

**Torres Rojas, Genara**

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**From:** Myers Sara [<mailto:SMyers@teamster.org>]  
**Sent:** Friday, September 12, 2014 1:45 PM  
**To:** Duffy, Daniel  
**Cc:** Nick Weiner  
**Subject:** Request # 15273 appeal

Mr. Duffy –

Thank you very much for speaking to me on the phone earlier today. Mr. Weiner’s FOI request (#15273) refers to the Port Newark current lease (both the License Agreement and Right of Entry Agreement) for Best Transportation, Inc.

The License Agreement is described on the Port Authority Lease Archive website as covering “Rental of Building 263, C & D and 3.52 Acres of Paved Open Area”. The lease is dated effective 08/1/2012.

The Right of Entry Agreement is described on the Port Authority Lease Archive website as covering “Right of Entry - 4.38 Acres of Paved Open Area on Distribution Street”. The lease is dated effective 07/01/2012.

Thank you very much for your help.

If you have any questions, please let me know,  
**Sara A. Myers**

Administrative Assistant  
International Brotherhood of Teamsters  
VP and Division Support  
25 Louisiana Ave, NW  
Washington, DC 20001

Phone: (202) 624-8798  
Fax: (202) 624-8137

**THE PORT AUTHORITY OF NY & NJ**

FOI Administrator

September 26, 2014

Mr. Nick Weiner  
CTW  
1900 L Street NW  
Washington, DC 20036

Re: Freedom of Information Reference No. 15273

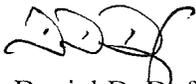
Dear Mr. Weiner:

This is in response to your September 3, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for a copy of "the Port Newark current lease (both the License Agreement and Right of Entry Agreement) for Best Transportation, Inc. " The License Agreement is described on the Port Authority Lease Archive website as covering "Rental of Building 263, C & D and 3.52 Acres of Paved Open Area". The lease is dated effective 08/1/2012.

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/15273-LPA.pdf>. Paper copies of the available records are available upon request.

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

Very truly yours,



Daniel D. Duffy  
FOI Administrator

Attachment

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY  
225 PARK AVENUE SOUTH, NEW YORK, NEW YORK 10003

RIGHT OF ENTRY LICENSE

(Agreement No. ROE-022PN)

THIS RIGHT OF ENTRY LICENSE (hereinafter referred to as the "License") made as of the 6th day of June, 2012, 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 York and New Jersey with the consent of the Congress of the United States of America, having its principal office at 225 Park Avenue South, New York, New York 10003 (the "Port Authority"), and BEST TRANSPORTATION, INC., a corporation of the State of Delaware, having its principal office at 263 Distribution Street, Port Newark, New Jersey 07114 (the "Licensee");

WITNESSETH, That

WHEREAS, the Port Authority and the Licensee are in discussions with regard to entering a lease agreement (the "Proposed Lease") for property owned by the Port Authority in Port Newark (the "Facility"), in the City of Newark, County of Essex and State of New Jersey; and

WHEREAS, the Proposed Lease would include property consisting of approximately 4.38 acres of paved open area on Distribution Street, across from Building 263 at Port Newark (the "Site"), displayed in diagonal cross-hatching on Exhibit A, attached hereto, hereby becoming a part hereof; and

WHEREAS, the Licensee has requested the right to enter the Site for the purpose of performing necessary repairs and improvements to prepare the Site for occupancy (the "Work", as further described in Exhibit B, attached hereto and hereby made a part hereof) and for no other purpose whatsoever; and

WHEREAS, the Work shall not include borings or any environmental excavation or drilling; and

WHEREAS, the Licensee is willing to accept and assume all the risks, costs, expenses and obligations set forth herein, and in consideration therefore, the Port Authority is hereby willing to grant access to the Site without payment of any access or similar fee or expense; and

WHEREAS, the Port Authority is willing to grant permission to the Licensee and its representatives, contractors, employees, agents and servants permission to enter upon, use and occupy the Site, for the purpose of performing the Work, and for no other purpose whatsoever, subject to the following terms and conditions:

NOW, THEREFORE, the Port Authority and the Licensee hereby mutually agree as follows:

1. Term; Nature of Permission.



(a) This License shall take effect as of the date the Port Authority executes this License (the "Effective Date"), and shall expire, unless sooner revoked or terminated, upon the earlier occurrence of completion of the Work or July 31, 2012. The permission hereby granted may be revoked at any time by the Port Authority, with or without cause, upon forty-eight (48) hours' written notice to the Licensee or may be terminated at any time by the Licensee, without cause, upon forty-eight (48) hours' written notice to the Port Authority. Revocation, termination or expiration of this License shall not relieve the Licensee of any liabilities or obligations hereunder which shall have accrued prior to the effective date of such revocation, termination or expiration.

(b) The permission granted herein shall not create a tenancy or any other interest in the Site except a non-exclusive license revocable at will. Without limiting the generality of the foregoing, the Port Authority, by its Commissioners and officers, contractors, agents and employees, shall have the right at any time and as often as the Port Authority shall determine to be necessary or desirable, in its absolute discretion, to enter upon the Site for any purpose whatsoever.

## 2. Project Manager's Approval.

(a) Prior to the commencement of the Work and the introduction of any equipment, supplies or materials of the Licensee onto the Site, the Licensee shall submit to the General Manager of New Jersey Marine Terminals, the Port Authority of New York and New Jersey, at 260 Kellogg Street, 2nd Floor, Newark, New Jersey 07114, or his or her authorized representative or successor (the "Project Manager"), plans and a detailed description of the scope of work for the Work prepared by a Port Authority approved environmental consultant and/or professional engineer, as applicable. The Work shall not commence until the Licensee receives the approval of the Project Manager to do so after his or her review of said plans and scope of work.

(b) The Project Manager may withhold his or her approval to proceed with the Work if, in his or her sole opinion, the Work will in any manner endanger persons or property and may condition his or her approval on the Licensee's agreement to take such precautions as the Project Manager may, in his or her sole opinion, deem advisable. In the event that at any time the Project Manager determines that the Work will unduly interfere with the operations of the facilities of the Port Authority or constitutes a hazard to persons or property, the Project Manager shall have the right to suspend the Work until such time as he or she determines that the Work may safely resume. In addition, the Project Manager may require Licensee to take such precautions as the Project Manager may, in his or her sole opinion, deem advisable. Any additions to or changes in the plans for approved Work must be submitted to the Project Manager in a timely manner for review and must be approved prior to implementation.

(c) It is expressly understood and agreed that any review of the Licensee's plans and scope of Work, comments thereon or monitoring, if any, of the Work shall not constitute or be construed as a representation or warranty on the part of the Port Authority as to the adequacy or propriety of such plans or methods of work, nor shall the Port Authority be deemed to have assumed any liability to the Licensee, its contractors, subcontractors, or any third

party by reason of such approval or monitoring, if any, or by virtue of the presence at the Site of representatives of the Port Authority.

3. Commencement and Performance of Work.

(a) At least seven (7) days prior to initiating the Work, the Licensee shall notify the Project Manager and comply with his or her instructions, including time and manner of work, ingress and egress to and from the Site, design and installation of safety and security precautions and limitations on the Site. In the event that the Licensee or the Port Authority determines that the Work may extend to property that is not under the jurisdiction or the control of the Port Authority, the Licensee shall secure the necessary access or permits thereto, including appropriate Tenant Alteration Application authorization, as defined in Section 11 hereof, and shall provide the Port Authority with written evidence thereof prior to the commencement of performance of the Work.

(b) All Work shall be performed at the sole cost and expense of the Licensee and shall be carried on in a manner so as not to interfere with or interrupt the operations or services of the Port Authority. The Licensee shall pay, or cause to be paid, all costs and expenses associated with the Work, and shall pay, or cause to be paid, all claims made against it and/or its contractors or subcontractors in connection with the Work, and shall cause its contractors and subcontractors to pay all claims validly made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against any part of the Site.

(c) Except as otherwise provided herein, the Work shall be permitted Monday through Friday between the hours of 8 o'clock a.m. and 5 o'clock p.m. unless the Project Manager shall determine that such Work will unduly interfere with operations at the Site or will constitute a hazard to life or property. In the event of such determination, the Project Manager shall have the right to suspend the Work or designate such other hours for performance of the Work until such time as the Project Manager determines that the Work may safely resume during normal business hours.

(d) The Licensee shall provide, and its employees and contractors shall wear, or carry badges or other suitable means of immediate identification. The badges or other suitable means of identification shall be subject to approval of the Port Authority.

(e) During the performance of the Work, the Licensee shall place barricades and signs to cordon off the portions of the Site where the Work is or will be performed and provide adequate security for its vehicles and equipment. At the conclusion of each day's work and whenever the Work is unattended by the Licensee's personnel, the Licensee shall secure its equipment, vehicles, signs and materials, and clean up all debris in such a manner as to secure the safety of all persons and property. The Site must be fenced off at the end of each work day.

(f) The Licensee, at its own cost and expense, and within ten (10) days of the completion of the Work, agrees to furnish to the Port Authority copies of any surveys or measurements, or inspection, testing, engineering or environmental sampling data, results, reports or studies concerning the Property or other similar engineering material, as applicable. Except as required by law, data shall not be shared with, conveyed to or discussed in any manner

with any person or entity other than the Port Authority without the express written permission of the Port Authority. The Licensee and Port Authority agree that Licensee is not performing any environmental testing, sampling, studies or environmental testing in connection with this License or the Proposed Permit.

4. Damage to Property. Any damage to property of the Port Authority or under the jurisdiction of the Port Authority, including property of or under the care of the Port Authority's licensee(s), lessee(s) and/or permittee(s), resulting from or in any way arising out of the Work or the Licensee's entry hereunder, will promptly be repaired or replaced by the Licensee at its sole cost and expense with equal or better materials. If the Licensee fails to complete such repairs or replacements within thirty (30) days after being requested to do so, the Port Authority shall have the right to make such repairs or replacements and the Licensee hereby agrees to reimburse the Port Authority for all costs and expenses thereof.

5. No Interference with Property of Others. Except as to the Work, no overhead, surface or subsurface structures, buildings, piping and/or wiring belonging to or under the control of the Port Authority, its lessees, permittees or licensees or any public utility shall be removed, relocated or reconstructed by the Licensee without first obtaining the approval of the Port Authority or the affected utility company, as the case may be, and any such work shall be performed at the sole cost and expense of the Licensee. Prior to the commencement of the Work, the Licensee shall ascertain the location of subsurface utilities, if any, at the Work Site. The Licensee shall provide the Port Authority with written evidence of such coordination with utility companies. All subsurface utilities, if any, shall be marked by the Licensee or utility company prior to the commencement of the Work. No subsurface work shall proceed without the presence of representatives of both the Port Authority Resident Engineer's Office and the Licensee's engineering staff, respectively.

6. Third Party Permissions.

(a) This License is not intended, and shall not be construed, to grant the Licensee permission to use or occupy property not owned by or under the jurisdiction of the Port Authority; and this License is not intended, and shall not be construed, to relieve the Licensee from its responsibility to procure and maintain in effect all requisite permissions and approvals from appropriate public utilities and other interested third parties, together with all licenses, franchises or permits necessary for it to comply with all laws, rules and regulations of federal, state and other governmental entities, authorities and agencies applicable to it and to the Work.

