil dirt, sand silt, dredged material, water or any other matter, including without limitation, Hazardous Substances (all of the foregoing being hereinafter generically called "Matter"), which Matter has been disturbed or removed by Lessee (or by any contractor or contractors of

Lessee) from a building, structure or any other type of improvement on the Premises (hereinafter specifically called the "Building Debris Matter") at any time or times, and regardless of the nature or composition of such Building Debris Matter, including without limitation, in connection with the performance of Lessee's Construction Work, the Phase 1 Development Work, the Phase 2 Development Work, the Phase 3 Development Work, the Phase 4 Development Work, the Starboard Street Property Development Work, the Marsh Street Development Work or the Waterfront-Shimizaki Property Development Work, or the repair, replacement or rebuilding of the Premises as required under this Agreement, and any and all remediation and Disposal of said Building Debris Matter and the taking or doing of any and all other action or actions necessary, required or appropriate in connection therewith, shall be the sole and complete responsibility of Lessee including, without limitation, all costs and expenses thereof and any and all Environmental Damages, Environmental Requirements, claims, penalties and other expenses relating thereto. The foregoing obligations of Lessee shall apply with full force and effect irrespective of the nature or source of any contaminant, pollutant, chemical, waste or other substance and regardless of whether such Building Debris Matter or a portion thereof is an Existing Condition, it being understood that the Port Authority shall not have any responsibility as to Building Debris Matter, regardless of when such Building Debris Matter came to be located on the Premises. Lessee shall perform all of the foregoing in accordance with and subject to all the terms, provisions, covenants and conditions of this Agreement. Without limiting the generality of any other term or condition of this Agreement, title to any Building Debris Matter on the Premises disturbed or removed by Lessee and not re-used at the Premises shall vest in the Lessee upon the disturbance or removal thereof and all such material shall be delivered and deposited by the Lessee at the Lessee's sole cost and expense to a location off the Port Newark Facility in accordance with the terms and conditions of this Agreement and all Environmental Requirements. The entire proceeds, if any, of the sale or other disposition of the Building Debris Matter shall belong to the Lessee. Promptly upon final disposition of any Hazardous Substance contained in Building Debris Matter disturbed or removed by Lessee from the Premises, pursuant to this paragraph (k)(1), Lessee shall submit to the Port Authority a "Certification of Final Disposal" stating the type and amount of material disposed, the method of disposal and the owner and location of the disposal facility. The format of such certification shall follow the requirements, if any, of governmental agencies having jurisdiction as if the Port Authority were a private organization and the name of the Port Authority shall not appear on any certificate or other document as a generator or owner of such material.

(2) It is further agreed that Matter disturbed, excavated or removed by Lessee (or by any contractor or contractors of Lessee) from the Premises at any time or times, that is other than Building Debris Matter (which shall be the sole responsibility of the Lessee, and shall be governed by paragraph (k)(1) above), to the extent that such Matter constitutes a portion of or is an Existing Condition ("Previously Contaminated Matter"), the remediation and Disposal of said Previously Contaminated Matter, but only to the extent that it is an Existing Condition, shall be the responsibility of the Port Authority, as shall the taking or doing of such other actions necessary, required

or appropriate in connection therewith. To the extent that any clean-up or remediation obligations with regard to such Previously Contaminated Matter arise under an Environmental Requirement, the Port Authority shall, at its option, either undertake such remediation itself (or by and through its agents, representatives, employees or contractors), at its cost and expense, or shall require that the Lessee shall undertake such remediation (through its agents, representatives, employees or contractors), in which case the Port Authority shall reimburse the Lessee for the reasonable and acceptable costs and expenses associated with such remediation, to the extent that the costs and expenses are associated with the Existing Condition. To the extent that the Previously Contaminated Matter is contaminated by a combination of an Existing Condition and a condition for which Lessee is responsible under this Agreement, any costs and clean-up obligation associated with such condition shall be the Lessee's responsibility, and any incremental costs and clean-up obligations associated with such Existing Condition shall be the responsibility of the Port Authority. The Port Authority and/or Lessee shall perform all of their respective foregoing obligations in accordance with and subject to the terms, provisions, covenants and conditions of this Agreement. Without limiting the generality of any other term or condition of this Agreement, title to any Previously Contaminated Matter on the Premises shall vest in the Port Authority upon the excavation or removal thereof and all such material shall be delivered and deposited by the Port Authority at the Port Authority's cost and expense to a location on or off the Port Newark Facility in accordance with the terms and conditions of this Agreement and all Environmental Requirements. The entire proceeds, if any, of the sale or other disposition of the Previously Contaminated Matter shall belong to the Port Authority. In any dispute between the Port Authority and the Lessee with regard to whether Matter is Previously Contaminated Matter, or a condition for which the Lessee is responsible, the Lessee shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to (x) whether the presence of any Hazardous Substance in such Matter occurred prior or subsequent to on or after December 1, 2000 (as to the Existing Terminal Facility) or after the commencement of the Term as to an Added Parcel as determined in accordance with Section 3 hereof; (y) whether any Hazardous Substance disposed of or released from the Existing Terminal Facility and/or any Added Parcel or which migrated from the Existing Terminal Facility and/or any Added Parcel came to be present in the Matter prior or subsequent to December 1, 2000 (as to the Existing Terminal Facility) or after the commencement of the Term as to an Added Parcel as determined in accordance with Section 3 hereof; and (z) whether the Lessee Exacerbated any Existing Condition or created a new condition that combined with an Existing Condition so as to cause additional costs, penalties, clean up obligations, or expenses to be incurred in connection with the remediation and/or Disposal of the Matter. For purposes of this Section, "burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(i) The foregoing obligations of the Port Authority shall apply to such Previously Contaminated Matter; provided, however, that, to the extent that the Previously Contaminated Matter reflects an Analyzed Item Increase (as hereinafter defined in paragraph (w)) above

the Existing Condition (other than in connection with a Condition Exception), any costs, penalties, expenses, clean-up obligations, or Environmental Damages associated with such Analyzed Item Increases shall be the Lessee's sole responsibility; and

(ii) To the extent that the Port Authority shall undertake any remediation in accordance with this Section 13, such shall be conducted in a manner, by such employees or contractors, and on such timetable as the Port Authority shall determine in its sole discretion provided the same is in compliance with Environmental Requirements

(3) In the event Lessee discovers any Hazardous Substance in, on or under the Premises, Lessee in reporting such Hazardous Substance shall direct such report to the attention of such individual at the subject Governmental Authority as the Facility Manager shall require in order to assure consistency in the environmental management of the Facility, provided, however, notwithstanding the foregoing in no event shall Lessee be required by this paragraph (k)(3) to violate any Environmental Requirement.

(l) Without limiting the generality of the provisions of Section 26 of this Agreement, the Port Authority and its designees shall have the right but not the obligation to enter upon the Premises upon forty-eight (48) hours' notice to Lessee to conduct testing and related activities from any existing wells, to install additional wells and borings and to conduct testing and related activities therefrom and to perform such activities as shall be necessary to remediate the Existing Condition and to remove any underground storage tanks existing on the Existing Terminal Facility after December 1, 2000 or on any Added Parcel after the commencement of the Term as to such Added Parcel as determined in accordance with Section 3 hereof and in the exercise of the foregoing rights the Port Authority and its designees shall minimize to the extent practicable the interference with Lessee's use and occupancy of the Premises. In the event that as a result of the performance of such remediation of the Existing Condition Lessee shall be denied the use of any open area constituting a part of the Premises then in such event Lessee shall be entitled to an abatement of basic rental with respect to such affected area until Lessee is once again able to use such part of the Premises.

(m) After any person performs any remediation on the Premises (whether or not with respect to the Existing Terminal Facility, such remediation is performed prior to December 1, 2000, or, with respect to any of the Added Parcels, whether or not such remediation is performed prior to the commencement of the Term as to such Added Parcel as determined in accordance with Section 3 hereof), such person, including without limitation, Lessee (subject to the terms and provisions of Section 26 hereof) or the Port Authority may but shall not be obligated to, sample and test the soil and/or aquifer of the Premises or portions thereof and set forth the results of such samplings and tests in a report. Provided that such report and test results meet the criteria set forth below, such report shall be referred to for purposes of this Agreement as a "Remediation Completion Report". Upon delivery of a Remediation Completion Report

to the Lessee and the Port Authority, such Remediation Completion Report shall (x) supersede and replace the existing Initial Environmental Survey, or the applicable portions thereof, to the extent such test results and report are of samples of Analyzed Items taken from the same well or boring or a new well or boring immediately adjacent to such well or boring, and such test results show levels of an Analyzed Item that are lower than the existing Initial Environmental Survey, and (y) supplement the existing Initial Environmental Survey, or the applicable portions thereof to the extent the test results and report would not supersede (pursuant to the foregoing clause (x)) any test results and reports in the existing Initial Environmental Survey, as applicable; but only provided, however, that said sampling and testing produced a fair and representative sampling of the Premises, have been analyzed by a New Jersey State approved independent laboratory and an LSRP, as applicable, and have been performed in accordance with a methodology approved by the Port Authority.

(n) Without limiting the generality of the provisions of Section 20 of this Agreement, Lessee agrees to protect and maintain any wells installed on the Premises and shall repair any damage thereto not caused by the activities of the Port Authority or its employees, agents or contractors.

(o) Without limiting the generality of any other term or provision of this Agreement, all of the obligations of Lessee under this Section shall survive the expiration or earlier termination of this Agreement.

(p) The terms and conditions of this Section are intended to allocate obligations and responsibilities between Lessee and the Port Authority, and nothing in this Section shall limit, modify or otherwise alter the rights and remedies which the Port Authority or Lessee may have against third parties at law, equity or otherwise.

(q) Subject to the terms and conditions of this Agreement, it is hereby understood and agreed if a Condition Exception or any portion thereof, must be remediated or removed in whole or in part in the fulfillment of any of Lessee's obligations under this Agreement, whether due to the fact Lessee cannot remediate or remove one or more Hazardous Substances for which it is responsible to remediate or remove without also remediating or removing one or more Analyzed Items for which it is not responsible for remediating or removing or due to cost or expedience or for any other reason, to the extent that the Port Authority has a clean-up or remediation obligation under an Environmental Requirement, the Port Authority shall have the option to either undertake such removal or remediation itself at its cost and expense, or shall require that the Lessee undertake such remediation, in which case the Port Authority will reimburse the Lessee for all reasonable and acceptable costs associated with such remediation or removal, to the extent that the costs or expenses are associated with a Condition Exception.

(r) The Port Authority has advised Lessee that it is the intention of the Port Authority, with respect to the application of pollution prevention programs, "best management practices plans" and other voluntary programs adopted and agreements

made by the Port Authority with any governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof constituting Environmental Requirements that the Port Authority will treat Lessee in a similar manner as similarly situated persons at the Port Newark Facility.

(s) Upon expiration or earlier termination of this Agreement, no level of any Analyzed Item shall exceed the level of such Analyzed Item as set forth in an Existing Condition, except if such increase is due to a Condition Exception (the amount of the increase, if any, of each and every Analyzed Item above the Existing Condition unrelated to a Condition Exception being hereinafter collectively called "Analyzed Item Increases"). Lessee covenants and agrees on or before the cessation of the letting under this Agreement or any portion thereof to remove and/or remediate all Analyzed Item Increases down to the Existing Condition in accordance with paragraph (w).

(t) (1) It is hereby acknowledged that because of the levels of one or more Hazardous Substances in the soil of the Premises, a Governmental Authority and/or an Environmental Requirement may require that a Deed Notice (formerly a Declaration of Environmental Restriction) be recorded with respect to the Premises by the fee owner of the Premises and that the recording of such Deed Notice may further require that the Basic Lease be amended to permit the recording of such Deed Notice. Further, Lessee acknowledges the fee owner of the Premises is the City of Newark and that the Port Authority has advised Lessee that the City of Newark may never record any Deed Notice with respect to the Premises or execute a supplement to the Basic Lease permitting the recording of such Deed Notice. Lessee, in executing this Agreement, agrees that neither the Port Authority nor the City of Newark shall have any obligation to Lessee under this Agreement or otherwise with respect to the recording of or failure to record such Deed Notice or to the entering into or failure to enter into any amendment to the Basic Lease, except, however, the Port Authority shall not object to Lessee making a petition to the municipal council of the City of Newark to adopt an ordinance which would authorize appropriate officials to execute on behalf of the City of Newark a Supplemental Agreement to the Basic Lease and to record a Deed Notice which has the approval of the New Jersey Department of Environmental Protection and if required the approval of the United States Environmental Protection Agency, relating to the Premises and no other portion of the Facility, to implement the provisions of the New Jersey Brownfields and Contaminated Site Remediation Act, N.J.S.A. 58:20B-1 et. seq., provided, however, Lessee shall have consulted with the Port Authority on the content and requirements of such proposed Deed Notice and shall have given the Port Authority an opportunity to provide Lessee, the New Jersey State Department of Environmental Protection, the United States Environmental Protection Agency and the City of Newark the Port Authority's comments on such proposed Deed Notice and that the terms, provisions and requirements of any such proposed Supplemental Agreement and Deed Notice shall be acceptable to the Port Authority, provided, further, however, that such Deed Notice shall not permit the presence on, include or be required by any Hazardous Substance whose presence in, on or under the Premises was caused by or resulted from the use and occupancy of the Premises by Lessee, Lessee's Representative, or by any

affiliated company of Lessee, or the performance of any work by any of them, or the acts or omissions of Lessee, Lessee's Representative, of any affiliated company of Lessee or of any sublessees or others who occupied the Premises with the permission of Lessee, Lessee's Representative, or with the permission of an affiliated company of Lessee or their officers, agents or employees, or whose presence in, on or under the Existing Terminal Facility occurred after December 1, 2000 or whose presence in, on or under any Added Parcel occurred after the commencement of the Term as to such Added Parcel as determined in accordance with Section 3 hereof. The Port Authority and the Lessee further agree that neither the failure to record any such Deed Notice (in the event that the consent of the City of Newark to such Deed Notice cannot be obtained despite commercially reasonable efforts to obtain such consent) or the execution of a supplement to the Basic Lease permitting such recording or failure of such Deed Notice to be recorded or failure of the Basic Lease to be supplemented to permit such recording, shall be or shall be deemed to be a breach of this Agreement by either the Port Authority or the Lessee, including without limitation, any breach of any implied or express covenant of quiet enjoyment.

(2) It is contemplated that the installation and maintenance of engineering controls may be required and other conditions imposed in connection with any permission to record and the recording of a Deed Notice. Without limiting any other term or provision of this Agreement, the Port Authority shall have the right to enter upon the Premises for the purpose of installing any such engineering controls or for the taking of any other action necessary to record, as a condition of or required by, such Deed Notice, provided, however, nothing in this paragraph (t) is intended to nor shall relieve Lessee of any of its obligations under this Agreement. Further, it is hereby agreed that this Agreement and Lessee's letting and use and occupancy of the Premises shall be subject to the requirements of any Deed Notice recorded with respect to the Premises and Lessee shall comply with all the requirements of any such Deed Notice to the extent of Lessee's obligations set forth elsewhere in this Agreement other than in this subparagraph (t)(2).

(3) To the extent that the Port Authority installs any institutional or engineering controls on any portion of the Premises in connection with the remediation of an Existing Condition or Historic Fill, Lessee shall not disturb, damage or interfere with, any such controls, and, to the extent such controls would be under this Agreement an item that Lessee is obligated to maintain, repair or replace pursuant to Section 20 hereunder, Lessee shall be responsible for such controls. For example, to the extent the pavement in the parking area is determined to be an engineering control, and Lessee pursuant to Section 20 is responsible to maintain the parking lot area, Lessee shall be responsible to maintain such control. Furthermore, during the Term of this Agreement, Lessee shall be responsible for (i) conducting any compliance monitoring as required under all applicable Environmental Requirements with respect to said control and (ii) filing with applicable Governmental Authorities, all applicable certifications and reports. Lessee shall not be responsible for obtaining any permits in connection with

such controls nor shall Lessee be responsible for establishing any required funding source in connection with such control.

(u) Lessee agrees that it shall not use any underground storage tanks which were located in, on or under the Existing Terminal Facility on December 1, 2000 or which were located in, on or under any of the Added Parcels on the commencement of the Term as to such Added Parcel as determined in accordance with Section 3 hereof.

(v) (1) Without limiting any other term or provision hereof (except as expressly provided in paragraph (i)(1) hereof, all the obligations of the Lessee under this Agreement shall survive the expiration or termination of the use/occupancy of the Premises or any portion thereof;

(2) Following the commencement of the fifth (5th) calendar year preceding the Expiration Date or, in the case of an earlier termination of the letting under this Agreement, within three (3) months after the effective date of such termination, as the case may be, the Lessee shall at its sole cost and expense sample and test the soil and ground water in, on and under the Premises in accordance with such standards, methods, protocol and procedures as shall be required by the Port Authority in its sole discretion after consultation with the Lessee (such sampling and testing of the soil and groundwater (the "Exit Baseline"). All such sampling, testing and the preparation of any associated report shall be performed by a Port Authority approved independent consultant and New Jersey State certified laboratory under the supervision of and certified by a New Jersey LSRP, said sampling and testing shall produce a fair and representative sampling of the Premises and said sampling and testing shall be performed in accordance with methodology approved by the Port Authority and be in compliance with all Environmental Requirements.

(3) The Exit Baseline and the test results therefrom may be used by the Lessee to evidence that a Hazardous Substance in, on or under the Premises occurred after the date that the Lessee shall have surrendered the Premises to the Port Authority.

(4) Lessee shall provide a complete copy of the Exit Baseline to the Port Authority. Lessee shall certify the copy to the Port Authority to be a true and complete copy thereof and the Exit Baseline shall provide that the Port Authority shall have the right to rely thereon.

(w) The results of sampling from the Exit Baseline, as applicable, shall be compared against the Initial Environmental Survey to determine if there are any Analyzed Item Increases. Lessee shall be responsible for, at its sole cost and expense, to the satisfaction of the Port Authority and in compliance with all Environmental Requirements, the remediation of all Analyzed Item Increases (except to the extent that any increase is due to a Condition Exception). Such work shall be in compliance with the provisions of this Section 13 and in particular paragraphs (d) and (e) herein. Accordingly, the Lessee hereby covenants and agrees that it shall, on or before the

cessation of the letting under this Agreement or any portion thereof (whether such cessation be by termination, expiration or otherwise), commence and undertake to completion the remediation of all Analyzed Item Increases, as necessary, to a level that at a minimum meets the level of such Analyzed Item constituting a part of an Existing Condition, to the satisfaction of the Port Authority, in accordance with all Environmental Requirements and this Section 13

Section 14. Ingress and Egress

Lessee shall have the non-exclusive right of ingress and egress between the Premises and the city streets outside the Premises. Such right shall be exercised by means of such pedestrian or vehicular ways to be used in common with others having rights of passage within the Marine Container Terminal Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Existing Terminal Facility. The Port Authority may, as reasonably necessary, at any time temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Premises presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to Lessee. Lessee hereby releases and discharges the Port Authority and its successors and assigns, of and from any and all claims, demands, or causes of action which Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area whether within or outside the Premises, provided that a reasonably equivalent means of ingress and egress remains available to Lessee. Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in, along, across or through any streets, ways and walks near the Premises.

Section 15. Governmental and Other Requirements

(a) Lessee shall be responsible for seeking and shall procure, from all governmental authorities having jurisdiction over the operations of Lessee hereunder, all licenses, certificates, permits and other authorization which may be necessary for the conduct of such operations.

(b) Lessee shall observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items, including without limitation all Environmental Requirements (to the extent Lessee is obligated for such compliance under Section 13 of this Agreement), now or at any time during the occupancy of the Premises by Lessee which as a matter of law are applicable to or affect (i) the Premises, (ii) the operations of Lessee at the Premises or the Marine Container Terminal Facility and/or (iii) the use and occupancy of the Premises. Lessee, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the Premises required in order to fully satisfy the compliance obligations set forth in this Agreement.

(c) The obligation of Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Marine Container Terminal Facility, and proper operation by Lessee. Such provisions provided for herein are not to be construed as a submission by the Port Authority to the application to itself of such requirements. The Port Authority, after written notice to Lessee and the expiration of any applicable cure period and upon no less than ten (10) business days' prior notice to Lessee, shall have the right to cause Lessee, the Premises, and/or the Marine Container Terminal to come into compliance with the legal requirements to the extent the Port Authority reasonably determines that Lessee has failed to do so; provided Lessee is not actively contesting such requirement in accordance with paragraph (d) below. Lessee shall indemnify the Port Authority for any Costs and any actual out of pocket expenses including attorney's fees incurred in connection with bringing Lessee, the Premises and or the Marine Container Terminal Facility into compliance or with respect to any claims or damages as a result of Lessee's failure to comply with legal requirements.

(d) Lessee, at its expense, after notice to the Port Authority, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any legal requirement, provided that: (a) the Port Authority shall not be subject to civil or criminal penalty or to prosecution for a crime, nor shall the Marine Container Terminal Facility or any part thereof be subject to being condemned or vacated, or subject to any lien or encumbrance, by reason of non-compliance or otherwise by reason of such contest; (b) before the commencement of such contest, Lessee shall furnish to the Port Authority a letter of credit or surety bond satisfactory to the Port Authority, in form substance and amount, and shall indemnify the Port Authority against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); and (c) Lessee shall keep the Port Authority regularly advised as to the status of such proceedings. The Port Authority shall be deemed subject to prosecution for a crime if the Port Authority or any of its Commissioners, officers, employees or agents is charged with a crime of any kind whatsoever unless such charge is withdrawn five (5) days before such party is required to plead or answer thereto.

Section 16. Rules and Regulations

(a) Lessee covenants and agrees to observe and obey, (and to compel its officers, employees and others on the Premises with its consent, to observe and obey) the rules and regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the governing of the conduct and operations of Lessee as may from time to time during the Term be promulgated by the Port Authority, and applicable to marine container terminal operators or users of such facilities owned or leased by the Port Authority, for reasons of safety, health, or preservation of property, for the maintenance of the good and orderly appearance of the Premises, for the safe or efficient operation of the Marine Container Terminal Facility or (as further described in paragraph (d) below) for the reimbursement of the Port Authority of capital or operating costs incurred or anticipated in connection

with improvements benefiting users of the Port Authority facilities. The Port Authority agrees that, except in cases of emergency, it will give notice to Lessee of every such further rule or regulation at least ten (10) days before Lessee shall be required to comply therewith.

(b) For purposes of this Agreement, the rules and regulations now in effect are set forth in the Tariff. A copy of the Tariff can be found on the Port Authority's website, www.panynj.gov.

(c) The Port Authority hereby agrees to apply the rules and regulations set forth in the Tariff and any further rule or regulation hereafter promulgated by the Port Authority equitably and without discrimination against Lessee and all other similarly situated tenants of the Port Authority at any marine container terminal facility.

(d) Lessee covenants and agrees that, pursuant to paragraphs (a) and (b) above, it shall collect from users of the Marine Container Terminal Facility on behalf of the Port Authority and remit the Port Authority such user, facility or security fees (a "User Fee") as the Port Authority may impose from time to time provided such User Fees are imposed on all similar users in the Port and such collection obligation is imposed on all marine terminal facilities in the Port. In the event that any user does not pay such User Fee to Lessee (or any other marine terminal operator in the Port) (a "Delinquent User"), upon notice to the Port Authority from Lessee of such failure, the Port Authority agrees to deliver a letter ("User Fee Notice") to each marine terminal operator in the Port advising each such facility to cease loading or unloading containers for such Delinquent User until the fee is paid to the Port Authority. If Lessee, or any other container terminal facility operator, shall (after the receipt of a User Fee Notice but prior to such user's payment of the outstanding fee) load or unload containers for such Delinquent User, Lessee or such other operator that loaded or unloaded the user's containers, as applicable, will be liable to the Port Authority for the amount of the User Fee with respect to all containers loaded or unloaded for such Delinquent User after the User Fee Notice has been issued, until such time as the Delinquent User shall have paid any and all outstanding fees owed to the Port Authority. The payment of the User Fee to the Port Authority shall be the Port Authority's sole remedy against Lessee for Lessee's handling of a Delinquent User's containers. The amount of the User Fee due from Lessee with respect to a Delinquent User following a User Fee Notice shall constitute additional Rent hereunder and Lessee's failure to pay such User Fee, if any shall be due from Lessee in accordance with this subsection (d) and the Tariff, shall entitle the Port Authority to seek any remedies allowed under this Agreement for the non-payment of Rent.

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

Section 17. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the Premises, Lessee shall conduct its operations in an orderly and proper manner so as not to unnecessarily annoy, disturb or be offensive to others near or at the Premises, and if requested by Port Authority in writing, as soon as reasonably possible Lessee shall remove the cause of any reasonable objection made by the Port Authority relative to the improper conduct of any of the employees of Lessee or of any others on the Premises to the extent Lessee is legally able to do so.

(b) Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Premises outside of what is ordinary and customary for a property of this type and Lessee shall remove from the Premises all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder on a regular basis. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to safely contain the waste material placed by Lessee therein. Said receptacles shall be provided and maintained by Lessee and shall be kept covered except when being filled or emptied. Lessee shall use commercially reasonable care when effecting removal of all such material, and shall in no event make use of any facilities or equipment of the Port Authority for the removal of such material except with the prior consent of the Port Authority.

(c) Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Premises.

(d) Lessee shall use reasonable effort not to commit any nuisance or permit its employees or others on the Premises to commit or create any nuisance in or near the Premises.

(e) Lessee shall take all reasonable measures to eliminate vibrations which could reasonably be expected to cause material damage to the improvements at the Premises or any part thereof.

(f) Lessee shall use reasonable efforts not to produce or cause to be produced permeate, or emanate from the Premises, any unusual, noxious or objectionable smokes, gases, vapors or odors.

(g) Lessee shall use reasonable efforts not to do or permit to be done any act or thing at the Premises which shall or may subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

(h) Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Premises and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading.

(i) Lessee shall permit the use of the Premises (not excluding the berthing area) at any time and from time to time for the installation, maintenance and operation of such navigation lights as may be required by the United States Coast Guard or other governmental authority having jurisdiction, and Lessee shall furnish such electricity as may be required for use by navigation lights which may be so installed.

(j) Lessee shall not do or permit to be done any act or thing on the Premises which (i) will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof, or (ii) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (iii) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Premises or the Port Newark Facility or any part thereof or upon the contents of any building thereon. Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of Lessee on the Premises, and Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by Lessee and Section 15(d), make all improvements, alterations and repairs of the Premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of Lessee to comply with the provisions of this paragraph, any rate for fire insurance, extended coverage or rental insurance on the Premises or any part thereof, shall at any time be higher than it otherwise would be, then Lessee shall pay to the Port Authority that part of any premiums paid by the Port Authority under any insurance policies which may be maintained by the Port Authority, if any, which shall have been charged because of such violation or failure by Lessee.

(k) From time to time and as often as required by the Port Authority (but without interfering in any material respect with Lessee's business operations), Lessee shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment on the Premises, whether furnished by the Port Authority or by Lessee. Lessee shall keep all fire-fighting and fire-extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be, for the use of which such equipment is designed, and shall train the appropriate number of its employees in the use of all such, equipment, including in such training periodic drills.

(l) Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), owned or operated by Lessee, or by a corporation, company or other organization or person associated, affiliated or connected

with Lessee or for which Lessee acts as agent, stevedore or terminal operator (or of others going to or from the Premises on business with Lessee), which shall have sunk, settled or become partially or wholly submerged at the berthing area or any part of the Premises. The provisions of the immediately preceding sentence shall be applicable whether or not the aforesaid object is owned by Lessee or is connected in any way with Lessee or its occupancy of or operations at the Premises. Notwithstanding the foregoing, Lessee shall have no obligation to raise or remove any such object to the extent its presence in the berthing area predates the effective date of the Existing Lease or is the result of the sole negligence or willful act of the Port Authority.

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

Section 18. Signs

(a) Except with the prior consent of the Port Authority, Lessee shall not erect, maintain or display any advertising, signs, posters or similar devices at or on the Premises. Notwithstanding the forgoing, Lessee may, without the consent of the Port Authority, erect advertising signs directly related to its permitted operations under this Agreement, safety instruction signs, direction signs and signs setting forth public service information issued by the City of Newark.

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

Section 19. Indemnity and Liability Insurance

(a) Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, personal injuries, and for property damages, arising out of the use or occupancy of the Premises by Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others on the Premises, or out of any other acts or omissions of Lessee, its officers, agents or employees on or with respect to, the Premises, or out of the acts or omissions of others on the Premises, including claims and demands of the party, if any, from which the Port Authority derives its rights in the Premises for indemnification arising by operation of law or through agreement of the Port

Authority with such party, excepting only claims and demands which result solely from the negligent or willful acts of the Port Authority.

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

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

(1) Commercial General Liability Insurance including but not limited to coverage for Premises operations and products liability-completed operations, which coverage shall not exclude claims arising out of or in connection with operations conducted within fifty (50) feet of railroad property, with a minimum combined single limit coverage for bodily injury and property damage of $25,000,000.00. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(2) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of $3,000,000.00.

(3) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual, accidental and sudden occurrences, both on-site and off-site cleanup, of $5,000,000.00 including coverage for environmental clean-up on land, in air, and on water. The environmental impairment liability policy(ies) and any certificate of insurance submitted pursuant to this Agreement in relation to such policy(ies) shall (i) be expressly endorsed for the Port Newark Facility and each transfer location, travel route and material disposition location selected by Lessee, (ii) state that claims disputes and coverage shall be litigated in United States courts having jurisdiction, and not be limited to arbitration, and (iii) acknowledge Lessee's disclosure to the insurance carrier that the material may be considered a Hazardous Substance under applicable law including, but not limited to, RCRA and/or CERCLA and/or the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. It should be noted that the substances may be considered "hazardous" under CERCLA, but not necessarily "hazardous" under RCRA and that such materials if RCRA "hazardous" would require a manifest and disposal certificate under RCRA at a Subtitle

C hazardous waste disposal facility. A copy of this Agreement, including all schedules and documents attached hereto, shall be provided to the insurance carrier.

(4) Workers' Compensation and Employer's Liability Insurance with limits of not less than $1,000,000, and otherwise in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (i) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - Jones Act, maritime (including coverage for Masters or Members of the Crew of Vessels), if applicable, and (ii) Coverage B under the Federal Employers' Liability Act.

(5) Such other insurance in such amounts as from time to time may be required by the Port Authority during the Term against such other insurance hazards as at that time are required by the Port Authority of all other lessees of the Port Authority operating marine container terminals similar to the Premises.

(d) With the exception of the Workers' Compensation and Employers' Liability Insurance Policy, each policy of insurance described in Section 19(c) above shall include the Port Authority as an additional insured (including, without limitation, for purposes of Premises operations and completed-operations) and each such policy shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Each such policy shall contain a contractual liability endorsement covering the indemnity obligations of Lessee under this Section and such policies shall not contain any care, custody or control exclusions. Such insurance shall also contain an endorsement with respect to providing that the protection afforded Lessee thereunder with respect to any claim or action against Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against Lessee by the Port Authority and against the Port Authority by Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

(e) All insurance provided for herein shall be issued by financially sound and responsible insurance providers authorized to do business in the State in which the Premises is located. Any insurance provider providing the required coverages must have a claims paying ability/financial strength rating of "A-" (or its equivalent) or better by Standard & Poor's, A.M. Best or an equivalent rating by a comparable insurance rating agency. On or before the date hereof, the Port Authority has reviewed certificates of insurance evidencing Lessee's various coverages and confirmed that the same are acceptable to the Port Authority and in conformance with the requirements of this Section 19.

(f) As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority within fifteen (15) days after the execution of this Agreement by the Port Authority and Lessee. In the event any binder is delivered it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving thirty (30) days, written advance notice thereof to the Port Authority. A binder evidencing each renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the Expiration Date, and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance or as to coverages or minimum limits, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority, and in each such case the Port Authority's requirements shall be applied to the Premises in a manner consistent with the Port Authority's application of such requirements at the other leases from the Port Authority made with respect to the operation of marine container terminal facilities, Lessee shall promptly obtain one or more new and satisfactory policies in replacement to the extent commercially available.

Section 20. Maintenance and Repair

(a) Lessee shall at all times keep the Premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of Lessee located in or on the Premises.

(b) Lessee shall promptly and at its sole expense repair, replace, rebuild and paint all or any part of the Premises or of the Marine Container Terminal Facility which may be damaged or destroyed by the acts or omissions of Lessee or by those of its officers or employees, or of other persons on or at the Premises.

(c) Subject to the provisions of paragraph (f) of this Section and Section 21 of this Agreement, throughout the Term, Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the Premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the Premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Premises or Lessee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items: (1) paving, which shall mean maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, catch basins, underground storm water pipes, and grate support systems, including repairs required above the structural concrete chamber of

catch basins and manholes; such repairs shall include the concrete brick collar, concrete collar, brick collar, asphalt concrete pavement, Portland cement concrete pavement, the frame and grate or manhole cover and silt bucket when and where applicable; for the purpose of manhole and catch basin repair, the top of the structural chamber shall be the top of the concrete slab that covers the vertical walls of the underground manhole structure, and for the purpose of catch basin and manhole repair, the top of the structural chamber shall be the top of the (cast-in-place or pre-cast) vertical walls of the underground catch basin and manhole structure); (2) crane rails and rail foundations; (3) scales; (4) rail tracks on the Premises (5) lights, light poles and light pole foundations; (6) sprinkler systems; (7) gas and electric from the meter (utility companies are responsible up to the meter); (8) container cranes; (9) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (10) the plumbing system, fixtures and equipment, and all finished plumbing; (11) buildings and all parts thereof; (12) special mooring devices and special loading devices, whether mechanical, electrical, hydraulic or otherwise; (13) fencing, (14) signs; (15) fire extinguishers; (16) all painting; and (17) any means of ingress, egress or other access, whether pedestrian or vehicular, within the Premises. Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement of the term of the letting thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the buildings or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises or the environmental condition thereof. Lessee shall make frequent periodic inspections of the Premises and shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by Lessee shall be in quality and class not inferior to the original in materials and workmanship. With respect to anything originally supplied or installed by the Port Authority in which title does not vest in the Port Authority, Lessee shall have the benefit of the warranty, if any, running to the Port Authority, to the extent assignment thereof does not impair or void the same.

(d) Without limiting the obligations of Lessee stated elsewhere in this Agreement, Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the Premises, excepting only loss, theft or damage which result solely from the affirmative negligent or willful acts of the Port Authority, its Commissioners, officers, employees and representatives, and shall promptly replace or repair the same within twenty (20) days after such loss, theft or damage (except that if any such repair requires activity over a

period of time, then Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at the commencement of the letting, reasonable wear not materially affecting the efficient use and functioning of the same excepted.

(e) (1) Upon sixty (60) days' notice from Lessee to the Port Authority that any portion of the berthing area that has been previously deepened and strengthened by Lessee to a specified number of feet below Mean Low Water (the "Existing Depth"), has shallowed to a depth of two (2) feet above the Existing Depth of such portion of the berthing area, then upon Lessee's making such part of the berthing area available for dredging operations, the Port Authority, at no expense to Lessee, shall proceed (to the extent permitted by governmental authorities having jurisdiction, which permission the Port Authority shall use commercially reasonable efforts to obtain) to dredge such part of the berthing area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to the Existing Depth of such portion of the berthing area, as applicable. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the sole opinion of the Port Authority for underwater support of structures, which opinion shall be controlling. Notwithstanding the foregoing, Lessee shall be solely responsible for all dredging costs associated with the strengthening, deepening, or construction of a berth to the Existing Depth.

(2) Notwithstanding any other provision of this Section, in the event that the Port Authority shall determine that the Estimated Cubic Yard Cost will exceed One Hundred and Ten Dollars and No Cents ($110.00), subject to adjustment as provided in this Section 20 (the "Base Cost"), the Port Authority shall not be obligated to perform the dredging work set forth in subparagraph (1) of this paragraph (e) unless Lessee shall pay for any amount of the Estimated Cubic Yard Cost in excess of the Base Cost. The "Estimated Cubic Yard Cost" shall mean the cost on average of dredging the portion of the berthing area described in Lessee's notice given to the Port Authority under the aforesaid subparagraphs per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations (including normal over dredge amounts) called for hereunder, with such estimate to include, but not be limited to, the cost of dredging, transportation, processing (including amendment, separation, removal, transportation and disposal of trash and debris), disposal (including mobilization at disposal sites) of any dredged material, insurances, compliance with environmental laws and obtaining necessary permits, work to address unanticipated site conditions, and an amount equal to one hundred fifteen percent (115%) of all of the direct staff costs to the Port Authority attributable to all of the foregoing. In the event that the Port Authority shall determine that the Estimated Cubic Yard Cost of any such dredging will exceed the Base Cost, the Port Authority shall so notify Lessee and Lessee shall have the right to elect to have the dredging performed subject to its obligation to pay for any

such excess cost. In the event that Lessee shall not elect to pay such excess cost of the dredging, the Port Authority shall be relieved of its obligation to perform such dredging until such time, if ever, that it shall determine that the Estimated Cubic Yard Cost of such dredging does not exceed the Base Cost. The Base Cost shall be subject to adjustment during the term of the letting under this Agreement in accordance with the provisions of subparagraph (4) of this paragraph.

