

**Olivencia, Mildred**

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**From:** gwright@wright-associate.com  
**Sent:** Thursday, July 02, 2015 2:17 PM  
**To:** Olivencia, Mildred  
**Cc:** Torres-Rojas, Genara; Van Duyne, Sheree; Ng, Danny  
**Subject:** Freedom of Information Online Request Form

Information:

First Name: George  
Last Name: Wright  
Company: George W. Wright & Associates, LLC  
Mailing Address 1: 505 Main St.  
Mailing Address 2:  
City: Hackensack  
State: NJ  
Zip Code: 07601  
Email Address: [gwright@wright-associate.com](mailto:gwright@wright-associate.com)  
Phone: 201-342-8884  
Required copies of the records: Yes

List of specific record(s):

Any and all documents, including written correspondence, contracts, leases or other arrangements related to the storage of empty containers or other equipment by Maher Terminals LLC or their customers or affiliates on or about property located at or near South Bay Avenue, Elizabeth, NJ

**Torres-Rojas, Genara**

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**From:** George Wright [<mailto:gwright@wright-associate.com>]  
**Sent:** Thursday, July 09, 2015 10:04 AM  
**To:** Torres-Rojas, Genara  
**Subject:** RE: RESPONSE LETTER FOR FOI REQUEST REFERENCE NO. 16132

Please consider our referenced FOI request as amended to cover all specified materials generated from Jan. 1, 2013 to the present date, including all agreements that were in effect, or expired, during that period.

Regards,

George W. Wright

**THE PORT AUTHORITY OF NY & NJ**

*FOI Administrator*

August 24, 2015

Mr. George Wright  
George W. Wright & Associates, LLC  
505 Main St.  
Hackensack, NJ 07601

Re: Freedom of Information Reference No. 16132

Dear Mr. Wright:

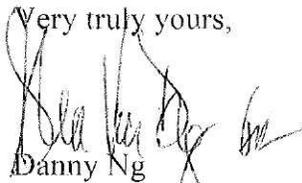
This is in response to your July 2, 2015 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy enclosed) for copies of any and all documents, including written correspondence, contracts, leases or other arrangements related to the storage of empty containers or other equipment by Maher Terminals LLC or their customers or affiliates on or about property located at or near South Bay Avenue, Elizabeth, NJ from January 1, 2013 to the present, including all agreements that were in effect or expired during that period.

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/16132-LPA.pdf>. Paper copies of the available records are available upon request.

Pursuant to the Code, certain portions of the material responsive to your request are exempt from disclosure as, among other classifications, security.

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

Very truly yours,

  
Danny Ng  
FOI Administrator

Enclosure

4 World Trade Center, 18th Floor  
150 Greenwich Street  
New York, NY 10007  
T: 212 435 7348 F: 212 435 7555

MLPF-11551.1

Lease No. EP-251

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

MAHER TERMINALS, INC.

Dated as of September 1, 2001

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MLPF 4473.1

THIS AGREEMENT OF LEASE, made as of the 1st day of September, 2001, by and between THE PORT AUTHORITY of NEW YORK and NEW JERSEY (hereinafter called "the Port Authority") a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office and place of business at One World Trade Center, New York, New York 10048, and MAHER TERMINALS, INC., a New Jersey corporation (hereinafter called "the Lessee") with an office and place of business at One Journal Square Plaza, Jersey City, New Jersey 07306, whose representative is M. Brian Maher,

WITNESSETH, That:

The Port Authority and the Lessee, for an in consideration of the covenants and mutual agreements hereinafter contained, do hereby agree as follows:

ARTICLE I. The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at the Elizabeth-Port Authority Marine Terminal (sometimes hereinafter called "the Facility"), in the City of Elizabeth, County of Union and State of New Jersey, the following described premises:

the open area and the enclosed spaces shown in diagonal crosshatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A",

together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located or to be located therein or thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential property.

ARTICLE II. The term of the letting shall commence at 12:01 o'clock A.M. on September 1, 2001 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on August 31, 2015.

ARTICLE III. The Lessee shall pay a basic rental as set forth in Special Endorsements No. 2 and No. 3 hereto.

ARTICLE IV. The Lessee shall use and occupy the premises for the following purposes only, and for no other purpose whatsoever:

As set forth in Special Endorsement No. 1 hereto.

ARTICLE V. The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 30) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

TITLE	NUMBER	DATE
Services	Standard Endorsement No. L5.1	10/6/75
Elizabeth-Port Authority Marine Terminal	Standard Endorsement No. L19.11	10/6/73
Insurance	Standard Endorsement No. L21.1	3/25/82
Abatement	Standard Endorsement No. L27.4	10/6/68
Special Endorsements Space Plan - Exhibit A Schedule naming Rules, Regulations, Rates and Charges applying at Port Authority Marine Terminals - Exhibit R		

ARTICLE VI. The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee hereto have executed these presents as of the date first above written.

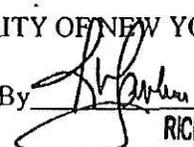
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ATTEST:

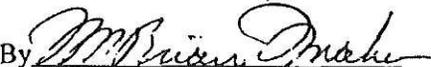


Daniel D. Bergstein  
Secretary  
The Port Authority of NY & NJ

By

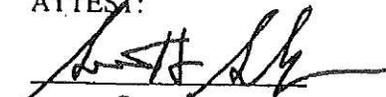
  
RICHARD M. LARRABEE  
Title: DIRECTOR, PORT COMMERCE DEPT.  
(Seal)

MAHER TERMINALS, INC.

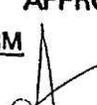
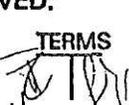
By 

Title: Chairman and Chief Executive Officer  
(Corporate Seal)

ATTEST:

  
Secretary

APPROVED:

FORM	TERMS
	

## TERMS AND CONDITIONS

### SECTION 1. *Ingress and Egress*

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

### SECTION 2. *Governmental and Other Requirements*

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

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

### SECTION 3. *Rules and Regulations*

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Lessee thereof by either delivery of a copy, or by publication in a newspaper published in the Port of New York District or by making a copy available at the office of the Secretary of the Port Authority.

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

**SECTION 4. *Method of Operation***

(a) In the performance of its obligations hereunder and in the use of the premises the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the premises or at the Facility and within twenty four hours remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or others on the premises with the consent of the Lessee.

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

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

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

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the premises or the Facility or any part thereof.