(b) The Licensee shall, and shall cause its contractors and subcontractors to, promptly observe, comply 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 Licensee's operations at, above or adjacent to the Site, including those of the State of New Jersey and its various departments, boards and bureaus. The provisions of this Paragraph are not to be construed as a submission by the Port Authority to the application to itself of any governmental laws, rules, regulations, enactments, requirements, ordinances, orders, resolutions, and directions, and no alleged or purported immunity or exemption from any of the foregoing available to the Port Authority shall excuse compliance or be grounds for non-compliance on the part of the Licensee, its contractors or subcontractors. Nothing contained in this License shall

constitute a determination or indication by the Port Authority that the Licensee, its contractors or subcontractors has complied with any applicable governmental law, ordinance, enactment, resolution, order, rule or regulation, including but not limited to those of the State of New Jersey which may pertain to the Work.

7. Risk of Loss; Indemnification.

(a) The Licensee hereby agrees to specifically assume any and all risk of loss or damage of any kind whatsoever to property or injury (including death) of persons directly or indirectly arising out of, as a result of or in connection with the Work, and/or the Licensee's use of the Site herein permitted, including, without, limitation, loss, damage, injury or death, and any and all remediation, removal, restoration or mitigation costs, if applicable, and costs, expenses, fees, fines, penalties or payments in lieu of penalties, occurring as a result of the release or threat of release of hazardous and/or toxic wastes or substances or as a result of its compliance or noncompliance with applicable law or as a result of compliance or noncompliance with Port Authority requirements as set forth herein, except to the extent caused by the gross negligence of the Port Authority. Without limiting the generality of the foregoing, the Licensee shall specifically be responsible for all costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any cleanup, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by a non-governmental entity or person on account of Hazardous Substances (as hereinafter defined in Paragraph 10) released by Licensee as a result of an act or omission in undertaking the Work on, under or about or migrating to or from the Site. The Port Authority, for itself and its successors and assigns, covenants and agrees that the Licensee does not assume responsibility for, and none of the provisions of this Paragraph shall apply to, Hazardous Substances (a) which have been released from or migrated onto or under the Site prior to the execution of this Agreement unless Licensee's Work causes the release, exacerbation, or migration of such Hazardous Substance off the Site or exacerbates an existing environmental condition on the Site, or (b) which have migrated or shall have migrated onto or under the Site after the execution of this Agreement from other lands actually occupied by or under the actual control of the Port Authority, unless it has been determined that such migration occurred due to acts or omissions of the Licensee.

(b) The Licensee further agrees to indemnify and hold harmless the Port Authority, each Commissioner of the Port Authority, each officer, agent, employee and representative of the Port Authority (each, an "Indemnified Party", and collectively, the "Indemnified Parties") from and against any and all claims, suits, demands, litigations and proceedings (the "Claims") based upon any of the risks so assumed whether just or unjust, or not, including without limitation, Claims of whatever kind or nature arising out of or because of the performance of the Work, or out of or as a result of the acts or omissions of the Licensee at the Site, its officers, agents, employees, contractors, subcontractors, consultants and representatives; and from all costs and expenses incurred by any Indemnified Party in the defense, settlement or satisfaction of the Claims, including but not limited to attorneys' fees and costs of suit. If so directed, the Licensee shall, at no cost and expense to any Indemnified Party, defend against all Claims, and in handling such Claims, the Licensee shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority or its Commissioners, officers, agents or

employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority.

8. Insurance.

(a) During the term of this License, the Licensee shall take out and maintain in its own name and at its own cost and expense a Commercial General Liability Insurance policy in limits of not less than Three Million Dollars and No Cents (\$3,000,000.00), combined single limit per occurrence for Bodily Injury and Property Damage Liability, including but not limited to Broad Form Property Damage, Explosion, Collapse and Underground Property Damage Hazards, Premises/Operations, Products Liability/Completed Operations and Independent Contractor coverages. In addition, the policy shall include a Contractual Liability endorsement covering the risks and indemnities the Licensee has assumed under this License.

(b) The Licensee shall take out and maintain in its own name and at its own expense a Comprehensive Automobile Liability Insurance policy covering owned, non owned and hired vehicles, as applicable, with limits of not less than Three Million Dollars and No Cents (\$3,000,000.00) combined single limit per accident for Bodily Injury and Property Damage Liability.

(c) The aforementioned policies shall name the Indemnified Parties as additional insureds and shall be specifically endorsed to provide that in any action or proceeding under or in connection with such policies, the insurance carrier shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority. The aforementioned policies must be specifically endorsed to provide that the policy may not be canceled, terminated or modified without thirty (30) days' written notice to the Port Authority, Manager, Risk Financing Department, at the address below. In particular, the Commercial General Liability Policy and the related certificate of insurance must include a cross-liability endorsement providing severability of interests so that coverage will respond as if separate policies were in force for each insured.

(d) Further, the Licensee shall cause to be obtained and maintained without cost or expense to the Port Authority a policy of Workers' Compensation Insurance and Employer's Liability Insurance in compliance with the requirements of law covering all persons employed by the Licensee and its contractors in connection with the Work.

(e) Prior to the commencement of the Work or the introduction of any equipment onto the Site, the Licensee shall deliver to the Manager, Risk Financing Division, The Port Authority of New York and New Jersey, 225 Park Avenue South, 12th Floor, New York, New York 10003 (Attention: Certificate Review), an original certificate or certificates of insurance evidencing the above coverages. Any certificate required under this License shall adequately identify this Agreement, shall contain a separate express statement of compliance with each and every requirement set forth above in this Paragraph, and shall stipulate that the

policies may not be canceled, terminated or modified without thirty (30) days' advance written notice to the said Manager. Moreover, all the aforesaid policies of insurance shall not contain any provisions for exclusions from liability not forming part of the standard basic unamended and unendorsed Liability Insurance policy. Upon request of the said Manager, the Licensee shall furnish him with a certified copy of each policy and proof that it is in full force and effect, including evidence that premiums have been paid.

9. Environmental Terms.

(a) The Licensee for itself and its successors and assigns, covenants that it will abide by all applicable Environmental Requirements when performing the Work and any remediation required hereunder.

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

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

(d) The Licensee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on the Site or at the Facility. Any Hazardous Substance disposed of, released or discharged by the Licensee or permitted by the Licensee to be disposed of, released or discharged at the Site or at the Facility shall be completely removed and/or remediated by the Licensee by methods and procedures satisfactory to and approved by the Port Authority and in accordance with all applicable Environmental Requirements.

(e) Nothing herein shall give rise to any obligation on the part of Licensee to remediate any environmental condition or remove any Hazardous Substances (i) existing at the Site as of the date of the Agreement and/or discovered, but not exacerbated, by Licensee in the course of performing the Work; or (ii) existing or affecting the Site after the date of this Agreement but not caused by any act or omission of Licensee.

10. Definitions.

(a) "Environmental Requirement" shall mean in the singular and "Environmental Requirements" shall mean in the plural all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidance documents, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, all pollution

prevention programs, 'best management practices plans', and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, provided such programs adopted and agreements made by the Port Authority have been provided to the Licensee by the Port Authority prior to execution of this Agreement and all applicable judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and unless otherwise agreed to by the applicable governmental entities, in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation, to the extent for which Licensee is responsible under this Agreement:

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

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

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

(b) "Hazardous Substance" shall mean and include in the singular and "Hazardous Substances" shall mean and include in the plural any pollutant, contaminant, toxic or hazardous waste, dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls ("PCBs"), chemicals known to cause cancer, microbial contaminant, 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 or in the future shall be restricted, prohibited, regulated or penalized by any applicable federal, state, county, or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations and guidance documents adopted and publications promulgated pursuant thereto.

11. Tenant Construction and Alteration Process.

(a) Prior to the Licensee performing any of the Work on the Site, in addition to obtaining the Project Manager's approval pursuant to Paragraph 2 of this License, at the Port Authority's sole discretion, such Work must additionally be set forth in plans and specifications submitted to the Port Authority with the Port Authority's appropriate form of either Tenant Alteration Application and/or Minor Works Application found in the Tenant Construction and Alteration Process Manual (which application as submitted by the Licensee, but not approved by the Port Authority, is hereinafter called the "Pending Tenant Application"). The Pending Tenant Application shall contain such terms and conditions as the Port Authority may include and shall set forth in detail and by complete plans and specifications the Work the Licensee desires to perform and the manner and time periods for performing the same (the foregoing tenant alteration application and/or minor works application, as approved by the Port Authority, is hereinafter called the "Tenant Application"). If the Port Authority does not approve any Pending Tenant Application, the Licensee shall redo and resubmit the Pending Tenant Application until approved by the Port Authority. The Licensee shall not commence performance of the Work covered by any Pending Tenant Application until said Pending Tenant Application is approved by the Port Authority, it being understood and agreed that the Port Authority may in its sole discretion disapprove all or any portion of the Work the Licensee proposes to do for any reason whatsoever. All locations where the Work is to be performed shall be specified in the Tenant Application. Notwithstanding the performance of the Work or any approval of the Tenant Application, it is hereby understood and agreed that the areas upon which the Licensee shall perform the work shall be set forth in the Tenant Application and said approval and references shall not be, nor be deemed to be, a part of or imply any lease, permit or other agreement covering the leasing, use or occupancy of the Site or the Property by the Lessee.

(b) For any improvements requiring a Tenant Alteration Application, the Licensee shall pay the Port Authority a fee ("Review Fee"). The Review Fee shall be an amount equal to one percent (1%) of the actual costs of the construction work or the Review Fee then generally applicable to such work under the Port Authority's Tenant Alteration Application process, whichever is greater.

12. Miscellaneous.

(a) Nothing herein contained shall be understood or construed to create or grant any third party benefits or rights or property interests unless the person claiming such rights is identified herein and the rights claimed are expressly set forth herein.

(b) No Indemnified Party shall be charged personally with any liability or held liable under any term or provision of this License or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

(c) This License, including the recitals contained herein, constitutes the entire agreement between the Port Authority and the Licensee on the subject matter and no modification or termination hereof shall be effective unless in writing, signed by both parties. The Licensee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this License.

(d) The Licensee shall not assign, sell or transfer this License or any of the rights granted hereunder, without the prior written approval of the Port Authority, directly or indirectly, in whole or in part, by operation of law or otherwise, and any such assignment, transfer or sale without such prior written approval shall be void as to the Port Authority.