(3) Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through the day preceding the next Anniversary Date, or the expiration date of the term of the letting under this Agreement, as the case may be, the Base Cost set forth in subparagraph (2) of this paragraph (e) shall be adjusted by adding to or subtracting from the Base Cost, as the case may be, the product obtained by multiplying the Base Cost by the Construction Cost Percentage Change for such Anniversary Date. For purposes of any adjustment under this subparagraph, the Base Cost employed in the calculation described in the immediately preceding sentence shall be the Base Cost as previously adjusted under this paragraph.

(4) In the event the index shall hereafter be converted to a different standard reference base or otherwise revised or ENR Magazine shall cease to publish the Construction Cost Index, then for the purposes hereof there shall be substituted for the index such other appropriate index or indices properly reflecting changes in construction costs in a manner similar to that established in the Construction Cost Index used in the latest adjustment as the Port Authority may in its discretion determine. If after an adjustment in the Base Cost shall have been fixed for any period, the Construction Cost Index used for computing such adjustment shall be changed or adjusted, then the adjustment of the Base Cost for that period shall be recomputed accordingly.

(5) Notwithstanding any other provision of this Section, the Port Authority shall not be obligated to perform the dredging work set forth in subparagraph (1) of this paragraph (e) as to any part of the portion of the berthing area described in Lessee's notice given to the Port Authority under the aforesaid subparagraph as long as any vessel or other floating structure, equipment or other personal property (whether or not intended to be floating) is sunk, settled or partially or wholly submerged in such part of the berthing area. The provisions of this subparagraph shall be applicable whether or not the aforesaid object is owned by Lessee or is connected in any way with Lessee or its occupancy of or operations at the Premises. The Port Authority shall have no obligation to raise or remove any such object unless its presence in the berthing area predates the effective date of the Existing Lease or is the result of the sole negligence or willful act of the Port Authority.

(f) Except under circumstances as to which paragraph (b) of this Section applies, and subject to paragraph (g) of this section, upon receipt of notice that repair or replacement of such of the following as are located in or are a part of the Premises is required: (1) the structure of the wharf, including wharf decking and wharf

and crane rail foundation piles, fender systems (but not backing logs or bumpers), and standard mooring devices; (2) the water distribution system; and (3) underground sanitary systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the Premises in a reasonably good condition for the operations of Lessee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the Premises to a better condition than that existing on the Commencement Date (or in the case of improvements made during the Term, the condition as at the time of the installation or construction thereof). The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of Lessee under any other provision of this Agreement. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable, except as expressly provided in Section 21 of this Agreement. If the Port Authority shall fail, after a reasonable period of time to perform its repair and replacement obligations under this paragraph, Lessee, as its sole remedy, shall, following written notice to the Port Authority, perform the work, and the Port Authority shall on demand pay Lessee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to Lessee a credit against its rental obligations under this Agreement in an amount equal to such expenditures. Furthermore, prior to the commencement by the Port Authority of any work set forth in Lessee's notice to the Port Authority, Lessee shall take all precautions necessary to protect persons or property at the Premises, including the immediate performance by Lessee of any work required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse Lessee for such work as provided in this paragraph. Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, Lessee's officers, employees, agents, and representatives which may arise from the condition of the Premises or any part thereof, or from the failure of Lessee to notify the Port Authority of conditions requiring repair or replacement, or from the failure of Lessee to make timely corrections of dangerous or potentially dangerous conditions at the Premises. Except as set forth above, Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, employees, agents, and representatives from any liability for damages to Lessee, consequential, or otherwise, in connection with any of the provisions of this paragraph concerning repairs or replacements to any portion of the Premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(g) The obligation of Lessee as set forth in paragraphs (b) and (c) of this Section and in Section 21 in the event of damage or destruction covered by any

contract of insurance under which the Port Authority is the insured (including, but not limited to, fire, extended coverage or pier and wharf insurance) 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 Lessee 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 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.

Section 21. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the Premises are damaged in any material respect, Lessee shall proceed in a timely manner to repair and/or rebuild the same with all due diligence subject to Force Majeure and the terms and conditions of this Agreement, including, without limitation, Section 10 hereof. Subject to the notice and cure periods provided for in Section 29 hereof, the Port Authority shall have the right to terminate this Agreement by notice given to Lessee, in the event of Lessee's failure to repair and/or rebuild in a timely manner and with due diligence, any damage to the Premises or any improvements thereon as a result of a casualty. Without in any way limiting the obligations of Lessee set forth in the first sentence of this paragraph, with respect to all portions of the Premises, Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the term of the letting under this Agreement:

(1) All risk property damage insurance covering the full replacement cost of any property owned, leased, or within the care, custody or control of Lessee and now or in the future located on or constituting a part of the Premises, except for any personal property owned by the Port Authority. Full replacement cost shall be reasonably determined by the Port Authority. No omission on the part of the Port Authority to make such determination shall relieve Lessee of its obligations to maintain the appropriate insurance under this paragraph. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New Jersey, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and boiler and machinery hazards and risks, and, if the Port Authority so requests, also covering nuclear property losses and contamination.

(2) The property damage insurance policy required by Section 21(a)(1) shall name the Port Authority and Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide that loss, if any, shall be adjusted with and payable to the Port Authority and naming the Port Authority as additional insured and loss payee. As to any insurance required by Section 21(a)(1), a certificate of insurance, or binders, shall be delivered by Lessee to the Port Authority on or before the Commencement Date. In the event any binder is delivered, it shall be replaced within ten (10) days by a certificate of insurance. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the Expiration Date. If at any time the policy required by Section 21(a)(1) shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, Lessee shall promptly obtain a new and satisfactory policy in replacement.

The proceeds of insurance from coverages secured in accordance with Section 21(a)(1) shall be made available to Lessee and shall be applied by Lessee strictly and solely to the repair, replacement, or rebuilding of the Premises as provided in this Agreement. The procedures for such rebuilding shall be the same as for Lessee's Construction Work as set forth in Section 10 hereof. Lessee shall not be entitled to any abatement of the Rent payable hereunder at any time by reason of such casualty.

(b) If there shall be an excess of the proceeds of insurance over the cost of the repair, replacement or rebuilding of the Premises as required under paragraph (a) of this Section, then Lessee shall identify to the Port Authority other capital improvements on the Premises beyond the aforesaid work required in connection with the casualty, including, without limitation, any portion of Lessee's Construction Work, and the Port Authority shall make such excess proceeds available to Lessee for such capital improvements; provided, however, that Lessee shall commence such capital improvements within one (1) year of the Port Authority's receipt of the proceeds of insurance, and if Lessee shall not so proceed in a timely manner, all of such proceeds shall be returned to the Port Authority regardless of any expenditure by Lessee on such capital improvements.

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

(d) In the event of damage to or a partial or total destruction of the Premises or improvements thereon, Lessee shall within thirty (30) days after the occurrence commence to remove from the Premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if Lessee does not perform its obligation hereunder, the Port Authority may, upon no less than ten (10) business days' notice to Lessee, remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by Lessee to the Port Authority, with any balance remaining to be paid to Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, Lessee shall pay such excess to the Port Authority on demand without limiting any term or provision of this Agreement, and Lessee shall indemnify and save harmless the Port Authority, its Commissioners, officers, agents, representatives, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise, excepting the affirmative negligent or willful acts of the Port Authority, its Commissioners, officers, agents, representatives, employees, contractors and subcontractors.

Section 22. Assignment and Sublease

(a) Except as otherwise set forth or permitted in this Lease (including the provisions of Section 48), neither this Agreement nor the term and estate hereby granted, nor any part hereof or thereof, shall be assigned, mortgaged, pledged, encumbered or otherwise transferred by Lessee voluntarily, involuntarily, by operation of law or otherwise (any of the foregoing, an "Assignment"; and the assignee or other transferee pursuant to an Assignment, an "Assignee") without the prior written consent of the Port Authority, and neither the Premises, nor any part thereof, shall be subleased, licensed, franchised, used or occupied by any person or entity other than Lessee or encumbered in any manner by reason of any act or omission on the part of Lessee, nor shall Lessee part with possession of all or any portion of the Premises (any of the foregoing being referred to herein as a "Sublease"; and the sublessee, licensee, franchisee, occupant or other party obtaining the right to possession pursuant to a Sublease being a "Sublessee") without the prior written consent of the Port Authority, and no rents or other sums receivable by Lessee under any Sublease of all or any part of the Premises shall be assigned or otherwise encumbered. No Assignment of this Agreement and the term and estate hereby granted and no Sublease of all or any portion of the Premises, shall relieve Lessee of its obligation to obtain the Port Authority's prior written consent to any further Assignment or Sublease.

(b) If Lessee shall enter into an Assignment or Sublease in violation of Section 22(a), the Port Authority may collect rent directly from any Assignee or Sublessee, or anyone who claims a right to this Agreement or to the letting or who occupies the Premises, and shall apply the net amount collected to the Rent herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in Section 22(a), nor an acceptance by the Port Authority of any such Assignee, Sublessee, claimant or occupant as tenant, nor a release of Lessee by the Port Authority from the further performance by Lessee of the covenants contained in this Agreement. Lessee hereby authorizes the exercise by the Port Authority of its rights under this subsection (b), and any Assignee or Sublessee may rely on this provision.

(c) Lessee further covenants and agrees that it will not use or permit any Sublessee whatsoever to use the Premises or any portion thereof for any purpose other than as provided in Section 9 of this Agreement.

Section 23. Condemnation

(a) Upon the acquisition by condemnation or the exercise of the power of eminent domain by any Person having a superior power of eminent domain, including the Port Authority (the "Condemning Agency") of an interest in all or any part of the Premises, or in the case of any deed, lease or other conveyance in lieu thereof (any such acquisition under this Section 23 being hereinafter referred to as a "taking" or "conveyance"), Lessee shall be entitled to assert any claim with respect to its leasehold interest in the Premises to any compensation, award or part thereof made or to be made therein or therefor or any claim with respect to its leasehold interest in the Premises to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any such claim against the Condemning Agency, provided that (i) such claim is then allowed by law, (ii) unless the Port Authority is the Condemning Agency, such claim shall not reduce the amount of compensation payable to the Port Authority solely with respect to its leasehold interest in the Premises or interfere with any claim made or action brought by the Port Authority against the Condemning Agency in connection therewith, and (iii) unless the Port Authority is the Condemning Agency, Lessee shall not be entitled to assert any such claim, or bring any such action, against the Port Authority for any such taking.

(b) In the event of the taking of all of the Premises then this Agreement and all rights granted by this Agreement to Lessee to use or occupy the Premises for its exclusive use and all rights, privileges, duties and obligations of the parties in connection therewith or arising thereunder shall terminate as of the date of the taking, provided, that such termination shall not constitute a waiver of Lessee's right to any claim which it is entitled to maintain against the Condemning Agency as specified in subsection (a) above.

(c) In the event that the taking covers fifty percent (50%) or more of the total usable area of the Premises, then Lessee and the Port Authority shall each have an option exercisable by notice given within ten (10) days after the effective date of such

taking to terminate the letting hereunder with respect to the Premises not taken, as of the date of such taking and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

(d) Except as set forth in paragraph (b) of this Section, in the event that the taking or conveyance covers only a part of the Premises, or in the event that the letting is terminated pursuant to paragraph (c) of this Section with respect to only a part of the Premises, then the letting as to such part shall, as of the date possession thereof is taken by such agency or agencies, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the term of the letting had on that date expired.

(e) In the event that all or any portion of the Premises is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice, which if practicable shall be given ninety (90) days in advance, to Lessee terminate the letting with respect to all or such portion of the Premises so required. Such termination shall be effective on the date specified in the notice. Lessee hereby agrees to deliver possession of all or such portion of the Premises so required upon the effective date of such termination in the same condition as that required for the delivery of the Premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by Lessee nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be an eviction of Lessee or a breach of this Agreement or be made the basis of any claim by Lessee against the Port Authority for damages, consequential or otherwise, other than those claims for any award to which Lessee may be entitled as expressly provided in this Section 23.

Section 24. Port Authority's Lessee Capital Improvement Fund

From and after January 1, 2016, Lessee may request, and the Port Authority will consider and may, in its sole and absolute discretion, create a fund in a total amount up to $150,000,000 (available in equal, one-third amounts over such three year period) toward the cost of capital improvements undertaken as part of Lessee's Construction Work, commencing during the calendar year 2016 and on the date on which the Port Authority agrees in writing, if at all, to provide such fund. The amount of funds used by Lessee from such funding, should the Port Authority decide to provide the funding, will be repaid over a twenty (20) year period at an interest rate to be determined by the Port Authority. In the event that the Term of this Agreement terminates or expires for any reason prior to the full and complete repayment of the amounts (together with interest) described herein, the entire then outstanding unpaid principal amount, together with all interest accrued thereon to the date of repayment, shall be due and payable in immediately available funds on the date of such earlier termination or expiration. All of the amount to be repaid by Lessee pursuant to this Section shall be in addition to, and not in substitution of, any other damages payable under this Agreement including, but not limited to, Section 32 hereof.

Section 25. Additional Rent and Charges

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of Lessee contrary to the said conditions, covenants and agreements (after any applicable notice and grace period as expressly provided herein), Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, Costs, damages and penalties, and the same may be added to any installment of Base Rent thereafter due hereunder, and each and every part of the same shall be and become Rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of any of the rentals set forth in this Agreement. If practicable, and except in case of emergency, the Port Authority will provide Lessee with fifteen (15) days notice prior to the Port Authority's making any such payment or incurring any such obligation or expense. No payment made by Lessee to the Port Authority under this Section shall be or be deemed a waiver by Lessee of any right to contest its making of such payment.

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

Section 26. Rights of Entry Reserved

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same, for observing the performance by Lessee of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise. In the case of an emergency, the Port Authority may enter the Premises at any time.

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and on behalf of furnishers of utilities and other services, shall have the right but not the obligation, for its own benefit, for the benefit of Lessee, or for the benefit of others than Lessee at the Premises, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as the Port Authority shall deem necessary or advisable and, from time to time, to construct or install over, in or under the Premises new systems or parts thereof; provided, however, that in the exercise of such rights of access, repair,

alteration or new construction the Port Authority shall not interfere in any material respect with the use and occupancy of the Premises by Lessee.

(c) Prior to exercising any right of entry reserved to it under this Section (in which event the Port Authority shall give such oral or written notice as may be appropriate under the circumstances), the Port Authority agrees, other than in the case of an emergency, to give Lessee reasonable prior notice of its intention to enter the Premises.

(d) Lessee shall cause such office and parking space within the Premises as the Port Authority may reasonably request and in such locations as are acceptable to Lessee, to be made available for use by the Port Authority police and its other representatives that are engaged in official duties on behalf of the Port Authority on the Premises. In addition, Lessee shall cause such space within the Premises as the Port Authority may reasonably request, to be made available for use as a field office by the Port Authority's engineers required or deemed advisable by the Port Authority to be present on the Premises in connection with Lessee's Construction Work or any other issue related to the Premises.

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

(f) Nothing in this Section 26 shall impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. Lessee is and shall be in exclusive control and possession of the Premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Premises or for any injury or damage to the Premises or to any property of Lessee or of any other person located therein or thereon (other than those occasioned by the acts of the Port Authority).

(g) At any time and from time to time during ordinary business hours within the twelve (12) months preceding the Expiration Date, the Port Authority, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same, and during such three (3) month period the Port Authority may place and maintain on the Premises, the usual "To Let" signs, which signs Lessee shall permit to remain without molestation.

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

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

Section 27. Limitation of Rights and Privileges Granted

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

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

(c) Nothing in this Agreement contained shall grant to Lessee any rights whatsoever in the air space above the roof of any building or buildings or portion of any building or buildings, if any are included in the Premises (except to the extent required in either case for the performance of any of the obligations of Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the Premises (except to the extent required for the operation of the container cranes and equipment on the Premises and the movement and storage of containers and other cargo).

Section 28. Prohibited Acts

(a) Subject to all the applicable terms and provisions of this Agreement, Lessee may install vending machines or devices designed to dispense or sell food, beverages, tobacco or tobacco products, or arrange for the installation and operation of such machines, subject to the Port Authority's reasonable approval of the type and method of installation thereof and Lessee may use an independent contractor, operator or supplier for such machines selected by Lessee unless the Port Authority reasonably determines that said contractor, operator or supplier will materially adversely affect or materially interfere with operations at the Premises or will cause or contribute to the causing of labor problems or disturbances thereat. Such vending machines shall be installed and operated solely for use by Lessee's officers, members, employees,

contractors, customers, guests and invitees. Lessee's agreement with any contractor, operator or supplier of vending machines shall permit cancellation by Lessee in the event the Port Authority notifies Lessee that such contractor, operator or supplier fails to meet the standards described in this paragraph. Lessee shall be fully responsible for insuring that its contractor, operator or supplier shall comply with all of the applicable provisions of this Agreement and all acts and omissions of such contractor, operator or supplier shall be deemed acts and omissions of Lessee and Lessee and the contractor, operator or supplier shall be jointly and severally responsible therefor to the Port Authority only.

(b) Subject to all of the provisions of this Agreement, and pursuant to an approved tenant construction or alteration application under Section 10 of this Agreement, Lessee may install a coffee shop, and may arrange for the presence at the Premises of a mobile coffee wagon, and may operate such facilities with its own employees, or arrange for the operation thereof by an independent contractor or operator selected by Lessee unless the Port Authority reasonably determines that said contractor or operator will materially adversely affect or materially interfere with operations at the Premises or will cause or contribute to the causing of labor problems or disturbances thereat. Such coffee shop and mobile coffee wagon shall be installed and operated solely for use by Lessee's officers, members, employees, contractors, customers, guests, and invitees. Lessee shall be fully responsible for insuring that its contractor or operator shall comply with all of the applicable provisions of this Agreement and all acts and omissions of such contractor or operator shall be deemed acts and omissions of Lessee and Lessee and the contractor or operator shall be jointly and severally responsible therefor to the Port Authority only.

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

(d) Lessee shall not dispose of nor permit any one to dispose of any waste material (whether liquid or solid) by means of the toilets, manholes, sanitary sewers or storm sewers in the Premises except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority.

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

(f) Lessee shall not overload any floor and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear.

(g) Lessee shall not fuel or defuel its automotive vehicles or other a equipment in the enclosed portions of the Premises without the prior approval of the Port Authority.

(h) Lessee shall not keep or store in the Premises, explosives, inflammable liquids or solids or oxidized materials or use any cleaning materials having a harmful corrosive effect on any part of the Premises, except for those materials normally used in the operation of a marine terminal and stored in a structure normally used for the storage of such materials and made safe for the storage thereof.

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

(j) Lessee shall not dispose or, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on or from the Premises, and shall not dispose of, release or discharge any Hazardous Substance at the Port Newark Facility. Any Hazardous Substance disposed of, released or discharged by Lessee (or permitted by Lessee to be disposed or, released or discharged) on or from the Premises or at the Port Newark Facility, shall upon notice by the Port Authority to Lessee and subject to the provisions of Section 13 hereof, be completely removed, cleaned up and/or remediated by Lessee. The obligations of Lessee pursuant to this paragraph (j) shall survive the expiration or termination of this Agreement.

Section 29. Termination

(a) If any one or more of the following events shall occur (each of which shall be referred to as an "Event of Default"):

(1) Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (or fail to object to any involuntary petition within ninety (90 days of the filing thereof)) or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property, or otherwise liquidate or dissolve whether or not in connection with any bankruptcy proceeding; or

(2) By order or decree of a court Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if Lessee is a corporation, by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof, that in each case, is not stayed or dismissed within ninety (90) days; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Lessee that is not stayed or dismissed within ninety (90) days; or

(4) This Agreement shall be assigned, sublet or transferred in violation of Sections 22 or 48; or

(5) The occurrence of any Change of Control without the prior written consent of the Port Authority as provided in Section 48; or

(6) If Lessee is a partnership, limited liability company or corporation, the said partnership, limited liability company or corporation shall be dissolved as the result of any act or omission of its partners, members or shareholders or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

(7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Lessee, and such possession or control shall continue in effect for a period of thirty (30) days; or

(8) (i) Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Premises or a substantial portion of the Premises for a period of sixty (60) days or (ii) after exhausting or abandoning any right of further appeal, Lessee shall be prevented for a period of sixty (60) consecutive days by action of any governmental agency from conducting its operations on the Premises, regardless of the fault of Lessee; or

(9) Lessee shall fail duly and punctually to pay when due any installment of Rent owing pursuant to this Agreement, or any part of the same, and such default shall continue for five (5) days after the scheduled payment date, in the case of regular payments of Base Rent or Container Throughput Rental, or five (5) days after written notice from the Port Authority for any other Rent; or

(10) Lessee shall fail to obtain any insurance policy required to be maintained by Lessee under this Agreement within ten (10) days after notice from the Port Authority of such failure, or shall allow any such policy to lapse without renewing same within thirty (30) days after such lapse; or

(11) If Lessee shall default in or fail to keep, perform and observe each and every other covenant and agreement set forth in this Agreement on its part to be kept, performed or observed (other than those referred to in Section 29(a)(1) – (10) above), and either such default or failure shall continue for a period of thirty (30) days after Lessee's receipt of notice from the Port Authority, or, in the case of a default or a contingency which is susceptible of being cured but which cannot with due diligence

be cured within such period of thirty (30) days, Lessee fails to proceed with all due diligence within such period of thirty (30) days to commence the cure of the same and thereafter to prosecute the curing of such default with all due diligence (it being intended that in connection with a default susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days that the time period will be extended as may be necessary to complete the curing thereof with all due diligence); provided, however, that if the default or noncompliance is not susceptible of being cured with due diligence but such default shall not materially affect Lessee's performance of this Agreement or the value of the Premises, Lessee shall be obligated in all events to take all reasonable acts to prevent reoccurrence;

then upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Port Authority may upon ten (10) days written notice, and provided such Event of Default remains uncured during such ten (10) day period, terminate the letting under this Agreement upon the date specified in such notice.

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

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

Section 30. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 29 of this Agreement, have the right to re-enter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession by way of summary or other appropriate legal proceedings. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 31. Waiver of Redemption

Lessee hereby waives any and all rights to recover or regain possession of the Premises and all rights of redemption, granted by or under any present or future law

in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains possession of the Premises in any lawful manner.

Section 32. Survival of the Obligations

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 29 of this Agreement, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 30 of this Agreement, Lessee shall pay to the Port Authority, upon such termination or cancellation, re-entry, regaining or resumption of possession, subject to the provisions of Section 33 hereof, the damages set forth in paragraph (b) of this Section. The Port Authority may maintain separate actions from time to time to recover the damage or deficiency then due, if any (less the proper discount), or at its option and at any time may sue to recover the full deficiency, if any, (less the proper discount) for the entire unexpired portion of the Term.

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

(1) the amount of all unfulfilled monetary obligations of Lessee under this Agreement, including, without limitation thereto, all sums constituting the Rent, including but not limited to under Sections 4, 6 and 8 of this Agreement (and including Container Throughput Rental for the remainder of the Term of this Agreement based on the 12 month period immediately preceding the date of termination) and all sums constituting additional rental under Section 25 of this Agreement, whether accrued prior to the effective date of termination or which would have accrued after such date, through the end of the Term of this Agreement, and the cost to and expenses of the Port Authority for fulfilling all other obligations of Lessee which would have accrued or matured during the balance of the Term or on the Expiration Date or within a stated time after expiration or termination; and

(2) Without duplication of any amount set forth in (1) above, an amount equal to the cost and the expenses of the Port Authority in connection with the termination, cancellation, regaining possession and restoring and reletting the Premises, the Port Authority's legal expenses and costs, and the Port Authority costs and expenses for the care and maintenance of the Premises during any period of vacancy; and

(c) Notwithstanding any other provision of this Section, and without limiting the generality thereof, Lessee shall pay to the Port Authority liquidated damages in the amounts set forth below in this paragraph. The aforesaid liquidated damages shall be payable in full by Lessee to the Port Authority on the first day of the first calendar month next following the termination or cancellation (or re-entry, regaining or resumption of possession), and, assuming such amount is timely paid to the Port Authority, shall be credited back to Lessee against other amounts due under this Section 32 as and when all such other amounts have been paid in full to the Port Authority. The

said liquidated damages shall not be subject to reduction under the provisions of Section 33 hereof:

(1) On account of Lessee's Base Rent and additional rental obligations, an amount equal to the Base Rent payable under Section 4 and additional rental due for the twelve-month period commencing on the first day of the first calendar month next following the earlier of the date of termination or cancellation (or re-entry, regaining or resumption of possession); and

(2) Without duplication of any amount set forth in subsection (c) (1) above, on account of Lessee's obligations under this Agreement with respect to the Container Throughput Rental and the Non-Container Cargo Throughput rental, an amount equal to the amount of each such rental payable by Lessee during the period of twelve full calendar months immediately preceding the earlier of the date of termination or cancellation (or re-entry, regaining or resumption of possession).

(d) Without limiting the generality of any other provision of this Section, in the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 29 of this Agreement, or in the event that the Port Authority has re-entered, regained or resumed possession of any portion of the Premises in accordance with the provisions of Section 30 of this Agreement, the Port Authority shall have the right to require Lessee to assign to the Port Authority any then outstanding contract or contracts entered into by Lessee for the performance of Lessee's Construction Work or any other construction work being performed on such portion of the Premises. The contract or contracts to be so assigned, if any, shall be determined by the Port Authority acting in its sole discretion and designated by written notice from the Port Authority to Lessee. In the event that Lessee shall assign any such contract to the Port Authority under the provisions of this paragraph, Lessee shall be fully responsible and liable for the payment of any amounts accrued under such contract through the date that the letting shall have been terminated in accordance with a notice of termination as provided in Section 29 of this Agreement, or the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 30 of this Agreement. Lessee agrees that it shall include in each contract entered into by it for the performance of Lessee's Construction Work or any other construction work provisions allowing the assignment of said contract to the Port Authority. Nothing contained in this paragraph shall be or be deemed an agreement by the Port Authority to accept an assignment and/or to perform any contract entered into by Lessee for the performance of Lessee's Construction Work or any other construction work or shall create or be deemed to create any rights against the Port Authority in any contractor or other third party with respect to any such contract.

(e) Nothing contained above in this Section 32 or in Section 33 shall or shall be construed to lessen, limit, mitigate, release or in any way affect any of the obligations of Lessee or the Port Authority, as applicable, under Sections 13 and 35 of this Agreement, which obligations shall remain in full force and effect notwithstanding any such termination or cancellation, re-entry, regaining or resumption of possession.

Section 33. Reletting by the Port Authority

The Port Authority, upon termination pursuant to Section 29 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 30 of this Agreement, may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of only part of the Premises or of the entire Premises, and for a period of time the same as or different from the balance of the Term remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination pursuant to Section 29 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 30 of this Agreement, have the right to repair and to make structural or other changes in the Premises, including changes which alter the character of the Premises and the suitability thereof for the purposes of Lessee under this Agreement, without affecting, altering or diminishing the obligations of Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the Premises (or portion thereof) during the balance of the Term as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the Premises as the Port Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance of a surrender. It is understood by the Port Authority and Lessee that the Port Authority has no obligation to relet the Premises or any portion thereof or to use or occupy the Premises or any portion thereof itself, except to the extent as may be required by law; provided, however, that the Port Authority will use its commercially reasonable efforts to lease the Premises or portions thereof in the general maritime real estate rental market promptly upon the cessation of Lessee's operations and removal by Lessee of its equipment and trade fixtures to the extent required hereunder.

Section 34. Remedies to Be Nonexclusive

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

Section 35. Surrender

(a) Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the

condition required by the provisions of Section 20 regarding the condition of the Premises at the expiration or termination of the letting hereunder.

(b) Unless required for the performance by Lessee of its obligations hereunder, Lessee shall have the right at any time during the Term to remove from the Premises, all its equipment, removable fixtures and other personal property (including, without limitation, its container cranes, regardless of whether such cranes are attached or affixed to the Premises), and all property of third persons for which Lessee is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the Premises, repairing all damage caused by any removal; provided, however, that, except with respect to any of Lessee's container cranes located on the Premises that the Port Authority has exercised its right to purchase such cranes, to the extent such right then exists under Section 59, if Lessee shall fail to remove all other property within forty-five (45) days after the expiration or earlier termination of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, provided further that the Port Authority shall have given Lessee ten (10) days' notice of the Port Authority's intent to sell such property at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by Lessee to the Port Authority, with any balance remaining to be paid to Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, Lessee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise.

Section 36. Acceptance of Surrender of Lease

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of Lessee. Except as expressly provided in this Section 36, neither the doing of, nor any omission to do, any act or thing, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

Section 37. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port Authority or Lessee, except as otherwise expressly provided herein, shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an office of such party, officer or representative during regular business hours; or (iii) delivered to the residence of such party, officer or

representative at any time; (iv) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar courier service or (v) sent by facsimile with transmittal receipt. In addition, notice to Lessee may be delivered to the Premises at any time to the offices of the terminal manager; provided, however, that said notice shall also be delivered to Lessee as set forth in subdivision (i), (ii), (iii), (iv) or (v) of the immediately preceding sentence. Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, 15th Floor, New York, New York 10003-1604, and Lessee designates its office, the address of which is set forth in Page 1 of this Agreement, as their respective offices where notices and requests may be served.

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

Section 38. General

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

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

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

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

except that Lessee may use contractors, in the performance of its obligations to maintain and repair the Premises, to perform Lessee's Construction Work, to conduct environmental assessments and to supply watching and stevedoring services, including, coopering, clerking, checking, and extra labor functions at the Premises provided that if separate contractors are engaged to perform any of the foregoing services, nevertheless, the active management, direction, administration and executive action involved in the operations of Lessee shall all be performed at all times during the letting solely by Lessee, its officers and employees, and provided further that Lessee shall be fully responsible to the Port Authority for the acts and omissions of such contractors and their officers, agents, representatives, employees and persons on the Premises with their consent to the same extent as if the same were the employees of Lessee. None of the

provisions of this Section 38(a) shall be taken to alter, amend or diminish any obligation of Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Premises with its consent.

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

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

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

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

(f) This Agreement does not constitute Lessee the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created, notwithstanding the fact that all or a portion of the rental to be paid hereunder may be determined by gross receipts from the operations of Lessee hereunder.

(g) As used in Sections 17 and 26, the phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

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

(i) In the event that obstruction lights are now or in the future shall be installed on the Premises, Lessee agrees to furnish the Port Authority without charge, electricity for energizing such obstruction lights daily for a period commencing thirty

(30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and sunrise may vary from day to day throughout the year) and for such other periods as may be requested by the Port Authority.

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

(k) So long as Lessee shall pay all rentals provided for in this Agreement and shall observe and perform all the terms, covenants and conditions on Lessee's part to be observed and performed under this Agreement, Lessee may peaceably and quietly enjoy the Premises, during the term of the letting, without hindrance or molestation by anyone claiming by, through or under the Port Authority, subject, nevertheless, to the terms, covenants and conditions of this Agreement, it being understood that the Port Authority's liability hereunder shall obtain only so long as it remains the ground lessee of the Premises.

(l) The Port Authority, for the benefit of itself and designated third parties, shall have the right of access and passage for vessels along, upon and across the waters of the berthing area or any part thereof, to the extent only that such right may be exercised without interfering in any material respect with the operations of Lessee.

(m) Without in any way limiting the obligations of Lessee as elsewhere stated in this Agreement, Lessee shall be liable to the Port Authority for any damage done to the Premises or to any part thereof, or to any property of the Port Authority thereon through any act or omission of those in charge of any one or more vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment while the same are at, coming to or leaving the Premises, except for damages to any property of the Port Authority (other than the Premises) caused by any one or more of such vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment as may be coming to or leaving the Premises without previous knowledge or permission on the part of the Lessee and not owned or operated by one of Lessee's customers or invitees.

(n) Lessee recognizes that the Premises are subject to certain height restrictions, due primarily to the proximity to Newark Liberty Airport. The Port Authority agrees to use commercially reasonable efforts to assist Lessee in discussions and filings with the FAA to determine or establish appropriate height restrictions at the Premises.

(o) The rights of the Port Authority in the Port Newark Facility are those acquired by it pursuant to the Basic Lease, and no greater rights are granted or intended to be granted to Lessee hereunder than the Port Authority has power thereunder

to grant. The letting shall in any event terminate simultaneously with the termination or expiration of the Basic Lease. Lessee shall have no surviving obligations to pay any then unpaid rents to the Port Authority in the event of a termination of the letting under this Agreement as a result of a termination or expiration of the Basic Lease.

(p) Nothing herein contained shall prevent the Port Authority from entering into an agreement with The City of Newark pursuant to which the Basic Lease is surrendered, canceled or terminated; provided, that, The City of Newark, at the time of such agreement, assumes the obligations of the Port Authority under this Agreement.

(q) Nothing contained herein shall be deemed or construed to be an undertaking or covenant for the benefit of any third party.

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

(s) This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of New Jersey, without regard to choice of law principles.

Section 39. Payments

All payments required of Lessee by this Agreement shall be made by mail to the Port Authority at P. O. Box 95000, Philadelphia, Pennsylvania, 19195-1517, or to such other address as may be substituted therefor. Alternatively, with the advance written permission of the Port Authority, Lessee may make such payments via wire transfer to the Port Authority to such bank and to such account number as the Port Authority shall advise Lessee in writing from time to time. Until such time as the Port Authority shall advise Lessee differently, the Port Authority designates TD Bank as the bank to which payments should be wired as follows:

Bank: TD Bank
ABA Number: 031201360
Account Number:

Ex (1)

Section 40. Premises

(a) Subject to Section 58 of this Agreement and except as otherwise expressly set forth herein, the Port Authority shall deliver the Premises to Lessee in its presently existing "as is" condition. Lessee agrees to and shall take the Premises in its "as is" condition and, except as set forth herein, the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the Premises for Lessee's use.

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

(c) Except for claims and demands which result solely from the negligent or willful acts of the Port Authority, the Port Authority shall not be liable to Lessee for injury or death to any person or persons whomsoever, or for damage to any property whatsoever at any time in the Premises, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, gas, steam, or electricity, whether the same may leak into, or flow from any part of the Premises or from any other place or quarter.

Section 41. Force Majeure

(a) Neither the Port Authority nor Lessee shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided, however, that this paragraph shall not apply to failures by Lessee to pay any Rent.

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

(c) Except as otherwise set forth herein, no abatement, diminution of reduction of the Rent or other charges payable by Lessee shall be claimed by or allowed to Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the state, county or city government, or of any other municipal, governmental or lawful authority

whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 42. Brokerage

Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Port Authority represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. Each party shall indemnify and save harmless the other of and from any and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services to such party in connection with the negotiation and execution of this Agreement based on such party's act or omission.

Section 43. Non-Liability of Individuals

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

Section 44. Services

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

(b) Lessee shall promptly pay all water-bills covering its own consumption, including but not limited to water delivered and sold by Lessee to vessels berthing at the Premises. In the event that any such water-bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute an item of additional Rent, payable to the Port Authority on demand.

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

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

(e) No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve Lessee of any of its obligations hereunder, or shall be or be construed to be an eviction of Lessee, or shall constitute grounds for any diminution or abatement of the rental or rentals payable under this Agreement, or grounds for any claim by Lessee for damages, consequential, or otherwise.

(f) Without in any way affecting the obligations of Lessee elsewhere stated in this Agreement, Lessee shall, subject to the provisions of Section 17 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), ship-filling lines and other water-using equipment and facilities.

Section 45. Reporting Obligations

(a) Lessee will (i) maintain books, records and accounts with respect to the business and operations of Lessee on a separate stand-alone basis from the overall operations of Lessee's Parent and any other direct or indirect subsidiaries thereof, in accordance with good business practice and applicable law; and (ii) make available to the Port Authority, during normal business hours upon the Port Authority's reasonable prior notice to Lessee, at the office of Lessee or one of its agents or advisors solely for review by the Port Authority and its agents at such location and without taking any copies, that portion of such books, records and accounts relating to security matters at the Premises or as may reasonably be required for the Port Authority to verify calculations relating to Container Throughput Rental and reimbursement requests made from time to time.

(b) The Port Authority agrees that (i) all information delivered pursuant to paragraph (a) above, and (ii) all notes, reports and analyses prepared by the Port Authority, its representatives or its advisors in connection with their review of materials provided or made available pursuant to paragraph (a) above, will, to the fullest extent permitted by applicable law, be treated confidentially and protected from disclosure by the Port Authority, including, without limitation, pursuant to any available

exceptions or exemptions under the Port Authority's "Freedom of Information Policy and Procedure". If the Port Authority receives any request to disclose any of the information provided hereunder, the Port Authority agrees to provide Lessee with prior written notice of such requirement so that Lessee may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this provision. If such protective order or other remedy is not obtained, or if Lessee waives compliance with the provisions hereof, the Port Authority agrees to disclose only that portion of the information that it is advised by counsel is legally required and it will exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such information.

Section 46. Security Deposit

(a) Upon the Commencement Date and subsequently as set forth in Section 46(h), Lessee shall deliver to the Port Authority as security for the full, faithful and prompt performance of and compliance with, on the part of Lessee, all of the terms, provisions, covenants and conditions of this Agreement on its part to be fulfilled, kept, performed or observed, clean, irrevocable letters of credit issued to and in favor of the Port Authority by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in the respective amounts set forth in Section 46(h) for the respective periods therein indicated. The form and terms of each letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority, which approval shall not be unreasonably withheld, conditioned or delayed. 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 clean, irrevocable letter of credit. Upon notice of cancellation of a letter of credit, Lessee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under this Section 46.