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

(g) *The Lessee shall not do or permit to be done any act or thing at the Facility which shall or might subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.*

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the premises or any part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and, if the premises are located in New York, of the Insurance Services Office of New York, or, if the premises are located in New Jersey, of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating

to construction by the Lessee, make any and all structural and non-structural improvements, alterations or repairs of the premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

(j) From time to time and as often as required by the Port Authority, the Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and fire-fighting equipment on the premises whether furnished by the Port Authority or by the Lessee. The Lessee shall keep all fire-fighting and fire extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

**SECTION 5. *Signs***

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

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Lessee on the premises or elsewhere on the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the premises and the Facility to the same condition as at the commencement of the letting. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every sign or piece of advertising and so to restore the premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

**SECTION 6. *Indemnity***

The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the premises by the Lessee or by others with its consent or out of any other acts or omissions of the Lessee, its officers and employees on the premises or elsewhere at the Facility, or out of the acts or omissions of others on the premises with the consent of the Lessee, including claims and demands of the party from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

**SECTION 7. *Maintenance and Repair***

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

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the premises which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers, employees or of other persons on or at the premises with the consent of the Lessee.

(c) With respect to all parts of the premises, including, but without limitation thereto, such of the following as are or may be during the term of the letting located in or on the premises; fences, the exterior and interior of the building walls the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and unpaved areas, glass of every kind, and the utility, mechanical,

electrical and other systems, the Lessee shall take the same good care of the premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the premises or adversely affect the efficient or the proper utilization of any part of the premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (the exterior of the building, areas of joint or common use and areas visible to the general public to be painted in colors which have been approved by the Port Authority), and, except under circumstances as set forth in paragraph (a) of Section 8 of these Terms and Conditions, the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the premises, all of which shall be in quality equal to the original in materials and workmanship and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) The obligation of the Lessee as set forth in paragraphs (b) and (c), of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; *provided, however*, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

#### SECTION 8. *Casualty*

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the premises with its consent) so as to render it 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 days of the occurrence commence to remove all of its damaged property and all debris thereof from the premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand.

#### SECTION 9. *Assignment and Sublease*

a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof.

(b) The Lessee shall not sublet the premises or any part thereof.

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of subdivisions (a) or (b) of this Section or if the premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right to this Agreement or letting or who occupies the premises and shall apply the net amount collected to the rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in subdivisions (a) and (b) of this Section nor an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as tenant, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein.

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the premises or any portion thereof for any purpose other than as provided in Article IV of this Agreement.

#### SECTION 10. *Condemnation*

(a) In any action or other proceeding by any governmental agency or agencies for the taking for a public use of any interest in all or part of the premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Lessee shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee.

(b) In the event that all or any portion of the premises is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the premises so required. Such termination shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the premises so required upon the effective date of such termination in the same condition as that required for the delivery of the premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery

by the Lessee nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be an eviction of the Lessee or a breach of this Agreement or be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise.

(c) In the event that the taking or conveyance covers the entire premises, or in the event that the letting is terminated with respect to the entire premises pursuant to paragraph (b) of this Section, then this Agreement shall, as of the date possession is taken by such agency or agencies from the Port Authority, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the said date were the original date of expiration hereof.

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

(e) In the event that the taking or conveyance or the delivery by the Lessee or taking by the Port Authority pursuant to paragraph (b) of this Section covers fifty percent (50%) or more of the total usable area of the premises including both open and enclosed space, then the Lessee and the Port Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

#### SECTION 11. *Construction by the Lessee*

Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any other construction work on the premises or alter, modify, or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made with or without such consent and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, or within sixty (60) days after expiration or earlier termination of the term of the letting, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

#### SECTION 12. *Additional Rent and Charges*

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the basic rental as set forth in Article III hereof.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should

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

(c) The term "cost" in this Agreement shall mean and include: (1) Payroll costs, including contributions to the Retirement System, or the cost of participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation and authorized absence pay; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) 30% of the sum of the foregoing.

### SECTION 13. *Rights of Entry Reserved*

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed necessary or advisable and, from time to time, to construct or install over, in or under the premises new systems or parts thereof, and to use the premises for access to other parts of the Facility otherwise not conveniently accessible; *provided, however*, that in the exercise of such rights of access, repair, alteration or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

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

(d) Nothing in this Section shall or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises nor for any injury or damage to the premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the acts of the Port Authority).

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

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

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

**SECTION 14. *Limitation of Rights and Privileges Granted***

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

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

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a building or buildings, if any are included in the premises, (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the premises.

**SECTION 15. *Prohibited Acts***

(a) Unless otherwise expressly permitted so to do, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the premises of any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation, dispensing or sale of food, beverages tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any equipment or device for the furnishing to the public of service of any kind, including therein, without limitation thereto, telephone pay-stations.

(b) The Port Authority, by itself or by contractors, lessees or 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 amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) an account of the Lessee's rental obligations, shall be the sum of the following:

(1) The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of a 30-day month; and

(2) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the demised premises, for legal expenses, boiler insurance premiums, if any, putting the premises in order including without limitation, cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

**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 said premises or portion thereof during the balance of the term of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port Authority may itself during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

**SECTION 21. Remedies to Be Nonexclusive**

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

**SECTION 22. Surrender**

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the same condition as at the commencement of the letting, reasonable wear arising from use of the premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first, to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

**SECTION 23. Acceptance of Surrender of Lease**

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

**SECTION 24. Notices**

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing (which shall include a telegram when delivered to the telegraph company), and all such notices

and requests shall be telegraphed or personally delivered to the party or to the duly designated officer or representative of such party or delivered to an office or residence of such party, officer or representative during regular business hours, or delivered to the residence of such party, officer or representative or delivered to the premises, or forwarded to him or to the party at the office or residence address by registered mail. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office, the address of which is set forth on the first page of this Agreement, as their respective offices where notices and requests may be served.

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

**SECTION 25. General**

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

(1) If the Lessee is a corporation, its obligation shall be performed by it and its rights shall be exercised only by its officers and employees or

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

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

(4) None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons firms or corporations doing business with it or using or on or at the premises with its consent.

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

(c) Unless otherwise stated in Article IV on page 2 of this Agreement, the rights of user thereby granted to the Lessee with respect to the premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

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

(e) The Section headings in these Terms and Conditions and in the endorsements, if any, attached hereto are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(f) All payments required of the Lessee by this Agreement shall be made at the office of the Treasurer of the Port Authority, One World Trade Center, New York, New York 10048, or to such other officer or address as may be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly prorated.