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

(f) The Licensee hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this License. The Licensee agrees that the service of process on the Licensee in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Licensee indicated herein, or by actual personal delivery to the Licensee, one of its directors or managing or general. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

(g) This License may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

(h) This License may not be construed as a promise or covenant to lease property. In addition, notwithstanding the performance of the Work, approval of the plans and specifications and/or any alteration application, and notwithstanding any references therein to the Licensee or to various proposed property lines or to space to be occupied by the Licensee, it is hereby understood and agreed that said performance, approvals and references are not and shall not be or be deemed to be a part of, or to imply, any lease, permit or other agreement covering the leasing, use or occupancy of any area or that any Port Authority approval for any construction, destructive building investigation or demolition of any structures at the Sites or leasing of such area or portion thereof shall be forthcoming. Additionally, no permission is hereby granted to the Licensee and Licensee is hereby expressly prohibited from doing any work that would in any way damage or alter any improvement on the Site.

(i) All notices hereunder shall be given in writing and delivered in person or by certified mail with return receipt, to the Port Authority by addressing the same to: (i) the Project Manager at the address designated in Paragraph 2 above; and (ii) The Port Authority of New York and New Jersey; and to the Licensee by addressing the same to Best Transportation, Inc., 263 Distribution Street, Port Newark, New Jersey 07114, Attention: Tom Heimgartner. Notices shall be effective upon receipt.

(j) Notwithstanding anything contained herein, it is hereby specifically understood that neither party shall constitute the agent or representative of the other party for any whatsoever hereunder, nor shall any partnership or joint venture be deemed created hereby.

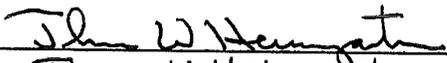
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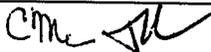
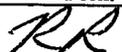
IN WITNESS WHEREOF the Port Authority and the Lessee have executed this License as of the date first above written.

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By:   
Name: RICHARD M. LARRABEE  
Title: DIRECTOR, PORT COMMERCE DEPT.  
Date: 7/11/12<sup>cm</sup>

BEST TRANSPORTATION, INC.

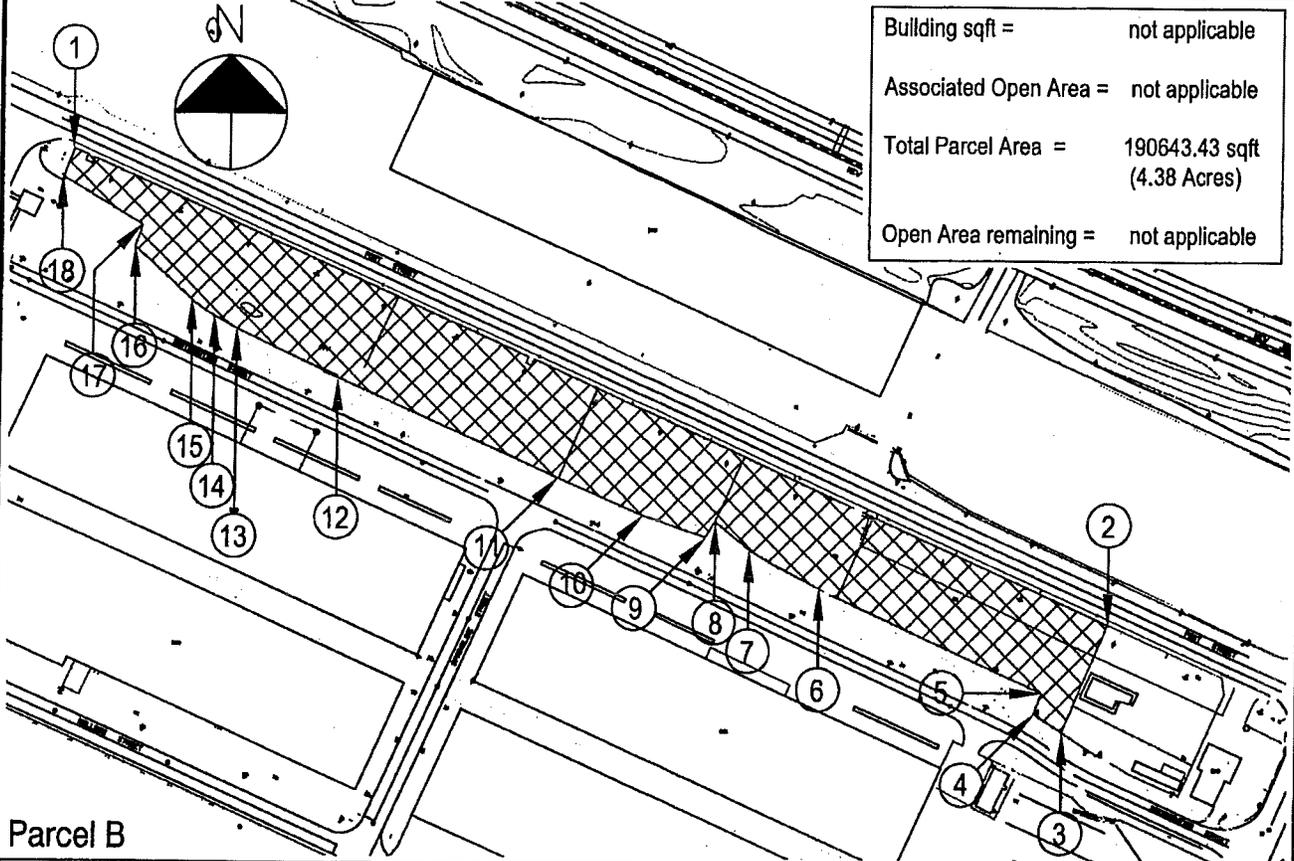
By:   
Name: Thomas W. Heimgartner  
Title: President

Port Authority Use Only:	
Approval as to Terms	Approval as to Form
<u></u>	<u></u>

RR

Best Transportation, Inc.

ROE-022PN



Building sqft = not applicable  
 Associated Open Area = not applicable  
 Total Parcel Area = 190643.43 sqft (4.38 Acres)  
 Open Area remaining = not applicable

Parcel B

Metes and Bounds:					Coordinate system - NAD 1983				
Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate	Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			680892.38	590723.02	10			680390.72	591518.96
2	1580.71'	S 65°51'15" E			11	130.47'	N 66°54'50" W	680441.88	591398.93
3	159.75'	S 22°31'56" W	680245.78	592165.43	12	338.60'	N 65°54'23" W	680580.10	591089.84
4	47.12'	N 57°27'47" W	680098.22	592104.21	13	151.54'	N 64°59'00" W	680644.19	590952.51
5	29.96'	N 22°16'21" E	680123.57	592064.49	14	40.13'	N 61°29'20" W	680663.34	590917.25
6	341.82'	N 65°42'57" W	680151.29	592075.84	15	37.42'	N 54°57'56" W	680684.82	590886.61
7	112.16'	N 61°29'29" W	680291.87	591764.27	16	108.42'	N 47°21'29" W	680758.27	590806.85
8	62.13'	N 51°42'28" W	680345.41	591665.71	17	31.76'	N 19°14'05" E	680788.26	590817.32
9	25.82'	S 31°22'42" W	680383.91	591616.94	18	126.89'	N 59°08'28" W	680853.34	590708.39
	89.33'	N 71°09'18" W	680361.86	591603.50		41.69'	N 20°32'20" E		
(return to point 1)									

Initialed:

*CMC* *JK*

For the PORT AUTHORITY

*GH*

For the Permittee

EXHIBIT :

**A**

THE PORT AUTHORITY OF NY & NJ

**PORT NEWARK**

Date : July 1, 2012

**Exhibit B – The Work**

The Licensee's Scope of Work includes:

- Installation of an Emergency Exit gate
- Painting of lines for trailer parking
- Installation of impact protection to fences, gates and other obstacles
- Installation of security cameras
- Public Service Electric & Gas (PSE&G) inspection and installation of security lighting
- Installation of electric gate operators
- Sealing cracks in asphalt

Initialed:

*CM JK*

\_\_\_\_\_  
For the Port Authority

*GH*

\_\_\_\_\_  
For the Permittee

**Lease No. L-PN-321**

**AGREEMENT**

**between**

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

**and**

**BEST TRANSPORTATION, INC.**

**Dated as of July 18, 2012**

**CONFORMED COPY**

MLPF 4473.1

THIS AGREEMENT OF LEASE, made as of the 18<sup>th</sup> day of July 2012, 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 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 BEST TRANSPORTATION, INC. (the "Lessee"), a Delaware corporation having an office and place of business at 263 Distribution Street, Port Newark, Newark, New Jersey 07114, whose representative is Tom Heimgartner.

WITNESSETH, That:

The Port Authority and the Lessee, for and 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 (the "Facility"), in the City of Newark, County of Essex and State of New Jersey, the following described premises:

1. the enclosed space in diagonal cross hatching and the related open area shown in stipple on the sketch attached hereto, hereby made a part hereof, and marked "Exhibit A" (hereinafter "Area A"), and
2. the paved open area shown in stipple and diagonal cross hatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit B" (hereinafter "Area B"),
- 3.

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 Premises constitute non-residential property.

ARTICLE II. The term of the letting shall commence at 12:01 o'clock A.M. on August 1, 2012 (the "Commencement Date") and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2018 (the "Expiration Date").

ARTICLE III. The Lessee shall pay a basic rental as set forth in Special Endorsement No. 2 hereto.

ARTICLE IV. The Lessee shall use and occupy the Premises for the following purposes only, and for no other purpose whatsoever: (a) for the receipt, temporary storage and distribution of non-hazardous cargo as shall have the prior and continuing consent of the Port Authority for the account of persons, firms and corporations other than the Lessee, and (b) for the maintenance and repair of trucks owned or operated by the Lessee in connection with the Lessee's 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 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  
 Services  
 Port Newark  
 Abatement  
 Insurance Schedule  
 Special Endorsements  
 Exhibits A and B  
 Schedule E

NUMBER  
 Standard Endorsement No. L5.1  
 Standard Endorsement No. L19.4  
 Standard Endorsement No. L27.4

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 of 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.

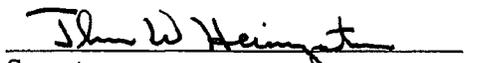
ATTEST

  
 Secretary

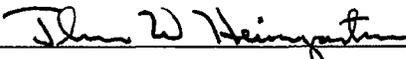
THE PORT AUTHORITY OF NEW YORK  
 AND NEW JERSEY

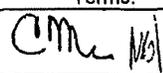
By   
 Name: RICHARD M. LARRABEE  
 Title: DIRECTOR, PORT COMMERCE DEPT.

ATTEST *Witness*

  
  
 Secretary

BEST TRANSPORTATION, INC.

By   
 Name: THOMAS W. HEIMGARTNER  
 Title: President

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

## 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 any such requirements.

### 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***

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal expenses, whether those of the Port Authority's Law Department or otherwise, 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 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, employees, guests, representatives, customers, contractors, invitees or business visitors on the Premises, or arising out of the acts or omissions of the Lessee, its officers and employees elsewhere at the Facility, 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.

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

#### **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 without limitation 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 untenable 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 (5) 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, without the prior written consent of the Port Authority.

(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) thirty percent (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 feet (20') 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 without limitation telephone pay-stations.

(b) The Port Authority, by itself or by contractors, lessees or permittees, 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 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.

