

MOLOD SPITZ & DeSANTIS, P.C.

ATTORNEYS AT LAW
1430 BROADWAY, 21ST FLOOR, NEW YORK, NY 10018
PHONE (212) 869-3200 FAX (212) 869-4242
dowens@molodspitz.com
www.molodspitz.com

NEW JERSEY OFFICE*
35 JOURNAL SQUARE, SUITE 1005
JERSEY CITY, NJ 07306
(201) 795-5400

*REPLY TO NEW YORK OFFICE

FREEDOM OF INFORMATION REQUEST

August 19, 2016

Attn: FOIL Unit
Port Authority of New York and New Jersey
4 World Trade Center, 18th Floor
150 Greenwich Street
New York, NY 10006

Re:

Our Client: Kelly A. Niland
Date of Accident: 6/29/216
Time of Accident: Approx. 6AM
Location: New York Container Terminal Howland Hook near the old boat Launch, approximately 50 yards into the brush – Mariner’s Harbor
Facility: Goethals Bridge
Our File No.: 4885 SJD

TO WHOM IT MAY CONCERN:

This office represents Kelly A. Niland, a wild life specialist, who while working with the USDA in the apprehension of Canadian Geese for the Newark Airport Paths, was attempting to round up geese that were in the area, when she was caused to slip and fall on a piece of hidden rebar impaling her right upper thigh.

A copy of the Port Authority of NY & NY’s Patron Accident report (case number 165-27) is enclosed for reference. It is noted that the NYPD ESU, PAPD ESU, RUMC EMS and FDNY L86 were at the scene.

Please provide our office with all documentation in the Port Authority’s possession in regard to the following F.O.I.A. requests:

FOIA Requests:

- All Notices of Claims received by the Port Authority and its subsidiaries between January 1, 2015 to and including August 19, 2016 for claims arising out of all accidents/incidents/occurrences at the New York Container Terminal, GCT New York, Mariner's Harbor, Staten, Island, NY.
- All accident/incident reports , including any DVDs, CDs, digital imaging, recordings, photographs, measurements, investigation notes or interviews related to the above referenced accident.
- Copies of all pictures, tapes, reports, surveys, proceedings, proposal, minutes of meetings, discussions, engineering sketches and similar material relating to Ms. Niland's accident of June 29, 2016 .
- Copies of records of any EMT personnel, first responders, or any personnel who provided first aid for Kelly Niland on 6/29/16 as referred to in the annexed Patron Accident Report.
- Provide any citations issued by any agency relating to the condition of the Mariner's Marsh Harbor where Kelly Niland was injured.
- Copies of records related to who owns, operates, control, maintains and manages the Mariner's Marsh/Mariner's Harbor where Kelly Niland was injured.

This request is being made pursuant to the Freedom of Information Act "Freedom of Information Code" revised/effective January 1, 2015. Kindly forward the requested documentation and information as soon as possible. Your anticipated cooperation is greatly appreciated.

If you have any questions, please do not hesitate to contact the undersigned.

Thank you for your prompt attention to this matter.

Very truly yours,

MOLOD SPITZ & DeSANTIS, P.C.

By: 
DAVID B. OWENS

DBO/kjf
Enc.

Received on 8/23/16

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
PUBLIC RECORD ACCESS FORM

PRA #17286

Action by (print / type name):

Danny Ng

, Freedom of Information Administrator

Signature:



Date:

10/31/2016

On behalf of the Secretary of the Port Authority, as Records Access Officer and Custodian of Government Records of the Port Authority.

- The requested records are being made available.
- Any responsive records that may exist are currently in storage or archived, and a diligent search is being conducted. The Port Authority will respond by:
- A diligent search has been conducted, and no records responsive to your request have been located.
- The requested records that have been located are not being made available, as they are exempt from disclosure for the following specific reasons:

- Some requested records that have been located are being made available. The remainder are exempt from disclosure for the following specific reasons:

- The request does not reasonably describe or identify specific records; therefore, the Port Authority is unable to search for and locate responsive records. Please consider submitting a new request that describes or identifies the specific records requested with particularity and detail.

- Other:

Material responsive to your request can be found on the Port Authority's website at <http://corpinfo.panynj.gov/documents/17286-LPA/>. Paper copies of the available records are available upon request. Exemptions applied for personal privacy and security.