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

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

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

#### SECTION 26. *Premises*

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

(b) The Port Authority shall not be liable to the Lessee, or to any person, for injury or death to any person or persons whomsoever, or damage to any property whatsoever at any time in the premises or elsewhere at the Facility, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, gas, steam, or electricity, whether the same may leak into, or fall, issue, or flow from any part of the Facility, or from any other place or quarter.

(c) If permission is given to the Lessee to enter into the possession of the premises or to occupy space other than the premises prior to the date specified in Article II as the commencement of the term of the letting, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the premises, the date of such possession shall be the date of commencement of the term hereunder.

#### SECTION 27. *Postponement*

If the Port Authority shall not give possession of the premises on the date fixed in Article II for the commencement of the term, by reason of the fact that the premises or any part thereof are in the course of construction,

repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the term shall in any wise affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any wise to extend the term beyond the date stated in Article II for expiration. However, the rent shall not commence until possession of the premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Article II for commencement of the term then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof.

**SECTION 28. *Force Majeure***

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors). Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption.

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

(c) No abatement, diminution or reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

**SECTION 29. *Brokerage***

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

**SECTION 30. *Non-liability of Individuals***

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

(a) The Port Authority agrees to grant (if requested so to do by the Lessee), to suppliers of water, gas, electricity and telephone service operating in the vicinity a right of way or rights of way under the Facility from the streets outside of the Facility to the premises for the sole purpose of supplying such service or services to the Lessee. No such right of way shall include the right to use any system, equipment or portion thereof constructed or owned by or leased to the Port Authority.

(b) The Lessee shall promptly pay all water bills covering its own consumption. Such payment shall include any factor which may have been included by the appropriate governmental authority as a sewer-rent or other charge for the use of a sewer system. In the event that any such water bill shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments at any time so made shall constitute an additional item of rental, payable to the Port Authority upon demand. Where sewage is contained in tanks periodically cleaned by a contractor paid by the Port Authority the Lessee shall pay such portion of the contract 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.

Standard Endorsement No. L 5.1

Services

All Facilities

10/6/75

(a) As used in this Agreement:

(1) "Elizabeth-Port Authority Marine Terminal", "Elizabeth-Port Authority Piers", "Facility", or "marine terminal" shall mean the land and premises in the City of Elizabeth, in the County of Union and State of New Jersey, title to which was vested in the Port Authority by an Order Vesting Title in and Directing Delivery of Possession to The Port of New York Authority dated March 14, 1958, filed March 17, 1958 in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-7065-56, in the case of The Port of New York Authority, plaintiff, vs. Edward J. Grassmann, et al., defendants, the lands title to which was so conveyed having been described fully in the Second Amended Complaint filed in the said case on May 16, 1957, and lands contiguous or adjacent thereto within the County of Union which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes.

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

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

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

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

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

Standard Endorsement No. L 19:11 (2 pages)  
Elizabeth-Port Authority Marine Terminal  
Elizabeth-Port Authority Marine Terminal  
10/6/73

(e) Without in anywise limiting the obligations of the Lessee as elsewhere stated in this Agreement, the Lessee shall be liable to the Port Authority for all damage done to the Facility or to any part thereof or to any property of the Port Authority thereon through any act or omission of those in charge of or operating any vessels, steamers, barges, lighters, other floating equipment or any trucks, other vehicles or other transportation equipment, while any such is at, coming to, or leaving the premises.

(f) The Port Authority covenants and agrees that as long as it remains the owner of the premises, the Lessee, upon paying all rentals hereunder and performing all the covenants, conditions and provisions of this Agreement on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the premises free of any act or acts of the Port Authority except as expressly permitted in this Agreement.

(g) 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.

Standard Endorsement No. L 19.11 (2 pages)  
Elizabeth-Port Authority Marine Terminal  
Elizabeth-Port Authority Marine Terminal  
10/6/73

(a) The Lessee in its own name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, shall cover the operations of the Lessee under this Agreement, and shall be effective throughout the term of the letting.

**SCHEDULE**

<u>Policy</u>	<u>Minimum Limit</u>
(1) Commercial general liability insurance (to include contractual liability endorsement)	
(i) Bodily-injury liability: For injury or wrongful death to one person:	<u>\$10,000,000.00</u>
For injury or wrongful death to more than one person in any one occurrence:	<u>\$10,000,000.00</u>
(ii) Property-damage liability: For all damages arising out of injury to or destruction of property in any one occurrence:	<u>\$10,000,000.00</u>
(iii) Products liability:	<u>\$ _____</u>
(2) Automotive liability insurance:	
(i) Bodily-injury liability For injury or wrongful death to one person:	<u>\$2,000,000.00</u>
For injury or wrongful death to more than one person in any one occurrence:	<u>\$2,000,000.00</u>
(ii) Property-damage liability: For all damages arising out of injury to or destruction of property in any one occurrence:	<u>\$2,000,000.00</u>
(3) Plate and mirror glass insurance, covering all plate and mirror glass in the premises, and the lettering, signs, or decorations, if any, on such plate and mirror glass:	<u>\$ _____</u>
(4) Boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	<u>\$ _____</u>
(5) "Additional Interest" policy of boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	<u>\$ _____</u>
(6) Garagekeepers' legal liability:	<u>\$ _____</u>

STANDARD ENDORSEMENT NO. L21.1 (2 pages)  
**INSURANCE**  
 All Facilities  
 3/25/82

(b) The Port Authority shall be named as an additional insured in any policy of liability insurance required by this Endorsement, unless the Port Authority shall, at any time during the term of the letting under this Agreement, direct otherwise in writing, in which case the Lessee shall cause the Port Authority not to be so named.

(c) In any policy of insurance on property other than that of the Lessee required by this Endorsement, the Port Authority shall be named as the owner except that as to property as to which the Port Authority is itself a lessee, the Port Authority shall be named as the lessee and the owner shall be named as the owner. Each shall be endorsed substantially as follows:

"Loss, if any, under this policy, as to the interest of the owner and as to the interest of the Port Authority of New York and New Jersey, shall be adjusted solely with the Port Authority and all proceeds under this policy shall be paid solely to the Port Authority."