**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, permittee or other occupier in connection with the use of the 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, 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 an office or the residence of such party, officer or representative, or (iv) delivered to the Premises, or (v) forwarded to such party or representative at the office or residence address by registered mail or by a nationally recognized overnight courier service. 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 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 an unincorporated association, or a "Massachusetts" or business trust, its obligations shall be performed by and its rights shall be exercised only by it acting only through the medium of its members, trustees, officers and employees or

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

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

(5) If the Lessee is a limited liability company, its obligations shall be performed by and its rights shall be exercised by it acting only through the medium of its managers, members and employees;

(6) 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 sent to the following address: The Port Authority of New York and New Jersey, P. O. Box 95000-1517, Philadelphia, Pennsylvania 19195-1517, or made via the following wire transfer instructions: Bank: TD Bank; Bank ABA Number: 031201360; Account Number: 5950011618, or sent to such other address, or via such other wire transfer instructions, as may hereafter 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 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***

No Commissioner, officer, agent or employees of the Port Authority 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.

**SECTION 31. *Right to Audit Books and Records***

(a) (i) The Lessee shall permit and/or cause to be permitted in ordinary business hours during the term of the letting hereunder and for one year thereafter the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Lessee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant in connection with the Lessee's use and occupancy of the Premises within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any such corporate records and books of account.

(ii) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee (hereinafter referred to as the "Audit Findings"), the Lessee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the 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 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 shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) 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 the Lessee under this Agreement.

**SECTION 32. *Late Charges***

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

**SECTION 33. *Waiver of Trial by Jury***

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.

**SECTION 34. *Effect of Use and Occupancy of Premises after Expiration or Termination***

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 rental in effect on the date of such expiration or termination, plus (ii) all items of additional rent and other periodic charges, if any, payable with respect to the Premises by the Lessee at the annual rate in effect during the three-hundred-sixty-five (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.

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(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.

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(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

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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 or 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.

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(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 No abatement

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$6.32\*

(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.

\*through July 31, 2013, thereafter the said rate to be increased in proportion to increases in basic rental.

## INSURANCE SCHEDULE

(a) The Lessee named in the Lease to which this Insurance Schedule is attached and of which it constitutes an integral part (the "Lease"), 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 Lease on a policy or policies of Commercial General Liability Insurance and Commercial Automotive 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:

	<u>Minimum Limits</u>
Commercial General Liability Insurance	
Combined single limit per occurrence for death, bodily injury and property damage liability:	\$2,000,000.00
Commercial Automotive Liability Insurance	
Combined single limit per occurrence for death, Bodily injury and property damage liability:	\$2,000,000.00
Workers' Compensation and Employers Liability Insurance	
Lessee's obligations under the applicable State Workers' Compensation Law for the employees of the Lessee employed in operations conducted pursuant to the Lease at or from the Facility	Statutory

In the event the Lessee 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 Lease, including without limitation this Insurance Schedule.

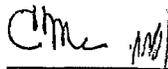
(b) Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and any claim or action against the Port Authority by the Lessee, 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 Lessee under this agreement.

(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 Lessee. 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 Lessee 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 Lease by the Lessee to the Port Authority. In the event any binder is delivered it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate of insurance. Any renewal policy shall be evidenced by a renewal certificate of insurance delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the Lease. The aforesaid insurance shall be written by a company or companies approved by the Port Authority. If at any time any insurance policy shall be or become unsatisfactory to the Port Authority as to form or substance or if any of the carriers issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee 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 Lessee under the Lease. The foregoing insurance requirements shall not constitute a representation or warranty as to the adequacy of the required coverage to protect the Lessee with respect to the obligations imposed on the Lessee by the Lease or any other agreement or by law.

  
\_\_\_\_\_  
For the Port Authority

Initialed:

  
\_\_\_\_\_  
For the Lessee

## SPECIAL ENDORSEMENTS

### SPECIAL ENDORSEMENTS

1. Notwithstanding the provisions of paragraph (c) of Section 7 of the Terms Conditions of this Agreement, the Lessee shall not be obligated, except as provided in paragraph (b) of said Section 7, to maintain and to make any repairs to the sprinkler system (including water flow tests) and the fire alarm system on or serving the premises. After receipt by the Port Authority of notice from the Lessee that repair or replacement of the sprinkler system and the fire alarm system are needed (stating precisely the work required), the Port Authority shall make the same to the extent necessary to keep the sprinkler system and fire alarm system in a reasonably good condition for the operations of the Lessee under this Agreement; but the Port Authority shall not be obligated to make repairs or replacements to bring the premises to a better condition than that existing at the commencement of the letting. Subject to the provisions of paragraphs (b) and (c) of Section 7 of the Terms and Conditions, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the Premises, whether such care, maintenance, repair or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise. The Port Authority shall have no obligation whatsoever under this Special Endorsement to make repairs or replacements of any structure, building, installation or fixture, or any part of any of them, which have been brought to or built or installed on the premises by the Lessee or its contractor, whether or not with the prior consent of the Port Authority, whether or not the same has become part of the premises under this Agreement and whether or not title thereto has vested in the Port Authority. The responsibility of the Port Authority under this special Endorsement shall be limited to bearing the expense of the repair or replacement of the sprinkler system, the maintenance and monitoring of the fire alarm system, the installation of pull boxes, inspecting fire protection equipment to ensure compliance with all applicable codes and, the Port Authority shall have no obligation whatsoever with respect to any repairs or replacements which are the obligation of the Lessee under other provisions of this Agreement. Without in any way limiting the foregoing, the Lessee shall maintain the fire extinguishers on the premises, which maintenance shall include testing the fire extinguishers and recharging them as needed. The Port Authority shall have no obligation with respect to any repairs or replacements which are required because of a casualty, whether or not insured or insurable, except as expressly provided in Section 8 of the said Terms and Conditions. If the Port Authority shall fail after a reasonable time to perform its obligations hereunder, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay to the Lessee its actual certified cash expenditures therefor or, at the option of the Port Authority, shall extend to the Lessee in an amount equal to such expenditures a credit against its rental obligations under this Agreement. Furthermore, prior to commencement by the Port Authority of any work set forth in the Lessee's notice to the Port Authority, the Lessee shall take all precautions necessary to protect persons or property by the Lessee of such work as may be required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Lessee for such work as hereinabove provided. Without limiting any obligation of the Lessee under this Agreement, the Port Authority, at any time and from time to time during the letting, may enter the premises for the purpose of making repairs or replacements, or for the purpose of performing maintenance, whether or not the Port Authority is obligated hereunder to do the

## SPECIAL ENDORSEMENTS

same and whether or not the Port Authority has received a notice request, or other communication from the Lessee concerning any such repair or replacement, provided that this right of the Port Authority shall not constitute or be deemed to constitute any obligation or duty on the Port Authority either to the Lessee or others to make repairs or replacements, do any maintenance or do anything else in connection therewith. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives from and against all claims and demands of any and all third persons whatsoever, including without limitation thereto the Lessee's employees, officers, agents and representatives, for personal injuries (including death) or property damage, which may arise from the condition of the premises or any part thereof or from failure of the Lessee to notify the Port Authority of conditions requiring repair or replacement, or from the failure of the Lessee to make timely corrections of dangerous or potentially dangerous conditions in or on the premises. The Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, agents, employees, contractors and subcontractors, and their employees, from all liability for damage to the Lessee, consequential or otherwise, in connection with any provision of this Special Endorsement concerning repair or replacement of 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.

2. (a) The Lessee shall pay a Basic Rental follows:

(i) With respect to Area A, during the period commencing on the Commencement Date and continuing through July 31, 2013, both dates inclusive, the Lessee shall pay to the Port Authority a basic rental at the rate of Three Hundred Twenty-eight Thousand Six Hundred Forty Dollars and No Cents (\$328, 640.00) per annum, payable in advance in monthly installments in the amount of Twenty-seven Thousand Three Hundred Eighty-six Dollars and Sixty-seven Cents (\$27,386.67) on the Commencement Date and on the first day of each and every month thereafter occurring during such period, provided, however, that, if the Commencement Date occurs on other than the first day of a month, the installment of basic rental for Area A payable on the Commencement Date shall be the amount of the monthly installment set forth in this paragraph prorated on a daily basis over the number of days in that month from the Commencement Date to the last day of that month, both dates inclusive.

(ii) With respect to Area B, during the period commencing on November 1, 2012 and continuing through July 31, 2013 both dates inclusive, the Lessee shall pay to the Port Authority a basic rental at the rate of Two Hundred Sixty-eight Thousand Three Hundred Twenty-nine Dollars and Sixty Cents (\$268,329.60) per annum, payable in advance in monthly installments in the amount of Twenty-two Thousand Three Hundred Sixty Dollars and Eighty Cents (\$22,360 .80) on November 1, 2012 and on the first day of each and every month thereafter occurring during such period.

## SPECIAL ENDORSEMENTS

(b) The basic rental set forth in paragraphs (i) and (ii) of this Special Endorsement No. 2 shall be adjusted during the term of the letting in accordance with the provisions of paragraph (c) of this Special Endorsement No. 2.

(c) As used in this Special Endorsement:

- (1) **“Adjustment Period”** shall mean, as the context requires, the calendar month of May 2013 and the calendar month of May in each calendar year occurring during the term of the letting under this Agreement.
- (2) **“Anniversary Date”** shall mean, as the context requires, August 1, 2013 (the “First Anniversary Date”) and each anniversary of such date occurring during the term of the letting under this Agreement.
- (3) **“Annual Index Increase”** shall mean the percentage of increase in the Index on each Anniversary Date, equal to (x) with respect to the First Anniversary Date, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period, and the denominator shall be the Index for the Base Period, and (y) with respect to each Anniversary Date thereafter, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the next preceding Adjustment Period, and the denominator shall be the Index for such next preceding Adjustment Period (for example, the Annual Index Increase for the Anniversary Date that is October 1, 2014 would be a fraction of which the numerator is the Index for July 2013 less the Index for July 2012 and the denominator is the Index for July 2012).
- (4) **“Base Period”** shall mean the calendar month of May 2012.
- (5) **“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.
- (6) **“Percentage Increase”** shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than two percent (2%), in which case the Percentage Increase shall be two percent (2%), or (y) such Annual Index Increase is more than four percent (4%), in which case the Percentage Increase shall be four percent (4%).

## SPECIAL ENDORSEMENTS

(e) *Annual Increase.* Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the expiration date of the term of the letting hereunder, as the case may be, the Lessee shall pay a basic rental at a rate per annum equal to the sum of (x) the basic rental theretofore payable and (y) the product obtained by multiplying such basic rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(f) *Adjustments.*

(1) In the event the Index to be used in computing any increase referred to in paragraph (c) of this Special Endorsement is not available on the effective date of such increase, the Lessee shall continue to pay the basic rental at the annual rate then in effect subject to retroactive increase at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index. In the event the United States Consumer Price Index for all Urban Consumers – New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) shall hereafter be converted to a different standard reference base or otherwise revised, or the United States Department of Labor shall cease to publish the United States Consumer Price Index for all Urban Consumers – New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest increase as the Port Authority may in its discretion determine.