This form is promulgated by the Port Authority pursuant to the Port Authority Public Records Access Policy and is intended to be construed consistent with the New York Freedom of Information Law and the New Jersey Open Public Records Act. It is intended to facilitate requests for Port Authority public records and does not constitute legal advice.

(61085)

AGREEMENT

AMONG

THE CITY OF NEW YORK,
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
AND
UNITED STATES LINES, INC.

HOWLAND HOOK MARINE TERMINAL

DATED AS OF JUNE 11, 1985

"A TRUE COPY:

29

ASSIGNMENT OF LEASE
WITH AMENDMENTS

THIS AGREEMENT, made as of the date of June 11, 1985, by and among THE CITY OF NEW YORK (hereinafter called "the City"), a municipal corporation of the State of New York, having its principal office at the City Hall, in the Borough of Manhattan, in the City, County and State of New York, acting by and through its Commissioner of Ports and Terminals, (hereinafter called "the Commissioner"); 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 for the transaction of business at One World Trade Center in the Borough of Manhattan aforesaid; and UNITED STATES LINES, INC. (hereinafter called "the Assignor") a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 27 Commerce Drive, Cranford, New Jersey 07016;

WITNESSETH, THAT;

WHEREAS, by an agreement of lease made as of June 30, 1983, (hereinafter called "the 1983 Lease"), the City leased to the Assignor and the Assignor hired and took from the City land and improvements (hereinafter called "the Demised Premises") in the Borough of Staten Island, in the County of Richmond, in the City and State of New York, all as described in the 1983 Lease, for a term therein set forth, with rights to extend the letting; and

WHEREAS, the Assignor desires to assign to the Port Authority the 1983 Lease and all the interest, rights, obligations and liabilities of the Assignor thereunder; and

WHEREAS, the Port Authority acting under legislation relating to its marine terminal powers and obligations is willing to accept an assignment of the 1983 Lease on certain terms, provisions, covenants and conditions, all as set forth herein; and

WHEREAS, the City is willing to consent to such assignment on certain terms, provisions, covenants and conditions, all as set forth herein; and

WHEREAS, the Port Authority and the City desire to amend the 1983 Lease from and after the effective date of this Agreement, all as set forth herein; and

WHEREAS, this instrument of assignment and amendment (hereinafter called "this Agreement") has been approved by resolution of the Board of Estimate 1985 (CAL. NO.), a copy of which resolution is annexed to this

Agreement and made a part hereof as Schedule A; and

WHEREAS, execution of this Agreement on behalf of the Port Authority has been authorized by resolution of the Board of Commissioners of the Port Authority, a copy of which resolution is annexed to this Agreement and made a part hereof as Schedule B; and

WHEREAS, execution of this Agreement on behalf of United States Lines, Inc. has been authorized by a resolution of the Board of Directors of that corporation, a copy of which resolution is annexed to this Agreement and made a part hereof as Schedule C;

NOW, THEREFORE, for and in consideration of the foregoing and of the covenants and mutual agreements herein contained, the City, the Port Authority and the Assignor hereby agree as follows:

ARTICLE FIRST - ASSIGNMENT

A. The Assignor does hereby assign, transfer and set over to the Port Authority, its successors and assigns, to its and their own proper use and benefit, the 1983 Lease and the letting thereunder of the Demised Premises (hereinafter sometimes called "the Terminal") to have and to hold the same unto the Port Authority, its successors and assigns from the effective date of this Agreement as determined in accordance with Article FOURTH hereof, for and during all the rest, residue and remainder of the term of the letting under the 1983 Lease, subject nevertheless to all the terms, provisions, covenants and conditions therein contained, as amended by this Agreement.

B. The City hereby consents to the foregoing assignment. Notwithstanding anything herein to the contrary, the granting of such consent by the City shall not be, or be deemed to operate as, a waiver of the requirement for consent (or consents) to each and every subsequent assignment.

C. The Assignor agrees that this assignment of the 1983 Lease and this consent of the City thereto shall not in any way whatsoever affect or impair the liability of the Assignor to perform all the terms, provisions, covenants and conditions of the 1983 Lease, including without limitation thereto the obligation to pay rent, on the part of the tenant thereunder to be performed, and that the Assignor shall continue fully liable for the performance of all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, on the part of the tenant thereunder to be performed, maturing on or prior to the effective date of this Agreement.