(d) Any "Additional Interest" policy of boiler and machinery insurance required by this Endorsement shall provide protection under Sections 1 and 2 only of the Insuring Agreements of the form of policy approved for use as of the date hereof by the Insurance Rating Board, New York, New York.

(e) As to any insurance required by this Endorsement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority within ten (10) days after the execution of this Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the term of the letting under this Agreement, as the same may be from time to time extended. If at any time any of the policies shall be or become unsatisfactory to the Port Authority as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

(f) Each policy of insurance required by this Endorsement shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

STANDARD ENDORSEMENT NO. L21.1 (2 pages)  
INSURANCE  
All Facilities  
3/25/82

(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 \$1.79\*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of \$1.79\*

(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.

\* for the period commencing on September 1, 2001 and continuing through August 31, 2003, the rate thereafter to be adjusted during the term of the letting proportionately to the adjustment in basic rental in accordance with the provisions of Special Endorsement No. 3 hereto.

Standard Endorsement No. L27.4

Abatement:

All Marine Terminals

10/6/68

## SPECIAL ENDORSEMENTS

1. The Lessee shall use the premises for the following purposes only, and for no other purpose whatsoever: (a) the receipt, handling, and storage predominately of cargo housed in containers; and also of non-containerized cargo, transported or to be transported by seagoing vessels permitted to be berthed in the "Berthing Area" (as such term is defined in Section 1(a) of Lease No. EP-249 between the parties and dated as of October 1, 2000 and hereinafter called "the Terminal Lease"), and the storage of ships' stores, supplies and gear on or from such seagoing vessels and other craft permitted to be berthed in the Berthing Area; (b) the parking of motor vehicles and of trailers and semi-trailers owned or operated by the Lessee or by the employees of the Lessee or by persons doing business with it at the Facility for the purposes set forth in this Special Endorsement; (c) the storage and repair of cargo containers, chassis, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of the Lessee under this Agreement and the Terminal Agreement; and (d) such office space (with related automobile parking) incidental to and necessary for the foregoing operations of the Lessee.

2. The Lessee shall pay to the Port Authority an annual rental (hereinafter called "the basic rental") during the period from September 1, 2001 through August 31, 2015 at the rate of Two Million Four Hundred Three Thousand Eight Hundred Ten Dollars and Sixty-nine Cents (\$2,403,810.69) per annum, payable in advance in equal monthly installments of Two Hundred Thousand Three Hundred Seventeen Dollars and Fifty-six Cents (\$200,317.56) on September 1, 2001 and on the first day of each calendar month thereafter during such period. The basic rental set forth in this Special Endorsement shall be adjusted during the term of the letting in accordance with the provisions of Special Endorsement No. 3 to this Agreement.

3. (a) As used in paragraph (b) of this Special Endorsement:

(1) "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.

(2) "Base Period" shall mean the calendar month of August, 2001.

(3) "Adjustment Period" shall mean, as the context requires, the calendar month of August, 2003 and the calendar month of August in each calendar year which thereafter occurs alternately during the term of the letting under this Agreement.

## SPECIAL ENDORSEMENTS

(4) "Anniversary Date" shall mean, as the context requires, September 1, 2003 and each anniversary of such date which thereafter occurs alternately during the term of the letting under this Agreement.

(5) "Percentage Increase" shall mean the percentage of increase in the Index on each Anniversary Date equal to a fraction the numerator of which shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period and the denominator of which shall be the Index for the Base Period.

(b) 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 under this Agreement, as the case may be, both dates inclusive, in lieu of the basic rental set forth in Special Endorsement No. 2 hereto the Lessee shall pay a basic rental at a rate per annum equal to the greater of:

(1) the sum obtained by adding to the basic rental set forth in Special Endorsement No. 2 hereto the product obtained by multiplying such basic rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date, or

(2) the basic rental payable immediately prior to such Anniversary Date including all amounts included therein as a result of prior adjustments thereof pursuant to the provisions of this paragraph, or

(3) the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule A" opposite the respective Anniversary Date.

Notwithstanding any other provision of this Agreement, the basic annual rental that shall be payable pursuant to Special Endorsement No. 2 hereto and this Special Endorsement commencing with each Anniversary Date and continuing through to the day preceding the following Anniversary Date, or the expiration date of the term of the letting under this Agreement, as the case may be, both dates inclusive, shall in no event exceed the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule B" opposite the respective Anniversary Date. For example, if the Percentage Increase for the calendar month of August, 2003 is shown to be five percent (5%) then the basic annual rental payable under Special

### SPECIAL ENDORSEMENTS

Endorsement No. 2 hereto and this Special Endorsement for the two-year period commencing September 1, 2003 shall be \$2,403,810.69 plus five percent (5%) thereof or \$2,524,001.22, but if (1) said increase is shown to be three percent (3%) then the basic annual rental for that two-year period shall be \$2,500,924.64, and if (2) said increase is shown to be ten percent (10%) then the basic annual rental for that two-year period shall be \$2,599,961.64.

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

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

If any adjustment of basic rental referred to in paragraph (b) of this Special Endorsement is effective on a day other than the first day of a calendar month, there shall be

## SPECIAL ENDORSEMENTS

payable in advance on the effective date of rental adjustment an installment of basic rental equal to 1/12th of the increment of annual basic rental as adjusted multiplied by a fraction, the numerator of which shall be the number of days from the effective date of the rental adjustment to the end of the calendar month in which the rental adjustment was effective and the denominator of which shall be the number of days in that calendar month.

4. 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.

5. (a) The policy of commercial general liability insurance required by Standard Endorsement No. L21.1 to this Agreement (i) shall include a contractual liability endorsement covering the Lessee's indemnity obligations under this Agreement; (ii) without limiting any other provision of the Agreement, shall include the Port Authority as an additional insured for purposes of both premises operations and completed-operations; (iii) shall not exclude claims arising out of or in connection with operations conducted within fifty feet of railroad property; and (iv) shall include coverage for the Lessee's liability for physical loss or damage to cargo in the Lessee's care, custody or control. If the Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage. The policy of automobile liability insurance required by said Standard Endorsement No. L21.1 shall cover all owned, non-owned and hired vehicles. (b) In addition to the policies of insurance required under said Standard Endorsement No. L21.1, the Lessee in its own name as assured shall secure and pay the premium or premiums for a policy of Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of \$5,000,000.00. (c) Each policy of insurance required by said Standard Endorsement No. L21.1 and the policies of Protection and Indemnity Insurance and of Environmental Liability Insurance shall contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

## SPECIAL ENDORSEMENTS

6. Notwithstanding anything contained in Special Endorsement No. 5 to this Agreement or in Standard Endorsement No. L21.1 annexed to this Agreement, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the limits set forth in said Special Endorsement No. 5 or said Standard Endorsement No. L21.1 to commercially reasonable amounts and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority.