(b) In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option at any time and from time to time, with or without notice, to draw upon said letter of credit or any part thereof in whole or partial satisfaction of any of its claims or demands against Lessee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of a letter of credit shall cure any default or breach of any obligation of Lessee under this Agreement.

(c) If at any time any bank shall fail to make any payment to the Port Authority in accordance with any letter of credit issued by any such bank in favor of the Port Authority as herein provided, Lessee shall cause to be delivered to the Port Authority on demand another clean, irrevocable letter of credit satisfactory to the Port

Authority and issued by another banking institution in favor of the Port Authority and satisfactory to it, in an amount equal to the original amount of the said letter of credit.

(d) Failure to provide a letter of credit in accordance with the terms and provisions of this Section at any time during the Term and for a period of six (6) months thereafter valid and available to the Port Authority and any failure of any banking institution issuing a letter of credit in favor of the Port Authority to make one or more payments as provided in such letter of credit, shall be and be deemed to be a breach of Lessee's obligations under this Agreement. If at any time and from time to time during the Term and for a period of six (6) months thereafter a payment is made to the Port Authority under any letter of credit running in its favor as provided in this Section, Lessee shall cause to be delivered to the Port Authority on demand and within two (2) days thereafter, an additional clean, irrevocable letter of credit satisfactory to and issued in favor of the Port Authority by a banking institution satisfactory to the Port Authority, in such an amount so that at all times during the Term and for a period of six (6) months thereafter the Port Authority shall have a clean, irrevocable letter of credit in the amount required by Section 46(h). The form and content of said letter of credit shall have been approved by the Port Authority in advance.

(e) 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 or be deemed to be a waiver of any default by Lessee of any obligation under this Agreement and all remedies under this Agreement consequent upon such default shall not be affected by the existence of or recourse to any such letter of credit.

(f) Upon the expiration of the Term and a period of six (6) months thereafter, and upon the condition that Lessee shall then be in no wise in default after applicable notice and cure periods of any of its obligations under this Agreement the Port Authority will return the letter of credit to Lessee less the amount of any and all unpaid claims and demands (included estimated damages) of the Port Authority by reason of default or breach by Lessee of any of its obligations under this Agreement.

(g) 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 any deposit or any part thereof resulting from a draw down of all or any part of a letter of credit provided by Lessee under this Section 46 in whole or partial satisfaction of any of the Port Authority's claims or demands against Lessee arising under this Agreement. There shall be no obligation on the Port Authority to exercise such right and neither the exercise of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of Lessee.

(h) The letter of credit to be provided by Lessee to the Port Authority under this Section 46 shall be maintained in an amount equal, at all times, to the Base Rent payable (on the date payment of Base Rent commences for each such acre comprising the Premises) on either the applicable portion of the Premises on which Base Rent is due or the entire Premises, as applicable, for twelve (12) months (the "Security

Deposit"); the Security Deposit shall be adjusted, from time to time, upon the addition or subtraction of acreage to the Premises as Lessee commences payment of Base Rent on the applicable additional acreage pursuant to Section 4, by an amount which is equal to the then Base Rent payable by Lessee for a period of twelve (12) months on such acreage, provided however, that Lessee shall not be required to adjust the amount of the letter of credit at any time other than as of an anniversary of the issuance of the letter of credit and provided that additional acreage was added to the Premises during the preceding one year period (for example, if the letter of credit was issued on March 1, 2011, and additional acreage was included in the Premises on July 1, 2011, Lessee shall not be required to adjust the amount of the letter of credit until March 1, 2012).

Section 47. Affirmative Action

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

(b) In addition to and without limiting the foregoing and without limiting the provisions of Schedule C attached hereto and hereby made a part hereof, it is hereby agreed that Lessee, in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Premises, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by Lessee to meet its aforesaid commitment, within sixty (60) days after the commencement of the Term to the Port Authority for its review and approval. Lessee shall incorporate in its said program such revisions and changes as the Port Authority and Lessee may agree upon from time to time. Lessee throughout the Term shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to, annual reports. The obligations imposed on Lessee under this paragraph shall not be construed to impose any greater requirements on Lessee than those which may be imposed on Lessee under applicable law.

(c) In the implementation of this Section the Port Authority may consider compliance by Lessee with the provisions of any federal, state or local law

concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(d) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

(e) Nothing in this Section shall grant or be deemed to grant to Lessee the right to make any agreement or award for concessions or consumer services at the Premises.

Section 48. Right of Termination - Ownership and Control

(a) Lessee hereby represents, as of the date hereof, knowing that the Port Authority is relying on the accuracy of such representation, that it is a limited liability company organized and existing under the laws of the State of Delaware, that one thousand (1,000) membership interests constitute all of its existing membership interests, and that five hundred (500) of its membership interests are owned by Ports America and five hundred (500) of its membership interests are owned by TIL, a company incorporated in Guernsey, that there are no other membership interests in Lessee, and that there are no other individuals or corporations and no partnerships or other entities, except as later set forth in this Section, having any direct beneficial ownership of Lessee, and that each of Lessee, and to the knowledge of Lessee, Ports America and TIL, is a duly organized and validly existing corporation, partnership or other entity in good standing under the laws of the jurisdiction of its incorporation or organization and is duly qualified or authorized to do business as a foreign corporation or entity and is in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification or authorization.

(b) Lessee hereby further represents that there are (i) no existing options, warrants, calls, rights, or other contracts of any nature to which Lessee, or its direct or indirect ownership interests, is subject requiring, and (ii) no securities of the Lessee outstanding upon which conversion or exchange would require, the issuance of any direct or indirect interest in Lessee, or other securities convertible into or exchangeable for or evidencing the right to subscribe for or purchase any direct or indirect interest in Lessee.

(c) Lessee hereby further represents that:

(1) On the date hereof, one hundred percent (100%) of the outstanding capital stock of Ports America is owned by PAH.

(2) On the date hereof, (A) one hundred percent (100%) of the outstanding capital stock of PAH is owned indirectly by the Highstar Funds; and (B) each of the Highstar Funds is managed and controlled by Highstar Capital LP.

(3) On the date hereof, one hundred percent (100%) of the outstanding ownership interests of TIL is owned by TIL Parent and one hundred percent (100%) of TIL Parent is owned and controlled in accordance with the TIL Parent Ownership.

(d) Lessee recognizes the fact that a direct or indirect transfer of the securities, membership interests or partnership interests, in Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a Change of Control of Lessee would be for practical purposes a transfer or disposition of the rights obtained by Lessee through this Agreement. Lessee further recognizes that because of the nature of the obligations of Lessee hereunder, the qualifications and identity of Lessee and its indirect controlling owners are of particular concern to the Port Authority. Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on Lessee for the faithful performance of all obligations and covenants hereunder.

(e) Upon or following the consummation of any transaction (or series of transactions in the aggregate) constituting a Change of Control of Lessee undertaken without the consent of the Port Authority, the Port Authority shall have the right to terminate this Agreement in accordance with Section 29 hereof.

(f) In the event that either Lessee or any of its direct or indirect owners enters into a binding agreement to engage in a transaction that is likely to result in a Change of Control, Lessee shall provide the Port Authority written notice of such proposed transaction, as soon as permissible, but in no event later than three (3) business days following the execution of a definitive agreement. Such notice shall contain a description of the transaction and copies of any and all definitive transaction agreements. Following receipt by the Port Authority of such written notice, the Port Authority shall have thirty (30) days to notify Lessee as to whether or not it will consent to such Change of Control, and the terms of such consent; if the Port Authority does not notify Lessee of its decision within such thirty (30) day period, the Port Authority will be deemed to have consented to such transfer of ownership or control of Lessee. The parties acknowledge and agree that, in determining whether to terminate this Agreement upon a Change of Control, the Port Authority may act in its discretion, and may determine to terminate this Agreement, or not to terminate this Agreement in accordance with the Consent Criteria; provided however, that any commitment to maintain (i) the existing management structure at Lessee, including a management continuity plan instituted at Lessee, or at Ports America or PAH, as applicable and (ii) the existing business plan (including capital expenditure amounts contemplated by Section 11 of this Lease) will be taken into account by the Port Authority when applying the Consent Criteria and its determination of Lessee's satisfaction of such Consent Criteria.

(g) In the event that the Port Authority consents or is deemed to have consented to a Change of Control, Lessee or its successor shall pay a fee (the "Consent Fee") to the Port Authority in an amount equal to the product of (x) the actual number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the immediately preceding Lease Year times (y) $0.85 times (z) the number of full lease years remaining until the Initial Expiration Date (or, if the notice is given during the Extended Term, until the Extended Expiration Date). In the event that such Change of Control shall take place with respect to a disposition of the direct or indirect interests in or control of Lessee of either solely Highstar Capital LP or solely TIL Parent, but not both of them, the Consent Fee shall be equal to 50% of the fee calculated in accordance with the preceding sentence.

(h) In determining whether or not a Person is a Prohibited Person, Lessee (1) may rely on the certificate or report of a nationally recognized independent investigation agency reasonably acceptable to the Port Authority indicating that a Person is not a Prohibited Person and (2) shall request from any Person acquiring any interest meeting a Prohibited Person Threshold; a certificate containing representations and warranties that such Person is not a Prohibited Person. In the event that Lessee or the Port Authority determines that any holder of an interest meeting a Prohibited Person Threshold is or has become a Prohibited Person, Lessee (or its members and affiliates if applicable), upon notice from the Port Authority, will promptly take such actions as are reasonably required by the Port Authority to divest such Prohibited Person of their interest in Lessee or take such other actions as the Port Authority may reasonably require. Lessee shall have a period of 180 days from receipt of notice from the Port Authority to comply with the requests of the Port Authority before the ownership of such Prohibited Person shall be deemed a Change of Control.

(i) It is expressly acknowledged and agreed by the Port Authority that

(1) the Highstar Funds may be comprised of one or more limited partnerships or other investment vehicles as Highstar Capital LP deems may be necessary to conduct their business and, provided that such does not result in a Change of Control, the creation or termination of such limited partnerships or investment vehicles, or the alteration of their relative indirect ownership percentages in PAH, shall not constitute an Event of Default under Section 29, or any other provision, hereof, nor require the consent of the Port Authority or the payment of a Consent Fee.

(2) at any time after the date hereof, the Highstar Funds may decide to consolidate all of their ports-related businesses and, in connection therewith, to combine PAH or Ports America and/or its subsidiaries with, or move them under, one or more wholly owned subsidiaries of the Highstar Funds controlled by Highstar Capital LP, whether by merger, consolidation or other such business combination and provided such consolidation does not result in a Change of Control and that the Highstar Funds shall give the Port Authority written notice of any such transaction including a description of any resulting changes in the representation in clause (a) or (b) of this Section, such consolidation shall not constitute an Event of Default under Section 29, or any other

provision, hereof, nor require the consent of the Port Authority or the payment of a Consent Fee.

(3) it is contemplated that Ports America or TIL may become a Publicly Owned Entity, or that a parent entity of Ports America, owning a majority of the voting securities of and controlling Ports America, or TIL (which parent corporation(s) or partnership(s) are hereinafter individually and collectively, as to Ports America or TIL, called the "Parent Company" and include, in the case of Ports America PAH and intermediate holding companies controlled by the Highstar Funds) may become a Publicly Owned Entity. Notwithstanding any other provision of this Section 48, in the event that Ports America or TIL or the Parent Company of either shall become a Publicly Owned Entity and, as a result of such transaction, the ownership of Ports America or TIL set forth above in this Section 48 shall cease to be in effect, such failure to so maintain said ownership interests (in connection with any such entity becoming a Publicly Owned Entity only) shall not be an event of default under this Section 48 or a Change of Control granting the Port Authority the right to terminate this Agreement under Section 29 hereof; provided that Ports America or TIL or the relevant Parent Company, as a Publicly Owned Entity, shall be listed on a Major Stock Exchange; and provided further that, no individual, corporation, partnership or other entity (other than, in the case of Ports America, PAH or the Highstar Funds, or in the case of TIL, TIL Parent or TIL Parent Ownership) or a Publicly Owned Entity listed on a major stock exchange in the event and so long as no individual, corporation, partnership or other entity shall have Control of any class of outstanding voting securities of such Publicly Owned Entity) shall Control any class of the outstanding voting securities of Ports America or TIL or of the relevant Parent Company unless the Port Authority shall have given its prior written consent thereto, and if any such event shall occur and be continuing then the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 29 hereof.

(j) Lessee acknowledges that the covenants and termination rights set forth in this Section 48 constitute a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of Lessee with the provisions contained in this Section 48 shall constitute an Event of Default under Section 29 of this Agreement, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of said Section 29 hereof.

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

(l) Lessee shall promptly advise the Port Authority of any change in the representations made in Section 48(a) and (b).

Section 49. Late Charges

If Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of Rent or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period herein below described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight tenths of one percent (0.8%) of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time there for by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 29 of this Agreement entitled "Termination" or (ii) any obligations of Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 50. Labor Matters

During the Term, and to the extent within its reasonable control, Lessee shall not permit any situation or condition to arise or continue that causes any Labor Troubles at, or emanating from, the Premises which interferes in any material respect with the operations (including any construction work) at the Premises. Upon written notice from the Port Authority (and provided the Port Authority has obtained a corresponding understanding and agreement from the New York Shipping Association with respect to the actions requested in such notice), Lessee will (or will cause its contractor to, as applicable) take such actions as are within its control and commercially reasonable under the circumstances to rectify any condition causing or contributing to Labor Troubles as specified in such notice. In the event of failure by Lessee (or any of its contractors, as applicable) to timely comply with the requirements of this paragraph, the Port Authority, after consultation with, and approval by, the New York Shipping Association, will have the right, by notice from the Port Authority to Lessee, to require

Lessee to (1) suspend the Port Authority's permission to Lessee to proceed with the applicable portion of each specific construction project of Lessee's Construction Work or other construction work being performed by or on behalf of Lessee (i.e. the portion to which the underlying Labor Trouble relates, or suspend the Port Authority's permission to Lessee to continue such other specific operations as reasonably necessary to immediately terminate such Labor Troubles, and Lessee will thereupon immediately cease the same, and/or (2) take such other actions, supported by the New York Shipping Association, as reasonably necessary to terminate such Labor Troubles. When Labor Troubles will be so settled that such interference no longer exists and the danger thereof has been substantially mitigated, the Port Authority by notice to Lessee will (i) reinstate the permission to Lessee to perform the subject specific construction project of Lessee's Construction Work or other construction work on all the same terms and conditions as before the suspension and/or (ii) permit Lessee to resume such other suspended activities at the Premises.

Section 51. Holdover Rent

Unless otherwise notified by the Port Authority in writing at least ninety (90) days prior to the expiration or earlier termination of the Term, in the event that Lessee remains in possession of the Premises after the expiration or earlier termination of the Term, Lessee shall be deemed a "holdover tenant" and upon notice from the Port Authority shall be obligated to pay holdover rent in accordance with applicable law as a result of Lessee's status as a holdover tenant. Nothing herein contained will be deemed to give Lessee any right to remain in possession of the Premises after the expiration or earlier termination of the Term.

Section 52. Audit Fee

(a) In the event that upon conducting an examination and audit under the provisions of this Agreement, the Port Authority determines that unpaid amounts are due to the Port Authority by Lessee (the "Audit Findings"), Lessee will be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge will be payable within ten (10) days of demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) will be exclusive of, and in addition to, any and all other monies or amounts due to the Port Authority by Lessee under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge will be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Agreement with respect to such unpaid amount. Each such service charge will be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals to be paid hereunder. Nothing in this Section is intended to, or will be deemed to, affect, alter, modify or diminish in any way (1) any rights of the Port Authority under this Agreement, including, without limitation, the Port Authority's rights to terminate this Agreement or (ii) any obligations of Lessee under this Agreement.

(b) Any right of the Port Authority to conduct an audit with respect to any Lease Year shall expire on the third anniversary of the expiration of such Lease Year. Lessee shall not be required to keep or maintain such books or records of account for any Payment Period subsequent to three (3) years after the expiration of any Lease Year unless the Port Authority is engaged in an audit of such books and records, in which event such books and records shall be kept and maintained by Lessee until such audit has been completed and any amounts due as a result thereof have been paid.

Section 53. Release and Covenant Not To Sue

(a) Lessee and the Port Authority confirm that the Base Rental Rate, Container Throughput Rental rate and all other business, economic and legal terms provided for in this Agreement during the Term (the "Agreed Rental Terms") were determined by the parties in arms-length negotiations on the basis of the unique circumstances of the transactions contemplated in this Agreement, including, without limitation, the Port Authority's agreement to significantly extend the term of the Existing Lease by this Agreement as well as the agreement by the Port Authority to lease to Lessee the Added Parcels allowing for expansion of the Existing Terminal Facility.

(b) Lessee acknowledges and agrees that Lessee will derive substantial benefits from the Port Authority's agreement to enter into this Agreement, that the terms hereof represent significant and costly concessions by the Port Authority, and that without the release, agreements and acknowledgements set forth in this Section, the Port Authority likely would not have obtained the approval of its Board to enter into this Agreement. Lessee acknowledges and agrees that were it to violate the terms of this Section it would be depriving the Port Authority of a material benefit of the bargain to which Lessee and the Port Authority have agreed.

(c) Lessee acknowledges that it had the opportunity to review the rental terms of the leases as listed on Schedule D attached hereto for all other marine container terminals owned by the Port Authority and has fully considered the terms of this Agreement as well as the rental terms of such other leases as Lessee deemed relevant. The Port Authority represents that it has made available for inspection true and complete copies of (i) each of the leases contained on the compact disc, previously provided to Lessee and included as Schedule D attached hereto and (ii) a draft of that certain Consolidated Amended and Restated Agreement of Lease between the Port Authority and Maher Terminals, LLC (subdivisions (i) and (ii) collectively referred to herein as the "Port Leases"), and that the Port Leases represent all other leases from the Port Authority with marine terminal tenants in the Port. In accepting the concessions and benefits it is receiving hereunder Lessee believes and expressly agrees that the Agreed Rental Terms are fair and not unreasonably or unduly discriminatory or preferential, and that any differences between the Agreed Rental Terms and the economic, business and legal terms of the Port Leases are justified by legitimate transportation considerations, policy objectives and reasonable business judgments.

(d) In consideration of the above, Releasors, for themselves and for their respective representatives, successors, and assigns, hereby release and forever discharge the Port Authority, and its representatives, successors, and assigns of and from any and all actions, causes of action and claims arising from or relating to any attempt to challenge or otherwise invalidate the Agreed Rental Terms pursuant to the Shipping Act, or any other law, on any grounds, including, but not limited to, that such Agreed Rental Terms result in any undue or unreasonable prejudice or disadvantage to Lessee when compared with the Port Leases.

(e) In agreeing to the release set forth in this Section, each Releasor hereby covenants and agrees not to sue the Port Authority on any claim challenging the Agreed Rental Terms on any theory including, that such rates constitute an alleged violation of the Shipping Act. Releasors agree that the Port Authority shall have the right to assert any claim for breach of this Section in the federal or state courts of New York or, sitting in New York County, or the courts of New Jersey, sitting in Hudson County, and Releasors hereby consent to the jurisdiction of such courts.

(f) Releasors and Lessee and the Port Authority acknowledge and agree that the damages the Port Authority would suffer in the event that any of the Releasors was to commence a lawsuit against the Port Authority in breach of paragraph (e) above would be uncertain in amount and/or difficult to calculate and, therefore, if said breach is established, Lessee:

(1) consents to the issuance of a temporary and permanent injunction against prosecution of any suit brought in violation of the release set forth in this Section;

(2) agrees to pay the reasonable costs and attorneys' fees in connection with such suit; and

(3) agrees that the Port Authority will be entitled to one of the following options, to be determined by Lessee in its sole discretion by written notice to the Port Authority delivered within thirty (30) days following receipt by it of the Port Authority's notice specifically invoking this Section and requesting that Lessee advise the Port Authority of its choice, either:

(i) Lessee will agree to pay the Port Authority liquidated damages in the amount of Twenty Million Dollars and No Cents ($20,000,000.00), which amount shall not be deemed to be a penalty, or

(ii) Lessee will agree that the Port Authority may terminate this Agreement and therefore Lessee's right to use and occupy the Premises; provided, however, that in order to exercise the termination right the Port Authority must deliver written notice of termination not later than thirty (30) days from receipt of

Lessee's notice of election of this subdivision (ii) and the termination shall be effective on the date specified in such notice.

Section 54. Offsite Capital Improvements

The Port Authority agrees to construct or cause the construction of a flyover bridge spanning over Corbin Street at Port Newark to provide direct access for the transport of containers from Lessee's on-dock container terminal on the Premises to ExpressRail Port Newark (an interim facility operated by Lessee pursuant to Port Authority Permit No. MNS-338). It is presently intended that such bridge would include a drilled pile foundation system, concrete piers, structural steel bridge structure, concrete deck, grading, drainage and associated electrical lighting. The Port Authority shall use commercially reasonable efforts to complete the afore-described bridge on or before December 31, 2012, it being understood and agreed by Lessee that, in order to accomplish same, the Port Authority will need to enter upon and use both the Premises and the area located at ExpressRail Port Newark, including, without limitation, use of these areas to store materials, supplies and equipment used in connection with construction of the bridge, without interference, interruption or hindrance by Lessee. The Port Authority shall exercise its rights pursuant to Section 26 of this Agreement and, in addition, Lessee hereby grants to the Port Authority the same rights at the area located at ExpressRail Port Newark. The date that the flyover bridge is made available to Lessee for the use intended in this Section shall be referred to as the "Rail Fly-over Completion Date".

Section 55. [Reserved]

Section 56. Terminal Guarantee

(a) Lessee shall be subject to the payment of a guaranteed rental (hereinafter called the "Guaranteed Rental") for each Lease Year during the term of the letting under this Agreement as follows: in the event that the number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during any such Lease Year shall not exceed the Terminal Guarantee Number for that Lease Year, Lessee shall pay to the Port Authority a Guaranteed Rental equal to the product obtained by multiplying (1) the difference between the Terminal Guarantee Number for that Lease Year and the actual number of Qualified Containers loaded onto or discharged from vessels berthing, at the premises during that Lease Year by (2) the Tier 1 Rental Rate in effect on the last day of that Lease Year pursuant to the provisions hereof. Any Guaranteed Rental owed under this Section shall be paid by Lessee to the Port Authority on the twentieth (20th) day of the month following the last month of the applicable Lease Year.

(b) On the twentieth (20th) day of the each month, Lessee shall render to the Port Authority a statement certified by a responsible officer of Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the preceding month and the cumulative number of Qualified

Containers loaded onto or discharged from vessels berthing at the Premises from the date of the commencement of the Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the month for which the report is made, and such statement shall also include terminal statistics and measures relating to containers handled at and discharged to and from the Premises as detailed and reasonably required from time to time by the Port Authority.

(c) Upon any termination of the letting hereunder prior to the Expiration Date (even if stated to have the same effect as expiration), the number of Qualified Containers shall be reported and the Guaranteed Rental shall be paid on the last day of the first month following the month in which the effective date of such termination occurs, as follows: Lessee shall render to the Port Authority a statement certified by a responsible officer of Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the Lease Year in which the effective date of termination falls; the payment then due on account of all Guaranteed Rental for the Lease Year in which the effective date of termination falls shall be computed based on adjusting of the Terminal Guarantee Number pro-rata based on the number of days elapsed during the relevant Lease Year through the effective termination date divided by 365 days. Any amount of the Guaranteed Rental determined to be owed to the Port Authority pursuant to such calculation shall be paid by Lessee at the time of rendering the statement.

(d) The amounts payable under this Section shall not be subject to abatement or suspension or reduction for any reason whatsoever. Termination under the provisions of this Section shall be governed by Section 29 hereof, and, without limiting any other rights of the Port Authority under this Agreement, the Port Authority shall have all of its rights hereunder upon any such termination of the letting.

Section 57. Railroad Operating Agreement

(a) Contemporaneously with the execution of this Agreement, Lessee and the Port Authority are entering into the Railroad Operating Agreement, pursuant to which Lessee shall be granted rights to use the area identified on "Exhibit A" attached thereto as a temporary intermodal rail facility in connection with its operations under this Agreement. The parties acknowledge that these rights were heretofore set forth in the Existing Lease and that Lessee's use and occupancy of area at the Port Newark facility to exercise its rights have been continuous and uninterrupted and there has been no reversion to the Port Authority of Lessee's interest in and to the said area. Upon full execution of the Railroad Operating Agreement, and from and after the effective date of the Railroad Operating Agreement, the provisions in the Existing Lease relating to the use of the area marked on Exhibit A-2 to the Existing Lease, the obligation to pay a Rail Facility Container Lift Fee in connection with its use of such area as an intermodal rail facility, and all other liabilities and obligations ancillary thereto, shall be deemed to be contained in the Railroad Operating Agreement; provided, however, that all obligations

and liabilities of Lessee that accrued under the Existing Lease shall survive the execution of the Railroad Operating Agreement.

(b) Without limiting the generality of paragraph (a), above, the parties acknowledge that the terms and conditions of Paragraph 8 to Supplement No.1 to the Existing Lease, made as of August 31, 2001, concerning payment of a "Rail Container Lift Fee", as said Paragraph and Rail Container Lift Fee have been amended and adjusted, respectively, from time to time, shall have no force and effect on and after the effective date of the subrules of Section H of FMC Schedule PA-10, i.e., the Tariff (as herein defined). Nothing in this paragraph shall relieve Lessee from the obligation to pay whatever the amount of the Rail Container Lift Fee that accrued, and became due and payable to the Port Authority, prior to said effective date of said subrules.

Section 58. Existing Lease Superseded

(a) The parties hereby acknowledge that the Existing Terminal Facility was occupied by Lessee pursuant to the Existing Lease. It is hereby acknowledged that Lessee has remained in continuous and uninterrupted occupancy of the Existing Terminal Facility under the Existing Lease, there has been no reversion prior to the Commencement Date, and at no time did Lessee surrender any portion of the Premises to the Port Authority.

(b) The terms, provisions and conditions of the Existing Lease shall apply to the letting of the Premises, Lessee and the rights and obligations of the parties thereto prior to the Commencement Date, and from and after the Commencement Date, the terms, provisions and conditions of this Agreement shall apply to the letting of the Premises, Lessee and the rights and obligations of the parties hereto. Accordingly, and without limiting the generality of any of the foregoing, any of the obligations under the Existing Lease which were to mature upon the expiration or termination thereof, shall be deemed to have survived and shall mature upon the expiration or termination of this Agreement.

(c) All obligations of Lessee under the Existing Lease that arose or accrued during or with respect to the period prior to the Commencement Date shall survive the execution and delivery of this Agreement. Lessee shall not, by virtue of this Agreement, be or be deemed to be released or discharged from any liabilities or obligations whatsoever arising under the Existing Lease or any other Port Authority permits or agreements including, but not limited to, any permits to make alterations all of which shall survive.

(d) All references in this Agreement to the condition of the Premises at the beginning of the term of the letting shall mean and be deemed to mean, with respect to the Existing Terminal Facility, the condition of the Premises as they existed at the beginning of the term under the Existing Lease. Further, the obligation of Lessee to remove any alterations or improvements made during the letting hereunder shall apply and pertain to any alterations and improvements made during the term of the Existing

Lease, as well as to alterations and improvements made by Lessee during the term of this Agreement.

Section 59. Container Cranes

Lessee shall use commercially reasonable efforts with respect to Lessee's container cranes located on the Premises to cause Ports America to request, in connection with any amendment, restatement, modification, refinancing or financing that occurs after the Commencement Date, that its creditors which hold a security interest in Lessee's container cranes, permit a grant by Lessee to the Port Authority of a right to purchase such container cranes. Lessee agrees that, at the expiration or termination of the letting hereunder, the Port Authority shall have a right to purchase any of Lessee's container cranes located on the Premises, which are, at such time, not subject to any restriction on Lessee's ability to grant such purchase right, if any. The purchase price for such cranes shall be, at Lessee's option, either (a) on the same terms as the best bona fide third party offer to buy such container cranes, received by Lessee after conducting a public process to solicit bids, or (b) at the fair market value of such container cranes.

Section 60.Sustainable Design

The Lessee agrees that in the performance of any work that is subject to the Section 10 of this Agreement entitled "Lessee's Construction Work," it will comply with the Port Authority's policy on sustainable design as set forth in the sustainable design guidelines promulgated by the Port Authority Engineering Department from time to time; provided that all marine container terminal tenants within the Port will be required to comply with the sustainable design guidelines, as the same my be modified or replaced from time to time.

Section 61. Entire Agreement

The within Agreement consists of pages number 1 through 114, together with Exhibits A, A-1, A-2, B, C, D-1, D-2, D-3, D-3(i), E, F and G and Schedules A, B, C and D. It constitutes the entire agreement regarding the letting of the included areas between the Port Authority and Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and Lessee. Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

[Signatures on next page]

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

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By _____

Name Richard M. Larrabee
(Title) Director, Port Commerce Dept.

WITNESS:

PORT NEWARK CONTAINER TERMINAL LLC

_____

By _____
Name David F. Adam
(Title) President

IN WITNESS WHEREOF the undersigned have executed this Agreement, solely for the purpose of making those representations and covenants of such entity under Section 53(d), (e) and (f) only, as of the date first above written.

PORTS AMERICA, INC.

By: _____
Name: Christian B.H.M. Dirx
Title: Treasurer

APPROVED
TERMS FORM

TERMINAL INVESTMENT LIMITED

By: _____
Name: Vikram Sharma
Title: CEO

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

ATTEST:

_____

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By_____

Name Richard M. Larrabee
(Title) Director, Port Commerce Dept.

WITNESS:

C. K. Darrell

Charles K. Darrell
V.P.

PORT NEWARK CONTAINER TERMINAL LLC

By_____

Name David F. Adam
(Title) President

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PORTS AMERICA, INC.

By: _____
Name: Christian B.H.M. Dirx
Title: Treasurer

TERMINAL INVESTMENT LIMITED

By: _____
Name: Vikram Sharma
Title: CEO

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

ATTEST:

_____
Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By _____

Name Richard Larrabee
(Title) Director Port Commerce

WITNESS:

_____

PORT NEWARK CONTAINER TERMINAL, LLC

By_____

Name David F. Adam
(Title) President

IN WITNESS WHEREOF the undersigned have executed this Agreement, solely for the purpose of making those representations and covenants of such entity under Section 53(d), (e) and (f) only, as of the date first above written.

PORTS AMERICA, INC.

By: _____
Name: Christian B.H.M. Dirx
Title: Treasurer

TERMINAL INVESTMENT LIMITED

By: _____
Name:
Title:

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

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

_____

By_____

Name Richard M. Larrabee
(Title) Director, Port Commerce Dept.

WITNESS:

PORT NEWARK CONTAINER TERMINAL LLC

_____

By_____

Name David F. Adam
(Title) President

IN WITNESS WHEREOF the undersigned have executed this Agreement, solely for the purpose of making those representations and covenants of such entity under Section 53(d), (e) and (f) only, as of the date first above written.

PORTS AMERICA, INC.

By: _____
Name:
Title:

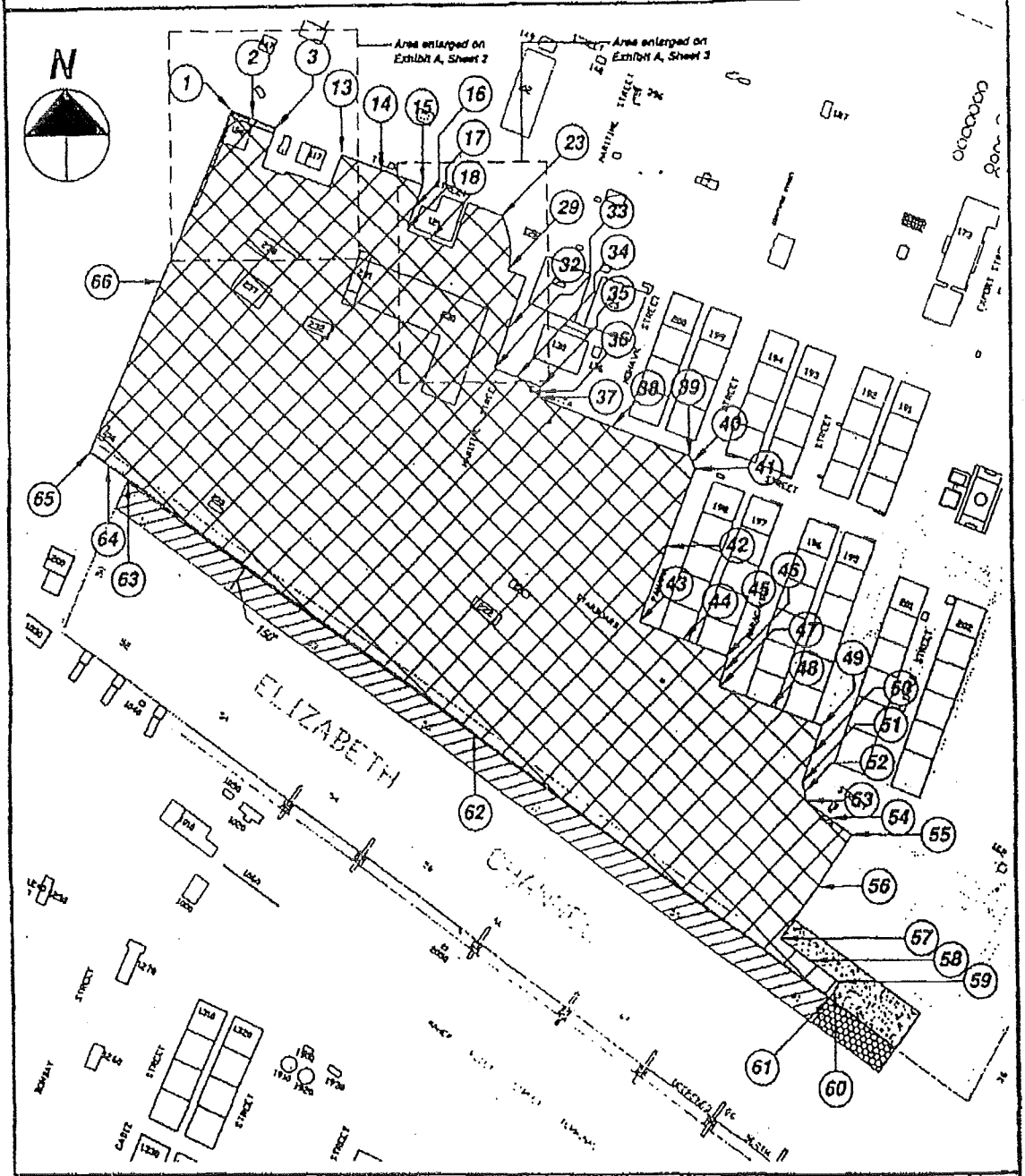
TERMINAL INVESTMENT LIMITED

By: [signature]
Name: VIKRAM SHARMA
Title: CEO.