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

(3) If any increase in basic rental referred to in paragraph (c) of this Special Endorsement is effective on a day other than the first day of a calendar month, there shall be payable in advance on the effective date of such rental increase an installment of basic rental equal to  $1/12^{\text{th}}$  of the increment of annual basic rental as increased, multiplied by a fraction of which the numerator shall be the number of days from the effective date of the rental increase to the end of the calendar month in which the rental increase became effective and the denominator shall be the number of days in that calendar month.

## SPECIAL ENDORSEMENTS

3. Abatement of basic rental, if any, to which the Lessee may be entitled shall be computed in accordance with the provisions of Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof.

4. The Lessee agrees to and shall take the Premises in its "as is" condition and the Port Authority shall have no obligation hereunder for preparation of the Premises for the Lessee's use.

5. The Port Authority shall have no obligation to supply the Lessee with any services or utilities in the Premises. The Lessee understands and agrees that it will be solely responsible for making all necessary arrangements with third-party suppliers including utility companies for the supply of any utility desired or required by the Lessee and shall pay all of the costs associated with the installation and supply of such utilities. No utilities or services whatsoever including any equipment, fuel or supplies in connection therewith shall be supplied by the Port Authority in connection with the use or operation of the Premises including, without limitation, heat, ventilation, air conditioning, garbage removal, janitorial, hot water, chilled water or security.

6. Neither the execution and delivery of this Agreement nor any act done pursuant thereto shall create between the Lessee and the Port Authority the relationship of bailor and bailee, the relationship of storer and garagekeeper, or any other relationship except that of lessee and lessor of space, nor shall there be created thereby any legal status which would impose upon the Port Authority with respect to any property located in the Premises any duty or obligation whatsoever. The Lessee expressly agrees that unless otherwise agreed in writing, the Port Authority shall have no liability with respect to any vehicle parked in the Premises, or with respect to any property of the Lessee or of any other person whatsoever left in any vehicle parked in the Premises, except for damage resulting solely from the gross negligence of the Port Authority.

7. The Lessee shall not permit others to perform any mechanical, electrical or structural repairs of vehicles on the Premises, and shall not permit others to clean, wash, fuel, lubricate or paint any vehicle or vehicles thereon, and shall not permit others to store on the Premises any automotive fuel or lubricants, oil, greases or other liquids contained in the functional reservoirs of the vehicles parked thereon.

8. The Lessee shall promptly wipe up all oil, gasoline, grease, lubricants, cleaning fluids and other inflammable liquids and substances and all liquids and substances having a corrosive or detrimental effect on the paving or other surface of the Premises which may leak or be spilled or placed thereon by reason of the operations of the Lessee hereunder. Without limiting the generality of Section 7 of the Terms and Conditions, the Lessee shall repair, replace, repave and rebuild, all or any part of the Premises which may be damaged or destroyed by such oil, gasoline, grease, lubricants, cleaning fluids or other liquids and substances. In the event the Lessee fails to commence to such repair, replacement, repaving or rebuilding within a period of ten (10) days after notice from the Port Authority so to do, or fails diligently to continue to

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completion such repair, replacement, repaving or rebuilding, the Port Authority, in addition to other remedies it may have, may at its option repair, replace, repave or rebuild all or any part of the paving or other surface of the Premises so damaged or destroyed and charge the cost thereof to the Lessee, which cost the Lessee hereby agrees to pay on demand.

9. The Lessee shall ensure labor harmony in its operations at the Facility and shall to that end, avoid and prevent strikes, walkouts, work stoppages, slowdowns, boycotts and other labor trouble and discord. The Lessee particularly recognizes the essential necessity of the continued and full operation of the whole Facility.

10. (a) The Port Authority and the Lessee shall each have the right to terminate this Agreement and the letting, in whole or in part, hereunder, without cause, on thirty (30) days' prior written notice to the other party. In the event of termination pursuant to this Section, this Agreement and the letting hereunder shall cease and expire as if the effective date of termination stated in the notice were the date originally stated hereunder for the expiration of this Agreement. In the event the Port Authority exercises its termination right under this Section, the Lessee shall not be entitled to receive, and the Port Authority shall have no obligation to pay or reimburse the Lessee for, all or any portion of the Lessee's unamortized capital investment, or for any other portion of the Lessee's investment at, in, on, or in connection with the Premises.

(b) In the event the Port Authority exercises its right to terminate the letting of the Premises for any reason other than "without cause," the Lessee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably incurred by Port Authority in connection with such termination, including without limitation any 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 it restored), preparing the Premises for use by a succeeding lessee, the care and maintenance of the Premises during any period of non use of the Premises, the foregoing to include, without limitation, personal costs and legal expenses (including but not limited to the cost to the Port Authority of in house legal services), repairing and altering the Premises and putting the Premises in order (such as but not limited to cleaning and decorating the same). Unless sooner terminated, the letting of the Premises hereunder shall expire in any event upon the expiration date. Termination shall not relieve the Lessee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of termination.

11. The parties hereby acknowledge that the Port Authority is performing a certain roadway expansion construction project ("Port Street Capacity Improvement Project") at the Facility. The Lessee understands that at any time from and after July 1, 2013, the construction and operation of the Port Street Capacity Improvement Project may require the use of a portion or portions of the premises, utilized by the Lessee for parking purposes, shown in stipple on the exhibit annexed hereto and hereby made a part hereof ("Exhibit B"), for and in connection with the construction, maintenance or operation of the Port Street Capacity Improvement Project as may be required or be appropriate therefor. At such time as the Port Street Capacity Improvement Project requires the use of a portion or portions of the premises, the Lessee shall, upon demand by the Port Authority, surrender such portion or portions of the premises to the

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Port Authority for such use. The Lessee also understands that the Port Authority's cost associated with the Port Street Capacity Improvement Project shall be borne by the Port Authority.

12. (a) The parties hereby acknowledge that as of the Effective Date hereof, two access gates are currently located along Distribution Street on the perimeter of the open area of the Premises, shown on Exhibit B, (collectively, the "Distribution Street Gates") providing the Lessee ingress and egress to and from such open area. Notwithstanding the foregoing, the Lessee shall have the right to construct and install one emergency access gate along Port Street ("Port Street Gate") to be used by the Lessee only during such times when the Distribution Street Gates are blocked by train activity and are inaccessible. In the use of the Port Street Gate, the Lessee shall only be permitted to make right turns onto the portion of the Premises via Port Street or right turns out of the portion of the Premises via Port Street. Notwithstanding the foregoing, in the event the Port Street Capacity Improvement Project requires the widening of Port Street, and therefore, the dismantling of the fence surrounding the Premises and the removal of the Port Street Gate, the Port Authority shall be responsible for the costs associated with the removal and re-installation of the fence as well as the Port Street Gate.

(b) In the performance of the construction, finishing, decorating, alteration or improvement work to the emergency access gate on the Premises, or to make repairs thereto, all of the same shall be made or performed in accordance with the following terms and conditions.

(c) Prior to commencing the performance of any construction work the Lessee shall submit to the Port Authority for its approval the Lessee's plans and specifications for the work in compliance with the Port Authority's Tenant Construction and Alteration Process Manual (the "TCAP Manual") The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee to the Port Authority 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, and shall be in sufficient detail for a contractor to perform the work. In connection with review by the Port Authority of the Lessee's submissions under this paragraph, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may require for such review. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor has been approved by the Port Authority. The Lessee shall include in any such contract or subcontract such provisions as the Port Authority may approve or require, including, without limitation thereto, provisions regarding labor harmony. The Lessee shall cause each such contractor and subcontractor to obtain and maintain in force such insurance coverage and performance bonds as the Port Authority shall specify. All work to be performed by the Lessee hereunder shall be done in accordance with the said Alteration Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon completion of the construction work the Lessee

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shall supply the Port Authority with a certificate signed by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph that all of the work performed by the Lessee has been performed in accordance with the plans and specifications approved by the Port Authority and the provisions of this Agreement and the Lessee shall supply the Port Authority with as-built drawings in such form and number as are requested by the Port Authority.

(d) The Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans and specifications and all of the improvements depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the aforesaid work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee.

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

(g) The 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 the work and shall cause its contractors and subcontractors to pay all such claims lawfully made against them.

13. (a) Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deliver to the Port Authority, as security for the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of this Agreement on its part to be fulfilled, kept, performed or observed, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District and acceptable to the Port Authority, in favor of the Port Authority, and payable in the Port of New York District in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such letter of credit shall provide that it shall continue throughout the term of the letting under this Agreement 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 clean and irrevocable satisfactory letter of credit. If requested by the Port Authority, said letter of credit shall be accompanied by a letter explaining the opinion of counsel for the banking institution that the issuance of said clean,

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irrevocable letter of credit is a appropriate and valid exercise by the banking institution of the corporate power conferred upon it by law. Upon notice of cancellation of a letter of credit, the Lessee agrees that unless, by a date 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. Failure to provide such a letter of credit at any time during the effective term of the letting, under this Agreement, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit shall be deemed to be a breach of this Agreement on the part of the Lessee. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Lessee made thereafter, the Port Authority will return the security deposit, if any, theretofore made. The Lessee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration or termination of this Agreement and fulfillment of the obligations of the Lessee hereunder. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Lessee on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to its full amount. No action by the Port Authority pursuant to the terms of any letter of credit, or any receipt by the Port Authority of funds from any bank issuing such letter of credit, shall be or be deemed to waiver of any default by the Lessee under the terms of this Agreement and all remedies of the Lease and of the Port Authority consequent upon such default shall not be affected by the existence of a recourse to any such letter of credit.

(b) The Lessee hereby certifies that its Federal Tax Identification Number is 22-2419252 for the purposes of this Special Endorsement.

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

14. (a) 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

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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) 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) The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

15. (a) As used in this Special Endorsement:

(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 and/or (ii) the disposal, released or threatened released 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 Facility as a result of (v) the Lessee's use or occupancy of the Premises, or the performance of any construction work or any other work or activities at the Premises or (w) a migration of a Hazardous Substance from the Premises or from under the Premises or (x) the Lessee's operations at the Facility, and/or (y) any personal injury (including wrongful death) or property damage arising out of or related to any such Hazardous Substance described in (i), (ii) or (iii) above, and/or (z) the violation of any Environmental Requirement pertaining to any such Hazardous Substance described in (i), (ii) or (iii) above, the Premises, and/or the activities thereon.

(2) "Environmental Requirement" shall mean in the singular and

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“Environmental Requirement” shall mean in the plural all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, ‘best management practices plans’, and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:

(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;

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

(iii) All applicable requirements, contained in but not limited to the following laws as they are or may be supplemented and/or amended and their state and local counterparts: The Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et. seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et. seq.; the Clean Air Act, 42 U.S.C. Section 7401 et. seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et. seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et. seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et. seq.; the New Jersey Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11b et seq., Industrial Site Recovery Act (“ISRA”), N.J.S.A. 13:1K-6 et seq.; together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof.