7. The Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the term of the letting under this Agreement:

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

(2) Unless otherwise directed by the Port Authority, the property damage insurance policy required by this Special Endorsement shall name the Port Authority and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide that loss,

## SPECIAL ENDORSEMENTS

if any, shall be adjusted with and payable to the Port Authority. As to any insurance required by this Special Endorsement, a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority simultaneously with the delivery of an executed copy of this Agreement by the Lessee. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective term hereof. If at any time the policy required by this Special Endorsement shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

The proceeds of insurance from coverages secured in accordance with this Special Endorsement shall be made available to the Lessee and shall be applied by the Lessee strictly and solely to the repair, replacement, or rebuilding of the premises as elsewhere provided in this Agreement.

8. The Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the Standard Form of "All Risk" insurance policy insuring the full replacement value of all of the Lessee's trade fixtures, equipment and other personal property. The Port Authority shall not be liable to the Lessee for loss or damage caused by any risk covered by said policy of insurance. Said policy of insurance shall be subject to the provisions of paragraph (e) of Standard Endorsement No. L21.1 to this Agreement, and shall contain an endorsement waiving any rights of subrogation of the insurer against the Port Authority.

9. The Lessee acknowledges that the premises are located on a former landfill facility and that hazardous wastes

## SPECIAL ENDORSEMENTS

and substances, including but not limited to polychlorinated biphenyl contaminated waste oil, have been located at the premises (which hazardous wastes and substances are hereinafter called "the Existing Wastes"). The Lessee agrees that in its use and occupancy of and in the conduct of its operations at the premises: (a) the Lessee shall make every effort not to conduct or allow any activity that causes or results in any penetration, breakage, cracking or other damage to the paved surface of the premises, and in the event that any said damage shall occur to said paved surface, the Lessee shall repair or replace the same with extreme promptness; (b) except as set forth in the immediately succeeding sentence of this paragraph, the Lessee shall in no event engage in or allow any removal, excavation or disruption of the landfill or soil at the premises; and (c) the Lessee shall make every effort not to conduct or allow any other activity that causes or results in any exacerbation of the condition of the premises with respect to the Existing Wastes. The Lessee shall be permitted to remove, excavate or disrupt the landfill or soil at the premises solely on the following conditions (which removal, excavation and/or disruption is hereinafter called "the Excavation Work"): (aa) the Lessee shall obtain the consent of the Port Authority for the performance of any of the Excavation Work, and the performance of the Excavation Work shall be subject to the terms and conditions of the Lease and an approved Construction Application which the Lessee shall prepare and submit to the Port Authority and to such further procedures, requirements and directions as the Port Authority shall determine; (bb) the Lessee shall obtain any required approval of any governmental entity, including without limitation the New Jersey Department of Environmental Protection, having jurisdiction over the performance of the Excavation Work and shall perform the Excavation Work in accordance with any laws, rules, regulations, requirements, orders or directives of any such governmental entity or entities; and (cc) the Lessee shall pay all of the costs and expenses of, arising out of, or resulting from, the performance of the Excavation Work, including without limitation all costs of the disposal of any soil and of obtaining any governmental permits or other governmental authorizations applicable to the performance the Excavation Work. Without limiting the generality of any provisions of this Agreement, and subject to the provisions of Special Endorsement No. 11 hereto, the Lessee shall maintain and repair the paved surface of the premises in accordance with any laws, rules, regulations, requirements, orders or directives of any governmental entity, including without limitation the New Jersey Department of Environmental Protection, that may at any time apply to said paved surface during the term of the letting.

## SPECIAL ENDORSEMENTS

10. Without limiting the generality of any provisions of this Agreement, including without limitation the provisions of Section 13 of the Terms and Conditions hereof, the Port Authority, by its officers, employees, agents, representatives and contractors, shall have the right at any time and from time to time during the term of the letting to enter upon the premises for the purpose of conducting environmental testing and/or environmental remediation. Said environmental testing may include, without limitation, soil borings, the establishing and maintenance of wells for the testing or monitoring of groundwater, and the gathering and removal of soil or groundwater from the premises. The Lessee shall make available such portion or portions of the premises for such period or periods that the Port Authority shall determine to be necessary for the performance of said environmental testing and/or environmental remediation, and the Lessee shall not damage or disrupt or allow any damage to or disruption of any wells, equipment or other devices employed in said environmental testing, and further the Lessee shall conduct its operations on the premises in such a way so as not to interfere with the performance of any of said environmental testing or environmental remediation. All of the rights of the Port Authority under this paragraph may be made available to any third party designated by the Port Authority acting in its sole discretion. Without limiting the generality of any provisions of this Agreement, including without limitation the provisions of Section 13(g) of the Terms and Conditions hereof, 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.

11. Without limiting the generality of any provisions of this Agreement, the Lessee shall not dispose of, release or discharge, nor permit anyone to dispose of, release or discharge any hazardous waste or substance on or from the premises or at the Facility. Any hazardous waste or substance disposed of, released or discharged by the Lessee or permitted by the Lessee to be disposed of, released or discharged on or from the premises or at the Facility shall, upon notice by the Port Authority to the Lessee and subject to the provisions of Section 11 of the Terms and Conditions hereof, be completely removed and/or remediated by the Lessee. Further, the Lessee undertakes and agrees that it shall be obligated to comply with the requirements of all environmental laws, rules, regulations, requirements, orders and directives of any governmental entity which may pertain or apply to its operations or to its use and occupancy of the premises under this Agreement. The obligations of the Lessee

## SPECIAL ENDORSEMENTS

pursuant to this Special Endorsement shall survive the expiration or termination of this Agreement.