Exhibits A & A-1

Existing Terminal Facility

PORT NEWARK CONTAINER TERMINAL LLC | LPN- 264



Initialed:

For the PORT AUTHORITY

For the Lessee

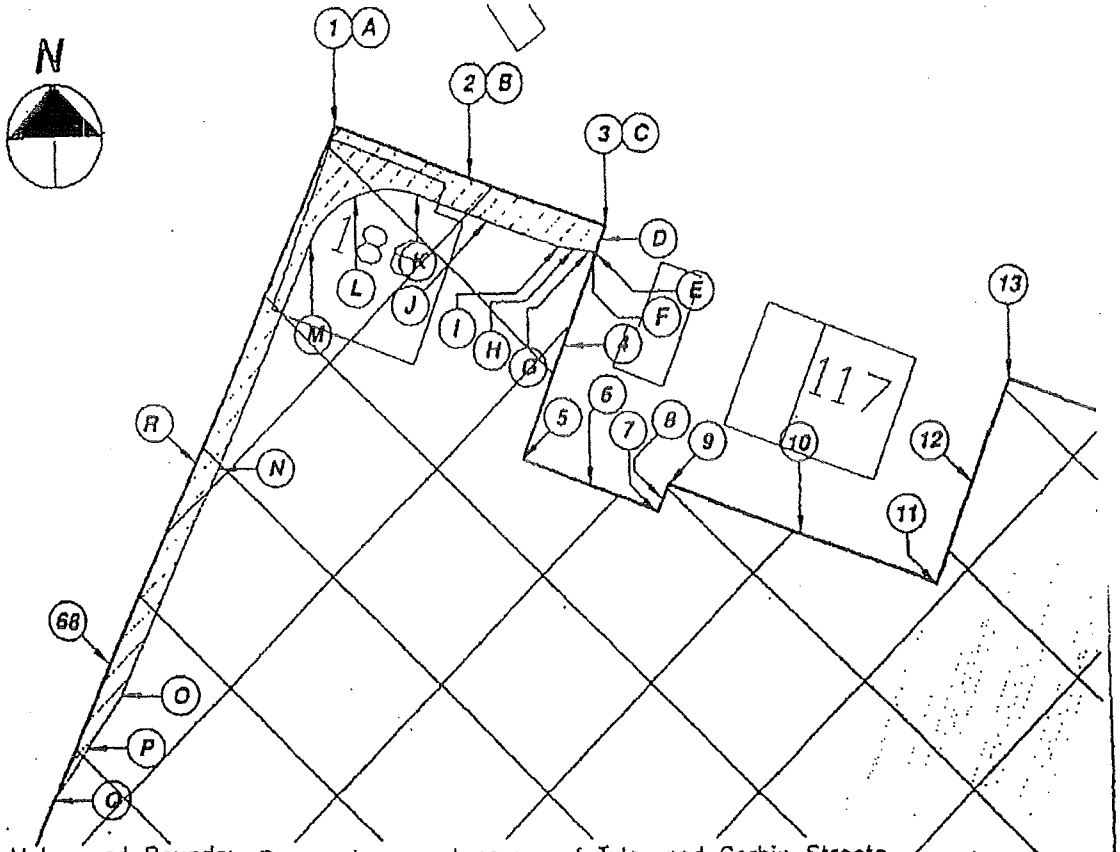
EXHIBIT : A Sheet 1

THE PORT AUTHORITY OF NY & NJ

PORT NEWARK

Date : March 1, 2011

PORT NEWARK CONTAINER TERMINAL LLC | LPN- 264



Metes and Bounds: Reserved area at corner of Tyler and Corbin Streets

A	N 678199.53 E 2141320.04	F	N65°58'03"W 5.68'	K	N 678139.53 E 2141384.80	P	S37°31'02"W 101.71'
B	S65°58'03"E 242.44'	G	N 678081.72 E 2141526.73	L	Radius= 70' 106.33'	Q	N 677667.05 E 2141048.74
C	N 678100.79 E 2141541.46	H	N77°16'39"W 25.50'	M	N 678107.38 E 2141293.92	R	N26°59'57"E 597.60'
D	S24°01'57"W 23.42'	I	N 678087.33 E 2141501.86	N	S26°59'57"W 403.64'		
E	N 678079.40 E 2141531.92	J	N65°58'03"W 128.17'	O	N 677747.73 E 2141110.68		

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT : A

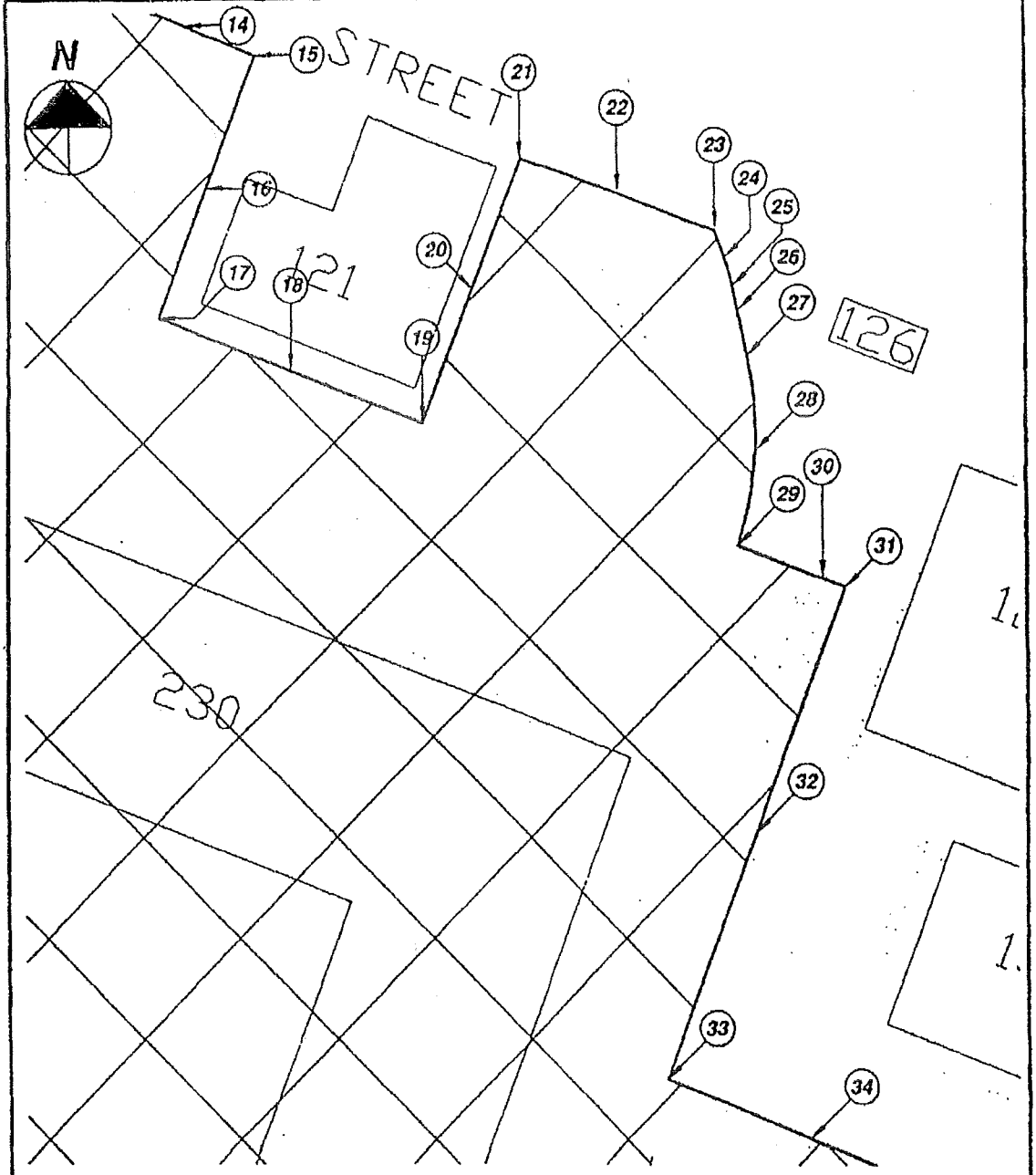
Sheet 2

THE PORT AUTHORITY OF NY & NJ

PORT NEWARK

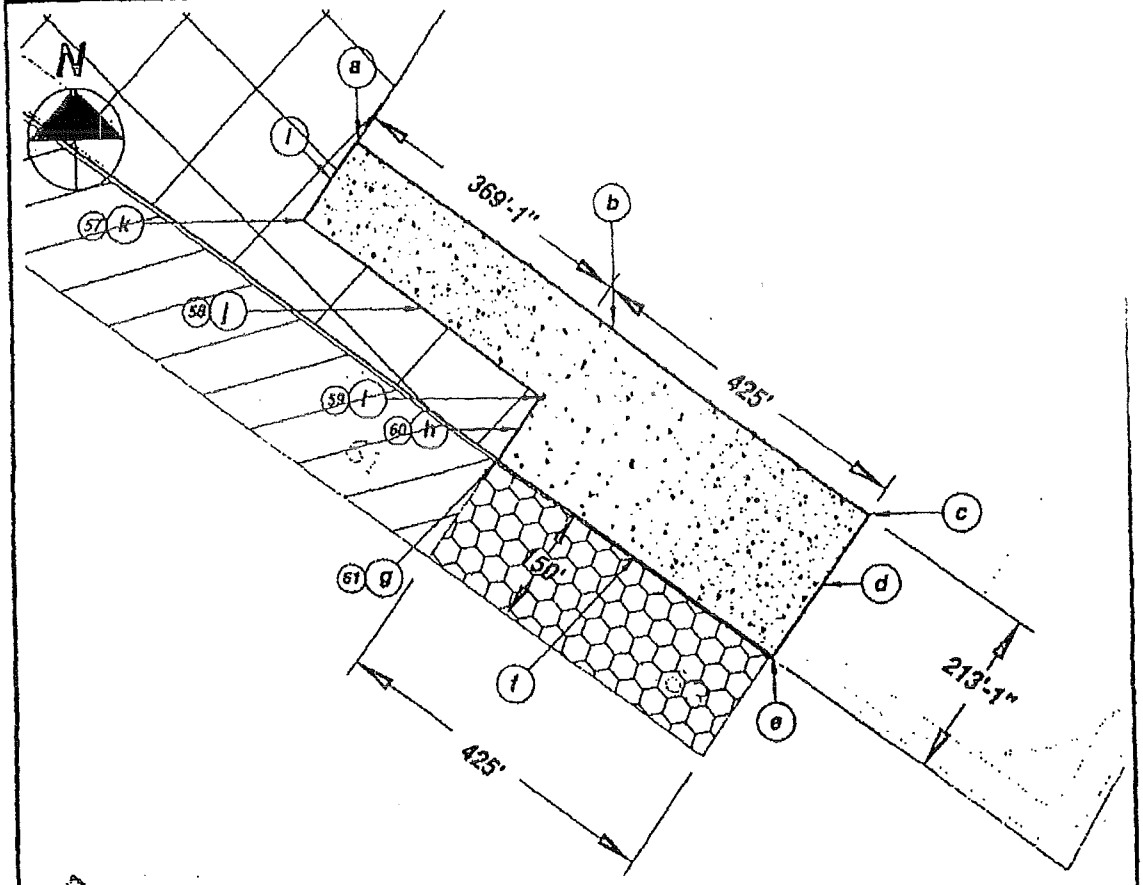
Date : March 1, 2011

PORT NEWARK CONTAINER TERMINAL LLC	LPN- 264	



Initialed:	EXHIBIT :	THE PORT AUTHORITY OF NY & NJ
SB For the PORT AUTHORITY DA For the Lessee	A Sheet 3	PORT NEWARK Date : March 1, 2011

PORT NEWARK CONTAINER TERMINAL LLC	LPN- 264	



Metes and Bounds: Reserved areas near Berths 61 and 63

a	N 674001.91 E 2143966.91	e	N 673338.27 E 2144451.91	i	N 673678.18 E 2144179.87
b	S51°12'00"E 794.05'	f	N51°12'00"W 425'	j	N51°12'00"W 369.05'
c	N 673504.36 E 2144585.45	g	N 673604.58 E 2144120.69	k	N 673909.43 E 2143892.25
d	S38°48'00"W 213.11'	h	N38°48'00"E 94.44'	l	N38°48'00"E 118.67'

Initialed:	EXHIBIT :	THE PORT AUTHORITY OF NY & NJ
For the PORT AUTHORITY For the Lessee	A Sheet 4	PORT NEWARK Date : March 1, 2011

PORT NEWARK CONTAINER TERMINAL LLC	LPN- 264		

Metes and Bounds:

1 N 678199.53 E 2141320.04

2 S65°58'03"E 242.44'

3 N 678100.79 E 2141541.46

4 S24°01'57"W 198.84'

5 N 677919.19 E 2141460.48

6 S65°58'03"E 121.26'

7 N 677869.81 E 2141571.23

8 N24°01'57"E 23.99'

9 N 677891.72 E 2141581.00

10 S65°58'03"E 235.91'

11 N 677795.64 E 2141796.46

12 N24°01'57"E 174.85'

13 N 677955.33 E 2141867.67

14 S65°58'03"E 452.46'

15 N 677771.06 E 2142280.91

16 S24°05'04"W 247.78'

17 N 677544.86 E 2142179.79

18 S65°52'44"E 259.96'

19 N 677438.62 E 2142417.05

20 S24°01'57"W 250.27'

21 N 677667.20 E 2142518.98

22 S65°58'03"E 190.65'

23 N 677589.56 E 2142693.10

24 Radius = 300' 51.69'

25 N 677539.71 E 2142706.56

26 S10°10'26"E 62.01'

27 N 677478.68 E 2142717.51

28 Radius = 300' 169.88'

29 N 677311.99 E 2142699.85

30 S65°52'44"E 110.39'

31 N 677266.88 E 2142800.61

32 S24°01'57"W 464.69'

33 N 676842.47 E 2142611.36

34 S65°32'23"W 257.35'

35 N 676735.91 E 2142845.61

36 S24°20'11"W 57.23'

37 N 676683.77 E 2142822.03

38 S65°58'03"E 839.35'

39 N 676341.94 E 2143588.62

40 S20°01'44"E 74.21'

41 N 676272.22 E 2143614.04

42 S24°01'57"W 824.30'

43 N 675519.37 E 2143278.34

44 S65°58'03"E 530.17'

45 N 675303.45 E 2143762.55

46 S24°01'57"W 160.00'

47 N 675157.33 E 2143697.30

48 S65°58'03"E 516.02'

49 N 674947.17 E 2144168.68

50 S24°01'57"W 292.30'

51 N 674680.21 E 2144049.64

52 S07°26'07"E 100.98'

53 N 674580.08 E 2144062.71

54 S51°12'00"E 287.39'

55 N 674400.00 E 2144286.68

56 S38°48'00"W 629.47'

57 N 673909.43 E 2143892.25

58 S51°12'00"E 369.05'

59 N 673678.18 E 2144179.87

60 S38°48'00"W 94.44'

61 N 673604.58 E 2144120.69

62 N51°12'00"W 4431.41'

63 N 676381.32 E 2140667.13

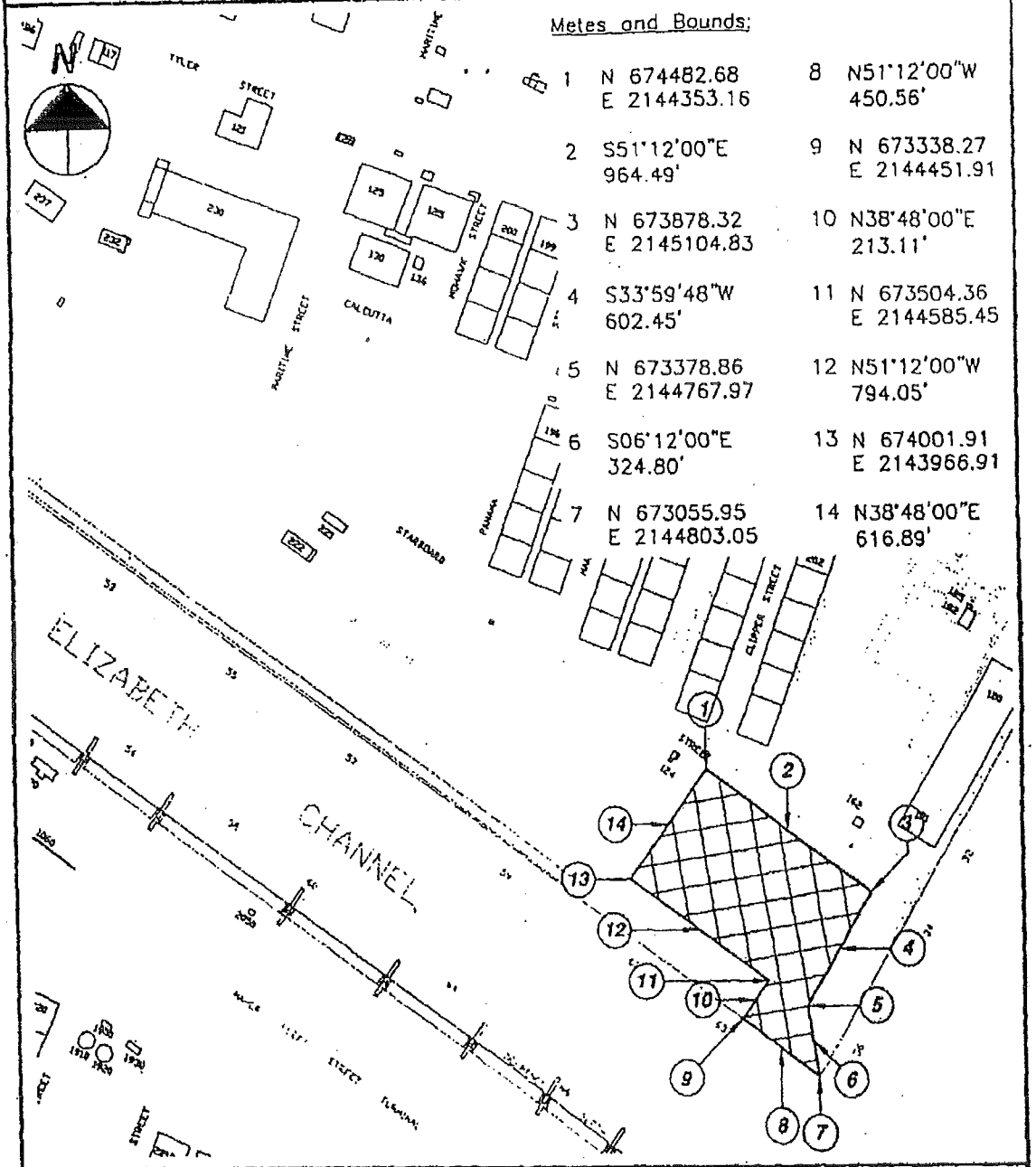
64 N51°12'00"W 248.94'

65 N 676537.31 E 2140473.12

66 N26°59'57"E 1865.54'

Initialed:	EXHIBIT :	THE PORT AUTHORITY OF NY & NJ
SB For the PORT AUTHORITY DAT For the Lessee	A Sheet 5	PORT NEWARK Date : March 1, 2011

PORT NEWARK CONTAINER TERMINAL LLC	LPN- 264	

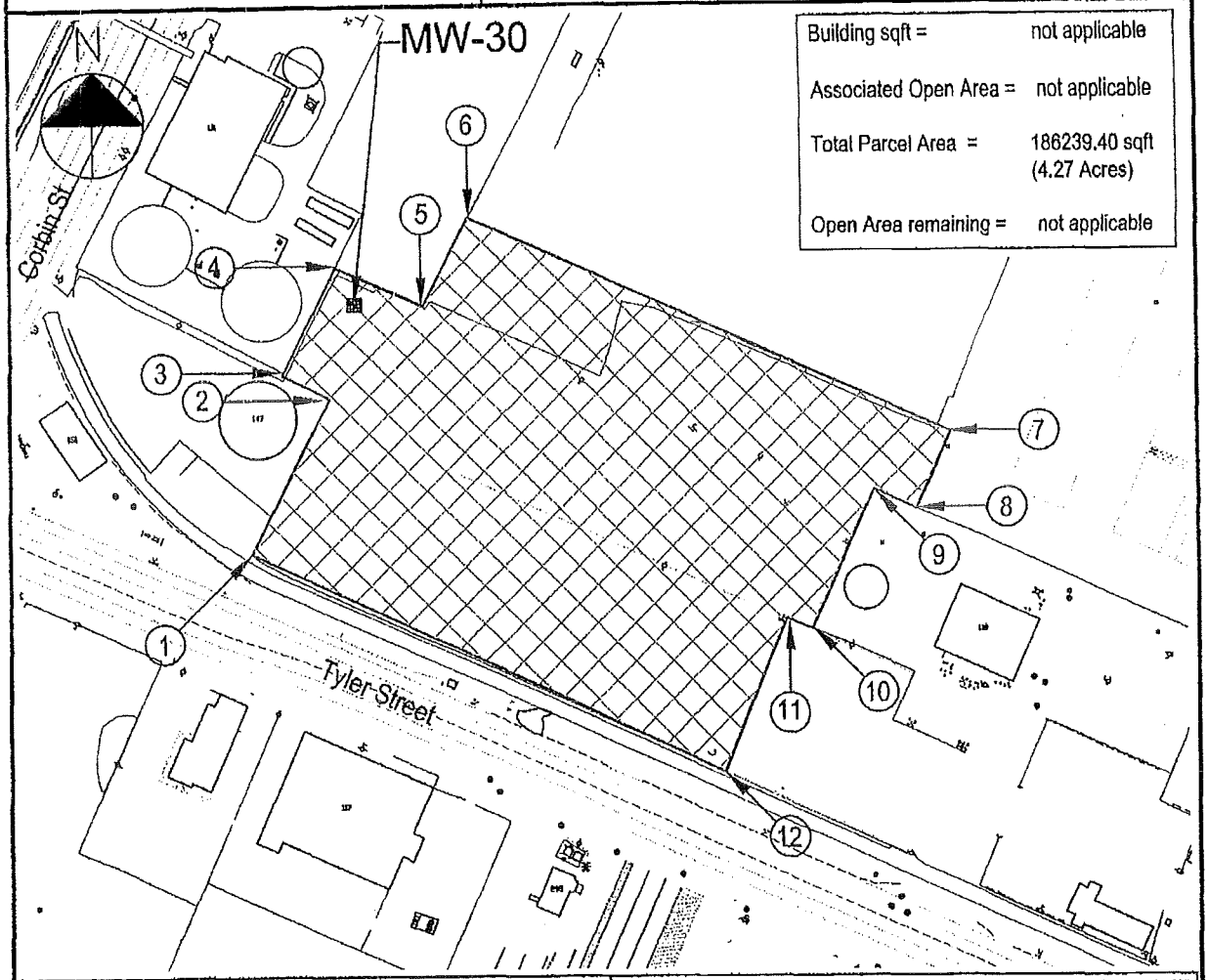


Initialed:	EXHIBIT :	THE PORT AUTHORITY OF NY & NJ
For the PORT AUTHORITY	A-1	PORT NEWARK
For the Lessee	Sheet 1	Date : March 1, 2011

Exhibit A-2

Existing Terminal Facility

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	



Building sqft =	not applicable
Associated Open Area =	not applicable
Total Parcel Area =	186239.40 sqft (4.27 Acres)
Open Area remaining =	not applicable

Metes and Bounds:

Coordinate system - NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			677968.33	587636.85
	162.14'	N 27°02'11" E		
2			678112.75	587710.55
	49.35'	N 63°49'41" W		
3			678134.51	587666.26
	111.41'	N 26°37'34" E		
4			678234.11	587716.19
	88.56'	S 66°20'47" E		
5			678198.58	587797.31
	91.34'	N 27°21'26" E		
6			678279.70	587839.28
	493.83'	S 66°08'15" E		
7			678079.93	588290.90
8	78.17'	S 25°03'52" W	678009.11	588257.78
9	43.17'	N 65°31'24" W	678027.00	588218.49
10	141.53'	S 24°05'58" W	677897.81	588160.70
11	25.85'	N 67°58'14" W	677907.50	588136.73
12	153.97'	S 22°19'48" W	677765.08	588078.23
	485.93'	N 65°16'30" W	(return to point 1)	

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

A-2

THE PORT AUTHORITY OF NY & NJ

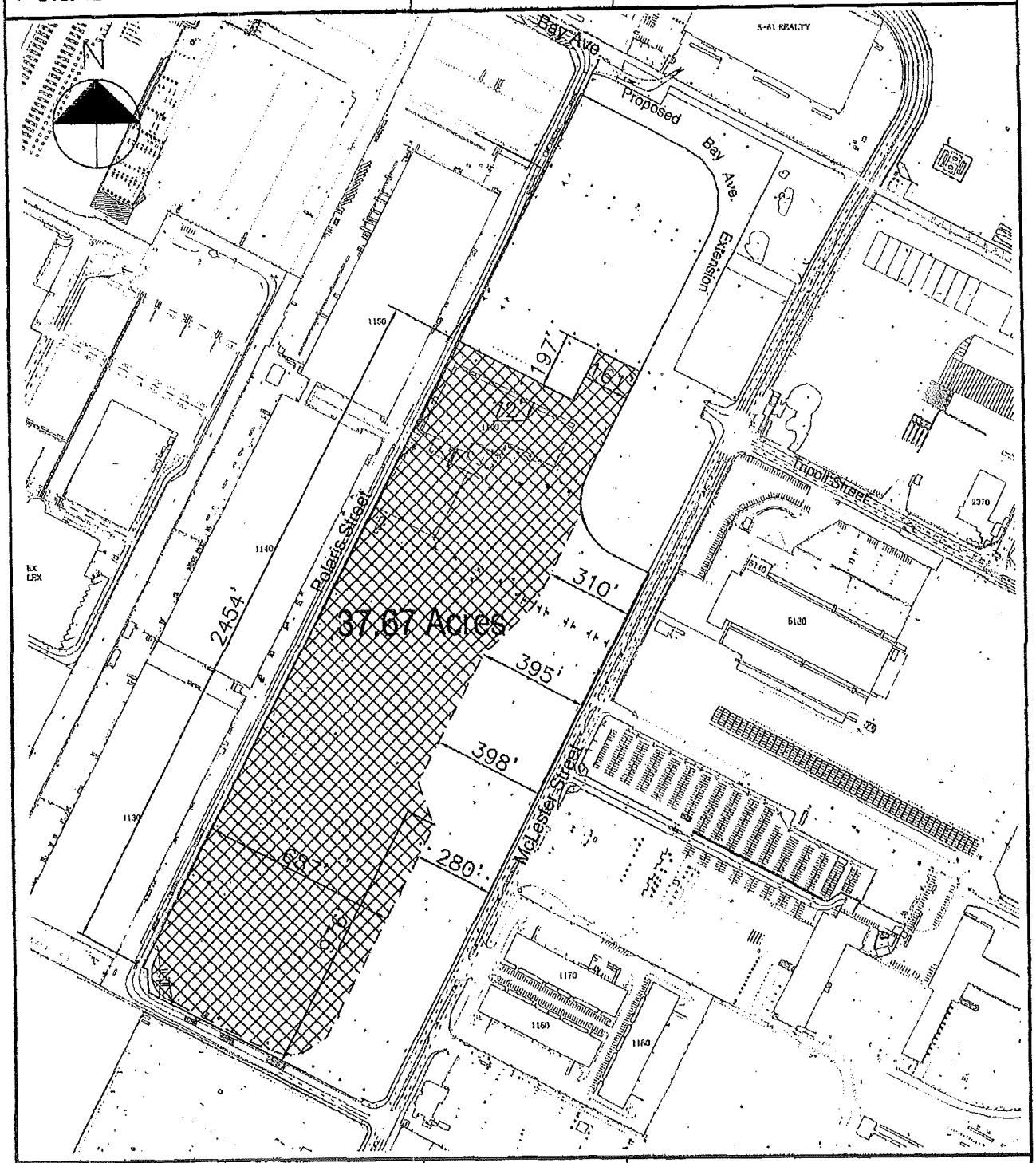
PORT NEWARK

Date : March 1, 2011

Exhibit B

Polaris Street Property

Polaris Satellite Yard	LNP-264	

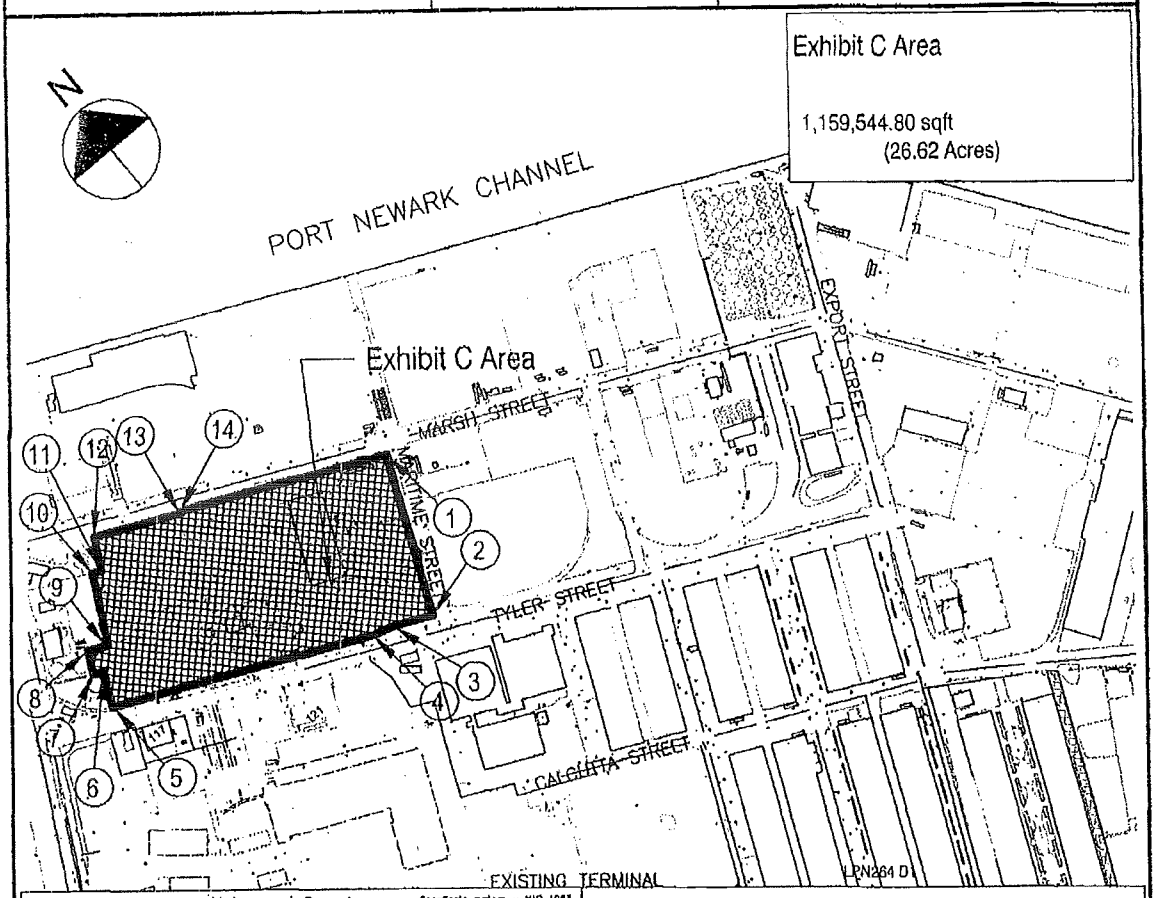


Initialed:	EXHIBIT :	THE PORT AUTHORITY OF NY & NJ
For the PORT AUTHORITY For the Lessee	B	ELIZABETH - PORT AUTHORITY MARINE TERMINAL Date : March 1, 2011

Exhibit C

Marsh Street Property

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	



Metes and Bounds: Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			678048.74	589362.15
	765.54'	S 23°30'55" W		
2			677346.77	589056.70
	187.22'	N 66°28'36" W		
3			677421.49	588885.04
	98.85'	N 73°50'45" W		
4			677449.00	588790.09
	1260.53'	N 65°50'58" W		
5			677968.33	587636.85
	164.04'	N 25°09'06" E		
6			678112.75	587710.55
	48.35'	N 60°42'12" W		
7			678134.51	587666.26
	108.77'	N 26°37'34" E		
8			678234.11	587716.19
	96.78'	S 65°24'11" E		
9			678193.83	587804.19
	338.36'	N 26°52'35" E		
10			678495.64	587957.15
	42.65'	S 63°04'31" E		
11			678476.33	587995.17
	159.41'	N 57°05'54" E		
12			678618.23	588067.79
	421.47'	S 65°54'20" W		
13			678446.17	588452.54
	9.28'	N 27°29'35" E		
14			678454.40	588456.82
	992.06'	S 65°51'49" E		
			(return to point 1)	

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

C

THE PORT AUTHORITY OF NY & NJ

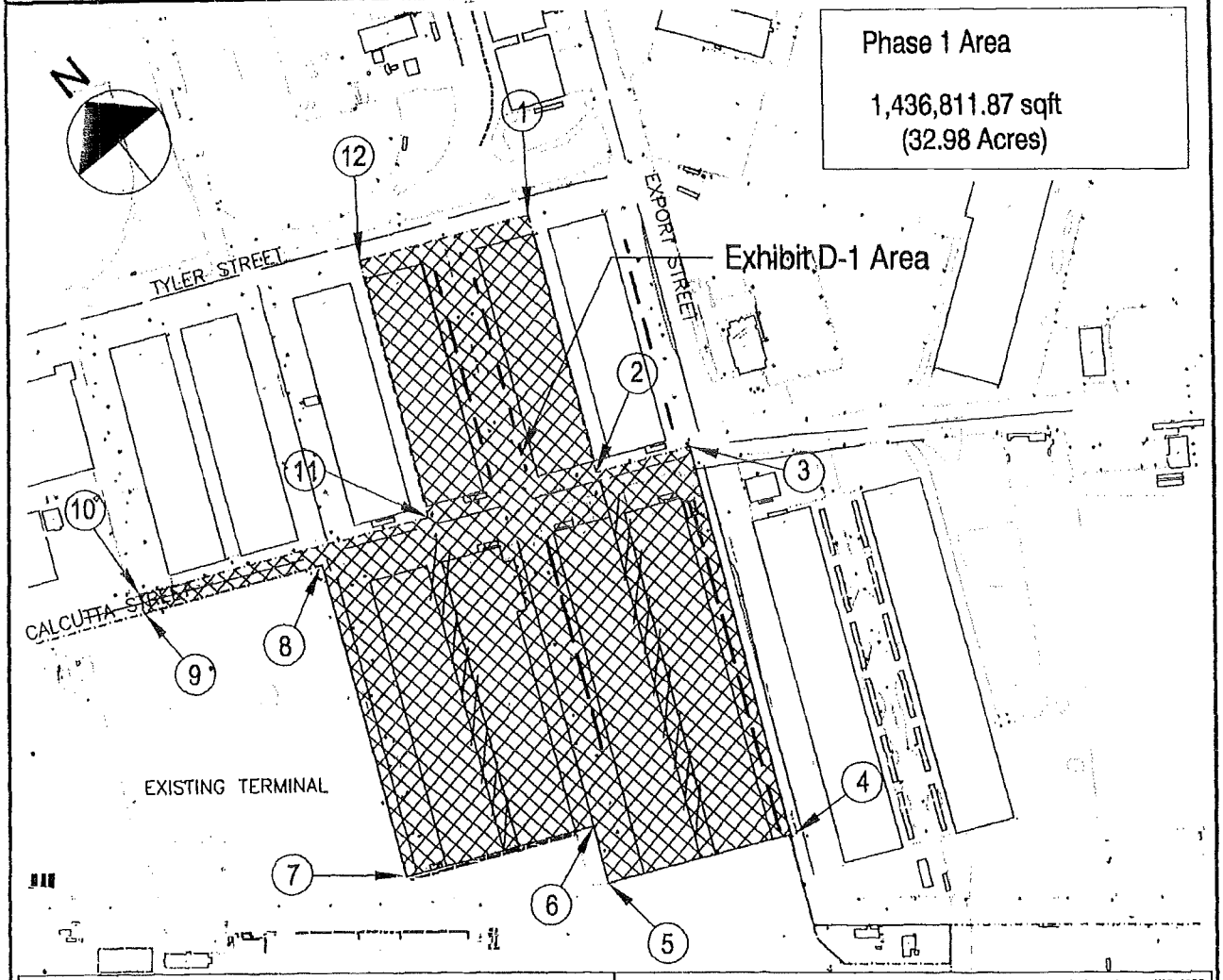
PORT NEWARK

Date : March 1, 2011

Exhibit D-1

Phase 1 Development Parcel

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	



Metes and Bounds:

Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate	Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			676474.04	590684.57	7			675290.90	589284.55
	723.88'	S 24°26'45" W				877.55'	N 24°05'30" E		
2			675815.05	590385.00	8			676092.01	589642.77
	270.66'	S 65°56'34" E				504.16'	N 65°05'34" W		
3			675704.77	590632.04	9			676289.19	589128.70
	1088.49'	S 24°40'16" W				53.10'	N 24°26'45" E		
4			674715.64	590177.69	10			676346.53	589204.68
	520.34'	S 65°51'12" W				817.61'	S 65°41'36" E		
5			674928.50	589702.89	11			676009.99	589949.81
	159.62'	N 24°11'56" E				723.97'	N 24°12'21" E		
6			675074.09	589768.31	12			676670.30	590246.65
	530.12'	N 65°51'34" W				479.98'	S 65°51'34" E	(return to point 1)	

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

D-1

THE PORT AUTHORITY OF NY & NJ

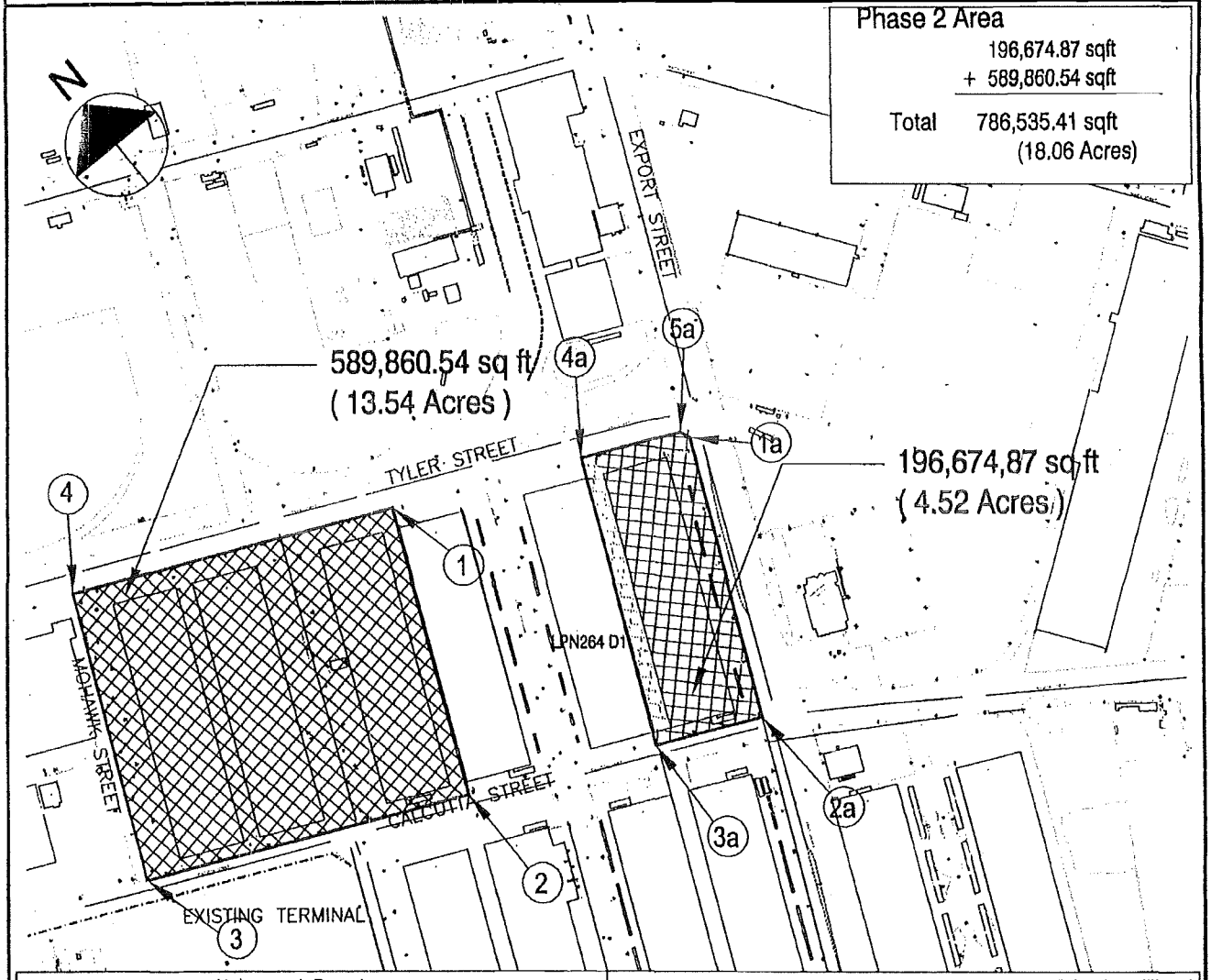
PORT NEWARK

Date : March 1, 2011

Exhibit D-2

Phase 2 Development Parcel

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	



Metes and Bounds:

Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			676670.30	590246.65
	723.97'	S 24°12'21" W		
2			676009.99	589949.81
	817.60'	N 65°41'36" W		
3			676346.53	589204.68
	721.61'	N 24°26'45" E		
4			677003.45	589503.45
	814.58'	S 65°51'34" E		
			(return to point 1)	

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1a			676343.98	590925.86
	703.51'	S 24°40'16" W		
2a			675704.77	590632.04
	270.54'	N 65°56'34" W		
3a			675815.05	590385.00
	723.88'	N 24°26'45" E		
4a			676474.04	590684.57
	253.38'	S 65°51'34" E		
5a			676370.41	590915.78
	28.28'	S 65°51'34" E		
			(return to point 1a)	

Initialed:

SR

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

D-2

THE PORT AUTHORITY OF NY & NJ

PORT NEWARK

Date : March 1, 2011

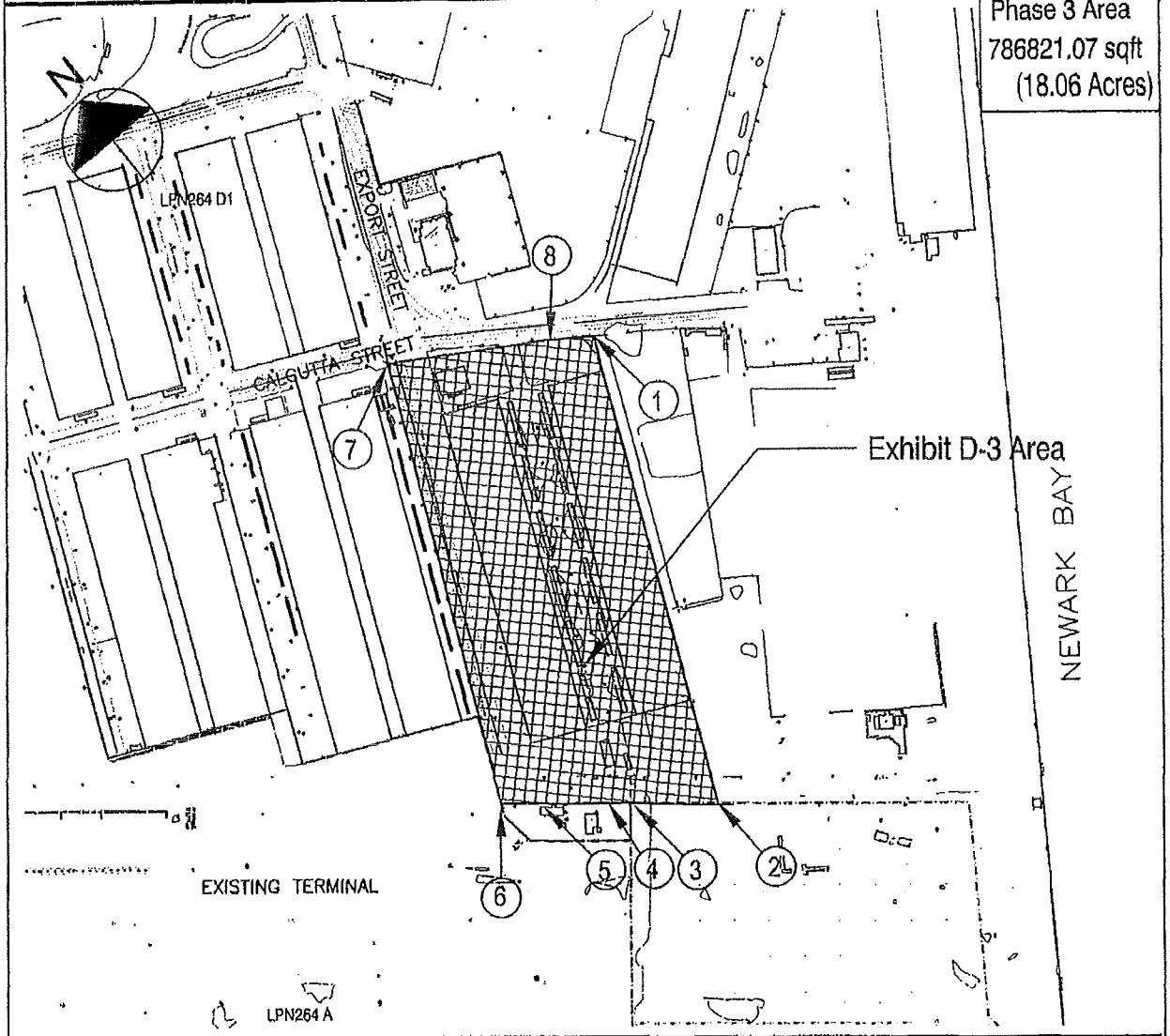
Exhibit D-3

Phase 3 Development Parcel

PORT NEWARK CONTAINER TERMINAL LLC

LPN-264

Phase 3 Area
786821.07 sqft
(18.06 Acres)



Metes and Bounds: Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			675340.76	591108.82
	1370.53'	S 24°01'12" W		
2			674088.92	590550.94
	253.33'	N 49°50'46" W		
3			674252.28	590357.32
	62.30'	N 51°09'59" W		
4			678291.34	590308.79
	108.7'	N 50°48'21" W		
5			674415.61	590154.09
	108.71'	S 50°48'21" W		
6			674484.31	590069.84
	281.41'	N 24°45'33" W		
7			675648.15	590606.03
	463.90'	S 59°06'57" E		
8			675410.03	591004.15
	125.53'	S 56°30'20" E		
			(return to point 1)	

Initialed:

SB

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

D-3

THE PORT AUTHORITY OF NY & NJ

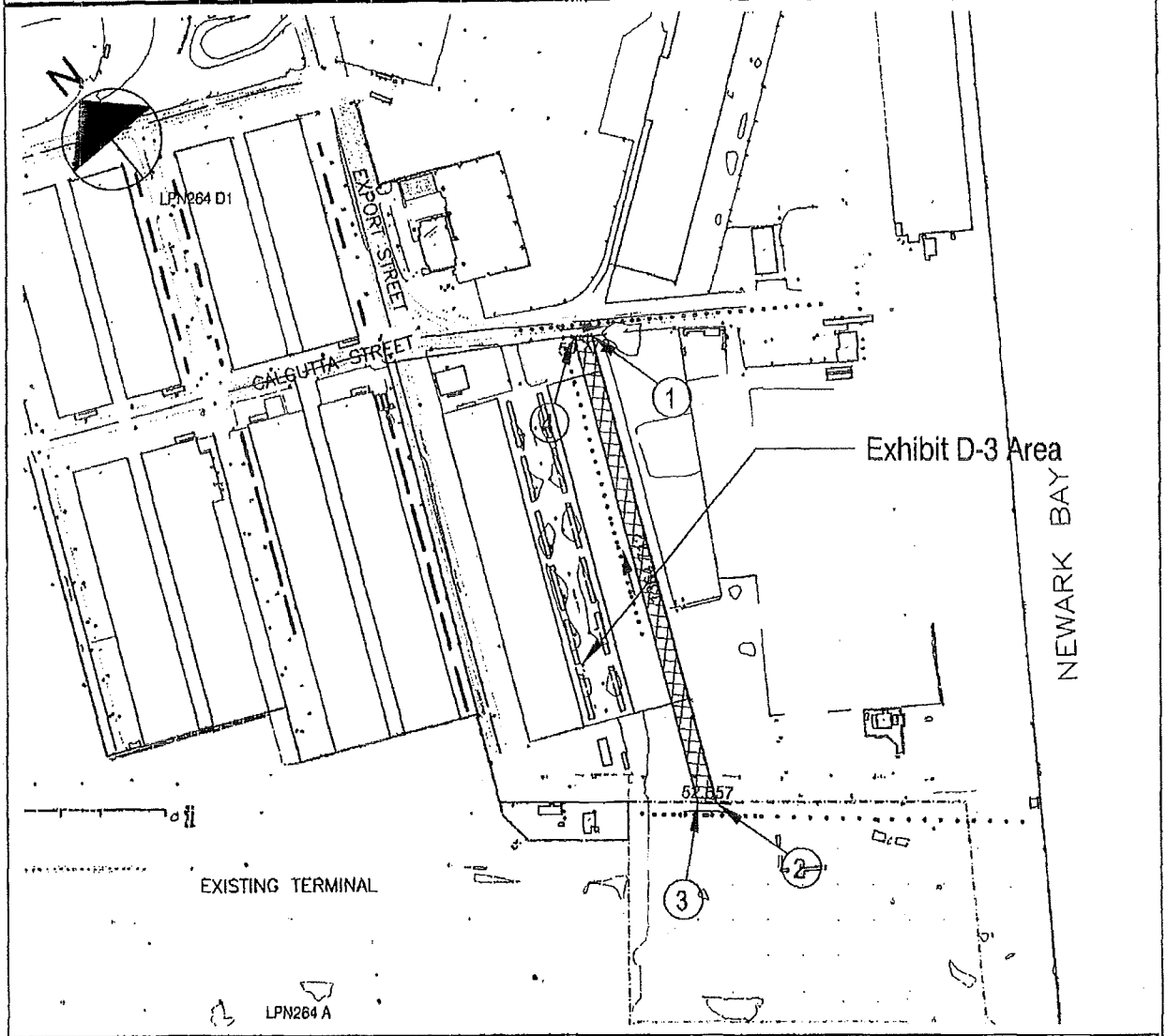
PORT NEWARK

Date : March 1, 2011

Exhibit D-3(i)

50-foot Access Roadway

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	



Metes and Bounds: Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			675340.76	591108.82
	1370.53'	S 24°01'12" W		
2			674088.92	590550.94
	52.66'	N 49°50'46" W		
3			674096.21	590542.30
	1364.71'	N 24°02'40" E		
4			675345.86	591099.20
	50.77'	S 55°58'32" E		
			(return to	point 1)

Phase 3 Area
68,546.75 sqft
(1.57 Acres)

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

D-3(1)

THE PORT AUTHORITY OF NY & NJ

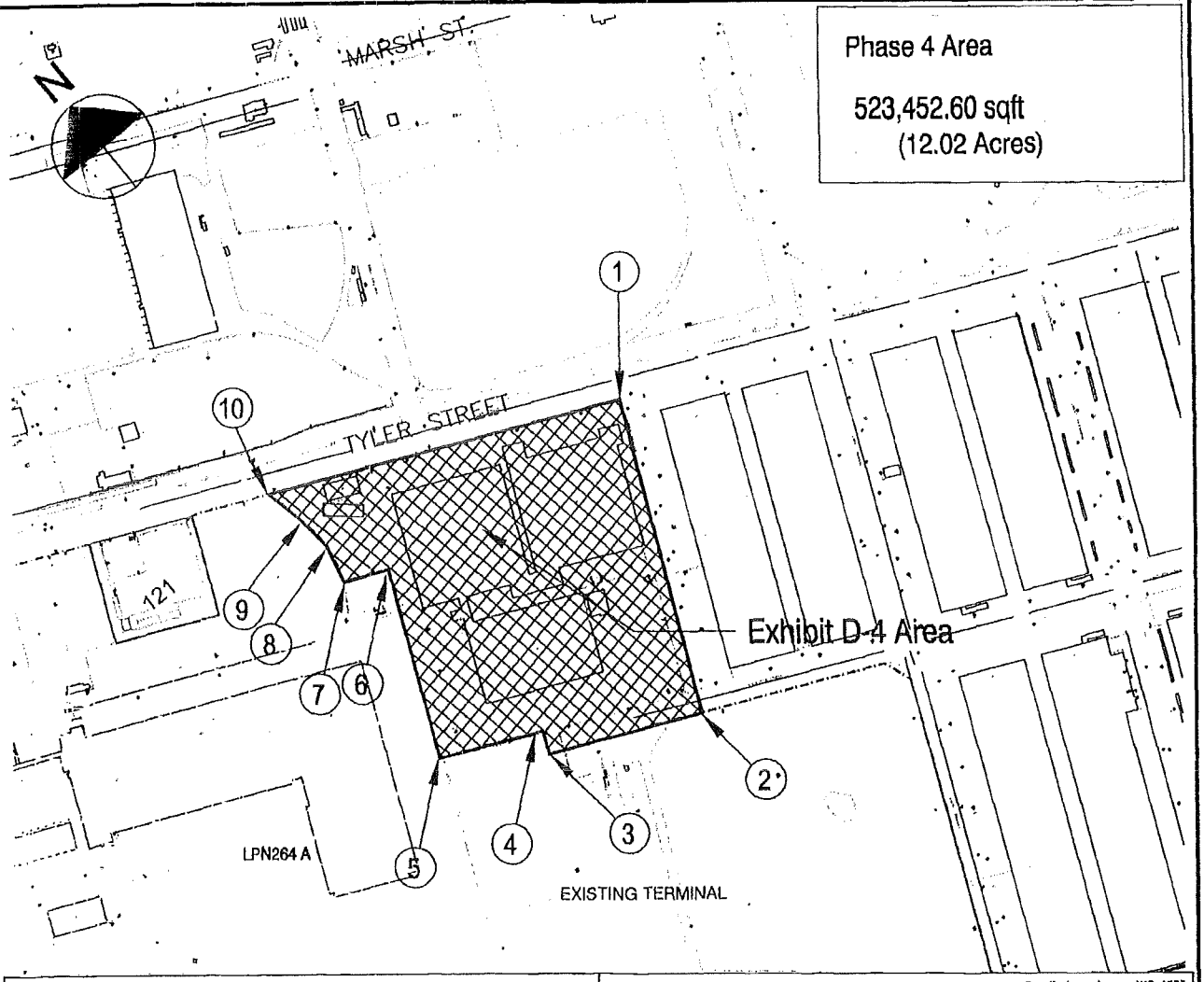
PORT NEWARK

Date : March 1, 2011

Exhibit D-4

Phase 4 Development Parcel

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	



Metes and Bounds:

Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			677003.45	589503.30
	798.09'	S 24°44'97" W		
2			676298.19	589182.70
	385.97'	N 65°51'34" W		
3			676456.05	588830.49
	57.22'	N 24°26'41" E		
4			676508.14	588854.17
	257.33'	N 65°25'54" E		
5			676656.13	588620.13
	464.65'	N 24°08'27" E		
6			677039.15	588810.17
	110.38'	N 65°46'15" W		
7			677084.45	588709.51
	92.36'	N 13°31'09" E		
8			677171.94	588730.54
	87.94'	N 3°54'34" W		
9			677261.98	588725.10
	102.37'	N 12°18'30" E		
10			677362.00	588703.28
	876.69'	S 65°51'34" E		
			(return to point 1)	

Initialed:

(36)

For the PORT AUTHORITY

DA

For the Lessee

EXHIBIT :

D-4

THE PORT AUTHORITY OF NY & NJ

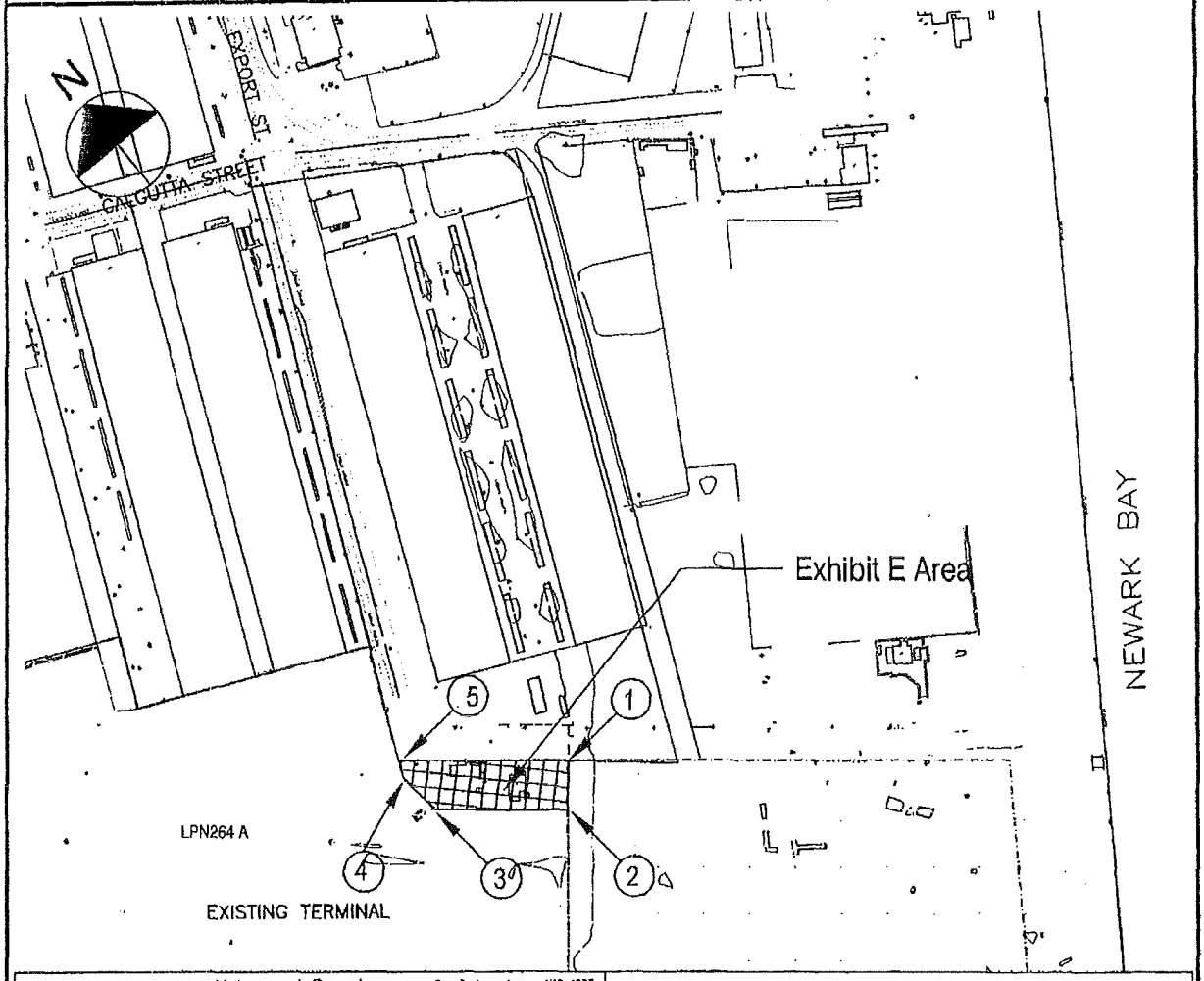
PORT NEWARK

Date : March 1, 2011

Exhibit E

Starboard Street Property

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	



Metes and Bounds: Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			674252.28	590357.32
	107.39'	N 38°54'30" E		
2			674168.71	590289.87
	287.37'	S 50°49'52" E		
3			674350.22	590067.08
	100.97'	S 07°19'37" E		
4			674450.37	590054.24
	37.14'	S 27°31'22" W		
5			674484.31	590069.84
	367.62'	N 51°03'56" W		
			(return to point 1)	

Exhibit E Area

36,024.92 sqft
(0.83 Acres)

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

E

THE PORT AUTHORITY OF NY & NJ

PORT NEWARK

Date : March 1, 2011

Exhibit F

Waterfront-Shimizaki Property

PORT NEWARK CONTAINER TERMINAL LLC	LPN-264	

Exhibit F - Bldg 117

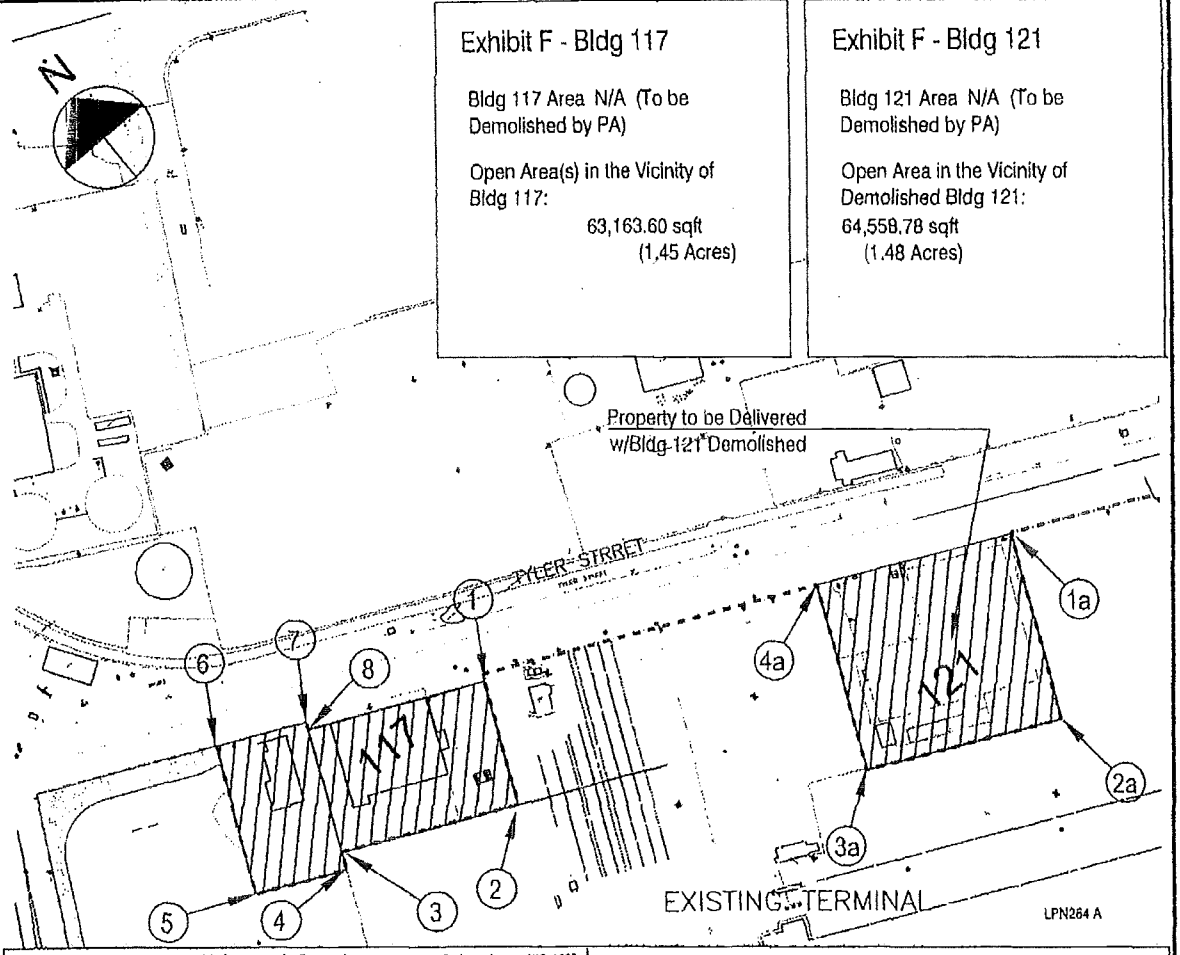
Bldg 117 Area N/A (To be Demolished by PA)

Open Area(s) in the Vicinity of Bldg 117:
63,163.60 sqft
(1.45 Acres)

Exhibit F - Bldg 121

Bldg 121 Area N/A (To be Demolished by PA)

Open Area in the Vicinity of Demolished Bldg 121:
64,558.78 sqft
(1.48 Acres)



Metes and Bounds: Coordinate system – NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			677720.63	587874.08
	165.29'	S 23°54'29" W		
2			677569.31	587807.00
	235.72'	N 65°59'16" W		
3			677665.23	587591.68
	23.34'	S 24°21'66" W		
4			677644.04	587581.90
	121.42'	N 65°30'22" W		
5			677694.45	587471.23
	198.40'	N 24°08'27" E		
6			677875.36	587552.71
	120.03'	S 65°51'35" E		
7			677826.27	587662.24
	9.74'	S 23°44'30" W		
8			677817.35	587662.24
	236.45'	S 65°51'20" E		
			(return to point 1)	

Metes and Bounds:

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1a			677438.08	588528.47
	248.22'	S 23°56'09" W		
2a			677211.60	588426.97
	260.19'	N 65°46'15" W		
3a			677318.27	588189.93
	247.76'	N 23°52'09" E		
4a			677544.27	588291.46
	260.48'	N 65°52'23" E		
			(return to point 1)	

Initialed:

SB

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

F

THE PORT AUTHORITY OF NY & NJ

PORT NEWARK

Date : March 1, 2011

Schedule A

Annual Per Acre Base Rental Rates

Beginning	Ending	Per Acre Rate ($)
3/1/2011	11/30/2011	**48,455.03**
12/1/2011	11/30/2012	**49,424.13**
12/1/2012	11/30/2013	**50,412.61**
12/1/2013	11/30/2014	**51,420.87**
12/1/2014	11/30/2015	**52,449.28**
12/1/2015	11/30/2016	**53,498.27**
12/1/2016	11/30/2017	**54,568.23**
12/1/2017	11/30/2018	**55,659.60**
12/1/2018	11/30/2019	**56,772.79**
12/1/2019	11/30/2020	**57,908.25**
12/1/2020	11/30/2021	**59,066.41**
12/1/2021	11/30/2022	**60,247.74**
12/1/2022	11/30/2023	**61,452.69**
12/1/2023	11/30/2024	**62,681.75**
12/1/2024	11/30/2025	**63,935.38**
12/1/2025	11/30/2026	**65,214.09**
12/1/2026	11/30/2027	**66,518.37**
12/1/2027	11/30/2028	**67,848.74**
12/1/2028	11/30/2029	**69,205.71**
12/1/2029	11/30/2030	**70,589.83**

With Respect to Any Portion of the Premises That is Not Contiguous With the Existing Terminal or Development Parcels, only:

12/1/2030	11/30/2031	**72,001.63**
12/1/2031	11/30/2032	**73,441.66**
12/1/2032	11/30/2033	**74,910.49**
12/1/2033	11/30/2034	**76,910.49**
12/1/2034	11/30/2035	**77,936.88**
12/1/2035	11/30/2036	**79,495.61**
12/1/2036	11/30/2037	**81,085.52**
12/1/2037	11/30/2038	**82,707.24**
12/1/2038	11/30/2039	**84,361.38**
12/1/2039	11/30/2040	**86,048.61**
12/1/2040	11/30/2041	**87,769.58**
12/1/2041	11/30/2042	**89,524.97**
12/1/2042	11/30/2043	**91,315.47**
12/1/2043	11/30/2044	**93,141.78**

Beginning	Ending	Per Acre Rate ($)
12/1/2044	11/30/2045	**95,004.62**
12/1/2045	11/30/2046	**96,904.71**
12/1/2046	11/30/2047	**98,842.80**
12/1/2047	11/30/2048	**100,819.66**
12/1/2048	11/30/2049	**102,836.05**
12/1/2049	11/30/2050	**104,892.77**

Schedule B

Tier 1 Rental Rates

Date	Tier 1 Rate
12/1/10	19.00
12/1/11	19.00
12/1/12	21.00
12/1/13	21.00
12/1/14	21.00
12/1/15	23.00
12/1/16	23.00
12/1/17	23.00
12/1/18	25.00
12/1/19	25.00
12/1/20	25.00
12/1/21	27.00
12/1/22	27.00
12/1/23	27.00
12/1/24	29.00
12/1/25	29.00
12/1/26	29.00
12/1/27	31.00
12/1/28	31.00
12/1/29	31.00

SCHEDULE C

PART I

Affirmative Action Guidelines - Equal Employment Opportunity

I. Lessee agrees to comply with and Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter and in paragraphs (r) and (s) of Section 10 of the Agreement to which this schedule is attached. The provisions set forth in this Part I are similar to the conditions for bidding on federal government contracts adopted by the Office of Federal contract Compliance and effective May 8, 1978.

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

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

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

(1) Minority participation: 32%

(2) Female participation: 6.9%

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

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

(b) The Contractor shall provide written notification to Lessee and Lessee agrees to provide written notification to the Equal Opportunity Programs Unit of the Port Authority within 14 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(c) As used in these specifications:

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

(2) "Minority" includes:

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

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

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

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

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

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

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

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

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

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

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

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

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) hereof provided that the Contractor actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide-access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

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

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

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

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

(n) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (h) hereof so as to achieve maximum results from its efforts to ensure equal employment

opportunity. If the Contractor fails to comply with the requirements of these provisions, Lessee shall proceed accordingly.

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

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

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

PART II

Minority Business Enterprises/Women-Owned Business Enterprises

Lessee agrees to and shall require the general contractor or other construction supervisor and each of Lessee's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the construction work, pursuant to the provisions hereof and in accordance with the Agreement. For purposes hereof, Minority Business Enterprise (MBE) shall mean any business enterprise which is at least fifty-one percentum owned by or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, Women-owned Business Enterprise (WBE) shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by women and such ownership is real, substantial and continuing. A minority shall be as defined in paragraph II (c) of Part I of this Schedule C. "Meaningful participation" shall mean that at least ten percent (10%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and Women-owned Business Enterprises, of which at least one percent (1%) are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

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

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

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

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

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

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

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

For the Port Authority

Initialed:

For Lessee

THROUGHPUT GUARANTY AGREEMENT

by

MSC Mediterranean Shipping Company S.A.

for the benefit of

The Port Authority of New York and New Jersey

This THROUGHPUT GUARANTY AGREEMENT, made as of the 14th day of June, 2011 by MSC MEDITERRANEAN SHIPPING COMPANY S.A. ("Carrier"), a Swiss registered company having its place of business at 40 Avenue Eugene Pittard, 1206 Geneva, Switzerland, for the benefit of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the "Port Authority"), a body corporate and politic created by compact between the States of New Jersey and New York, with the consent of the United States Congress, and having an office and place of business at 225 Park Avenue South, 15th Floor, New York, New York 10003-1604, United States of America.

WHEREAS, as of the date hereof, the Port Authority and Port Newark Container Terminal LLC will enter into a certain Amended and Restated Agreement of Lease known as L-PN-264 ("PNCT Lease");

WHEREAS; in consideration of Carrier's execution of this Agreement, the Port Authority has agreed to the economics, terms and conditions of the PNCT Lease and without Carrier's execution hereof, the Port Authority could not justify entering into the PNCT lease;

WHEREAS, in consideration of the Port Authority's execution of the PNCT Lease, which will enable the Carrier's Containers to be handled by PNCT in volume (by the Port Authority increasing the land available to PNCT) pursuant to the terms of the PNCT Lease and at economic rates (by reducing the lease payments payable by PNCT to the Port Authority) pursuant to the terms of the PNCT Lease, Carrier has agreed to the economics, terms and conditions of this Agreement and without the Port Authority's execution of the PNCT Lease, Carrier could not justify entering into this Agreement; and

WHEREAS; Terminal Investment Limited, which, contemporaneously with the execution hereof, will become the owner of a 50% ownership interest in Port Newark Container Terminal, LLC's, and with whom Carrier has an agreement concerning the exclusivity of Port Newark Container Terminal LLC for Carrier's

containers in the Port of New York and New Jersey, will derive substantial benefit from the Port Authority's agreement to enter into the PNCT Lease.

NOW THEREFORE; Carrier, for and in consideration of the covenants and agreements described above and hereinafter contained, hereby agrees as follows:

Section 1. Definitions

"Agreement" shall mean this Throughput Guaranty Agreement;

"Carrier" shall have the meaning given in the Preamble;

"Carrier's Containers" shall mean Qualified Containers carrying cargo for which Carrier is acting as common carrier or any empty Qualified Containers owned or leased by Carrier;

"Guaranty" shall have the meaning given to it in Section 3(a);

"Force Majeure" shall mean any circumstances occurring at the Port for which Carrier is not responsible and which are not within its control that preclude Carrier from conducting operations within the Port for a significant period of time including, acts of God, acts of the public enemy, acts of superior governmental authority, unusually severe weather conditions, riots, rebellion, sabotage, labor disputes or a physical impediment, not existing on the date hereof, to use of the Port by Carrier's vessels;

"PNCT" shall mean Port Newark Container Terminal, LLC;

"PNCT Lease" shall mean the Amended and Restated Agreement of Lease known as Lease L-PN-264;

"Port" shall mean the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N. Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session;

"Port Authority" shall have the meaning given in the Preamble;

"Port Throughput Fee" shall mean the Port Throughput Shortfall Number multiplied the amount indicated in Schedule A in effect on the last day of the applicable Port Throughput Guaranty Period;

"Port Throughput Guaranty Number" shall mean Carrier's Containers for each Throughput Year falling within the ranges set forth below:

(i) from March 1, 2011 through November 30, 2012: 413,600 Carrier's Containers;

(ii) from December 1, 2012 through November 30, 2014: 488,800 Carrier's Containers;

(iii) from December 1, 2014 through November 30, 2019: 572,000 Carrier's Containers;

(iv) from December 1, 2019 through November 30, 2024: 809,100 Carrier's Containers;

(v) from December 1, 2024 through November 30, 2029: 939,600 Carrier's Containers;

(vi) from December 1, 2029 and through November 30, 2030: 1,120,300 Carrier's Containers;

In the event that any Throughput Year shall contain less than 12 calendar months, the Port Throughput Guaranty Number for such Throughput Year will be prorated on a 360 day per year basis.

"Port Throughput Guaranty Period" shall mean each two successive Throughput Years, the first such period beginning on March 1, 2011 and ending on November 30, 2012, then each successive two Throughput Years thereafter.

"Qualified Containers" shall mean containers (or similar cargo conveyances, if any, which shall generally replace, succeed or are functionally equivalent to present containers) loaded onto or discharged from vessels berthing within the Port (whether or not stuffed or stripped at the Premises, whether or not so loaded or discharged by means of container cranes, and whether or not empty or containing cargo), including without limitation any specialized cargo containers such as flat-racks (flat-racks when empty and bundled together as one unit shall be counted as one container), but shall not mean containers arriving on shipboard and departing on the same ship and the same voyage if such containers are merely unloaded from the ship at the Premises and reloaded in the course of a restowing operation or are merely moved from one location to another location on the same ship in the course of a shifting operation. Containers discharged from a vessel berthing at the Premises and loaded onto another vessel berthing at the Premises in the course of a transshipment operation shall be deemed to have been discharged and loaded in one discrete operation and counted as one (1) Qualified Container for purposes of the computation of the total number of Carrier's Containers.

"Throughput Year" shall mean any twelve (12) month period commencing on December 1 and ending on the following November 30 throughout the Term of this Agreement, provided; however that the first Throughput Year shall be the nine (9) month period between March 1, 2011 and November 30, 2011.

"Term" shall have the meaning set forth in Section 4.

Section 2. Representations and Warranties

Carrier represents and warrants as of the date hereof, as follows:

(a) Carrier acknowledges that the Port Authority would not enter into the PNCT Lease but for the undertaking by the Carrier in this Agreement and Carrier has received, or will receive substantial, direct or indirect benefit from the making of this Agreement and from the execution of the PNCT Lease by Port Newark Container Terminal, LLC and the Port Authority;

(b) Carrier, and the individuals executing below on its behalf, are duly authorized to execute and deliver and to enter into this Agreement.

Port Authority represents and warrants with respect to itself as of the date hereof, as follows:

(a) Port Authority acknowledges that Carrier would not enter into this Agreement but for Port Authority providing to PNCT sufficient suitable land for PNCT to handle all of Carrier's Containers, and to provide that land at all times at a cost to PNCT which is competitive with the cost paid by other container terminals in the Port to the Port Authority;

(b) Port Authority, and the individuals executing below on its behalf, are duly authorized to execute and deliver and to enter into this Agreement.

Section 3. Guaranty

(a) Carrier guarantees to the Port Authority that, for each Throughput Year, Carrier will transport to or from the Port not less than the Port Throughput Guarantee Number of Carrier's Containers.

(b) Carrier's primary intention in delivering this Agreement is in support of its obligation of exclusivity as a customer of PNCT, however to the extent that PNCT cannot handle the Port Throughput Guaranty Number for any reason, Carrier's obligations described in this Section 3 shall in no way be limited and Carrier will obtain terminal services elsewhere within the Port in order to reach the Port Throughput Guaranty Number.