D. As of the effective date of this Agreement determined as set forth in Article FOURTH hereof, the Port Authority hereby accepts the assignment of the 1983 Lease as amended by this Agreement, and from and after that date shall

assume all the rights and perform all the obligations of the Lessee under the 1983 Lease as hereby assigned and amended, and shall operate the Demised Premises as a marine terminal.

E. The City and the Assignor hereby represent to the Port Authority that the 1983 Lease has not been amended, modified or supplemented and that the agreement between the City and the Assignor with respect to the Terminal is as set forth in the 1983 Lease. The City represents that it has full title to the Demised Premises subject to such liens, easements, encumbrances and other restrictions as are matters of record which a title search would disclose. The Port Authority will order a title search and report. In the event any one or more liens, easements, encumbrances or other restrictions are disclosed, which would prevent the accomplishment of the purposes of this Agreement, the Port Authority shall have the right to terminate this Agreement and all obligations of the Port Authority hereunder, by notice to the City and to the Assignor to be given within ninety days of the Port Authority's receipt of the title report.

F. From and after the effective date, the City hereby leases to the Port Authority and the Port Authority hereby hires and takes from the City the lands and improvements as shown in diagonal hatching on the sketch attached hereto, marked "Schedule D" and hereby made a part hereof, and from and after the effective date said lands and improvements shall be and become a part of the Demised Premises, subject to all the terms and provisions of the 1983 Lease as amended by this Agreement, and there shall be no change in the rental payable.

ARTICLE SECOND - TERM

When this Agreement shall become effective, in accordance with Article FOURTH hereof, the term of the letting under the 1983 Lease as amended by this Agreement shall be changed to a term expiring at the end of the period of thirty-five (35) years which shall commence upon the third anniversary of the date this Agreement becomes effective. All options and rights to extend the letting under the 1983 Lease are hereby extinguished.

ARTICLE THIRD - SUBLEASE TO ASSIGNOR

A. Subject to the consent of the Commissioner, the Port Authority will sublet the Terminal, consisting of the Demised Premises as existing on the effective date of this Agreement, to the Assignor, by an instrument hereinafter called the Sublease. The Sublease shall provide that the Terminal will remain the principal wharf facility of the Assignor for all its container ships which call at the Port of New York and New Jersey, and that the Assignor (as subtenant) will use its best efforts to maximize the flow of its containers and cargo through the Demised Premises, subject to all applicable laws, and to the rules and regulations of the Federal Maritime Commission and all other governmental bodies having jurisdiction. The Assignor acknowledges this to be a commitment to handle at the Terminal

not less than eighty percent (80%) of all its seagoing vessel cargo loaded or unloaded on or from seagoing vessels at the Port of New York and New Jersey, such commitment to be subject to the physical and operational limitations of the Terminal, strikes, labor stoppages, government directive or other force majeure occurrences as defined in the Sublease. The subletting under the Sublease shall be for a term which will expire one day before the expiration of the term of the letting under the 1983 Lease as amended by this Agreement, as set forth in Article SECOND hereof. The City and the Assignor expressly agree with the Port Authority that if any provision of any other agreement made between the City and the Assignor, shall be or be deemed to be an extension of the rights of the Assignor beyond the expiration date of the subletting expressly set forth in the Sublease, the Sublease shall nevertheless be and remain, among the parties hereto, an instrument of subletting and not an instrument of assignment, and no claim or argument to the contrary shall be made or advanced by either the City or the Assignor at any time.

B. Article THIRD of the 1983 Lease is hereby amended to read as follows:

"ARTICLE THIRD - SUBLEASES

The Port Authority shall not have the right to make subleases except with the prior consent of the Commissioner, which consent the City agrees shall not be unreasonably withheld or delayed."

ARTICLE FOURTH - EFFECTIVE DATES

A. This Agreement shall not be effective for any purpose whatsoever prior to the latest of the following dates:

(i) The date on which this Agreement is executed by appropriate officers of the Port Authority acting pursuant to a valid resolution of the Board of Commissioners of the Port Authority;

(ii) The date on which this Agreement is executed by the appropriate officers of the City acting under a valid resolution of the Board of Estimate;

(iii) The date on which this Agreement is executed by the appropriate officers of United States Lines, Inc. (the Assignor) acting under valid authorization of the governing body of that corporation;

(iv) The date on which (a) this Agreement is permitted to become effective pursuant to the Shipping Act of 1984 (46 USCA Appendix 2701 et seq.) and Regulations of the Federal Maritime Commission issued pursuant thereto; or (b) the Federal Maritime Commission determines that it has no jurisdiction over this Agreement; or

(v) The date on which the Sublease becomes

(01003)

effective, in accordance with Section B below.