(3) “Hazardous Substance” shall mean and include in the singular and “Hazardous Substances” shall mean and include in the plural any pollutant, contaminant, toxic or hazardous waste, dangerous substance, noxious substance, toxic substance, flammable, explosive

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or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls ("PCBs"), chemicals known to cause cancer, microbial contaminant, 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 or in the future shall be restricted, prohibited, regulated or penalized by any applicable federal, state, county, or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations and guidances adopted and publications promulgated pursuant thereto.

(b) Without limiting the generality of any of the other terms and provisions of this Agreement, the Lessee hereby expressly agrees to assume all responsibility for, and any and all risks of any kind whatsoever caused by, arising out of or in connection with, the conditions of the Premises from and after the commencement of the term of this Agreement, including without limitation all Environmental Requirements and all Environmental Damages and the Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, agents and employees from and against all such risks and responsibilities and all Environmental Damages and Environmental Requirements (including, without limitation, all fines, penalties, payments in lieu of penalties, and legal expenses incurred by the Port Authority in connection therewith). If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such 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.

(c) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall at its sole cost and expense and in accordance with and subject to the provisions of the Section of this Agreement entitled "Maintenance and Repair," upon notice from the Port Authority, promptly take all actions to completely remove and remediate: (1) any Hazardous Substance present on, about or under the Premises whose presence occurred during the term of this Agreement or resulted from any act or omission of the Lessee or others during the term of this Agreement, (2) any Hazardous Substance disposed of or released from the Premises during the term of this Agreement or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the term of this Agreement, and (3) any Hazardous Substance present on, about or under other property at the Facility or elsewhere whose presence resulted from the Lessee's use and occupancy of the Premises or which migrated from the Premises to such other property during the term of this Agreement or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the term of this Agreement, which any Governmental Authority or any Environmental Requirements or any violation thereof require to be removed and/or remediated, or which in the sole opinion of the Port Authority are necessary to mitigate Environmental Damages, including, but not limited to, the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial

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plans, and the performance of any cleanup, remediation, mitigation, containment, operation, maintenance, monitoring or restoration work; the standard for any of the foregoing shall be that which requires the lowest level or presence of a particular Hazardous Substance under the laws of the United States or the State of New Jersey, with the strictest to be applied, and which does not require any restriction on the possible use of the Premises or such other property. The Lessee agrees that with respect to any of its obligations set forth above in this paragraph it will not make any claim against the Port Authority and/or the City of Newark for contribution under any Environmental Requirement. Any actions required under this Special Endorsement shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the Premises. The Lessee shall promptly provide to the Port Authority all copies of test results and reports generated in connection with such actions. Promptly upon completion of such investigation and remediation, the Lessee shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property.

(d) Without limiting any other of the Lessee's obligations under this Agreement, the Lessee shall provide the Manager of the Facility at the cost and expense of the Lessee with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, and as may be necessary for the preparation of any application, registration, statement, certification, notice, non-applicability affidavit, communication, negative declaration, clean-up plan or other information, documentation or communication required by the Environmental Requirements and the Lessee shall promptly swear to, sign or otherwise fully execute the same. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee and at the Lessee's cost and expense. Further, the Lessee agrees unless directed otherwise by the Port Authority, to provide the Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Lessee at the time the same are provided to the Lessee with respect to any Environmental Requirements.

(e) Notwithstanding any other provision of this Special Endorsement, all of the Lessee's obligations, undertakings and responsibilities under this Special Endorsement shall apply to any Environmental Damage involving any Hazardous Substance whose presence on, about or under the Premises occurred prior to the commencement of the term of this Agreement if any clean-up, remediation or other response action, or indemnification or other action under this Special Endorsement is required with respect to such Environmental Damage as a result of (1) any violation by the Lessee or the Lessee's Representative, as hereinafter defined, of any Environmental Requirements pertaining to such Hazardous Substance, the Premises and/or the activities thereon, or any failure by the Lessee or the Lessee's Representative to observe and comply with any Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including without limitation those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities, or construction guidelines which have been or may

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be established by the Port Authority for the Facility and submitted to the Lessee, and/or (2) any negligent act or omission by the Lessee or the Lessee's Representative with respect to such Hazardous Substance. For purposes of this Special Endorsement, "Lessee's Representative" shall mean its officers, employees, 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.

(f) Without limiting the Port Authority's remedies that it may have under this Agreement or at law or in equity, the Port Authority shall have the right during the term of this Agreement and subsequent to the termination or expiration thereof to such equitable relief, including restraining injunctions and declaratory judgments, as may be required to enforce compliance by the Lessee with its environmental obligations under this Special Endorsement. In the event the Lessee fails to comply with or perform any of its obligations hereunder, the Port Authority at any time during the term of this Agreement and subsequent to the termination or expiration thereof may elect (but shall not be required) to perform such obligations and the Lessee shall pay to the Port Authority upon demand its costs thereof, including all overhead costs as determined by the Port Authority.

(g) Notwithstanding any other provision of this Special Endorsement, and without limiting the generality of paragraph (e) of this Special Endorsement, the Lessee's obligations, undertakings and responsibilities under this Special Endorsement shall not apply to any Environmental Damage involving any Hazardous Substance which migrated or shall migrate onto the Premises during the term of this Agreement (hereinafter called the "Migrated Hazardous Substance"), except that such obligations, undertakings and responsibilities under this Special Endorsement shall apply to any Environmental Damage involving any Migrated Hazardous Substance if any clean-up, remediation or other response action, or indemnification or other action under this Special Endorsement is required with respect to such Environmental Damage as a result of (1) any violation by the Lessee or the Lessee's Representative of any Environmental Requirements pertaining to such Migrated Hazardous Substance, the Premises and/or the activities thereon, 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 without limitation those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities, or construction guidelines which have been or may be established by the Port Authority for the Facility and submitted to the Lessee, and/or (2) any act or omission of the Lessee or the Lessee's Representative with respect to such Migrated Hazardous Substance.

(h) The Lessee agrees that in any legal action or proceeding in which the Port Authority and the Lessee are opposing parties the Lessee shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (1) whether the presence of any Hazardous Substance on, about or under the Premises occurred prior or subsequent to the commencement of the Term; (2) whether any Hazardous Substance disposed of or released from the Premises or which migrated from the Premises came to be present on, about or under the Premises prior or subsequent to the commencement of the Term; and (3) whether the Lessee

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exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated during the term of this Agreement. For purposes of this paragraph, "burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

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

16. The Lessee shall not make any alterations to the Premises, or perform any construction on the premises without the Port Authority's prior written approval. The Port Authority shall be entitled to impose, and the Lessee shall pay, a fee ("Review Fee") as compensation for the Port Authority's review and oversight in connection with any construction work as contemplated under Section 11 of the Terms and Conditions hereof. The Review Fee shall be an amount equal to the greater of (a) one percent (1%) of the actual cost of the construction work or (b) the Review Fee then in effect and generally applicable to such work performed pursuant to the Port Authority's Tenant Construction and Alteration Application process.

17. (a) In the event that any consent to assign this Agreement to any third party (an "Assignee") is granted by the Port Authority, upon the terms and conditions set forth in the Consent to Assignment, the Lessee and the Assignee, as a joint and several obligation, shall pay to the Port Authority, a fee (the "Assignment Consent Fee") for the Port Authority's cost of administration with regard to the Port Authority's review, approval and consent of such approved assignment (the "Consent Process"). The Assignment Consent Fee shall be equal to ten percent (10%) of net present value of the gross fixed basic rental payable to the Port Authority for the unexpired portion of the term of this Agreement, at a discounted rate that is determined by the Port Authority during the Consent Process period, but in no event shall such rate be greater than five percent (5.0%).

(b) In the event that any consent to sublet the Premises to any third party (a "Sublessee") is granted, upon the terms and conditions set forth in the Port Authority consent to sublease ("Consent to Sublease"), the Lessee and its Sub-Lessee, as a joint and several obligation, shall pay to the Port Authority a fee (the "Sublease Consent Fee") at the times set forth in and in accordance with this paragraph (b). The Sublease Consent Fee shall be paid to the Port Authority by the Lessee and the Sublessee as a joint and several obligation as follows: on the twentieth (20<sup>th</sup>) day of each and every calendar month during the time such sublease remains in effect (including the calendar month following the expiration or earlier termination of the Consent to Sublease), the Lessee or the Sublessee shall render to the Port Authority a statement sworn to by a responsible fiscal or executive officer of the Lessee or the Sublessee showing all amounts, monies, revenues, rental (whether basic or additional), and income of every kind paid or payable to the Lessee by such Sublessee arising out of or in connection with the Sublessee's use and/or occupancy of space in the Premises (the "Sublease Payments") paid or payable for the preceding month. The Lessee or the Sublessee shall pay to the Port Authority at the time of

## SPECIAL ENDORSEMENTS

rendering such statement the Sublease Consent Fee in an amount equal to: in the event that the rate per square foot of the subleased Premises exceeds the rate per square foot due and payable by the Lessee under this Agreement, fifty percent (50%) of the total amount by which the rate under the Sublease exceeds the rate under this Agreement. The Sublease Consent Fee shall constitute rent hereunder and shall be in addition to the rental due hereunder.

(c) 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 subleasing of this Agreement and the rights granted hereunder.

18. The Lessee agrees that the performance of any work that is subject to Special Endorsement No. 13 and the Section of this Agreement entitled "*Construction by the Lessee*" 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.

19. (a) The 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 E attached hereto and hereby made a part hereof, it is hereby agreed that the 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 Facility, shall throughout the term of the letting under this Agreement 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 the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit its said extensive affirmative action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within sixty (60) days after the commencement of the term of the letting under this Agreement to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes as the Port Authority and the Lessee may agree upon from time to time. The Lessee throughout the term of the letting under this Agreement shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the 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 the Lessee under this Special Endorsement shall not be construed to impose any greater requirements on the Lessee than those which are imposed on the Lessee under applicable

## SPECIAL ENDORSEMENTS

law.

(c) "Minority" as used herein shall be as defined in paragraph II (c) of Part of Schedule E.

(d) In the implementation of this Special Endorsement, the Port Authority may consider compliance by the 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 Special Endorsement, as effectuating the provisions of this Special Endorsement. 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 Special Endorsement to the extent that such duplication or conflict exists.

(e) 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.

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

20. (a) The parties hereby acknowledge that certain portions of the Premises, , (the "Former Premises") were occupied by the Lessee pursuant to (i) (as to Building 263, Sections C and D North), the agreement of lease, dated as of August 1, 2006, and identified as Port Authority Lease No. LPN-275 by and between the Port Authority and the Lessee and (ii) (as to Building 263, Section D South), the agreement of lease, dated as of July 1, 2004, and identified as Port Authority Lease No. LPN-273 by and between the Port Authority and the Lessee (which agreements of lease, as the same has been heretofore supplemented and amended, are hereinafter collectively referred to as the "Old Leases"). It is hereby agreed that the commencement of the letting under this Agreement occurred immediately after the expiration or termination, as the case may be, of the Old Leases and that no reversion with respect to the Former Premises occurred between the expiration or termination, as the case may be, of the Old Leases and the commencement of the letting hereunder. Further, it is hereby acknowledged that the Lessee remained in possession of the Former Premises continuously from the expiration or termination, as the case may be, of the Old Leases to the Commencement Date and at no time did the Lessee surrender the Former Premises to the Port Authority.