(c) In the event that during any Port Throughput Guaranty Period, the number of Carrier's Containers transported to or from the Port shall be less than the Port Throughput Guarantee Number calculated for each Throughput Year during a Port Throughput Guaranty Period, with the result of each of the two Throughput Years during the applicable Port Throughput Guaranty Period being aggregated (the "Port Throughput Shortfall Number"), Carrier shall pay to the Port Authority a sum (hereinafter called "the Port Throughput Fee") equal to the product obtained by multiplying the amount indicated on Schedule A in effect on the last day of the applicable Port Throughput Guaranty

Period by the Port Shortfall Number, with payment to be made as set forth in paragraph (e) of this Section.

(d) Carrier shall pay the Port Throughput Fee on the 20th day of the month following the last month of the previous Port Throughput Guaranty Period during the Term, Carrier shall render to the Port Authority a statement certified by a responsible officer of Carrier showing the total number of Carrier's Containers transported to or from the Port for each Throughput Year during the applicable Port Throughput Guaranty Period. If the statement rendered for the Port Throughput Guaranty Period shall show a Port Throughput Shortfall Number, the Carrier shall pay to the Port Authority the Port Throughput Fee at the time of rendering such statement. Each statement shall be accompanied by, and the determination of the number of the Carrier's Containers loaded onto or discharged from vessels berthing at any Port Authority terminal within the Port during any Throughput Year shall be as shown in, monthly vessel activity reports made by the Carrier to the New York Shipping Association, or successor organization, for the purpose of cargo assessment. Carrier, in addition to providing copies of monthly vessel activity reports at the time of rendering the bi-annual statement described herein, shall provide the Port Authority with a copy of any such report within five (5) days of the Carrier's making such report to the New York Shipping Association.

(e) By way of example, if the Port Throughput Guaranty Number applicable for both Throughput Years during a Port Throughput Guaranty Period is equal to 1000 Carrier Containers, and on the first Throughput Year the actual number of Carrier Containers transported to or from the Port is 700, and during the second Throughput Year the actual number of Carrier Containers transported to or from the Port is 1100, the Port Throughput Shortfall Number for that Port Throughput Guaranty Period will be equal to 200 (300 short in year 1 less 100 over in year 2), and the Port Throughput Fee for that Port Throughput Guaranty Period will be equal to 200 times the rate in effect on the last day of such Port Throughput Guaranty Period as specified on Schedule A.

(f) In the event that during any Port Throughput Guaranty Period from and after December 1, 2020, the number of Carriers Containers transported to or from the Port shall be in excess of the number of Carriers Containers required hereunder during such Port Throughput Guaranty Period (such excess number of containers, the "Port Throughput Surplus Number"), Carrier will be entitled to a credit equal to 50% of the Port Throughput Surplus Number to be applied against a Port Throughput Shortfall Number, if any, for any subsequent Port Throughput Guaranty Period.

(g) Carrier shall permit the Port Authority by its agents, employees and representatives at all reasonable times to examine and audit the records and other documentation of Carrier which pertain to and will substantiate such statements and reports.

Section 4. Events Beyond Carrier's Control.

(a) Carrier has undertaken the obligation to provide the throughput volumes described in this Agreement, or, failing which, to pay the Port Throughput Fee. In so doing, Carrier has assumed substantial business risk and the obligation to maintain and expand its operations within the Port, regardless of many factors that could impact Carrier's ability to do so. Notwithstanding the foregoing, Carrier and the Port Authority agree as follows:

(1) In the event of a Force Majeure that Carrier reasonably expects to have a material impact on its ability to meet the Port Throughput Guaranty Number, the Port Authority and Carrier agree to negotiate for a reasonable and appropriate adjustment in the Port Throughput Guaranty Number for the Throughput Year (or Throughput Years) materially affected by such Force Majeure event provided Carrier has promptly (but in no event later than 45 days from the commencement of Force Majeure event) notified the Port Authority in writing of the occurrence and nature of such Force Majeure.

(2) In the event that the Port Authority does not deliver any portion of the additional acreage to be leased to PNCT pursuant to the PNCT Lease and such failure to deliver such acreage is reasonably expected to have a material impact on Carrier's ability to meet the Port Throughput Guaranty Number, the Port Authority agrees to negotiate with Carrier for a reasonable and appropriate adjustment to the Port Throughput Guaranty Number.

(3) In the case of general economic conditions beyond Carrier's control causing a substantial decrease in overall shipping volumes that might otherwise have been expected to move through the Port, the Port Authority agrees to negotiate with Carrier for a reasonable and appropriate adjustment to the Port Throughput Guaranty Number for the Throughput Year (or Throughput Years) materially affected by such general economic conditions.

(b) The Port Authority agrees to act in its reasonable discretion in negotiating with Carrier to agree upon any appropriate adjustments to the Port Throughput Guaranty Number. In the exercise of such reasonable discretion, the Port Authority may and will consider various factors that may effect Carriers ability to meet the Port Throughput Guaranty Number including, but not limited to, Carrier's throughput volumes at competing ports, Carrier's relative market share in comparison to other carriers, and Carrier's ability to maintain or expand throughput volumes through reasonable commercial means or reasonable adjustments to Carrier's operations over the course of any given Port Throughput Guaranty Period.

Section 5. Term. The term of this Agreement shall commence on the date hereof and shall end upon the expiration or earlier termination of, and be co-terminus with, the PNCT Lease excluding any extensions or renewals thereof.

Section 6. Costs and Expenses. If the Carrier should fail to pay, if and when due, the Port Throughput Fee, Carrier agrees to pay to the Port Authority all reasonable out-of-pocket costs and expenses (including court costs and reasonable attorneys' fees) incurred by the Port Authority in connection with the enforcement hereof.

Section 7. No Offset. Carrier shall not have any right to offset any amounts owed to the Port Authority hereunder against any claims or actions from time to time against the Port Authority or any debts or amounts owed by the Port Authority to Carrier.

Section 8. PNCT Lease Amendments: The Port Authority agrees that it will not, without the consent of Carrier, which consent will not be unreasonably withheld, conditioned or delayed, agree to (i) any amendment to the PNCT Lease that enables PNCT to surrender any material portion of the premises leased pursuant to the PNCT Lease or (ii) consent to PNCT not taking delivery of any material portion of the expansion parcels (except to the extent that such portion is replaced by substantially similar land) to be leased to PNCT pursuant to the PNCT Lease. Carrier's right to consent shall be limited solely to the foregoing matters and no other waivers, modifications, amendments or otherwise shall require any notice to, or consent by, Carrier.

Section 9. Miscellaneous:

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the Port Authority and Carrier, and their respective successors and assigns.

(b) The obligations hereunder are personal to Carrier and may not be assigned. Any purported assignment, by merger, operation of law, or otherwise, shall not in any way relieve Carrier, and any successor to Carrier, of any obligations hereunder.

(c) This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement shall be governed by, interpreted and construed in accordance with, the laws of the State of New Jersey, without regard to choice of law principles.

(d) Carrier hereby irrevocably submits to the exclusive jurisdiction of any federal or state court located within the State of New Jersey over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the

laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(e) Carrier hereby agrees to appoint an agent for service of process for any suit, action or proceeding in relation to this Guaranty and to notify the Port Authority of that appointment within 7 working days of receiving written notice from the Port Authority to do so. Failing the appointment of an agent as aforesaid the Port Authority shall be entitled to serve process for any suit, action or proceeding in relation to this Guaranty at the head office of Carrier's steamship agent in the United States and Carrier confirms that the said agent is so authorized to accept service.

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

(g) The Port Authority and Carrier do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. This provision shall survive the termination or expiration of this Agreement.

(h) This Agreement contains the entire agreement between the parties with respect to the matters contained herein and supersedes all prior understandings, if any, with respect hereto.

(i) This Agreement cannot be modified or amended unless such modification or amendment is in writing and executed by the parties hereto.

(j) The descriptive headings herein are inserted for convenience of reference only, do not constitute a part of this Agreement, and shall not affect in any manner the meaning or interpretation of this Agreement.

(k) No provision of this Agreement shall be deemed waived by a party unless expressly waived in a writing signed thereby. The waiver by a party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained.

(l) This Agreement may be executed in counterparts with the same effect as if all parties hereto had executed the same document. All counterparts shall be construed together and shall constitute a single agreement.

(m) Without limiting any term or condition hereof, the Port Authority, in the enforcement of this Agreement, shall have all rights and remedies available to it hereunder and under law and equity.

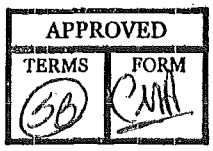
(n) Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof shall be held personally liable to the Carrier or to Carrier's Parent under any term provision of this Agreement or because of its execution or because of any breach or alleged or attempted breach thereof or otherwise.

(o) The parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applicable to the interpretation of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY



By:_____
Name: Richard Larrabee
Its: Director Port Commerce Dept.
(the Port Authority)

MSC MEDITERRANEAN SHIPPING COMPANY SA

By:_____
Name:
Its:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By:_____
Name: Richard Larrabee
Its: Director Port Commerce Dept.
(the Port Authority)

MSC MEDITERRANEAN SHIPPING COMPANY SA

By:_____
Name: D. Aponte
Its: Vice-President

Schedule A

Throughput Rates

Date	Per Container Amount
3/1/11	14.25
12/1/11	14.25
12/1/12	15.75
12/1/13	15.75
12/1/14	15.75
12/1/15	17.25
12/1/16	17.25
12/1/17	17.25
12/1/18	18.75
12/1/19	18.75
12/1/20	18.75
12/1/21	20.25
12/1/22	20.25
12/1/23	20.25
12/1/24	21.75
12/1/25	21.75
12/1/26	21.75
12/1/27	23.25
12/1/28	23.25
12/1/29	23.25

ExpressRail Port Newark

This Space for Port Authority Use Only:
Number: MNS-338

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

RAILROAD OPERATING AND SPACE PERMIT (the "Permit")

The Port Authority of New York and New Jersey (hereinafter called the "***Port Authority***") hereby grants to the Permittee hereinafter named permission to use and occupy the following described space (hereinafter called the "***Space***"), in compliance with the operating procedures described herein, at the Port Authority Facility hereinafter named, for the purposes hereinafter specified and purposes incidental thereto, in accordance with the Terms and Conditions hereof and the endorsements annexed hereto; and the Permittee agrees to perform all the obligations imposed upon it in the Terms and Conditions and endorsements.

1. **FACILITY**: PORT NEWARK

2. **PERMITTEE**: PORT NEWARK CONTAINER TERMINAL, LLC, a Delaware limited liability company

3. **PERMITTEE'S ADDRESS**: 241 Calcutta Street
Port Newark, New Jersey 07114

4. **PERMITTEE'S REPRESENTATIVE**: David F. Adam

5. **SPACE**: Approximately 7.16 acres of open area shown respectively in diagonal crosshatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A". The Port Authority and the Permittee agree that the Space constitutes non-residential real property. The Port Authority in its sole discretion reserves the right to add additional acreage to the Space at any time during the term of this Permit.

6. **PURPOSES**: For: (i) the operation and management of the ExpressRail Port Newark intermodal rail terminal as a public, multi-user marine container rail interchange terminal; (ii) the ingress and egress of railroad cars and locomotives to and from areas adjacent to the Space; (iii) the receipt and delivery of containerized waterborne freight which has arrived or will be departing by vessel through the Port of New York and New Jersey, to and from such railroad cars; and (iv) such other purposes as may be approved by the Facility Manager in writing.

7. **[INTENTIONALLY OMITTED]**

8. **COMMENCEMENT DATE**: As set forth in Section 1 of the Terms and Conditions.

9. **EXPIRATION**: The term of this Permit shall be coterminous with the term of the Lease. The expiration date of this Permit shall be November 30, 2030 (unless terminated or revoked in accordance with the Terms and Conditions and Endorsements), subject to extension of such expiration date in accordance with the provisions of the Lease. In the event that the Lease is revoked or terminated, this Permit shall be revoked as of the date of termination or revocation, as applicable, of the Lease.

10. **ENDORSEMENTS**: 10.4, 11.1, 17.1, 18.1, 22.1, 28, Special Endorsements, Exhibits A and B, and Insurance Schedule.

Dated as of: June 14, 2011

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By_____

Print Name Richard M. Larrabee

(Title) Director, Port Commerce Dept.

PORT NEWARK CONTAINER TERMINAL LLC

By_____

Print Name David F. Adam

(Title) President

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

SA

7. **[INTENTIONALLY OMITTED]**

8. **COMMENCEMENT DATE:** As set forth in Section 1 of the Terms and Conditions.

9. **EXPIRATION:** The term of this Permit shall be coterminous with the term of the Lease. The expiration date of this Permit shall be November 30, 2030 (unless terminated or revoked in accordance with the Terms and Conditions and Endorsements), subject to extension of such expiration date in accordance with the provisions of the Lease. In the event that the Lease is revoked or terminated, this Permit shall be revoked as of the date of termination or revocation, as applicable, of the Lease.

10. **ENDORSEMENTS:** 10.4, 11.1, 17.1, 18.1, 22.1, 28, Special Endorsements, Exhibits A and B, and Insurance Schedule.

Dated as of: JUNE 14, 2011

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By_____

Print Name_____

(Title)_____

PORT NEWARK CONTAINER TERMINAL, INC.

By_____

Print Name: David F. Adam

(Title):President

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

SA

TERMS AND CONDITIONS

1. COMMENCEMENT DATE

The permission hereby granted shall take effect on January 1, 2008 (hereinafter called the "**Commencement Date**").

2. DEFAULTS

If any one or more of the following events shall occur, that is to say:

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

(b) Involuntary Bankruptcy.

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

(ii) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Permittee and shall not be dismissed within thirty (30) days after the filing thereof; or

(c) Assignment. The interest of the Permittee under this Permit shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(d) Consolidation. The Permittee, if a corporation, shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

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

(f) Abandonment. The Permittee shall voluntarily abandon, desert or vacate the Space or discontinue its operations at the Space or, after exhausting or abandoning any right of further appeal, the Permittee shall be prevented for a period of thirty (30) days by action of any

governmental agency, from conducting its operations at the Space, regardless of the fault of the Permittee; or

(g) Liens. Any lien shall be filed against the Space because of any act or omission of the Permittee and shall not be discharged within twenty (20) days; or

(h) Failure to Make Payments. The Permittee shall fail duly and punctually to make any payment required hereunder when due to the Port Authority; or

(i) Non-Performance. The Permittee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Permit, on its part to be kept, performed or observed, within seven (7) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Permittee shall have commenced to perform whatever may be required for fulfillment within seven (7) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by seven (7) days' notice revoke this Permit, such revocation to be effective upon the date specified in such notice. Such right of revocation and the exercise thereof shall be and operate as a conditional limitation.

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 such revocation or termination.

3. DEFINITIONS

(a) "**Annual Period**" shall mean as the context requires the twelve-month period commencing with the Commencement Date and each of the twelve-month periods thereafter occurring during the period of the permission granted under this Permit commencing on each anniversary of the Commencement Date occurring during the period of the permission granted under this Permit, except that if the Commencement Date shall occur on a day other than the first day of a calendar month then the first Annual Period shall mean the portion of the calendar month in which the Commencement Date shall occur commencing with the Commencement Date and the eleven-month period following said month and each succeeding Annual Period shall mean the twelve-month period commencing on the anniversary of the first day of the calendar month in which the Commencement Date shall occur; provided, however, that the last Annual Period shall expire in any event on the expiration date of the period of the permission granted under this Permit.

(b) "**Basic Lease**" shall mean that agreement of lease respecting marine and air terminals entered into with the Port Authority by the City of Newark (New Jersey) under date of October 22, 1947, and recorded in the Office of the Register of the County of Essex on October 30, 1947, in Book E-110 of Deeds, on pages 242 et seq. as the said agreement of lease has heretofore been or from time to time hereafter may be supplemented and amended.

The rights of the Port Authority in the Facility are those acquired by it pursuant to the Basic Lease and no greater rights are granted or intended to be granted to the Permittee hereunder than the Port Authority has power thereunder to grant. The granting of permission shall in any event terminate simultaneously with the termination or expiration of the Basic Lease.

(c) "**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.

(d) "**Existing Lease**" shall mean that certain Agreement dated as of December 1, 2000, between the Port Authority, as lessor and the Permittee, as lessee, as amended and supplemented by those certain Supplemental Agreements between the Port Authority and Lessee numbered 1 through 10, i.e. Supplement No. 1, dated as of August 31, 2001, Supplement No. 2, dated as of November 26, 2001, Supplement No. 3, dated as of March 25, 2002, Supplement No. 4, dated as of December 1, 2000, Supplement No. 5, dated as of October 1, 2002, Supplement No. 6, dated as of February 15, 2003, Supplement No. 7, dated as of May 31, 2005, Supplement No. 8, dated as of August 31, 2005, Supplement No. 9, dated as of March 13, 2007 and Supplement No. 10, dated as of December 31, 2006.

(e) "**Facility**" or "**Port Newark Facility**" shall mean the land and Space in the City of Newark, in the County of Essex and State of New Jersey, which are easterly of the right-of-way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the Basic Lease and marked "Exhibit A" (thereto), as contained within the limits of a line of crosses appearing on the said Exhibit A and marked (by means of the legend) "Boundary of Terminal Area in City of Newark," and lands contiguous thereto within the County of Essex which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes.

(f) "**Facility Manager**" and "**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 Facility Manager or his or her duly designated representative.

(g) "**Lease**" shall mean that certain Amended and Restated Agreement of Lease (L-PN-264) dated as of June 14, 2011, between the Port Authority, as lessor and Permittee, as lessee, as the same may be amended, supplemented or otherwise modified.

(h) "**Space**" shall mean the area shown on Exhibit A hereto together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located or to be located therein or thereon, as such may area may be expanded pursuant to the terms of this Permit.

(i) "**Terminal**" shall mean the ExpressRail Port Newark intermodal rail terminal located on the Space as such terminal shall exist on the Commencement Date and at any time thereafter during the period of the permission granted under this Permit.

4. 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 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.

5. NO TRANSFER

The rights granted hereby shall be exercised by the Permittee acting only through the medium of its officers and employees. The Permittee shall not assign, transfer, mortgage or otherwise encumber this Permit or any improvements of the Port Authority on the Space or any of the rights or privileges granted under this Permit or enter into any contract requiring or permitting the doing of anything under this Permit by an independent contractor, without the prior written approval of the Port Authority.

6. NO AGENCY

This Permit does not constitute the Permittee the agent or representative of the Port Authority for any purpose whatsoever.

7. ORDERLY MANNER

The operations of the Permittee, its employees, invitees and those doing business with it, shall be conducted in an orderly and proper manner. The Port Authority shall have the right to object to the Permittee regarding the demeanor, conduct and appearance of the employees and invitees of the Permittee and of those doing business with it, whereupon the Permittee will take all steps necessary to remove the cause of the objection.

8. 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 of the Port Authority now in effect, and such further reasonable rules and regulations 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, including the Space, or for the safe and efficient operation of the Facility, including the Space. The Port Authority agrees that, except in cases of emergency, it

shall give notice to the Permittee of every rule and every regulation hereafter adopted by it at least five (5) days before the Permittee shall be required to comply therewith.

9. INDEMNIFICATION

(a) The Permittee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, representatives and contractors, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal 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 default of the Permittee, its officers, employees, and persons who are doing business with it, in performing or observing any term or provision of this Permit, or out of any of the operations, acts or omissions of the Permittee, its officers, employees, and persons who are doing business with it, including claims and demands of the City of Newark, from which the Port Authority derives its rights in Port Newark, for indemnification arising by operation of law or through agreement of the Port Authority with the said City.

(b) If so directed, the Permittee shall at its own expense defend any suit based upon any such claim or demand (even if such 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, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(c) The 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.

10. CASUALTY

(a) Total Destruction. If the Space, including improvements and personal property furnished by the Port Authority, or any part thereof, shall be completely damaged by fire, the elements, the public enemy or other casualty, this Permit shall terminate and the Permittee shall promptly remove all debris resulting from such damage from the Space, and to the extent, if any, that the removal of debris under such circumstances is covered by insurance, the proceeds thereof shall be made available to and be used by the Permittee for such purpose.

(b) Partial Destruction.

(i) If the Space, including improvements and personal property furnished by the Port Authority, or any part thereof, shall be damaged by fire, the elements, the public enemy

or other casualty but not rendered untenantable or unusable for a period of ninety (90) days, the Space shall be repaired with due diligence in accordance with the plans and specifications for the same as they existed prior to such damage by and at the expense of the Permittee unless otherwise directed by the Port Authority in writing, and if such damage is covered by insurance, the proceeds thereof shall be made available to and be used by the Permittee for such repairs.

(ii) If the Space, including improvements and personal property furnished by the Port Authority, or any part thereof, shall be destroyed or so damaged by fire, the elements, the public enemy or other casualty as to be unusable for ninety (90) days, or if within ninety (90) days after such damage or destruction the Permittee notifies the Port Authority in writing that in its opinion the same will be unusable for ninety (90) days then: The Permittee, unless otherwise directed by the Port Authority in writing, shall proceed with due diligence to make the necessary repairs or replacements to restore the Space, including improvements and personal property furnished by the Port Authority in accordance with the plans and specifications therefor as the same existed prior to such damage or destruction; or with the approval in writing of the Port Authority make such other repairs, replacements or changes as may be desired by the Permittee. If such damage or destruction was covered by insurance, the proceeds thereof shall be made available to and used by the Permittee for such restoration.

(c) Costs Limited to Proceeds. The obligation of the Permittee to repair or replace shall be limited to the amount of the insurance proceeds provided the Permittee has carried insurance to the extent and in accordance with the Insurance Schedule attached hereto. Any excess of the proceeds of insurance over the costs of the restoration shall be retained by the Port Authority.

(d) Section 227 of the RPL. The parties hereby stipulate that neither the provisions of Section 227 of the Real Property Law of the State of New York nor those of any other similar statute shall extend or apply to this Permit.

11. PERSONAL PROPERTY

(a) Permittee's Personal Property. All personal property (including trade fixtures) which is installed by the Permittee in or on the Space pursuant to this Permit, removable without material damage to the Space, shall be deemed to be and remain the property of the Permittee except as otherwise provided in this Permit. All such personal property, provided the Permittee shall install suitable replacements therefor if such personal property is necessary to operate the Space in accordance with the terms and provisions hereof and in accordance with the best practices of the stevedoring and railroad industries in the United States, may at the Permittee's option be removed by the Permittee from the Space at any time during the effective period of this Permit. Furthermore, all such property of the Permittee shall, unless otherwise agreed in writing by the parties hereto, be removed by the Permittee on or before the expiration or earlier revocation or termination of the effective period of this Permit. If the Permittee shall fail to remove its property on or before the expiration or earlier revocation or termination of the effective period of this Permit, the Port Authority may remove such property to a public warehouse for deposit or retain the same in its own possession and in either event may dispose of the same as waste material or sell the same as waste material or sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale; second

to any sums owed by the Permittee to the Port Authority, with any balance remaining to be paid to the Permittee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Permittee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Permit, the Permittee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise, except for claims based on the sole negligence of the Port Authority.

(b) The Port Authority's Personal Property. Without limiting the obligations of the Permittee stated elsewhere in this Permit, the Permittee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the Space, and shall promptly replace or repair, the same within twenty (20) days after such loss, theft or damage; and the Permittee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier revocation of this Permit in the same condition as at the commencement of this Permit, reasonable wear not materially affecting the efficient use and functioning of the same, excepted.

12. INTELLECTUAL PROPERTY

The Permittee represents that it is the owner of or fully authorized to use and 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 wise limiting its obligations under the Insurance Schedule, 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 wise connected with this Permit.

13. VENDING MACHINES

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

(b) Service by the Port Authority. The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the Space for the sale of merchandise of all types or for the rendering of services, provided,

however, that no such machine or device shall be installed except upon the request of the Permittee. If the Port Authority does not install and maintain any such machine that the Permittee may reasonably request, the Permittee shall have the right to do so, provided, however, (i) that the Permittee shall pay or cause to be paid to the Port Authority each month for each machine upon the same basis for the preceding month as any concessionaire, permittee or licensee of the Port Authority then operating machines at the Port Authority facilities generally for the sale of similar merchandise or the rendering of similar services, and (ii) that in the event the Permittee exercises such right the Port Authority, at any time thereafter, may substitute for the Permittee's machines other machines selling similar merchandise or services operated by the Port Authority or by its licensee, permittee or concessionaire, and thereupon the Permittee shall remove its machines.

14. SIGNS

No signs, posters or similar devices shall be erected, displayed or maintained by the Permittee in view of the general public in or on the Space or the Facility without the written approval of the Facility Manager; and any not approved by the Facility Manager may be removed by the Port Authority at the expense of the Permittee.

15. PERMITTEE REPRESENTATIVE

The representative of the Permittee hereinbefore specified (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 to do any act or thing to be done hereunder, and to execute on behalf of the Permittee any amendments, or supplements to this Permit or any extension thereof and to give and receive notices hereunder. This Permit shall not constitute the Permittee the agent or representative of the Port Authority for any purpose whatsoever.

16. NOTICE

(a) Requirements. All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party, or (ii) delivered to an office or residence of such party, officer or representative during regular business hours, or (iii) delivered to the residence of such party, officer or representative, (iv) or, if directed to the Permittee, delivered to the Space, or (v) forwarded to such party, officer or representative at the office or residence address by registered mail or by a nationally recognized overnight courier service. The Permittee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Permittee designates the person whose name appears on the first page of this Permit as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Permittee designates its office, the address of which is set forth on the first page of this Permit, as their respective offices where notices and requests may be served.

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

17. NO BROKER

The Permittee represents and warrants that no broker has been concerned in the negotiation 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 and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Permit.

18. ENTIRE AGREEMENT

This Permit, including the attached endorsements, exhibits and schedules, if any, constitutes the entire agreement of the Port Authority and the Permittee on the subject matter. It may not be changed, modified, discharged, or extended, except by written instrument duly executed on behalf of the Port Authority and the Permittee. The Permittee agrees that no representatives or warranties shall be binding upon the Port Authority unless expressed in writing herein.

The Permittee shall daily remove from the Space 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 its operations hereunder, and any such garbage, debris and other waste material 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, to be of a design safely and properly to contain whatever material may be placed therein, and to be 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 Space. 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.

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

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

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.

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.

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.

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.

No Commissioner, Director, officer, agent or employee of either party shall be charged personally by the other party with any liability, or held liable to the other party, under any term or provision of this Permit, or because of the party's execution or attempted execution, or because of any breach thereof.

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 Fire Protection Association and The Fire Insurance Rating Organization of N.J., and any other body or organization exercising 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 Endorsement, 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.

The Permittee shall not do or permit to be done any act which,

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

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

(c) 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

(d) may cause or produce upon the marine terminal any unusual, noxious or objectionable smokes, gases, vapors or odors, or

(e) 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 marine terminal, or

(f) shall constitute a nuisance in or on the marine terminal or which may result in the creation, commission or maintenance of a nuisance in or on the marine terminal.

For the purpose of this Endorsement, "marine terminal" includes all structures located thereon.

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.

SPECIAL ENDORSEMENTS

1. [INTENTIONALLY OMITTED]

2. [INTENTIONALLY OMITTED]

3. SCHEDULES

The Permittee shall, prior to furnishing any additional services hereunder, state the same in a schedule submitted to the Port Authority for its prior written approval (except that such Port Authority approval shall not be required for additional services to be provided outside of normal operating hours). Such schedules shall be submitted to the Port Authority for its approval as to compliance by the Permittee with its obligations under this Permit. The Port Authority shall examine such schedules and make such modifications therein as may be necessary. Any changes thereafter in the schedules shall be similarly submitted to the Port Authority for its prior written approval, and, if necessary, modification. All such schedules shall be made available to the public by the Permittee at locations designated from time to time by the Port Authority. The Permittee agrees to adhere to the rates stated in the approved schedules. If the Permittee applies any rate in excess of the approved rates, the amount by which the charge based on such actual rate deviates from a charge based on the approved rates and/or discounts shall constitute an overcharge which will, upon demand of the Port Authority or the Permittee's customer, be promptly refunded to the customer. If the Permittee applies any rate which is less than the approved rates the amount by which the charge based on such actual rate or actual discount deviates for a charge based on the approved rates shall constitute an undercharge and shall be collected from its customer by the Permittee. Notwithstanding any repayment of overcharges to a customer by the Permittee, any such overcharge shall constitute a breach of the Permittee's obligations hereunder and the Port Authority shall have all remedies consequent upon breach which would otherwise be available to it at law, in equity or by reason of this Permit.

4. TERMINAL MAINTENANCE

(a) Improvements. The Port Authority shall furnish properly ballasted railroad tracks and switches, light stanchions and electrical wiring for such stanchions, and water pipes, sewer lines and fencing on the Space, which are expected to be completed by December 31, 2014.

(b) Labor and Equipment. The Permittee shall furnish all labor and equipment necessary for the efficient operation of the Terminal throughout the period of the permission granted hereunder.

(c) Care of Space. The Permittee shall at all times keep the Space clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Permittee located in or on the Space.

(d) Repair and Replacement.

(i) 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 or by those of its officers or employees, or of other persons on or at the Space with the consent of the Permittee.

(ii) Subject to the provisions of paragraph (d)(iii) of this Special Endorsement, throughout the period of permission under this Permit, the Permittee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the Space, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing the Permittee shall do all preventive maintenance, maintain and make repairs and replacements, structural or otherwise to all improvements located on the Space and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Space or the Permittee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items: (1) paving, which shall mean maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, catch basins, underground storm water pipes, and grate support systems. In addition, the Permittee shall be responsible for maintenance repairs, and damages, that are required above the structural concrete chamber of catch basins and manholes. Such repairs shall include the concrete brick collar, concrete collar, brick collar, asphalt concrete pavement, Portland cement concrete pavement, the frame and grate or manhole cover and silt bucket when and where applicable. For the purpose of manhole and catch basin repair, the top of the structural chamber shall be the top of the concrete slab that covers the vertical walls of the underground manhole structure, and for the purpose of catch basin and manhole repair, the top of the structural chamber shall be the top of the (cast-in-place or pre-cast) vertical walls of the underground catch basin and manhole structure; (2) scales; (3) rail track system including, without limitation, rail, switches, turnouts, and rail foundations; (4) all loading and unloading equipment and the infrastructure on which they operate, including concrete runways, turning pads and crossings; (5) lights, light poles and light pole foundations; (6) sprinkler systems; (7) gas and electric from the meter (utility companies are responsible up to the meter); (8) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (9) power switch mechanism; (10) compressed air system; (11) the plumbing system, fixtures and equipment, and all finished plumbing; (12) buildings and all parts thereof; (13) gate complexes; (14) special loading devices, whether mechanical, electrical, hydraulic or otherwise; (15) fencing; (16) signs; (17) fire extinguishers; (18) all painting; and (19) any rail crossing and its associated warning systems and devices, provided that Permittee's responsibility for any rail crossing shall exclude the Corbin Street runner track located in the Space until such time as a majority of the cargo containers handled by Permittee are moved through the Corbin Street runner track. The Permittee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the Permit and all times during the period of the permission, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the period of the permission hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of structures on the Space or adversely affect the efficient or the proper

utilization of any part of the Space or the environmental condition thereof. The Permittee shall make frequent periodic inspections of the Space and shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by the Permittee shall be in quality and class not inferior to the original in materials and workmanship. With respect to anything originally supplied or installed by the Port Authority, the Permittee shall have the benefit of the warranty, if any, running to the Port Authority, to the extent assignment thereof does not impair or void the same. Without limiting any other provision of this Permit, the obligations of the Permittee set forth above in this paragraph apply to the Space as the same shall exist on the Commencement Date and at any time thereafter during the period of the permission under this Permit.

(iii) Except under circumstances as to which paragraph (d)(i) of this Section of this Special Endorsement applies, upon receipt of notice that repair or replacement of such of the following as are located at the Space is required: (1) the water distribution system up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto; or (2) the underground sanitary systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the Space in a reasonably good condition for the operations of the Permittee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the Space to a better condition than that existing at the Commencement Date. The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of the Permittee under any other provision of this Permit. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable. If the Port Authority shall fail, after a reasonable period of time to perform its repair and replacement obligations under this paragraph, the Permittee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay the Permittee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to the Permittee a credit against its rental obligations under the Lease in an amount equal to such expenditures. Furthermore, prior to the commencement by the Port Authority of any work set forth in the Permittee's notice to the Port Authority, the Permittee shall take all precautions necessary to protect persons or property at the Space, including the immediate performance by the Permittee of any work required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Permittee for such work as provided in this paragraph.

(iv) The Permittee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, the Permittee's officers, employees, agents, and representatives which may arise from the condition of the Space or any part thereof, or from the failure of the Permittee to notify the Port Authority of conditions requiring repair or replacement,

or from the failure of the Permittee to make timely corrections of dangerous or potentially dangerous conditions at the Space. Except as set forth above, the Permittee hereby releases and discharges the Port Authority, its Commissioners, officers, employees, agents, and representatives from any liability for damages to the Permittee, consequential, or otherwise, in connection with any of the provisions of paragraph (d)(iii) of this Section of this Special Endorsement concerning repairs or replacements to any portion of the Space, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(e) Personal Property. Without limiting the obligations of the Permittee stated elsewhere in this Permit, the Permittee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the Space and shall promptly replace or repair the same within twenty (20) days after such loss, theft or damage (except that if any such repair requires activity over a period of time, then the Permittee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and the Permittee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of this Permit in the same condition as at the commencement of the Permit (or such later time at which the Permittee became responsible for same), reasonable wear not materially affecting the efficient use and functioning of the same excepted.

5. TERMINAL OPERATION

(a) Purpose. A principal purpose of the Port Authority in granting the permission under this Permit is to have available for maritime users of The Port of New York and New Jersey the services which the Permittee is permitted to render hereunder, all for the better accommodation and convenience of such entities and in fulfillment of the Port Authority's obligation to operate facilities for the use and benefit of the public.

(b) Non-Discrimination. The Terminal shall be open to all railroads and outside shippers.

(c) Operational Standards. The Permittee agrees that it will conduct a first class operation and (without limiting any provision of paragraph (c) of Special Endorsement No. 4 hereto) will furnish all fixtures, equipment (including, without limitation, computer systems and software), personnel (including, without limitation, licensed personnel as necessary), supplies, materials and other facilities necessary or proper therefor. The Permittee shall furnish all services hereunder on a fair, equal and non-discriminatory basis.

(d) Competition. The Permittee shall not enter into any agreement or understanding, express or implied, binding or nonbinding, with any other person who may furnish services in the Port of New York District (as such term is defined in Section 6403 of Title 17 of the Unconsolidated Laws of New York Annotated) similar to those furnished hereunder which will have the effect of (i) fixing rates and charges to be paid by users of the services; (ii) lessening or

preventing competition between the Permittee and such other furnishers of services; or (iii) tending to create a monopoly in The Port of New York and New Jersey in connection with the furnishing of such services.

(e) Prohibited Acts.

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

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

(f) Safety. From time to time and as often as required by the Port Authority, the Permittee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and fire-fighting equipment on the Space whether such system or equipment is furnished by the Port Authority or by the Permittee. The Permittee shall keep all fire-fighting and fire extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

(g) Condition of Space. The Permittee shall accept the Space, the railroad track and switches and all other improvements and personal property of the Port Authority thereon in their present condition and shall repair any damages thereto or to any other Port Authority property caused by its operations. The Permittee shall be responsible for snow removal. The Permittee shall not install any fixtures or make any additions or improvements in or additions to the Space except with the prior written approval of the Port Authority.

(h) Application of Insurance Proceeds. The obligation of the Permittee as set forth in paragraph (i) of this Special Endorsement, in the event of damage or destruction covered by any contract of insurance under which the proceeds thereof are payable to the Port Authority, the Permittee is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

(i) Harmful Acts. Without in any wise limiting obligations of the Permittee as elsewhere stated in this Permit, the Permittee shall be liable to the Port Authority for any damage done to the Space or the Facility or to any part of either or to any property of the Port Authority thereon through any act or omission of those in charge of or operating any railroad locomotive cars or railroad equipment, any marine container equipment, any truck or other highway vehicle or any other vehicles or transportation equipment, while the same are at, coming to, or leaving the Space. Upon the payment by the Permittee to the Port Authority of all amounts due with respect to any such damage, the Port Authority shall transfer to the Permittee all rights of the Port Authority against any such third party with respect to such damages.

(j) Security of the Space. 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.

(k) Use of Space by Permittee.

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

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

(2) 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,

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

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

(5) 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.

(ii) 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) 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 any fees shall apply thereto.

6. INGRESS AND EGRESS

The Permittee shall have the right of ingress and egress between the Space and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways, to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Permittee. The Permittee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Permittee may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any way or other area whether within or outside the Facility. The Permittee shall not do anything which will interfere with the free access and passage of others to space adjacent to the Space or in any streets, ways and walks near the Space.

7. AMOUNTS PAID BY PORT AUTHORITY FOR PERMITTEE OBLIGATIONS

(a) Non-Performance. If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Permittee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Permittee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Permit as a result of an act or omission of the Permittee contrary to the said conditions, covenants and agreements, the Permittee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and each and every part of the same shall be recoverable by the Port Authority in the same manner and with like remedies that the Port Authority would have at law or in equity consequent upon any breach of this Permit by Permittee.

(b) Evidence of Payment. For all purposes under this Special Endorsement and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be prima facie evidence against the Permittee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Permittee with cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof, shall likewise be prima facie evidence against the Permittee that the amount of such charge was necessary and reasonable.