12. The provisions of Sections 2, 4, 6, 7, and 19(b) (2) of the Terms and Conditions of this Agreement and of Special Endorsement No. 11 to this Agreement shall not apply to the Existing Wastes; provided, however, that the provisions of said Sections and Special Endorsement shall apply to the Existing Wastes in the event that any disposal of, release or discharge of the Existing Wastes or any portion thereof on or from the premises or at the Facility is caused by or results from the acts or omissions of the Lessee or of others on the premises or at the Facility with its consent; and further provided, that, the provisions of said Sections and Special Endorsement shall apply to the Existing Wastes to the extent that the presence of the Existing Wastes does not impose any additional cost or expense upon the Lessee with respect to its compliance with the provisions of said Sections or Special Endorsement.

13. The Port Authority shall have the right to temporarily terminate the letting of portions of the premises under this Agreement up to a total of six (6) acres at any one time, without cause, at any time and from time to time during "the Port Redevelopment Period", as such term is hereinafter defined, upon thirty (30) days' written notice to the Lessee (each of which portion of the terminated premises is hereinafter individually called "the Temporarily Surrendered Space"). The aforesaid notice shall designate the exact size, location and configuration of the Temporarily Surrendered Space and the effective date of the termination. Termination under the provisions of this Special Endorsement shall have the same effect as if the effective date of termination stated in the aforesaid notice were the date of expiration of the term of the letting of the Temporarily Surrendered Space under this Agreement. The Lessee shall provide to the Port Authority and/or any designee of the Port Authority a fully adequate right of entry through the premises under this Agreement for the purpose of ingress and egress at all times between the Temporarily Surrendered Space and such pedestrian or vehicular ways used in common with others having rights of passage within the Facility and providing access to the premises as the Port Authority shall determine from time to time acting in its sole discretion. The Temporarily Surrendered Space shall be returned to the leasehold on or before the end of "the Port Redevelopment Period", upon thirty (30) days' written notice from the Port Authority to the Lessee, and upon the effective date stated in said notice the Temporarily Surrendered Space shall be and become part of the premises under this Agreement, subject to and in accordance with all the terms, provisions, covenants and conditions hereof, including without

## SPECIAL ENDORSEMENTS

limitation the escalated basic rental as provided for in Special Endorsement No. 3 hereto. Without limiting the generality of any provision of this Agreement, the Lessee shall be entitled to an abatement of the basic rental payable under the provisions of Special Endorsements No. 2 and No. 3 hereto for the period from the effective date of the termination of the Temporarily Surrendered Space to the effective date of its return to the leasehold as set forth in the immediately preceding sentence, with said abatement to be computed in accordance with the provisions of Standard Endorsement No. L27.4 hereto. For purposes of this Agreement, "the Port Redevelopment Period" shall mean the period commencing on September 1, 2001 and ending on December 31, 2007; provided, however, that any notice of termination under this Special Endorsement may be given by the Port Authority to the Lessee on or before August 2, 2001, such that the premises under this Agreement on the commencement of the term of the letting on September 1, 2001 may be reduced by up to six (6) acres in accordance with the provisions of this Special Endorsement.

14. (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, 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 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 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

## SPECIAL ENDORSEMENTS

time to time. The Lessee throughout the Term 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 paragraph shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(c) "Minority" as used herein 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) 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 Special Endorsement 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.

15. The Lessee shall have the right to install, maintain and operate or permit the installation, maintenance and

## SPECIAL ENDORSEMENTS

operation on the premises of vending machines or devices designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, and shall also have the right to install, maintain and operate or permit the installation, maintenance and operation on the premises of a small kitchen, for the benefit of officers and employees of the Lessee and their families and business guests of such officers and employees, and which machines and kitchen shall be operated at no profit to the Lessee and shall be installed, maintained and/or operated either directly by the Lessee or by an independent contractor(s) of the Lessee who has/have received a permit or permits from the Port Authority so to do; provided, however, that in the event any operation permitted under this Special Endorsement violates health regulations and upon notice of termination of such operation from the Port Authority, the Lessee or the independent contractor(s), as the case may be, shall immediately cease such operation as specified in said notice. The Lessee agrees that the aforesaid installation(s) shall be performed subject to the terms and conditions of the Lease and an approved Construction Application which the Lessee shall prepare and submit to the Port Authority.

16. If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Special Endorsement, with respect to such unpaid amount.

## SPECIAL ENDORSEMENTS

Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Special Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 16 of the Terms and Conditions of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Special Endorsement shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

17. Prior to the execution of this Agreement by either party hereto, the following changes were made in the Terms and Conditions of this Agreement:

(a) The phrase "or (iii) to cancel this Agreement and terminate the letting as to the entire premises;" appearing in the fifth and sixth lines of paragraph (a) (2) of Section 8 thereof was deleted therefrom.

(b) The following clause was inserted following the word "conveyance" appearing in the sixth line of Section 10 thereof:

", except for the possible claim to an award for trade fixtures installed by the Lessee and/or an award for moving expenses if (i) such claim is then allowed by law and (ii) such award is made separate and apart from the award made or to be made to the Port Authority in such proceeding and any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority;"

(c) The following clause was inserted following the word "premises" appearing as the last word in the last line of paragraph (c) of Section 14 thereof:

"(except to the extent required for the placement of lights and utilities, the placement and operation of equipment (excluding container cranes) on the premises and the movement and storage of containers, chassis and other cargo). If any construction or

SPECIAL ENDORSEMENTS

installation is performed under this Agreement or on the premises hereunder, the height thereof above ground shall be as determined solely by the Port Authority."

(d) Paragraphs (a) and (b) of Section 15 thereof were deleted therefrom and the following paragraphs were inserted in lieu thereof:

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

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

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

(d) The Lessee shall not fuel or defuel its automotive vehicles or other equipment in the enclosed portions of the premises without the prior approval of the Manager of the Facility.

(e) The Lessee shall not keep or store in the premises, explosives, inflammable liquids or solids or oxidized materials or use any cleaning materials having a harmful or corrosive effect on any part of the premises.

SPECIAL ENDORSEMENTS

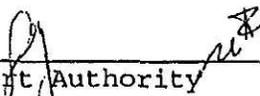
(f) The Lessee shall not use or permit the use of any truss or structural supporting member of the building or roof or any part thereof for the storage of any material or equipment, or to hoist, lift, move or support any material or equipment or other weight or load, by means of said trusses or structural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

(g) The Lessee shall not fuel or defuel equipment in the enclosed portions of the premises without prior approval of the Manager of the Facility."