(b) The terms, provisions and conditions of the Old Leases shall apply to the letting of the Former Premises, to the 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 Former Premises, to the 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 Old Leases 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 the Lessee under the Old Leases that arose or accrued

## SPECIAL ENDORSEMENTS

during or with respect to the period prior to the Commencement Date shall survive the execution and delivery of this Agreement. The Lessee shall not, by virtue of this Agreement be released or discharged from any liabilities or obligations whatsoever arising under the Old Leases 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 Former Premises at the beginning of the term of the letting shall mean and be deemed to mean the condition of the premises as they existed at the beginning of the term under the Old Leases. Further, the obligation of the 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 Old Leases.

21. (a) This Agreement and any claim, dispute or controversy arising out of, under or related to this Lease, 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 choice of law principles.

(b) The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

(c) Notwithstanding the fact that certain references elsewhere in this Agreement to acts required to be performed by the Lessee hereunder, or to breaches or defaults of this Agreement by the Lessee, omit to state that such acts shall be performed at the Lessee's sole cost and expense, or omit to state that such breaches or defaults by the Lessee are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by the Lessee pursuant hereto shall be performed or fulfilled at the Lessee's sole cost and expense, and all breaches or defaults by the Lessee hereunder shall be deemed material.

(d) In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory authority of competent jurisdiction, the parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement, with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected by such holding.

22. Prior to the execution of this Agreement, the following changes, additions and deletions were made to the Terms and Conditions in accordance with the following:

## SPECIAL ENDORSEMENTS

(a) The words “unless otherwise provided in Paragraph 1 of the Special Endorsements annexed hereto” shall be inserted after the word “hereunder” appearing in the third line of paragraph (b) appearing in Section 2.

(b) Paragraph (f) appearing in Section 4 shall be amended by inserting the following after the words “gases or vapors”: “considering the nature of the Lessee’s operations permitted herein”.

(c) the words “and except as provided in Paragraph 1 of the Special Endorsements” shall be inserted in the first line of paragraph (j) of Section 4 following the words “Port Authority”.

(d) The following sentence shall be added to paragraph (a) of Section 5: “the Port Authority’s written consent shall not be arbitrarily or capriciously withheld, delayed or conditioned”.

(e) The following phrase shall be inserted at the end of the last sentence appearing in paragraph (a) of Section 6: “excepting only claims and demands which result solely from affirmative willful acts done by the Port Authority”.

(f) The following changes shall be made in Section 7:

(i) The words “catch basins and storm sewer drains shall be deemed inserted after the words “located in or on the Premises” in the second line of paragraph (c).

(ii) The following new paragraph (e) shall be deemed inserted in Section 7:

“(e) Without in any way limiting the provisions of paragraph (c) of this Section, the Port Authority shall be obligated to maintain the underground utilities on the Premises and keep and maintain the same so that at the expiration of the term of the letting hereunder, 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 and tear.

(g) The following changes shall be made in Section 8:

(i) The word “and/” shall be inserted after the words “untenable in whole” appearing in the last line of paragraph (a) of Section 8.

(ii) The words “if, in the opinion of the Port Authority,” appearing in the first line of sub-paragraph (a)(2) shall be deleted and the words “if, in the sole opinion of the Port Authority, after consultation with the Lessee,” shall be inserted in lieu thereof.

## SPECIAL ENDORSEMENTS

(h) The following phrase shall be inserted following the words “included in the Premises in paragraph (c) of Section 14: “(except to the extent as shall be permitted by the Port Authority approval of the Lessee’s plans and specifications for work in compliance with the Port Authority’s Tenant Construction and Alteration Process Manual”).

(i) The phrase, “upon twenty-four (24) hours’ prior notice to the Lessee,” shall be inserted after the words “shall have the right” appearing in the third line of paragraph (e) of Section 13.

(j) The Port Authority’s written consent shall not be arbitrarily or capriciously withheld, delayed or conditioned in the exercise of its rights of approval set forth in sub-paragraph (a)(5) appearing in Section 16.

(k) The words and figure “fifteen (15)” appearing in sub-paragraph (a)(7) appearing in Section 16 shall be deleted and the words and figure “thirty (30)” shall be inserted in lieu thereof.

(l) The following shall be inserted in line eleven of Section 20 following the words “of the Lessee hereunder”: “that would be taken by a reasonably prudent owner who desired to keep and maintain the Premises so that at the expiration or termination of the letting and at all times during the letting, the Premises will be in as good condition as at the commencement thereof, except for reasonable war and tear which does not adversely affect the efficient and proper utilization thereof”.

(m) The words “or residence of such party” appearing in the third, fourth and sixth lines in paragraph (a) of Section 24 shall be deleted. The following sentence shall be deemed inserted in the eighth line following the sentence ending with “is at such office”: A copy of all such notices required to be delivered hereunder shall be delivered to the Lessee’s Counsel (for informational purposes only) at the following address: “Anthony J. Vizzoni, Esquire, Becker Meisel LLC., 354 Eisenhower Parkway, Suite 1500, Livingston, New Jersey 07039”.

(n) The words “fire hydrants” appearing in the definition of “utility, mechanical , electrical and other systems” appearing in paragraph (h) of Section 25 shall be deleted.

(o) Notwithstanding the provisions of paragraph (b) appearing in Section 26, the Port Authority shall be liable to the Lessee, or to any person, for injury or death to any person or persons whomsoever, or for damage to any property whatsoever at any time in the Premises caused by the sprinkler system, arising out of the gross negligence on the part of the Port Authority, whether the same may leak into, or fall, issue or flow from any part of the Facility, or from any place or quarter.

(p) Paragraph (a) of Section 28 shall be deleted and the following paragraph (a) shall be inserted in lieu thereof:

SPECIAL ENDORSEMENTS

“(a) The Port Authority and the Lessee shall each 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 strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any type (whether affecting the Port Authority, its contractors or subcontractors). Further, the Port Authority and the Lessee shall each not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority or the Lessee to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption”.

(q) Section 29 shall be deleted and the following Section 29 shall be deemed inserted in lieu thereof:

“Section 29. Brokerage

The Port Authority and the Lessee each represent and warrant that no broker has been concerned in the negotiation of this Agreement and there is no broker who is or may be entitled to be paid a commission in connection therewith. The Port Authority and the Lessee shall indemnify and save harmless the other of and from any claim for commission or brokerage made by any and all persons, firms, corporations whatsoever for services in connection with the negotiation and execution of this Agreement”.

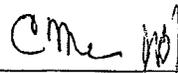
(r) Section 30 shall be deleted and the following Section 20 shall be inserted in lieu thereof:

“Section 30. Non-liability of Individuals

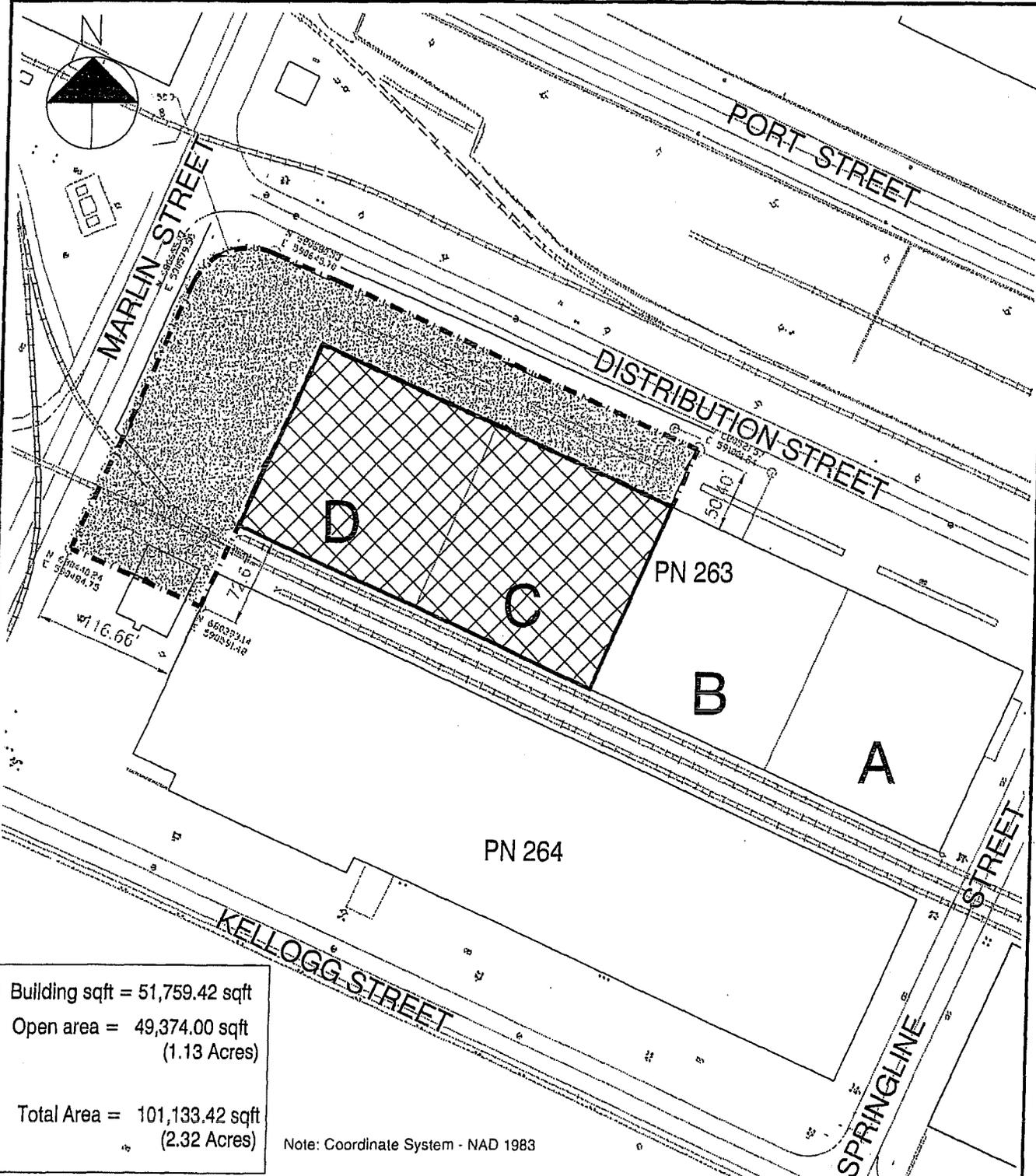
No commissioner, director, officer, agent or employee of the Port Authority or of the Lessee shall be charged with any liability, or held liable to the other under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof”.

(s) The words “from time to time and at any time” appearing in the last line of sub-paragraph (a)(i) appearing in Section 31 shall be deleted and the words “no more than one time in any annual period hereunder” shall be inserted in lieu thereof.