(c) Definition of Costs. The term "costs" in this Special Endorsement shall mean and include; (i) payroll costs, including contributions to pension plans or systems, insurance costs, sick leave pay, holiday, vacation, and authorized absence pay; (ii) cost of materials and supplies

used; (iii) payments to contractors; (iv) any other direct costs; and (v) thirty percent (30%) of the sum of the foregoing.

8. REVOCATION

(a) Right of Entry. The Port Authority shall, as an additional remedy upon the giving of a notice of revocation as provided in paragraph 2 of the Terms and Conditions of this Permit, have the right to re-enter the Space and every part thereof upon the effective date of revocation without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Permittee under this Permit and shall in no event constitute an acceptance of the surrender of the Space.

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

(c) Mutual Termination. No agreement for the mutual termination of this Permit shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Permittee. Except as expressly provided in this Special Endorsement, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the Port Authority, shall be deemed an acceptance of a mutual termination of this Permit.

9. ACCEPTS THE SPACE AS-IS

(a) The Permittee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Space or the suitability thereof for the operations permitted on the Space by this Permit. The Permittee, prior to the execution of this Permit, has thoroughly examined the Space and has found it to be in good order and repair and determined them to be suitable for the Permittee's operations hereunder. Without limiting any obligation of the Permittee to commence operations hereunder at the time and in the manner stated elsewhere in this Permit, the Permittee agrees that no portion of the Space will be used initially or at any time during the effective period of this Permit which is in a condition unsafe or improper for the conduct of the Permittee's operations hereunder 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 Commencement Date hereof.

10. NO LIABILITY

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

11. [INTENTIONALLY OMITTED]

12. HOLDOVER

Without in any way limiting any provisions of this Permit, as herein amended, 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 period of permission granted under this Permit, as herein amended, as such 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 the maximum amount that may be charged by the Port Authority in accordance with applicable law. Nothing herein contained shall give, or 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 period of permission granted under this Permit, as herein amended. 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.

13. GOVERNMENTAL AUTHORITY INTERFERENCE

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

(b) Interference with Business Operations. No abatement, diminution or reduction of any charges payable by the Permittee, shall be claimed by or allowed to the Permittee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or

indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Permit be affected by any such causes. In the event any occurrence described in the foregoing sentence shall result in the inability of the Permittee to operate at the Space for a period in excess of thirty (30) days, any charges hereunder shall be abated from and after the thirtieth (30th) day after such occurrence for so long as the Permittee shall be unable to operate at the Space.

14. UTILITIES

(a) Provision of Utilities. The Port Authority shall be under no obligation to supply the Permittee with any utilities, including but not limited to water, gas, electricity, sewer service, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service.

(b) Water. The Permittee shall promptly pay all water-bills covering consumption on the Space. In the event that any such water-bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier revocation or termination of the effective period under this Permit, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall be payable to the Port Authority on demand.

(c) Increase in Assessments. If any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the Space, the Permittee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Permittee, pay, in accordance with any such notice, such charge, fee, rent or assessment or such increase thereof (or the portion thereof allocated by the Port Authority to the Space or to the operations of the Permittee under this Permit) either directly to the governmental body, authority or agency, or to the public utility or other entity, or directly to the Port Authority, as such notice may direct. All such payments shall constitute charges payable under this Permit.

(d) Interruption of Services. No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve the Permittee of any of its obligations hereunder, or shall be or be construed to be a revocation or termination of this Permit, or shall constitute grounds for any diminution or abatement of any charges payable under this Permit, or grounds for any claim by the Permittee for damages, consequential or otherwise.

(e) Meters. Without in any wise affecting the obligations of the Permittee elsewhere stated in this Permit, the Permittee shall, subject to the provisions of Special Endorsement No. 4 of this Permit, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility).

15. BOOKS AND RECORDS

The Permittee shall maintain in accordance with accepted accounting practice during the period of the permission under this Permit and for three years thereafter records and books of account of its operations at the Space connected with or reflecting upon the payment of any charges hereunder, which records and books of account shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session. The Permittee shall provide to the Port Authority on a monthly basis on or before the twentieth (20th) day of the following calendar month a report summarizing such activity and such payments in such form as may be directed from time to time by the Port Authority. The Port Authority shall have the right from time to time during ordinary business hours by its agents, employees and representatives to audit and inspect such books, records and other data of the Permittee relating to the Space and the operations of the Permittee thereat, as the Port Authority shall deem necessary to substantiate the Permittee's reports hereunder, it being understood that the Port Authority shall not be bound by any prior audit conducted by it.

16. RIGHT TO USE RAILROAD TRACKS

The Permittee shall have the right (to be exercised in common with others now or in the future having rights of passage by rail) to use such of the existing railroad tracks located on lands owned or leased by the Port Authority (and as to which others shall not have been granted the exclusive use by lease, permit or other arrangement with the Port Authority) as may be necessary for ingress and egress of railroad cars to and from Space subject to the following limitations and conditions:

(a) United States' Superior Rights. The foregoing right of use shall be subject to all times to the prior right of use by or on behalf of the United States;

(b) No Interference. The foregoing right of use shall be exercised in a manner which will not hamper, interfere with or prevent the reasonable use of the tracks by others for the passage of railroad cars, locomotives and tenders and for the ingress and egress of such cars and locomotives to areas adjacent to the Space made available to others by the Port Authority;

(c) Rules and Regulations. The Permittee shall not cause or permit the tracks to be obstructed, (except for the portion of track adjacent to the Space, and that portion for reasonable loading and unloading periods only), and shall comply with all rules and regulations of the Port Authority relating to the use of railroad tracks which are now in effect or which may hereafter be promulgated for the safe and efficient use of the Facility, and shall comply further with the directions of the Facility Manager relating to the use of railroad tracks;

(d) Relocation of Tracks. The Port Authority shall have the right to remove or to relocate any track or tracks so long as means of ingress and egress for railroad cars as above described remains available;

(e) Delays by the Port Authority. The Port Authority shall not be liable for any inconvenience, delay or loss to the Permittee by reason of interruption of use by the Permittee of

any or all such railroad tracks, occasioned by causes or circumstances over which the Port Authority shall not have control;

(f) Railroad Company Agreements. The right of user granted hereby shall be subject to any existing or future agreements between the Port Authority and the railroads serving the Facility relating to the furnishing of service by such railroads, as the said agreements may from time to time be modified or amended.

17. PRIOR OBLIGATIONS

(a) Continuous Possession and Occupancy. The parties acknowledge and agree that (i) the Permittee has had and currently has the rights to use, occupy and operate the Space since the effective date of Lease Supplement No. 1 to the Existing Lease, (ii) the Permittee shall continue to have such rights during the period of permission of this Permit and (iii) no gap in time and no reversion with respect to the Space has occurred between the effective date of Lease Supplement No. 1 to the Existing Lease and the commencement of the period of permission of this Permit. Further, it is hereby acknowledged that the Permittee remained in possession of the Space hereunder continuously from the effective date of Lease Supplement No. 1 to the Existing Lease through the Commencement Date, and at no time did the Permittee surrender the Space to the Port Authority.

(b) Survival of the Lease Obligations. The Permittee shall not, by virtue of this Permit, be released or discharged from any liabilities or obligations whatsoever that arose or accrued under the Existing Lease or any other prior Port Authority permits or agreements, all of which shall survive.

18. LABOR DISTURBANCES

(a) The existing paragraph appearing in Standard Endorsement No. 28 shall be designated as paragraph (a) thereof and the following shall be deemed inserted as paragraphs (b), (c), (d) and (e) thereof:

> "(b) The Permittee shall use its best efforts to ensure labor harmony in its operations at the Space, to the end of avoiding and preventing strikes, walkouts, work stoppage, slowdowns, boycotts and other labor trouble and discord. The Permittee particularly recognizes the essential necessity of the continued and full operations at the Space.
>
> (c) 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 operations of the Permittee under this Permit.
>
> (d) The Permittee shall immediately give notice to the Port Authority (to be followed by written notices and reports) to 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 complaint, trouble, dispute or controversy."

(e) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors.)"

19. ACCEPTANCE OF CARGO

The Permittee will accept and deliver cargo containers at the Space in accordance with current and prevailing regional marine terminal operating hours.

20. PERMITTEE COOPERATION DURING CONSTRUCTION

The Permittee understands that construction of additional parts of the Facility will be ongoing during its operations and that relocation and movement in and out of operating areas will be required in order to provide for unimpeded construction at the Facility. The Permittee hereby agrees and commits to faithfully and promptly cooperate with such relocation and movement requirements. Upon 15-day prior notice from the Port Authority, the Permittee will move out of needed areas and the Permittee will move back into such areas upon 15-day prior notice from the Port Authority.

21. PERFORMANCE STANDARDS

The Port Authority and the Permittee have established the Performance Standards for the operations of the Permittee at the Space annexed hereto and hereby made a part hereof and marked Exhibit B and the Port Authority will review the Permittee's compliance therewith in connection with any determination by the Port Authority of the eligibility of the Permittee for participation in any procurement process for the operation of the Space for the period following the expiration of this Permit.

22. LATE CHARGE

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 of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this

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 Special Endorsement with respect to such unpaid amount. Nothing in this Special Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Permit, including without limitation the Port Authority's rights set forth in this Special Endorsement or (ii) any obligations of the Permittee under this Permit. In the event that any late charge imposed pursuant to this Special Endorsement 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.

23. TRAFFIC

All traffic information at the Terminal shall be reported by the Permittee to the Port Authority at a minimum on a monthly basis.

24. INDEMNITY

(a) Indemnification. Without limiting any of the provisions of the Insurance Schedule, the Permittee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, representatives and contractors, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal 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 default of the Permittee, its officers, employees, and persons who are doing business with it, in performing or observing any term or provision of this Special Endorsement, including claims and demands of the City of Newark, from which the Port Authority derives its rights in the Facility, for indemnification arising by operation of law or through agreement of the Port Authority with the said City of Newark.

(b) Claims. If so directed, the Permittee shall at its own expense defend any suit based upon any such claim or demand (even if such 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, the immunity of the Port Authority, its Commissioners, officers, agents or employee, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

25. TRANSFER OF OWNERSHIP INTERESTS

The Permittee recognizes the fact that a transfer of all of the securities or interests in the Permittee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or interests or with respect to the identity of the parties in control of the Permittee, is for practical purposes a transfer or disposition of the rights obtained by the Permittee through this Permit. The Permittee further recognizes that because of the nature of the obligations of the Permittee hereunder, the

qualifications and identity of the Permittee and its security or interest holders are of particular concern to the Port Authority. The Permittee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Permit and, in doing so, is willing to accept and rely on the Permittee for the faithful performance of all obligations and covenants hereunder. Therefore, the Permittee agrees that Section 48 of the Lease shall be incorporated herein.

26. 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 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 amounts due under this Permit 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.

27. 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.

28. OFAC COMPLIANCE

(a) The Permittee hereby represents and warrants to the Port Authority that the Permittee (x) is not, and shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign 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 (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, and (y) is not engaging, and shall not engage, in any dealings or transactions with, and is not and shall not be otherwise associated

with (as determined by the Secretary of the Treasury of the United States of America), such persons or entities. 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. In the event of any breach of any of the foregoing representations and warranties by the Permittee, the Port Authority shall have the right, in addition to any and all other remedies provided under this Permit or at law or in equity, to immediately terminate this Permit upon written notice to the Permittee. The Permittee further acknowledges that there shall be no cure for such a breach. In the event of any such termination by the Port Authority, the Permittee shall, immediately on receipt of the Port Authority's termination notice, cease all use of and operations permitted under this Permit and surrender possession of the Space to the Port Authority without the Port Authority being required to resort to any other legal process. Termination on the afore-described basis shall be deemed a termination for cause.

(b) The Permittee shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the Permittee's breach of any of its representations and warranties made under this Section. 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.

29. GOVERNING LAW

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

30. CROSS DEFAULT

If any event described in the Lease as a ground for termination or event of default, shall occur, such event shall be a ground for revocation of this Permit in the same manner and to the same extent as if it had been explicitly enumerated in of Section 2 of the Terms and Conditions of this Permit.

1. OTHER AGREEMENTS

(a) If there shall be a conflict between any provision of this Permit and the Lease, the Lease shall control.

(b) 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, leases or agreements including but not limited to any permits to make alterations.

(c) Throughout the period of permission pursuant to this Permit, the Permittee and the Space shall be subject to and in compliance with the following sections of the Lease as if the Permittee were the Lessee (as defined in the Lease) and the Space was the Premises (as used in the Lease), including any exhibits and schedules referenced thereto:

(i) Section 13 of the Lease, entitled "*Environmental Responsibilities*";

(ii) Section 22 of the Lease, entitled "*Assignment and Sublease*";

(iii) Section 35 of the Lease, entitled "*Surrender*"; and

(iv) Section 36 of the Lease, entitled "*Acceptance of Surrender of Lease*".

For the Port Authority

Initialed:

For the Permittee

Exhibit B

TERMINAL OPERATOR

PERFORMANCE MEASURES AND STANDARDS

- Train Release:
  - Measure: Frequency of on-time train releases to the railroad.
  - Standard: Loading completed and train released to railroad on time 92% of the time, subject to on-time train placement and rail car mix at the Space by the railroad.

- Accurate Train Loading:
  - Measure: Occurrence of mis-loads (including incorrect destinations, overheights, overweights).
  - Standard: The Permittee will pay for, or reimburse the railroad for, re-routing costs, if contractually required by agreement between the Permittee and the railroad. (measured on a case by case basis)

- Terminal Turn-Time:
  - Measure: Maximum total turnaround time for truckers from other terminals, from arrival at the in-bound gate, to departure from the out-bound gate.
  - Standard: Turn time at the Space will not exceed 30 minutes (gate to gate). Permittee will pay "detention" time to truck operators for each 15 minute increment over 30 minutes at the rate of $12.50/15 min. on a single move and for each 15 minute increment over 45 minutes at the rate of $12.50/15 min. on a double move provided in each case that the trucker has presented necessary documentation to the Permittee.

- Import Unit Handling Efficiency:
  - Measure: Percentage of units on hand loaded to train.
  - Standard: 100% of all loaded import units received to the Space by cut-off (to be defined) must be loaded on the train on the same day, given adequate railcar supply by railroad. (measured on a weekly basis)

Export Unit Handling Efficiency:
- Measure: Percentage of units made available for customer pick up within stipulated time after train is placed.
- Standard: On weekdays, 100% of all inbound containers must be made available within two hours of train placement or the start of business, whichever is later. Following

weekends or holidays, all containers must be made available by 6:00 a.m. next business day. (measured on a weekly basis)

- E.D.I./Data Entry:
  - Measure: Compatibility of systems, and percent of information entered accurately and timely.
  - Standard: System and data entry must be compatible with equipment and standards of servicing railroad.

- Container Dwell Time in Terminal:
  - Measure: Min/max/avg time containers spend in Space.
  - Standard: Terminal operator may enforce a demurrage program consistent with tariff rates of servicing railroad. (measured on a case by case basis)

- Safe Operation:
  - Measure: Operation at the Space without injuries/fatalities; development and enforcement of a proactive safety program.
  - Standard: Demonstrated improvement (or zero deterioration) in the level of incident-free operating days per week, using the first three months of operational responsibility as the base standard. (measured on a weekly basis)

For the Port Authority

Initialed:

For the Permittee

ExpressRail Port Newark

INSURANCE SCHEDULE

(a) The Permittee named in the Permit to which this Insurance Schedule is attached and of which it constitutes an integral part, 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:	$25,000,000.00
Commercial Automobile Liability Insurance Combined single limit per occurrence for death, bodily injury and property damage liability:	$25,000,000.00
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 Port:	Statutory (in no event less than $1,000,000.00)

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 fifteen (15) 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 financially sound and responsible insurance providers authorized to do business in the State in which the Space is located, with a claims paying ability/financial strength rating of "A-" (or its equivalent) or better by Standard & Poor's, A.M. Best or an equivalent rating by a comparable insurance rating agency. 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

Lease No. LPN-317

AGREEMENT OF LEASE

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

PORTS AMERICA, INC.

Dated as of March 31, 2011

CONFORMED COPY

PORTS AMERICA, INC.

Lease No. LPN-317

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ATTACHMENTS

Exhibit A	The Premises
Exhibit 1	The Prior Lease - Lease No. LPN-287

Port Authority Lease No. LPN-317

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made as of March 31, 2011 by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic, established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America, and having an office at 225 Park Avenue South, New York NY 10003 (the "**Port Authority**"), and PORTS AMERICA, INC., having an office and place of business at 99 Wood Avenue South, Iselin, New Jersey 08830 (the "**Lessee**"), whose representative is Jared Parker, Senior Vice President,

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee entered into Port Authority Lease No. LPN-287, dated as of April 1, 2008 for certain premises at Port Newark in the New Jersey Port Authority Marine Terminal (the "**Marine Terminal**"); (such lease, a copy of which is attached hereto as Exhibit 1 and by this reference made a part hereof, the "**Prior Lease**");

WHEREAS, the Prior Lease is expiring on March 31, 2011, and in lieu of extending and amending the Prior Lease, the parties wish to enter into a new lease in replacement of the Prior Lease, providing for the Lessee to continue its occupancy of the premises under the Prior Lease; and

WHEREAS, in entering into this Agreement, the parties intend that this Agreement and the letting hereunder shall be construed as if the Prior Lease had been extended and amended in accordance with the terms and conditions provided below;

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

Section 1. Letting

(a) ***Premises***. Subject to and in accordance with the terms and conditions of this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at Port Newark the premises described in Article 1 of the Prior Lease (the "**Premises**"). The Premises are shown in the drawing dated April 1, 2011, attached hereto as Exhibit A and hereby made a part hereof, which shall supersede "Exhibit A" to the Prior Lease. The parties hereby acknowledge and agree that the Premises are identical to the "premises" under the Prior Lease.

(b) ***Continued Application of Prior Lease***. This Agreement shall be deemed to incorporate the terms, provisions and conditions of the Prior Lease as if set forth in full herein and, except as otherwise provided herein (to which extent the Prior Lease shall be deemed superseded), the terms, provisions and conditions of the Prior Lease shall apply to the letting of the Premises to the Lessee hereunder.

(c) ***Continuous Possession and Occupancy***. The parties hereby acknowledge and agree that the commencement of the Term of this Agreement is occurring immediately upon the expiration of the Prior Lease and that no gap in time and no reversion with respect to the Premises occurred between the expiration of the Prior Lease and the commencement of the Term of this Agreement. Further, it is hereby acknowledged that the Lessee remained in possession of the Premises hereunder continuously from prior to the expiration of the Prior Lease through the Effective Date (as defined below), and at no time did the Lessee surrender the Premises to the Port Authority.

(d) ***Survival of Prior Lease Obligations***. The Lessee shall not, by virtue of this Agreement, be released or discharged from any liabilities or obligations whatsoever under the Prior Lease or any other Port Authority permits or agreements, including without limitation any permits to make alterations, all of which shall survive. Further, all the terms, provisions and conditions of the Prior Lease and such permits and agreements shall survive and continue in full force and effect, and any breach or default under the

Prior Lease or under such permits and agreements, whether prior to or after the Effective Date, shall be deemed breaches and defaults under this Agreement. Without limiting the generality of any of the foregoing, any obligations under the Prior Lease which were to mature upon the expiration or termination thereof, including any obligation to remove alterations and improvements, shall be deemed to have survived and shall mature upon the expiration or termination of this Agreement.

(e) ***Condition of the Premises.*** All references in the Prior Lease, as incorporated herein, to the condition of the Premises at the beginning of the Term shall be deemed to mean the condition of the Premises as they existed at the beginning of the term under the Prior Lease. The Lessee acknowledges that the Lessee or its predecessor has been in exclusive possession of the Premises since the beginning of the term under the Prior Lease, and the Lessee hereby assumes all responsibility for any and all risks, costs and expenses of any kind whatsoever caused by, arising out of or in connection with the condition of the Premises, including without limitation environmental liabilities and obligations.

Section 2. **Term**

The term of the letting under this Agreement (as it may be terminated pursuant to the provisions of this Agreement, the "**Term**") shall commence on April 1, 2011 (the "**Effective Date**") and shall expire on March 31, 2014 (the "**Expiration Date**"), unless sooner terminated in accordance with the terms and provisions of this Agreement, including without limitation the provisions of Special Endorsement No.1 to the Prior Lease, as incorporated herein.

Section 3. **Rental**

(a) ***Basic Rental.*** The Lessee shall pay to the Port Authority a rental (the "**Basic Rental**") for the Premises as follows:

(i) For the period from April 1, 2011 through March 31, 2012, at the rate of Eight Thousand Four Hundred Thirty-Six Dollars and Forty-

Eight Cents ($8,436.48) per annum, payable in monthly installments of Seven Hundred Three Dollars and Four Cents ($703.04) each on the first day of each calendar month,

(ii) For the period from April 1, 2012 through March 31, 2013, at the rate of Eight Thousand Seven Hundred Seventy-Three Dollars and Ninety-Four Cents ($8,773.94) per annum, payable in monthly installments of Seven Hundred Thirty-One Dollars and Sixteen Cents ($731.16) each on the first day of each calendar month, and

(iii) For the period from April 1, 2013 through March 31, 2014, at the rate of Nine Thousand One Hundred Twenty-Four Dollars and Ninety Cents ($9,124.90) per annum, payable in monthly installments of Seven Hundred Sixty Dollars and Forty-One Cents ($760.41) each on the first day of each calendar month.

(b) ***Abatement of Basic Rental.*** Standard Endorsement No. L27.4 to the Prior Lease, entitled "Abatement", is hereby amended, effective as of the Effective Date, by deleting in its entirety the footnote thereto, and inserting in its place the following:

"* (aa)(i) for the period from April 1, 2011 through March 31, 2012, at the rate of $3.37; (ii) for the period from April 1, 2012 through March 31, 2013, at the rate of $3.51; and (iii) for the period from April 1, 2013 through March 31, 2014, at the rate of $3.65;

(bb) in addition to the above, for the five hundred square feet of open area covered by the office trailer located on the premises pursuant to Standard Endorsement No. L15.1 annexed to this Agreement, as follows: (i) for the period from April 1, 2011 through March 31, 2012, at the rate of $10.12; (ii) for the period from April 1, 2012 through March 31, 2013, at the rate of $10.53; and (iii) for the period from April 1, 2013 through March 31, 2014, at the rate of $10.95."

(c) ***Prior Lease Rental Provisions Superseded.*** It is specifically understood and acknowledged by the parties that as of the Effective Date the foregoing provisions shall supersede the Prior Lease provisions relating to rental.

Section 4. Place of Payments

All payments required of the Lessee by this Agreement shall be sent to the following address:

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

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 No.:	
Beneficiary Name:	Port Authority of NY & NJ

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

Section 5. Security Deposit

(a) As a condition to the continuing effectiveness of this Agreement and the commencement of the term on the Commencement Date, the Lessee shall deliver and deposit with the Port Authority (and shall keep deposited throughout the letting under this Agreement) the sum of Four Thousand Five Hundred Dollars and No Cents ($4,500.00) 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 Lessee, all of the terms, provisions, covenants and conditions of this Agreement 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 Lessee 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 Lessee) in a manner satisfactory to the Port Authority. The Lessee may request the Port Authority to accept a registered bond in the Lessee's name, and if acceptable to the Port Authority the Lessee 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 Lessee, any expenses incurred by the Port Authority in re-registering a bond to the name of the Lessee shall be borne by the Lessee. 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 Lessee. 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 Lessee. With respect to any bonds deposited by the Lessee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Lessee, 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 Lessee. The Lessee 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 Lessee. 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 Lessee. 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-stated amount, the Lessee 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 stated above in this paragraph (a), and such additional deposits shall be subject to all the conditions of this Section. After the expiration or earlier termination of the letting under this Agreement as the said letting may have been extended, and upon condition that the Lessee shall then be in no wise in default under any part of this Agreement, as this Agreement may have been amended or extended (or both), and upon written request therefor by the Lessee, the Port Authority will return the deposit to the Lessee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Lessee of this Agreement or any part hereof. The Lessee agrees that it will not assign or encumber the deposit. The Lessee 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 has paid or applied against the Lessee's obligations under this Agreement or which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge, whether as or in lieu of an administrative expense, or custodial charge, or otherwise.

(b) For purposes of the provisions set forth in this Section, the Lessee certifies that its I.R.S. Employer Identification Number is ____ _____

Section 6. Assignments

(a) ***Amendment.*** Section 9, entitled "*Assignment and Sublease*", of the Terms and Conditions of the Prior Lease, as incorporated herein, is hereby amended by adding at the end of subdivisions (a) and (b) thereof the following: "without, in each case, the prior written consent of the Port Authority."

(b) ***Assignment Consent Fee.*** In the event that any consent to assign this Agreement to any third party (an "**Assignee**") is granted by the Port Authority, the Lessee

and the Assignee, as a joint and several obligation, shall pay to the Port Authority, as rental hereunder, a fee (the "**Assignment Consent Fee**") equal to ten percent (10%) of the then net present value of this Agreement, which shall equal the gross Basic Rental payable for the unexpired portion of the Term, discounted at five percent. The foregoing shall be without limitation as to the Port Authority's right, in its sole discretion, to consent or withhold its consent to any proposed assignment or subletting, and to charge a consent fee in connection with any subletting.

Section 7. **Construction**

(a) ***TAA Review Fee.*** With respect to any construction work that is subject to Section 11 of the Terms and Conditions of the Prior Lease (as incorporated herein), entitled "*Construction by the Lessee*", where the Lessee is required to file an application for Port Authority approval, the Lessee shall pay a fee to the Port Authority as compensation for its review and oversight of any such construction work (the "**Review Fee**"). The Review Fee shall be an amount equal to one percent (1%) of the actual cost of the construction work or the Review Fee then generally applicable to such work under the Port Authority's construction application review process, whichever is greater.

(b) ***Sustainable Design.*** The Lessee agrees that in the performance of any work that is subject to Section 11 of the Terms and Conditions of the Prior Lease (as incorporated herein), entitled "*Construction by the Lessee*", it will comply with the Port Authority's policy on sustainable design as set forth in the sustainable design guidelines promulgated by the Port Authority Engineering Department from time to time.

(c) ***Amendment.*** Standard Endorsement No. L15.1 to the Prior Lease is hereby amended, effective as of the commencement date of the Prior Lease, by deleting from the opening sentence thereof the words "paragraph (b) of this Endorsement" and inserting in their place the following: "Section 11, entitled "*Construction by the Lessee*", of the Terms and Conditions of the Agreement to which this Standard Endorsement is attached".

Section 8. Brokerage

The Lessee represents and warrants that no real estate broker has been concerned on its behalf in the negotiation of this Agreement and that there is no real estate broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all Persons, firms or corporations whatsoever for services rendered to the Lessee in connection with the negotiation and execution of this Agreement.

Section 9. Notices

(a) ***Notices to be in Writing.*** Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party (each, a "**Notice**") shall be in writing, and each Notice shall be personally delivered to the duly designated officer or representative of such party or delivered to the office of such officer or representative during regular business hours, or forwarded to him or to the party at such address by certified or registered mail, or by nationally known overnight courier service.

(b) ***Designated Representative.*** The Lessee shall from time to time designate in writing an office within the Port of New York District and an officer or representative whose regular place of business is at such office upon whom Notices may be served. Until further Notice, the Port Authority hereby designates its Executive Director, and the Lessee designates Jared Parker, Senior Vice President, as their respective officers upon whom Notices may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office at the address set forth in the preamble to this Agreement, as their respective offices where Notices may be served.

(c) ***When Notices Deemed Given.*** Each Notice shall be deemed given and effective upon receipt, or, in the event

of a refusal by the addressee, on the first tender of such Notice to the addressee at the designated address.

Section 10. OFAC Compliance

(a) ***Representation and Warranty.*** The Lessee hereby represents and warrants to the Port Authority that the Lessee is not, and shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Asset Control ("**OFAC**") of the United States Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order on Terrorist Financing Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit or Support Terrorism), or other governmental action and is not engaging, and shall not engage, in any dealings or transactions or be otherwise associated with such persons or entities. The Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any breach of any of the foregoing representations and warranties by the Lessee, the Port Authority shall have the right, in addition to any and all other remedies provided under this Agreement or at law or in equity, to immediately terminate this Agreement upon written notice to the Lessee. The Lessee further acknowledges that there shall be no cure for such a breach. In the event of any such termination by the Port Authority, the Lessee shall, immediately on receipt of the Port Authority's termination notice, cease all use of and operations permitted under this Agreement and surrender possession of the Premises to the Port Authority without the Port Authority being required to resort to any other legal process. Termination on the afore-described basis shall be deemed a termination for cause.

(b) ***Indemnification.*** The Lessee shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents and representatives from and

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

(c) ***Survival.*** The provisions of this Section shall survive the expiration or earlier termination of the Term.

Section 11. Miscellaneous

(a) ***Relationship of the Parties.*** Notwithstanding any other term or provision hereof, this Agreement does not constitute the Lessee as the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.

(b) ***Lessee's Rights Non-Exclusive.*** Except as expressly provided herein with respect to the Premises, neither the execution of this Agreement by the Port Authority nor anything contained herein shall grant or be deemed to grant to the Lessee any exclusive rights or privileges.

(c) ***Construction and Application of Terms.***

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

(1) Unless otherwise expressly specified, the terms, provisions and obligations contained in any Exhibits and Schedules attached hereto, whether there set out in

full or as amendments of, or supplements to provisions elsewhere in the Agreement stated, shall have the same force and effect as if herein set forth in full.

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

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

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

(d) ***Non-liability of Individuals.*** No Commissioner, director, official, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

(e) ***Entire Agreement.*** This Agreement consists of the following: Sections 1 through 11 and Exhibits A and 1 attached hereto. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Port Authority and the Lessee have executed these presents as of the date first written above.

ATTEST:

Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

(name) RICHARD M. LARRABEE
(title) DIRECTOR, PORT COMMERCE DEPT.

PORTS AMERICA, INC.

ATTEST:

(name) MAUREEN WALSH
(title) ASST. TREASURER

(name) JARED PARKER
(title) SENIOR VICE PRESIDENT

(Seal)

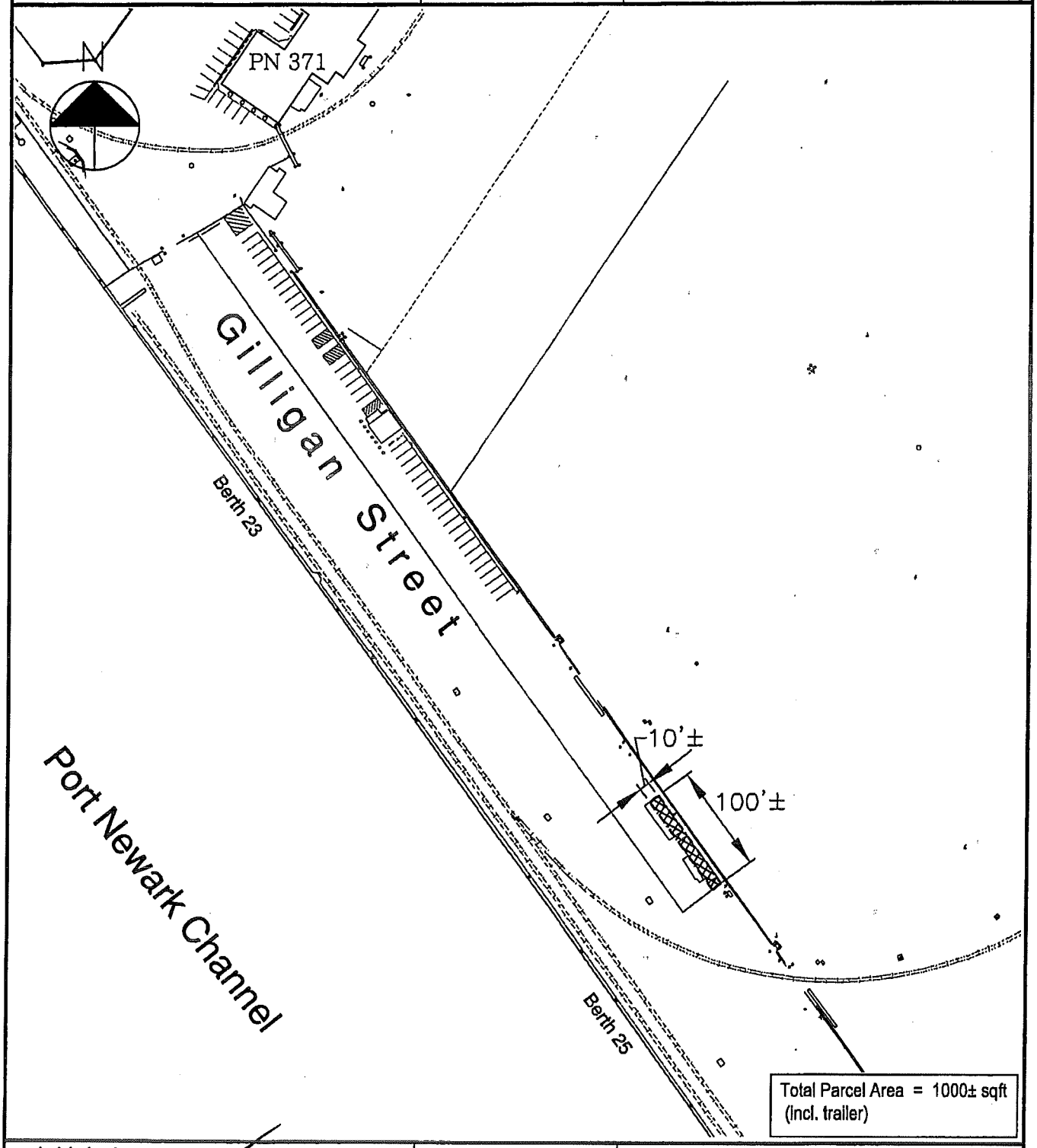
Port Authority Legal Only	
Approval as to Terms:	Approval as to Form:

JJL

EXHIBIT A

THE PREMISES

Ports America, INC.	LPN-317	



Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

A

THE PORT AUTHORITY OF NY & NJ

PORT NEWARK

Date : June 1, 2011

EXHIBIT 1

THE PRIOR LEASE

Lease No. L-PN-287

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

PORTS AMERICA, INC.

Dated as of April 1, 2008

CONFORMED COPY

CMC

Leasing Files

MLPF 4473.1

THIS AGREEMENT OF LEASE, made as of 1st day of April 2008, by and between THE PORT AUTHORITY of NEW YORK and NEW JERSEY (hereinafter called "the Port Authority") a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office and place of business at 225 Park Avenue South, New York, New York 10003 and PORTS AMERICA, INC., a corporation of the State of Delaware (hereinafter called "the Lessee") with an office and place of business at 99 Wood Avenue South, 8th Floor, Iselin, New Jersey 08830, whose representative is Donald Hamm:

WITNESSETH, That:

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

ARTICLE I. The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at Port Newark (sometimes hereinafter called "the Facility") in the City of Newark, County of Essex, State of New Jersey, the following described premises:

> the open area shown in diagonal cross-hatching and outlined in broken line on the sketch attached hereto hereby made a part hereof and marked "Exhibit A"

together with the buildings, structures, fixtures, improvements, and other property; if any, of the Port Authority located or to be located therein or thereon, the said areas, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential property.

ARTICLE II. The term of the letting shall commence at 12:01 o'clock A.M. on April 1, 2008 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on March 31, 2011.

ARTICLE III. The Lessee shall pay a basic rental as follow:

(a) For the period from April 1, 2008 through March 31, 2009, both dates inclusive, the basic rental rate is comprised of (i) Three Thousand Dollars and No Cents ($3,000.00) per annum for the open area; plus (ii) Four Thousand Five Hundred Dollars and No Cents ($4,500.00) per annum for the portion of the open area on which the Lessee's trailer is placed. The sum of the basic rental is payable in equal monthly installments in full in advance each in the sum of Six Hundred Twenty-five Dollars and No Cents ($625.00) on April 1, 2008 and on the first day of each calendar month thereafter during such period.

(b) For the period from April 1, 2009 through March 31, 2010, both dates inclusive, the basic rental rate is comprised of (i) Three Thousand One Hundred Twenty Dollars and No Cents ($3,120.00) per annum for the open area; plus (ii) Four Thousand Six Hundred Eighty Dollars and No Cents ($4,680.00) per annum for the portion of the open area on which the Lessee's trailer is placed. The sum of the basic rental is payable in equal monthly installments in full in advance each in the sum of Six Hundred Fifty Dollars and No Cents ($650.00) on April 1, 2009 and on the first day of each calendar month thereafter during such period.

(c) For the period from April 1, 2010 through March 31, 2011, both dates inclusive, the basic rental rate is comprised of (i) Three Thousand Two Hundred Forty-four Dollars and Eighty Cents ($3,244.80) per annum for the open area; plus (ii) Four Thousand Eight Hundred Sixty-seven Dollars and Twenty Cents ($4,867.20) per annum for the portion of the open area on which the Lessee's trailer is placed. The sum of the basic rental is payable in equal monthly installments in full in advance each in the sum of Six Hundred Seventy-six Dollars and No Cents ($676.00) on April 1, 2010 and on the first day of each calendar month thereafter during such period.

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

> for the placement and use of a 500 square foot trailer to be used as a clerical and administrative office solely in conjunction with the activity of the Lessee in conducting automobile discharging operations at the Facility.