(e) The phrase "as at the commencement of the letting, reasonable wear arising from use of the premises to the extent permitted elsewhere in this Agreement, excepted" following the word "condition" appearing in the third line of paragraph (a) of Section 22 thereof was deleted and the following phrase was inserted in lieu thereof:

"required by the provisions of Section 7(b) hereof regarding the condition of the premises at the expiration or termination of the letting hereunder"

Initialed:

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

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

**SCHEDULE A**

September 1, 2003	2,500,924.64
September 1, 2005	2,601,962.00
September 1, 2007	2,707,081.26
September 1, 2009	2,816,447.35
September 1, 2011	2,930,231.82
September 1, 2013	3,048,613.18

SCHEDULE B

September 1, 2003	2,599,961.64
September 1, 2005	2,812,118.51
September 1, 2007	3,041,587.38
September 1, 2009	3,289,780.91
September 1, 2011	3,558,227.04
September 1, 2013	3,848,578.36

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of April 19, 2007, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and MAHER TERMINALS LLC,

WITNESSETH, That:

WHEREAS, heretofore and as of September 1, 2001, the Port Authority and Maher Terminals, Inc. entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union and State of New Jersey; and

WHEREAS, heretofore and on or about December 31, 2006, Maher Terminals, Inc. was merged into a corporation of the same name and such corporation was converted into a limited liability company (hereinafter called "the Lessee"); and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

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

1. (a) Effective as of 11:59 o'clock P.M. on the "Surrender Date" (as such term is defined in subparagraph (h) of this paragraph), the Lessee has granted, bargained, sold, surrendered and yielded up and does by these presents grant, bargain, sell, surrender and yield up to the Port Authority, its successors and assigns, forever, that part of the premises let to the Lessee constituting the "Surrendered Area" (as such term is defined in subparagraph (f) of this paragraph), and the term of years with respect thereto under the Lease as herein amended yet to come and has given, granted and surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by the Lease as herein amended with respect to the Surrendered Area all to the intent and purpose that the said term under the Lease as herein amended and the said rights, rights of renewal, licenses, privileges and options may be wholly merged, extinguished and

determined on the Surrender Date with the same force and effect as if the said term were in and by the provisions of the Lease as herein amended originally fixed to expire on such date; to have and to hold the same unto the Port Authority, its successors and assigns forever.

(b) The Lessee hereby covenants on behalf of itself, its successors and assigns that (i) it has not done or suffered and will not do or suffer anything whereby the Surrendered Area, or the Lessee's leasehold therein, has been or shall be encumbered, as of the Surrender Date in any way whatsoever; (ii) the Lessee is and will remain until the Surrender Date the sole and absolute owner of the leasehold estate in the Surrendered Area and of the rights, rights of renewal, licenses, privileges and options granted by the Lease as herein amended with respect thereto and that the same are and will remain until the Surrender Date free and clear of all liens and encumbrances of whatsoever nature; and (iii) the Lessee has full right and power to make this Agreement.

(c) All promises, covenants, agreements and obligations of the Lessee with respect to the Surrendered Area under the Lease as herein amended or otherwise which under the provisions thereof would have matured upon the date originally fixed in the Lease as herein amended for the expiration of the term thereof, or upon the termination of the Lease as herein amended prior to the said date, or within a stated period after expiration or termination, shall, notwithstanding such provisions, mature upon the Surrender Date and shall survive the partial surrender provided for in this paragraph.

(d) The Lessee has released and discharged and does by these presents release and discharge the Port Authority from any and all obligations on the part of the Port Authority to be performed under the Lease as herein amended with respect to the Surrendered Area for that portion of the term subsequent to the Surrender Date. The Port Authority does by these presents release and discharge the Lessee from any and all obligations on the part of the Lessee to be performed under the Lease as herein amended with respect to the Surrendered Area for that portion of the term subsequent to the Surrender Date; it being understood that nothing herein contained shall release, relieve or discharge the Lessee from any liability for rentals or for other charges that may be due or become due to the Port Authority for any period or periods prior to the Surrender Date, or for breach of any other obligation on the Lessee's part to be performed under the Lease as herein amended for or during such period or periods or maturing pursuant to subparagraph (c) of this paragraph.

(e) In consideration of the making of this Agreement by the Port Authority, the Lessee hereby agrees to terminate its occupancy of the Surrendered Area and to deliver actual physical possession of the same to the Port Authority on or before the Surrender Date in the condition required by the Lease as herein amended upon surrender. The Lessee further agrees that it will remove from the Surrendered Area 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 Surrender Date, 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.

(f) The term "Surrendered Area" shall mean all or a part of the premises shown in diagonal crosshatching and designated as "Area of Partial Surrender (permanent)" on the sketch attached hereto, hereby made a part hereof and marked "Exhibit PS-1". The determination of whether the Surrendered Area shall constitute all of such area or part of it, and in the latter case the size, location and configuration thereof, shall be made by the Port Authority acting in its sole discretion. The Port Authority shall provide the Lessee with written notice prior to the Surrender Date of the Port Authority's determination of the Surrendered Area and if the Surrendered Area is less than all of the space designated as Area of Partial Surrender (permanent) on Exhibit PS-1 annexed hereto, the Port Authority and the Lessee shall enter into an agreement supplementary to the Lease as herein amended containing a space exhibit showing the Surrendered Area.

(g) The Port Authority and the Lessee agree that from and after the Surrender Date, the basic rental payable under the Lease shall be abated at the annual rate equal to the product obtained by multiplying (1) the number of square feet constituting the Surrendered Area by (2) the abatement rate applicable thereto from time to time under Special Endorsement No. L27.4 annexed to the Lease.

(h) The term "Surrender Date" shall mean the date set forth in written notice given by the Port Authority to the

Lessee as the date that the Surrendered Area is required in connection with the performance of work on the ExpressRail Elizabeth second lead track and/or the Bay Avenue relocation project (hereinafter called "the Rail Work").