Initialed:

  
\_\_\_\_\_  
For the Port Authority

  
\_\_\_\_\_  
For the Lessee



Building sqft = 51,759.42 sqft  
 Open area = 49,374.00 sqft  
 (1.13 Acres)  
 Total Area = 101,133.42 sqft  
 (2.32 Acres)

Note: Coordinate System - NAD 1983

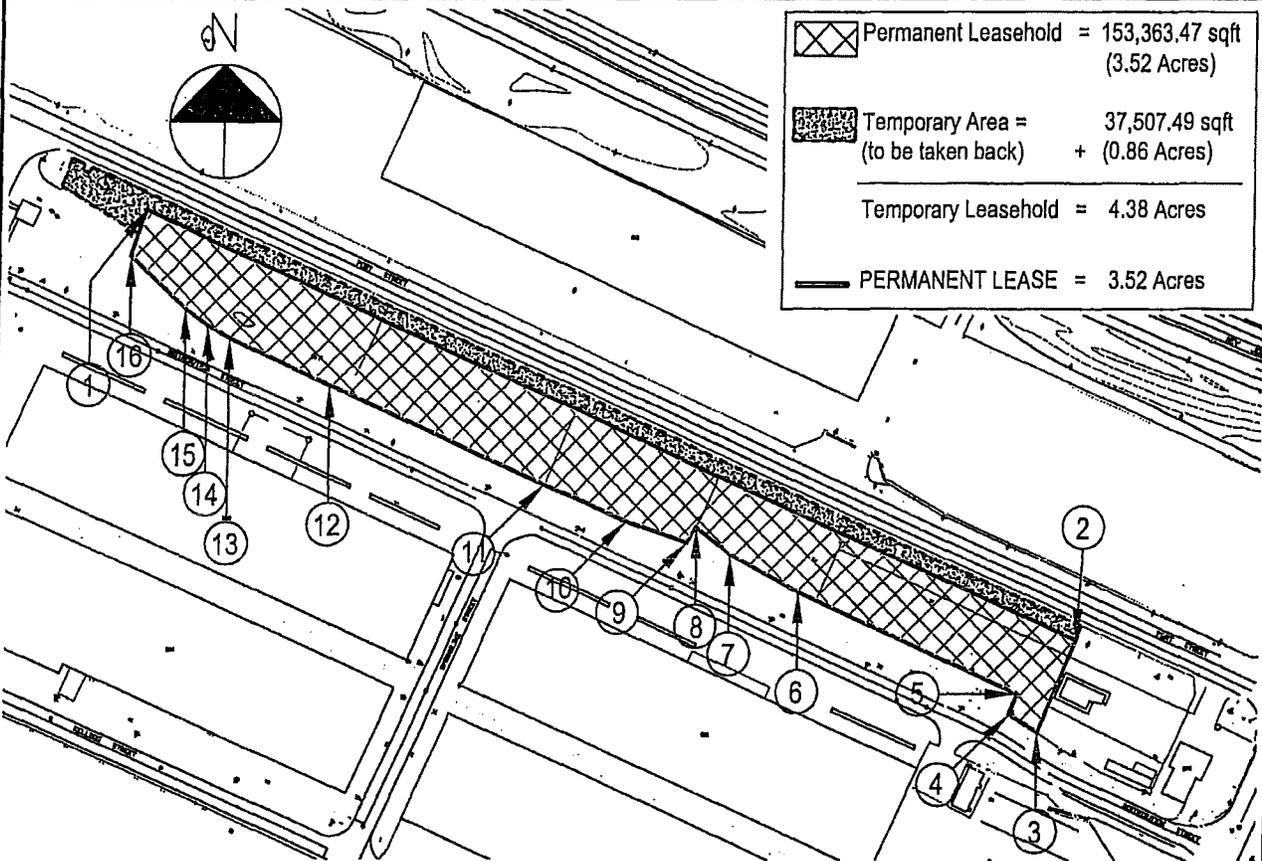
Initialed:  
*CME*  
 For the PORT AUTHORITY  
 \_\_\_\_\_  
 For the Lessee  
 \_\_\_\_\_

EXHIBIT :  
**A**

THE PORT AUTHORITY OF NY & NJ  
**PORT NEWARK**  
 Date : August 1, 2012

Best Transportation, Inc.

LPN-321



**Metes and Bounds:**

Coordinate system - NAD 1983

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate	Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			680821.52	590828.92	10			680390.72	591518.96
	1455.69'	S 65°50'56" E				130.47'	N 66°54'50" W		
2			680225.93	592157.19	11			680441.88	591398.93
	138.26'	S 22°31'56" W				338.60'	N 65°54'23" W		
3			680098.22	592104.21	12			680580.10	591089.84
	47.12'	N 57°27'47" W				151.54'	N 64°59'00" W		
4			680123.57	592064.49	13			680644.19	590952.51
	29.96'	N 22°16'21" E				40.13'	N 61°29'20" W		
5			680151.29	592075.84	14			680663.34	590917.25
	341.82'	N 65°42'57" W				37.42'	N 54°57'56" W		
6			680291.87	591764.27	15			680684.82	590886.61
	112.16'	N 61°29'29" W				108.42'	N 47°21'29" W		
7			680345.41	591665.71	16			680758.27	590806.85
	62.13'	N 51°42'28" W				66.98'	N 19°14'05" E		
8			680383.91	591616.94					
	25.82'	S 31°22'42" W							(return to point 1)
9			680361.86	591603.50					
	89.33'	N 71°09'18" W							

Initialed:

*[Handwritten signature]*

For the PORT AUTHORITY

*[Handwritten initials]*

For the Lessee

EXHIBIT :

**B**

THE PORT AUTHORITY OF NY & NJ

**PORT NEWARK**

Date : August 1, 2012

## SCHEDULE E

### AFFIRMATIVE ACTION-EQUAL OPPORTUNITY---MINORITY BUSINESS ENTERPRISES --WOMEN-OWNED BUSINESS ENTERPRISES REQUIREMENTS

#### Part I. Affirmative Action Guidelines - Equal Employment Opportunity

Without limiting any of the terms and conditions of the Lease between The Port Authority of New York and New Jersey (the "*Port Authority*") and Best Transportation, Inc. ("the Lessee") under Lease No. LPN-321 (the "*Lease*"), the Lessee understands and agrees that it shall put into effect prior to the commencement of any construction work (including but not limited to any work under a Tenant Alteration Application) an affirmative action program and Minority Business Enterprise (MBE) program and Women-owned Business Enterprise (WBE) program in accordance with the provisions of this Schedule E. As used in this Schedule E the term "*construction work*" shall be deemed to include also any and all construction work and/or alteration work under each Tenant Alteration Application. The provisions of this Schedule E shall be applicable to the Lessee's contractor or contractors and subcontractors at any tier of construction as well as to the Lessee itself and the Lessee shall include the provisions of this Schedule E within all of its construction contracts so as to make said provisions and undertakings the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. The Lessee shall and shall require its said contractor, 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, Minority Business Enterprise (MBE) and Women-owned Business Enterprise (WBE) programs called for hereunder as the Port Authority may request at any time and from time to time regarding the affirmative action, Minority Business Enterprises (MBE) and Women-owned Business Enterprises (WBE) programs of the Lessee and its contractor, contractors, and subcontractors at any tier of construction, and the Lessee shall and shall also require that its contractor, 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 hereof and this Schedule E to effectuate the goals of affirmative action and Minority Business Enterprise (MBE) and Women-owned Business Enterprise (WBE) programs.

In addition to and without limiting any terms and conditions of the Lease, the Lessee shall provide in its contracts and all subcontracts covering the construction work or any portion thereof, that:

(aa) The contractor shall not discriminate against employees and 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;

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

(cc) 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;

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

(ee) 'Contractor' as used herein shall include each contractor and subcontractor at any tier of construction.

I. As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require the Contractor, as hereinafter defined, to comply with all of the provisions of this Schedule E, the foregoing provisions set forth above and the provisions set forth hereinafter in this Schedule E. The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

The Lessee as well as each bidder, contractor and subcontractor of the Lessee and each subcontractor of a contractor at any tier of construction (herein collectively referred to as "the Contractor") must fully comply with the following conditions set forth herein as to each construction trade to be used on the construction work or any portion thereof (said conditions being herein called "Bid Conditions"). The Lessee hereby commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions. The Lessee shall likewise 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. The Lessee and the Contractor shall each appoint an executive of its 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	
	Minority, except laborers	30%
	Minority, laborers	40%
(2)	Female participation	
	Female, except laborers	6.9%
	Female, laborers	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 required herein of minority and female employment and training must 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 the Lessee and the Lessee shall provide written notification to the Manager of the Office of Business and Job Opportunity of the Port Authority within 10 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 must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training subject to the availability of employment opportunities. Trainees must 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 number 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 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 the 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 decision 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 areas of a Contractor's workforce.

(11) Tests and other selecting 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 nonsegregated 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 suppliers, 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 Contractors' 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 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 the 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 actions 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, the 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. mechanical 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 is 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 Lease, 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

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself and shall require the general contractor or other construction supervisor and each of the 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 of this Schedule E. 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 E. "Meaningful participation" shall mean that at least seventeen percent (17%) 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 twelve percent (12%) 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 the 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.

Certification of MBEs and WBEs hereunder shall be made by the Office of Business and Job Opportunity of the Port Authority. If the Contractor wishes to utilize a firm not already certified by the Port Authority, it shall submit to the Port Authority a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the Port Authority. All such requests shall be in writing addressed to the Office of Business and Job Opportunity, the Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York 10003 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing by the Director in charge of the Office of Business and Job Opportunity of the Port Authority. The determination of the Port Authority shall be final and binding.

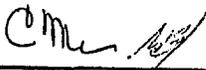
The Port Authority has compiled a list of the firms that the Port Authority has determined satisfy the criteria for MBE and WBE certification. This list may be supplemented and revised from time to time by the Port Authority. Such list shall be made available to the Contractor upon request. The Port Authority makes no

representation as to the financial responsibility of such, firms, their technical competence to perform, or any other performance-related qualifications.

Only MBE's and WBE's certified by the Port Authority will count toward the MBE and WBE goals.

Please note that only sixty percent (60%) of expenditures to MBE or WBE suppliers will count towards meeting the MBE and WBE goals. However, expenditures to MBE or WBE manufacturer's (i.e. suppliers that produce goods from raw materials or substantially alter them before resale) are counted dollar for dollar.

Initialed:

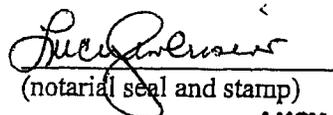
  
\_\_\_\_\_  
For the Port Authority

  
\_\_\_\_\_  
For the Lessee

For the Port Authority

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

On this 26<sup>th</sup> day of July, 2013, 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 the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of the Board of Commissioners.

  
(notarial seal and stamp)

**LUCY AMBROSINO**  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01AM6101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2015

For the Lessee

STATE OF New Jersey )  
 )ss.  
COUNTY OF Essex )

On this 24<sup>th</sup> day of JUNE, 2013, before me, the subscriber, a notary public of New Jersey personally appeared

Thomas W Heimgartner the President President of Best Transportation Inc

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

PATRICIA A. STUISSO  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 12, 2013

(notarial seal and stamp)  