ARTICLE V. The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 30) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

TITLE	NUMBER	DATE
Services	Standard Endorsement No. L5.1	10/6/75
Late Charges	Standard Endorsement No. L8.1	10/13/05
Construction by the Lessee	Standard Endorsement No. L 15.1	10/6/64
Port Newark	Standard Endorsement No. 19.4	10/6/73
Insurance	Standard Endorsement No. L21.1	3/25/82
Abatement	Standard Endorsement No. L 27.5	8/29/69
Special Endorsements		
Exhibit A		

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ARTICLE VI. The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

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

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ATTEST:

By _____
RICHARD M. LARRABEE

Secretary

Title DIRECTOR, PORT COMMERCE DEPT.

(Seal)

ATTEST:

PORTS AMERICA, INC.
Lessee

Secretary

By _____

Print Name STEPHEN EDWARDS

Title President

(Corporate Seal)

Approval as to Terms:	Approval as to Form:

MLG/dmt

TERMS AND CONDITIONS

SECTION 1. ***Ingress and Egress***

The Lessee shall have the right of ingress and egress between the premises and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area, whether within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in any streets, ways and walks near the premises.

SECTION 2. ***Governmental and Other Requirements***

(a) The Lessee shall procure from all governmental authorities having jurisdiction of the operations of the Lessee hereunder, all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations.

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

SECTION 3. ***Rules and Regulations***

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

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

(c) No statement or provision in the said Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain

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

SECTION 4. ***Method of Operation***

(a) In the performance of its obligations hereunder and in the use of the premises the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the premises or at the Facility and within twenty four hours remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or others on the premises with the consent of the Lessee.

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

(c) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Facility.

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

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the premises or the Facility or any part thereof.

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

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

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the premises or any

part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and, if the premises are located in New York, of the Insurance Services Office of New York, or, if the premises are located in New Jersey, of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, make any and all structural and non-structural improvements, alterations or repairs of the premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

(j) From time to time and as often as required by the Port Authority, the Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and fire-fighting equipment on the premises whether furnished by the Port Authority or by the Lessee. The Lessee shall keep all fire-fighting and fire extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

SECTION 5. ***Signs***

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

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Lessee on the premises or elsewhere on the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the premises and the Facility to the same condition as at the commencement of the letting. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every sign or piece of advertising and so to restore the premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

SECTION 6. ***Indemnity***

The Lessee indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the premises by the Lessee or by others with its consent or out of any other acts or omissions of the Lessee, its officers and employees on the premises or elsewhere at the Facility, or out of the acts or omissions of others on the premises with the consent of the Lessee, including claims and demands of the party from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

SECTION 7. ***Maintenance and Repair***

(a) The Lessee shall at all times keep the premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Lessee located in or on the premises.

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the premises which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers, employees or of other persons on or at the premises with the consent of the Lessee.

(c) With respect to all parts of the premises, including, but without limitation thereto, such of the following as are or may be during the term of the letting located in or on the premises; fences, the exterior and interior of the building walls the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and unpaved areas, glass of every kind, and the utility, mechanical, electrical and other systems, the Lessee shall take the same good care of the premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the premises or adversely affect the efficient or the proper utilization of any part of the premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (the exterior of the building, areas of joint or common use and areas visible to the general public to be painted in colors which have been approved by the Port Authority), and, except under circumstances as set forth in paragraph (a) of Section 8 of these Terms and Conditions, the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the premises, all of which shall be in quality equal to the original in materials and workmanship and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) The obligation of the Lessee as set forth in paragraphs (b) and (c), of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; *provided, however*, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

SECTION 8. ***Casualty***

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the premises with its consent) so as to render it untenantable in whole or substantial part, then

(1) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence, and the rental hereunder shall be abated as provided in this

Agreement, for the period from the occurrence of the damage to the completion of the repairs or rebuilding, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(2) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage or if one or more of the structures or buildings which are a part of the premises or the entire premises require rebuilding, then the Port Authority shall have options: (i) to proceed with due diligence to repair or to rebuild as necessary or (ii) to terminate the letting as to the damaged structure or structures, building or buildings or portion thereof only; or (iii) to cancel this Agreement and terminate the letting as to the entire premises; and the rental payable under this Agreement shall be abated, as provided in this Agreement, either, as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination, for the area or areas involved.

(b) "Substantial part" shall mean for the purpose of this Section at least twenty-five percent (25%) of the usable floor space in the structure or building or part thereof comprising the premises, or, if there is more than one structure or building on the premises, at least twenty-five percent (25%) of the aggregate usable floor space comprising the premises in all of the structures and buildings covered by insurance.

(c) The parties hereby stipulate that if the premises are in New Jersey neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the premises are in New York, neither the provisions of Section 227 of the Real Property Law of New York nor those of any other similar statute shall extend or apply to this Agreement.

(d) In the event of damage to or a partial or total destruction of the premises, the Lessee shall within five days of the occurrence commence to remove all of its damaged property and all debris thereof from the premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand.

SECTION 9. ***Assignment and Sublease***

a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof.

(b) The Lessee shall not sublet the premises or any part thereof.

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

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the premises or any portion thereof for any purpose other than as provided in Article IV of this Agreement.

SECTION 10. ***Condemnation***

(a) In any action or other proceeding by any governmental agency or agencies for the taking for a public use of any interest in all or part of the premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Lessee shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee.

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

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

(d) In the event that the taking or conveyance covers a part only of the premises, or in the event that the letting is terminated pursuant to paragraph (b) of this Section with respect to a part only of the premises, then the letting as to such part shall, as of the date possession thereof is taken by such agency or agencies, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the term of the letting had on that date expired, and the basic rental shall be abated as provided hereinafter.

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

SECTION 11. ***Construction by the Lessee***

Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any other construction work on the premises or alter, modify, or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time

during the letting, or install any fixtures, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made with or without such consent and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, or within sixty (60) days after expiration or earlier termination of the term of the letting, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

SECTION 12. ***Additional Rent and Charges***

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the basic rental as set forth in Article III hereof.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof shall likewise be *prima facie* evidence against the Lessee that the amount of such charge was necessary and reasonable.

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

SECTION 13. ***Rights of Entry Reserved***

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the premises for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise.

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the premises at all reasonable times to make such repairs, replacements or alterations as may, in the

opinion of the Port Authority, be deemed necessary or advisable and, from time to time, to construct or install over, in or under the premises new systems or parts thereof, and to use the premises for access to other parts of the Facility otherwise not conveniently accessible; *provided, however*, that in the exercise of such rights of access, repair, alteration or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

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

(d) Nothing in this Section shall or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises nor for any injury or damage to the premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the acts of the Port Authority).

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

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

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

SECTION 14. ***Limitation of Rights and Privileges Granted***

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

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

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a building or buildings, if any are included in the premises, (except to the extent required in either case for the performance of any of the

obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the premises.

SECTION 15. ***Prohibited Acts***

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

(b) The Port Authority, by itself or by contractors, lessees or Lessees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the premises; *provided, however,* that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machine installed except at the sole discretion of the Port Authority.

SECTION 16. ***Termination***

(a) If any one or more of the following events shall occur, that is to say:

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

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

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within thirty (30) days after the filing thereof; or

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

(5) The Lessee, if a corporation, shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(6) If the Lessee is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

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

(8) The Lessee shall voluntarily abandon, desert or vacate the premises or discontinue its operations at the premises or at the Facility or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the premises, regardless of the fault of the Lessee; or

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

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required hereunder when due to the Port Authority; or

(11) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this agreement, on its part to be kept, performed or observed, within ten (10) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

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

SECTION 17. ***Right of Re-entry***

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 16 of these Terms and Conditions, have the right to re-enter the premises and every

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

SECTION 18. ***Waiver of Redemption***

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

SECTION 19. ***Survival of the Obligations of the Lessee***

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 16 of these Terms and Conditions, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 17 of these Terms and Conditions, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Article II hereof, and the amount or mounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) an account of the Lessee's rental obligations, shall be the sum of the following:

(1) The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of a 30-day month; and

(2) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the demised premises, for legal expenses, boiler insurance premiums, if any, putting the premises in order including without limitation, cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

(3) An amount equal to all costs and expenses reasonably incurred by the Port Authority in connection with such termination, cancellation, re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of the premises (on failure of the Lessee to have restored), the reletting of the premises, the care and maintenance of the premises during any period of vacancy of the premises, the foregoing to include without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), brokerage fees and commissions, repairing and altering the premises and putting the premises in order (such as but not limited to cleaning and decorating the premises).

SECTION 20. ***Reletting by the Port Authority***

The Port Authority, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon any re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions, may occupy the premises or may relet the premises and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. Such reletting may be of part only of the premises or of the premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions have the right to repair and to make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, Lessee or other occupier in connection with the use of the said premises or portion thereof during the balance of the term of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port Authority may itself during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

SECTION 21. ***Remedies to Be Nonexclusive***

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

SECTION 22. ***Surrender***

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the same condition as at the commencement of the letting, reasonable wear arising from use of the premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first, to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

SECTION 23. ***Acceptance of Surrender of Lease***

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

SECTION 24. ***Notices***

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing (which shall include a telegram when delivered to the telegraph company), and all such notices and requests shall be telegraphed or personally delivered to the party or to the duly designated officer or representative of such party or delivered to an office or residence of such party, officer or representative during regular business hours, or delivered to the residence of such party, officer or representative or delivered to the premises, or forwarded to him or to the party at the office or residence address by registered mail. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office, the address of which is set forth on the first page of this Agreement, as their respective offices where notices and requests may be served.

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

SECTION 25. ***General***

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

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

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

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

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

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

(c) Unless otherwise stated in Article IV on page 2 of this Agreement, the rights of user thereby granted to the Lessee with respect to the premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

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

(e) The Section headings in these Terms and Conditions and in the endorsements, if any, attached hereto are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(f) All payments required of the Lessee by this Agreement shall be made to The Port Authority of New York and New Jersey, P.O. Box 95000-1517, Philadelphia, Pennsylvania 19195-1517 or via the following wire transfer instructions: Bank: Commerce Bank; Bank ABA Number: 031201360; Account Number: 5950011618, or to such other officer or address as may be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly prorated.

(g) This Agreement does not constitute the Lessee the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint adventure is hereby created, notwithstanding the fact that all or a portion of the rental to be paid hereunder may be determined by gross receipts from the operations of the Lessee hereunder.

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

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

SECTION 26. ***Premises***

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

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

(c) If permission is given to the Lessee to enter into the possession of the premises or to occupy space other than the premises prior to the date specified in Article II as the commencement of the term of the letting, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the premises, the date of such possession shall be the date of commencement of the term hereunder.

SECTION 27. ***Postponement***

If the Port Authority shall not give possession of the premises on the date fixed in Article II for the commencement of the term, by reason of the fact that the premises or any part thereof are in the course of construction, repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the term shall in any wise affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any wise to extend the term beyond the date stated in Article II for expiration. However, the rent shall not commence until possession of the premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Article II for commencement of the term then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof.

SECTION 28. ***Force Majeure***

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors). Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption.

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

(c) No abatement, diminution or reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements,

orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

SECTION 29. ***Brokerage***

The Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Agreement.

SECTION 30. ***Non-liability of Individuals***

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

(a) The Port Authority agrees to grant (if requested so to do by the Lessee), to suppliers of water, gas, electricity and telephone service operating in the vicinity a right of way or rights of way under the Facility from the streets outside of the Facility to the premises for the sole purpose of supplying such service or services to the Lessee. No such right of way shall include the right to use any system, equipment or portion thereof constructed or owned by or leased to the Port Authority.

(b) The Lessee shall promptly pay all water bills covering its own consumption. Such payment shall include any factor which may have been included by the appropriate governmental authority as a sewer-rent or other charge for the use of a sewer system. In the event that any such water bill shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon and the total payment or payments at any time so made shall constitute an additional item of rental, payable to the Port Authority upon demand. Where sewage is contained in tanks periodically cleaned by a contractor paid by the Port Authority the Lessee shall pay such portion of the contact charge as may be reasonably determined by the Port Authority, on demand.

(c) Unless the Port Authority has expressly undertaken to heat the enclosed portions of the premises, if any, the Lessee agrees to heat the enclosed portions of the premises to a sufficient temperature so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings which, or a portion or portions of which, are included in the premises, (including but not limited to any sewer-rent or other charge for the use of a sewer system or systems), the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, pay, in accordance with such notice, such charge, fee, rent or assessment or such increase thereof (or the portion thereof allocated by the Port Authority to the premises or to the operations of the Lessee under this Agreement) either directly to the governmental body, authority or agency, or to the public utility, or directly to the Port Authority, as such notice may direct. All payments to be made by the Lessee hereunder shall constitute items of additional rental.

(e) No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder or shall be or be construed to be an eviction of the Lessee, or shall constitute grounds for any diminution or abatement of the rental or rentals payable under this Agreement, or grounds for any claim by the Lessee for damages, consequential or otherwise.

(f) In the event any one or more structures within or attached to the premises but not accessible directly from the enclosed portion of the premises is or are in use as a valve-room or valve-rooms for a sprinkler system, the same shall not be deemed a portion of the premises hereunder, and the Lessee shall afford access thereto through and across the premises at all times as required by the Port Authority for itself or its contractors, with or without tools, equipment, parts and supplies.

(a) If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of any basic, percentage or other rental or any payment of utility or other charges, 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 of such unpaid amount for each late charge period. There shall be twenty-four 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 (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Endorsement with respect to such unpaid amount. Each late charge shall be recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental. Nothing in this Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in the section of this Agreement entitled "Termination" or (ii) the Terms and Conditions of this Agreement or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Endorsement shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

(b) In event that upon conducting an examination and audit as described in this Special Endorsement the Port Authority determines that unpaid amounts are due to the Port Authority by the Lessee, the Lessee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount of five percent (5%) of each amount determined by the Port Authority audit findings to be unpaid. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Lessee under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority to payment of any late charge(s) or other service charge(s) payable under the provisions of this Special Endorsement 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 Special Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including, without limitation, the Port Authority's rights to terminate the letting hereunder; or (ii) any obligations of the Lessee under this Agreement.

Standard Endorsement No. L8.1
LATE CHARGES
All Facilities
7/30/82; 10/13/05

(a) All work which the Lessee is required or permitted to do pursuant to the provisions of paragraph (b) of this Endorsement shall be done strictly in accordance with the following terms and conditions:

(1) The Lessee shall be the insurer of the Port Authority, its Commissioners, officers, agents and employees, against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, of the Port Authority, of the Marine Terminals Construction Engineer of the Port Authority, or of third persons, or from acts of God or of the public enemy, or otherwise, excepting only risks which result solely from affirmative, willful acts done by the Port Authority subsequent to the commencement of the work of construction, repair, alteration, improvement or addition:

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

(ii) The risk of death, injury or damage, direct or consequential, to the Port Authority, its Commissioners, officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the Port Authority, its Commissioners, officers, agents and employees for all such injuries and damages, and for all loss suffered by reason thereof;

(iii) The risk of claims and demands, just or unjust, by third persons against the Port Authority, its Commissioners, officers, agents and employees arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the Port Authority, its Commissioners, officers, agents and employees against and from all such claims and demands, and for all loss and expense incurred by it and by them in the defense, settlement or satisfaction thereof.

(2) All work done pursuant to this Endorsement shall be done in accordance with drawings and specifications to be submitted to and approved by the Marine Terminals Construction Engineer of the Port Authority prior to the commencement of the work, shall be done to his satisfaction and shall be subject to his inspection; and the Lessee shall re-do or replace at its own expense any work not approved by the said Engineer.

(3) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen, workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the premises.

(4) The Lessee shall procure and maintain comprehensive public liability insurance, including automotive, and covering bodily-injury (including death) and property-damage liability, which shall be in addition to all policies of insurance otherwise required by this Agreement, or, if the work is to be done by an independent contractor, the Lessee shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in the following schedule:

(i) Bodily injury liability:

For injury or wrongful death to one person:	$2,000,000.00
For injury or wrongful death to more than one person from any one accident:	$2,000,000.00

(ii) Property damage liability:

For all damages arising out of injury to or destruction of property in any one accident:	$2,000,000.00

(5) As to any insurance required by this Endorsement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority prior to the commencement of work. 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. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form of substance, or if any carrier issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

(6) The Port Authority shall be named as an insured in any policy of liability insurance required by this Endorsement, unless the Port Authority shall, at any time during the term of the letting under this Agreement direct otherwise in writing, in which case the Lessee shall cause the Port Authority to be so named.

(7) As soon as the construction, repair, alteration, improvements or addition shall have been completed to the satisfaction of the Marine Terminals Construction Engineer of the Port Authority, then title shall immediately and without execution of any further instrument, vest in the Port Authority, and every structure, and all such repairs, alterations, improvements or additions, shall thereupon become and thereafter be part of the premises. However, the Port Authority shall have the option, exercisable by notice delivered on or before the date of expiration or termination of the term of the letting or within sixty (60) days after such expiration or termination, to require the Lessee to remove any or all such structure, alterations, improvements or additions, and to restore the premises to the condition thereof prior to the building of such structure or the making of such alteration, improvement or addition. In the event of a failure on the part of the Lessee so to remove and restore, the Port Authority may do so, and the Lessee shall pay the costs thereof as an additional item of rental hereunder, to be paid to the Port Authority on demand.

(a) As used in this Agreement:

(1) "Facility", "Port Newark" or "marine terminal" shall mean the land and premises in the City of Newark, in the County of Essex and State of new Jersey, which are easterly of the right of way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the Basic Lease and marked "Exhibit A" as contained within the limits of a line of crosses appearing on the said Exhibit A and marked (by means of the legend) "Boundary of Terminal Area in City of Newark", and lands contiguous thereto (but only those lying within the County of Essex) which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes:

(2) "Basic Lease" shall mean that agreement respecting marine and air terminals entered into with the Port Authority by the City of Newark (New Jersey) under date of October 22, 1947, and recorded in the Office of the Register of the County of Essex on October 30, 1947, in Book E-110 of Deeds, on pages 242 et seq., as the same has been or may be from time to time supplemented and amended.

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

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

(b) The letting shall in any event terminate simultaneously with the termination or expiration of the Basic Lease. The rights of the Port Authority in the premises are those granted to it by the Basic Lease and no greater rights are granted or intended to be granted to the Lessee than the Port Authority has power thereunder to grant.

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

(d) Since the Port Authority has agreed by a provision in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of the City and its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation, to the extent that the Port Authority finds it practicable so to do, the Lessee agrees except in cases where the Port Authority either notifies the Lessee that it need not comply therewith or directs it not to comply therewith, to comply with all enactments, ordinances, resolutions and regulations which would be applicable to its operations at the marine terminal or to any of the premises leased to it for its exclusive use if the Port Authority were a private corporation, and, subject to the provisions of this Agreement concerning construction by the Lessee, to make all non-structural improvements and alterations of or to the premises required at any time hereafter by any such enactment, ordinance, resolution or regulation, and all structural improvements or alterations of or to the premises that may be required at any time hereafter by any such enactment, ordinance, resolution or regulation because of the operations of the Lessee on the premises or its use and occupancy thereof. The Lessee shall for the information of the Port Authority, deliver to the Port Authority within three (3) days (Saturdays, Sundays and holidays included)

after receipt of any notice, warning, summons or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation, a true copy of the same. In the event of compliance with any such enactment, ordinance, resolution ore regulation on the part of the Lessee, acting in good faith, commenced after such delivery to the Port Authority but prior to the receipt by the Lessee of a written direction from the Port Authority not to comply, (and thereafter discontinued) such compliance shall not constitute a breach of this Agreement, although the Port Authority thereafter directs the Lessee not to comply. Nothing herein contained shall release or discharge the Lessee from compliance with any other provision of this Agreement respecting governmental requirements.

(e) In the event that obstruction lights are now or in the future shall be installed on the premises, the Lessee agrees to furnish the Port Authority without charge, electricity for energizing such obstruction lights daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and sunrise may vary from day to day throughout the year) and for such other periods as may be directed or requested by the Control Tower of Newark International Airport.

(f) If by the provisions of Article IV or by other express provision in this Agreement the Lessee is authorized to use the premises to store for distribution items of merchandise or other materials (whether for the account of the Lessee or of others, as may be specifically provided elsewhere in this Agreement) such storage shall be substantially for merchandise and materials waterborne to the Facility or intended to be waterborne from the Facility, except that as specifically authorized from time to time by the Port Authority, the Lessee may store non-waterborne items, the handling of which is necessary as an incident to its business at the premises. "Waterborne to (or from) the Facility" shall mean and include all shipments consigned to or from the Facility which reach or leave the Port of New York by water carrier.

(a) The Lessee in its own name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, shall cover the operations of the Lessee under this Agreement, and shall be effective throughout the term of the letting.

SCHEDULE

	Policy	Minimum Limit
(1)	Commercial general liability insurance (to include contractual liability endorsement)	
	(i) Bodily-injury liability: For injury or wrongful death to one person:	$ 2,000,000.00
	For injury or wrongful death to more than one person in any one occurrence:	$ 2,000,000.00
	(ii) Property-damage liability: For all damages arising out of injury to or destruction of property in any one occurrence:	$ 2,000,000.00
	(iii) Products liability:	$
(2)	Automotive liability insurance:	
	(i) Bodily-injury liability For injury or wrongful death to one person:	$
	For injury or wrongful death to more than one person in any one occurrence:	$
	(ii) Property-damage liability: For all damages arising out of injury to or destruction of property in any one occurrence:	$
(3)	Plate and mirror glass insurance, covering all plate and mirror glass in the premises, and the lettering, signs, or decorations, if any, on such plate and mirror glass:	$
(4)	Boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	$
(5)	"Additional Interest" policy of boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	$
(6)	Garagekeepers' legal liability:	$

(b) The Port Authority shall be named as an additional insured in any policy of liability insurance required by this Endorsement, unless the Port Authority shall, at any time during the term of the letting under this Agreement, direct otherwise in writing, in which case the Lessee shall cause the Port Authority not to be so named.

(c) In any policy of insurance on property other than that of the Lessee required by this Endorsement, the Port Authority shall be named as the owner except that as to property as to which the Port Authority is itself a lessee, the Port Authority shall be named as the lessee and the owner shall be named as the owner. Each shall be endorsed substantially as follows:

> "Loss, if any, under this policy, as to the interest of the owner and as to the interest of the Port Authority of New York and New Jersey, shall be adjusted solely with the Port Authority and all proceeds under this policy shall be paid solely to the Port Authority."

(d) Any "Additional Interest" policy of boiler and machinery insurance required by this Endorsement shall provide protection under Sections 1 and 2 only of the Insuring Agreements of the form of policy approved for use as of the date hereof by the Insurance Rating Board, New York, New York.

(e) As to any insurance required by this Endorsement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority within ten (10) days after the execution of this Agreement. 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. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the term of the letting under this Agreement, as the same may be form time to time extended. If at any time any of the policies shall be or become unsatisfactory to the Port Authority as to form or substance, of if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

(f) Each policy of insurance required by this Endorsement shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of this Agreement or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of $*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of $ n/a

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

* (aa) (i) for the period from April 1, 2008 through March 31, 2009, both dates inclusive, at the rate of $3.00; (ii) for the period from April 1, 2009 through March 31, 2010, both dates inclusive, at the rate of $3.12; and (iii) for the period from April 1, 2010 through March 31, 2011, both dates inclusive, at the rate of $ 3.24;

(bb) in addition to the above, for the five hundred square feet of open area covered by the office trailer located on the premises pursuant to Standard Endorsement No. L15.1 annexed to this Agreement as follows: (i) for the period from April 1, 2008 through March 31, 2009, both dates inclusive, at the rate of $9.00; (ii) for the period from April 1, 2009 through March 31, 2010, both dates inclusive, at the rate of $9.36; and (iii) for the period from April 1, 2010 through March 31, 2011, both dates inclusive, at the rate of $ 9.73.

Standard Endorsement No. L27.4
Abatement
All Marine Terminals
10/6/68

Special Endorsements

1. In addition to all other rights under this Agreement, the Port Authority shall have the right to terminate the letting under this Agreement without cause, at any time, on thirty (30) days' notice to the Lessee in advance. Termination under the provisions of this Special Endorsement shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the letting.

2. The Port Authority and the Lessee were heretofore parties to Port Authority Lease No. L-PN-047, dated as of March 15, 1984, which has been replaced with this Agreement. The Lessee shall remain liable for all obligations and liabilities which accrued under Lease No. L-PN-047 through the expiration or termination date of Lease No. L-PN-047 and all such obligations and liabilities which were expressly or impliedly stated or intended to survive the expiration or termination of said agreement shall so survive. The premises which is the subject of this Agreement is the same premises which was the subject of Lease No. L-PN-047 and the Lessee has been in continuous occupancy of such premises. At the expiration or termination of this Agreement, the Lessee agrees that it shall be obligated to return the premises to the Port Authority in the same good order and repair in which such premises was delivered to it under Lease No. L-PN-047 as such lease was amended from time to time.

3. The Lessee recognizes that the trailer which was put on the premises under Lease L-PN-047 will remain the property of the Lessee, and that the Port Authority shall have no obligations whatsoever of maintenance or repair in connection with the said trailer.

4. The number of pounds avoirdupois contemplated in paragraph (h) of Section 4 of the Terms and Conditions of this Agreement is two hundred fifty (250).

5. The following new paragraph (b) shall be deemed inserted at the end of paragraph (a) of Standard Endorsement No L15.1:

> "(b) The work, if any, to be done by the Lessee shall be the installation of an office trailer and its connection with water, electrical distribution and telephone systems. Notwithstanding the provisions of subparagraph (7) of paragraph (a) above, title to the trailer shall remain at all times in the Lessee."

6. (a) The insurance policies provided by the Lessee under the provisions of Standard Endorsement No. L15.1 and L21.1 will be acceptable to the Port Authority if they are written to provide a combined single limit in the amount stated; but they must also carry a contractual liability endorsement covering the risks and indemnities the Lessee has assumed under this Agreement.

(b) The provisions of subparagraph (6) of paragraph (a) of Standard Endorsement No L15.1 shall be null and void, and No. L21.1 shall apply to the insurance policies provided under Standard Endorsement No. L 15.1.

(c) The policy of commercial general liability insurance required by Standard Endorsement No. L21.1 to this Agreement shall include a contractual liability endorsement

covering the Lessee's indemnity obligations under the Lease. Each policy of insurance required by said Standard Endorsement No. L21.1 shall contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

7. Notwithstanding anything contained in Special Endorsement No. 4 to the Lease or in Standard Endorsement No. L21.1 annexed to the Lease, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the limits set forth in said Special Endorsement No. 4 or said Standard Endorsement No. L21.1 to a commercially reasonable amount and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority.

8. Without in any way limiting the provisions set forth in the Sections of this Agreement entitled *"Termination"*, *"Right of Re-entry"* and *"Survival of the Obligations of the Lessee"*, unless otherwise notified by the Port Authority in writing, in the event the Lessee remains in possession of the premises after the expiration or termination of the term of the letting under this Agreement, as it may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Agreement or other remedies the Port Authority may have by law or otherwise, the Lessee shall pay to the Port Authority a rental for the period commencing on the day immediately following the date of such expiration or the effective date of such termination and ending on the date that the Lessee shall surrender and completely vacate the premises at an annual rate equal to twice the sum of (i) the annual rate of basic rental in effect on the date of such expiration or termination, plus (ii) all items of additional rent and other periodic charges payable with respect to the premises by the Lessee at the annual rate in effect during the 365 day period immediately preceding such date. Nothing herein contained shall give, or be deemed to give, the Lessee any right to remain in possession of the premises after the expiration or termination of the letting under this Agreement. The Lessee acknowledges that the failure of the Lessee to surrender, vacate and yield up the premises to the Port Authority on the effective date of such expiration or termination will or may cause the Port Authority injury, damage or loss. The Lessee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

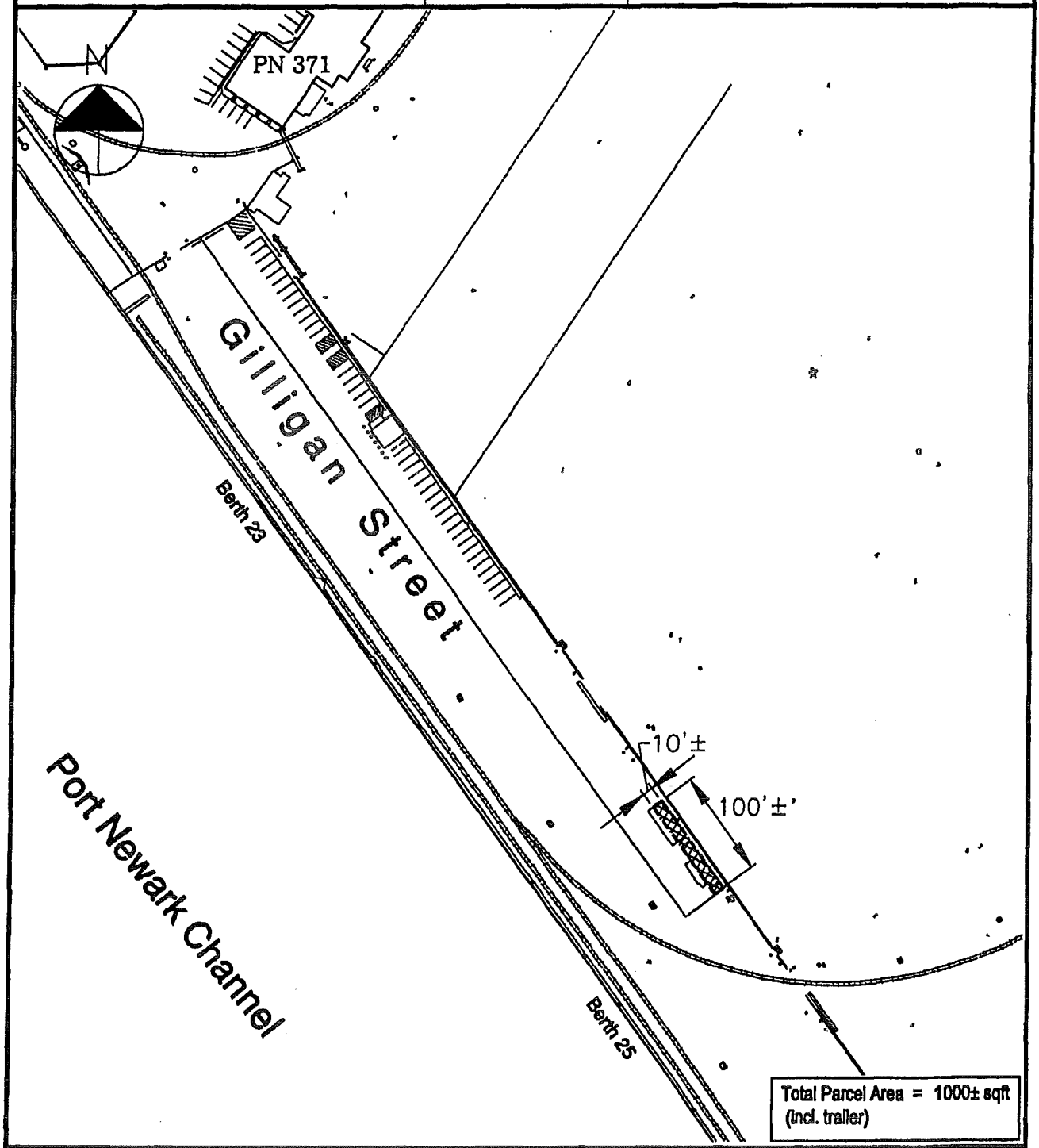
9. The Lessee waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Lessee in respect of the premises and/or in any action that may be brought by the Port Authority to recover fees, damages, or other sums due and owing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

For the Port Authority

Initialed:

For the Lessee

Ports America, INC.	LPN-287	



Initialed:	EXHIBIT :	THE PORT AUTHORITY OF NY & N.J
For the PORT AUTHORITY For the Lessee	A	PORT NEWARK Date : Apr. 1, 2008

FOR THE PORT AUTHORITY OF NY & NJ

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

On this 19th day of August, 2009, before me, the subscriber, a notary public of New York, personally appeared RICHARD M. LARRABEE the DIRECTOR, PORT COMMERCE DEPT. of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him/her the contents thereof, he/she did acknowledge that he/she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

(notarial seal and stamp)

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

FOR PORTS AMERICA, INC.

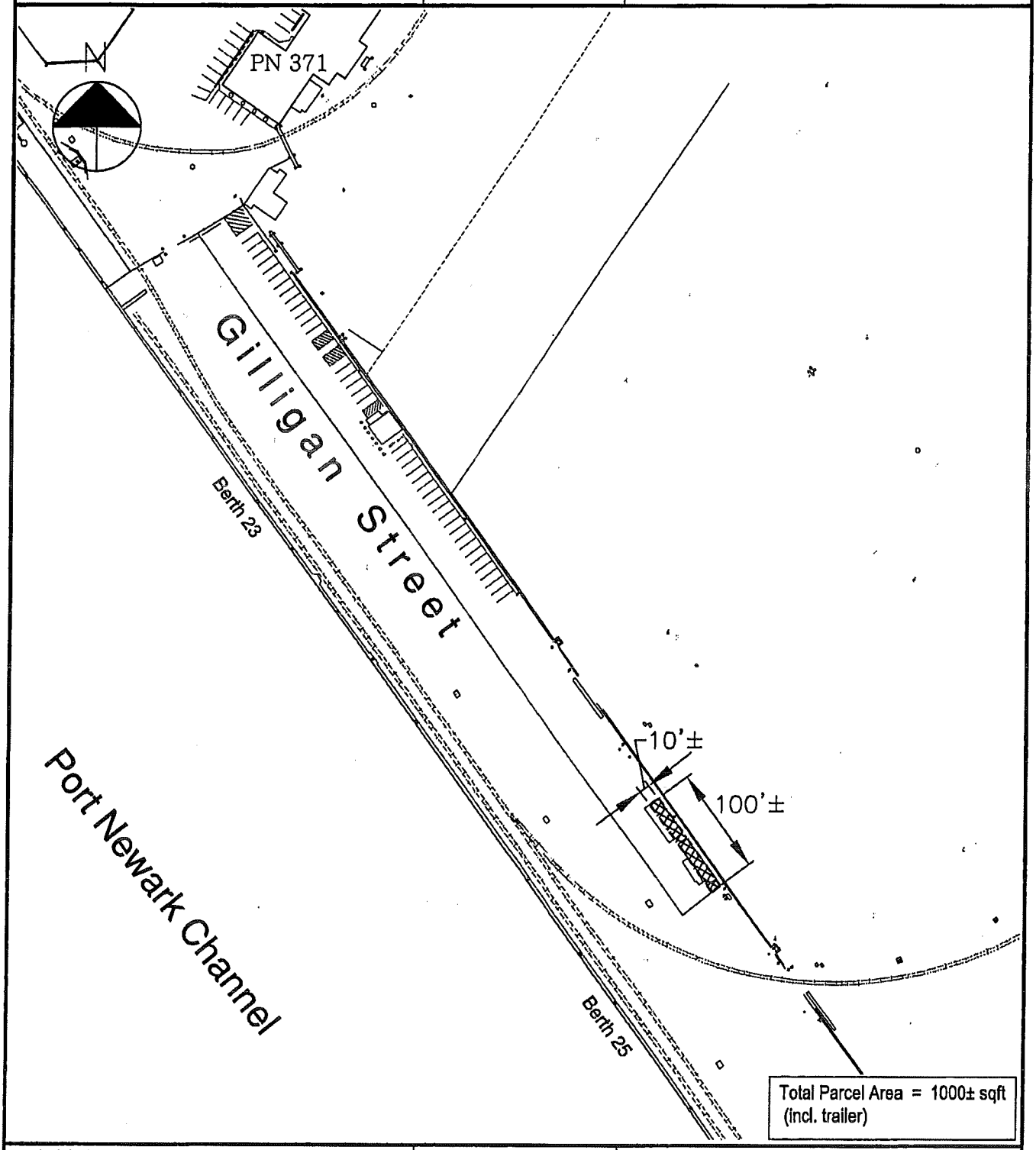
STATE OF NEW YORK)
) :ss
COUNTY OF NEW YORK)

On the 24th day of July, 2009, before me the subscriber a personally appeared STEPHEN EDWARDS the PRESIDENT of PORTS AMERICA, INC., who I am satisfied is the person who has signed the within instrument; and I having first made known to him/her the contents thereof, he/she did acknowledge that he/she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

(notarial seal and stamp)

Jon E Kelly
Notary Public, State of New York
No. 01KE5031337
Qualified in New York County
Commission Expires Aug. 1, 2010

Ports America, INC.	LPN-317	



Initialed:	EXHIBIT :	THE PORT AUTHORITY OF NY & NJ
For the PORT AUTHORITY	A	PORT NEWARK
For the Lessee		Date : June 1, 2011

For the Port Authority

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

On the 5th day of January in the year 2012, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard M. Larrabee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/her capacity, and that by his/~~her~~ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Nancy S. Niles

(notarial seal and stamp)

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

For the Lessee

STATE OF NEW JERSEY)
) ss
COUNTY OF MERCER)

On the 14th day of NOVEMBER in the year 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared JARED PARKER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(notarial seal and stamp)

JON KELLY
NOTARY PUBLIC OF NEW JERSEY
I.D. # 2411943
My Commission Expires 9/1/2016