2. (a) The Lessee hereby grants to the Port Authority, its employees, agents, representatives, contractors, subcontractors and designees a right of entry and exclusive occupancy and possession of all or a portion of that part of the premises let to the Lessee constituting "the Temporarily Surrendered Area" (as such term is defined in subparagraph (b) of this paragraph) for its use by the Port Authority in connection with the performance of the Rail Work (which right of entry and exclusive occupancy and possession of said portion of the premises is hereinafter called "the Temporary Surrender"). The Temporary Surrender shall commence on "the Temporary Surrender Date" (as such term is defined in subparagraph (c) of this paragraph) and shall terminate on the date set forth in written notice given by the Port Authority to the Lessee as the date that the Temporarily Surrendered Area is no longer of use in connection with the performance of the Rail Work (which date, as so determined, is hereinafter called "the Exit Date"). The Lessee shall be entitled to an abatement of the basic rental payable under the Lease at the annual rate equal to the product obtained by multiplying (1) the number of square feet constituting the Temporarily Surrendered Area by (2) the abatement rate applicable thereto from time to time under Special Endorsement No. L27.4 annexed to the Lease commencing on the Temporary Surrender Date and continuing through the Exit Date, except that if the Temporary Surrender Date shall be a day other than the first day of a calendar month then the monthly abatement amount allowable for the month in which the Temporary Surrender Date shall occur shall be prorated based on the number of days from the Temporary Surrender Date through the last day of the month in which the Temporary Surrender Date shall occur, and if the Exit Date shall be a day other than the last day of a calendar month then the monthly abatement amount allowable for the month in which the Exit Date shall occur shall be prorated based on the number of days from the first day of the month in which the Exit Date shall occur through the Exit Date. Nothing contained in this agreement shall or shall be deemed to create any obligation on the part of the Port Authority to perform any or all of the Rail Work.

(b) The term "Temporarily Surrendered Area" shall mean all or a part of the premises shown in diagonal hatching and designated as "Areas of temporary Partial Surrender" on Exhibit PS-1 annexed hereto. The determination of whether the Temporarily Surrendered Area shall constitute all of such area or part of it, and in the latter case the size, location and

configuration thereof, shall be made by the Port Authority acting in its sole discretion. The Port Authority shall provide the Lessee with written notice prior to the Temporary Surrender Date of the Port Authority's determination of the Temporarily Surrendered Area and if the Temporarily Surrendered Area is less than all of the space designated as Areas of temporary Partial Surrender on Exhibit PS-1 annexed hereto, the Port Authority and the Lessee shall enter into an agreement supplementary to the Lease as herein amended containing a space exhibit showing the Temporarily Surrendered Area.

(c) The term "Temporary Surrender Date" shall mean the date set forth in written notice given by the Port Authority to the Lessee as the date that the Temporarily Surrendered Area is required in connection with the performance of the Rail Work.

(d) During the period of the Temporary Surrender, the Temporarily Surrendered Area shall be and be deemed to be removed from the premises under the Lease as herein amended, and the Lessee shall not have the obligations set forth in the Lease as herein amended with respect to the Temporarily Surrendered Area during the period of the Temporary Surrender including, without limitation, responsibility for the activities thereon by the Port Authority or by third parties. Nothing set forth in the immediately preceding sentence shall limit in any way the rights of the Port Authority under law with respect to the Lessee apart from such rights as shall arise directly from the Lease as herein amended.

(e) During the period of the Temporary Surrender, the Port Authority shall install and maintain such fencing and/or other devices to secure the boundaries of the Temporarily Surrendered Area and the remainder of the premises as shall be reasonably required for the safety of persons and property at the premises.

3. In addition to the rights granted to the Port Authority under paragraphs 1 and 2 of this Agreement, the Port Authority shall perform such work in the Temporarily Surrendered Area as it shall determine in its sole discretion for the purpose of relocating the entry area to the premises in connection with the Rail Work (which relocation work is hereinafter called "the Entry Relocation Work"). The Entry Relocation Work shall be performed by the Port Authority in substantial conformity with the nine (9) pages of the Port Authority's plans attached hereto and hereby made a part hereof, entitled "EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE", dated 11/13/2006, and bearing the following drawing numbers: S003, T012, T013, C017, C018, C033, C034, C055 and C056.

4. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect.

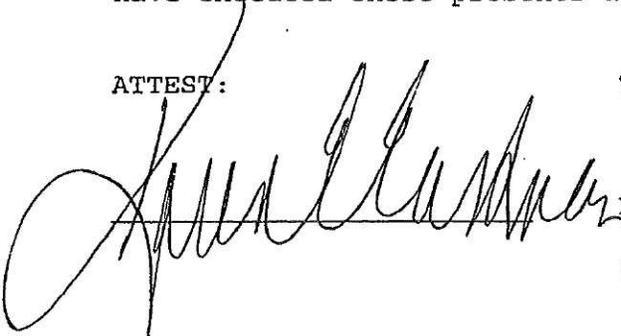
5. The Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from all claims for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

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

7. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Agreement.

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

ATTEST:



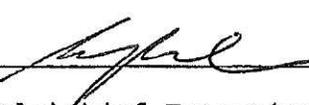
THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

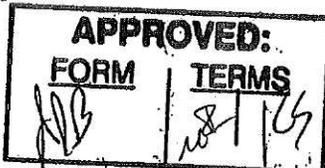
BY   
RICHARD M. LARRABEE  
(Title) DIRECTOR, PORT COMMERCE DEPT.  
(Seal)

WITNESS:

MAHER TERMINALS LLC

  
Secretary ✓

By   
(Title) Chief Executive Officer ✓

**APPROVED:**  
FORM | TERMS  


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

On the 15<sup>th</sup> day of October in the year 2007,  
before me, the undersigned, a Notary Public in and for said state,  
personally appeared RICHARD M. LARRABEE, personally  
known to me or proved to me on the basis of satisfactory evidence to be  
the individual(s) whose name(s) is (are) subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in  
his/her/their capacity(ies), and that by his/her/their signature(s) on  
the instrument, the individual(s), or the person upon behalf of which  
the individual(s) acted, executed the instrument.

Lucy Ambrosino  
(notarial seal and stamp)

LUCY AMBROSINO  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01AM6101070  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES NOV. 3, 2008

STATE OF New Jersey )  
 ) ss. /  
COUNTY OF Union ) /

On the 11<sup>th</sup> day of September in the year 2007,  
before me, the undersigned, a Notary Public in and for said state,  
personally appeared Basil Nahal + Scott Schley, personally  
known to me or proved to me on the basis of satisfactory evidence to be  
the individual(s) whose name(s) is (are) subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in  
his/her/their capacity(ies), and that by his/her/their signature(s) on  
the instrument, the individual(s), or the person upon behalf of which  
the individual(s) acted, executed the instrument.

Virginia S. Kochan  
(notarial seal and stamp) //

VIRGINIA S. KOCHAN  
Notary Public, State of New Jersey  
Registered in Union County  
My Commission Expires Aug. 12, 2011