B. The Sublease shall not be effective prior to the later of the following dates:

(i) The date on which the Commissioner consents to the Sublease, which shall not be sooner than the execution of the Sublease by appropriate officers of the Port Authority acting under a valid resolution of the Board of Commissioners of the Port Authority and the execution by appropriate officers of United States Lines, Inc. acting under valid authorization of its governing body; or

(ii) The date on which (a) this Sublease is permitted to become effective pursuant to the Shipping Act of 1984 (46 USCA Appendix 2701 et seq.) and Regulations of the Federal Maritime Commission issued pursuant thereto; or (b) the Federal Maritime Commission determines that it has no jurisdiction over this Sublease.

C. Neither this Agreement nor the Sublease shall be in effect for any purpose whatsoever prior to the effective date thereof, determined as set forth in Section A or B above. In the event not all of the conditions hereinabove set forth have occurred so that this Agreement does not become effective on or before January 31, 1986, then this Agreement shall be null and void, and all parties hereto hereby release each the other from all claims and demands whatsoever, whether under this Agreement or under the Sublease, or under any preliminary writing made among the parties, as the case may be, provided, however, that the 1983 Lease without any of the amendments herein contained shall remain in effect between the City and the Assignor.

ARTICLE FIFTH - RENTAL

A. The Port Authority will pay to the City throughout the portion of the term of the letting under the 1983 Lease as assigned and amended by this Agreement commencing with the effective date of this Agreement, a basic rental in the amount per annum which would have been paid for the same portion of the term by the Lessee under the 1983 Lease in accordance with the provisions of Section A of Article FOURTH of the 1983 Lease, the sum not to exceed \$5.7 Million annually through August 31, 2006, with the said sum to be adjusted by reductions as provided in the 1983 Lease and by the 5-1/4% increase as set forth in Paragraph (a) of Article FIFTH to be applied on September 1, 2006 to the basic rental in effect as of September 1, 2006 and to be applied on September 1, 2016 to the basic rental in effect as of September 1, 2016. The provisions of Sections B & C of Article FOURTH shall remain in force.

B. Provisions stating the amount of rental to be paid by the Sublessee under the Sublease are attached hereto as Schedule R.

ARTICLE SIXTH - ADDITIONS TO THE TERMINAL

A. The parties recognize and acknowledge that additional parcels of land in the vicinity of the Terminal will be required so that the improvements listed on Attachment 1 can be completed. The parties further recognize that such parcels of land include land presently owned by the City and land owned by others than the City. It is agreed that upon the execution of this Agreement the parties hereto will work cooperatively, meeting on a regularly scheduled basis to reach agreement on which parcels are to be made a part of the Demised Premises under this Agreement and on a master plan with respect to the lay-out desired. It is recognized that a number of the parcels that will be considered may have environmental problems and that will be a factor in the determination of the parties as to which parcels shall be made a part of the Demised Premises. It is recognized further that the items set forth in Attachment I marked with an asterisk may require the inclusion in the Demised Premises of parcels presently owned by the City.

B. Parcels which are added to the Demised Premises under this Agreement will be the subject of agreements amending the 1983 Lease, to be executed by the City and the Port Authority after approval by the Board of Estimate. The rental payable to the City under the provisions of ARTICLE FIFTH shall not increase because of such additions, whether of lands presently owned by the City or by others. Parcels which are to be added to the 1983 Lease but are owned by others will be acquired through cooperative action by the City, the Port Authority and the Assignor, with title thereto to be held either in the name of the City or of the Port Authority. In the event the City is required to exercise the power of eminent domain the Port Authority shall act as agent of the City in implementing the exercise of such power. The Port Authority will pay all costs for the acquisition of all such property.

C. All parcels, whether of presently City owned land or land acquired from others, shall become part of the Terminal and of the Demised Premises, and part of the premises subleased to the Assignor. All the right, title and interest of the Port Authority in such parcels which were acquired from others shall be transferred to the City without charge at or before the expiration of the term of the letting as set forth in ARTICLE SECOND of this Agreement. The Port Authority shall at that time execute all documents which may be appropriate to effect said transfer to the City, all said documents to be in recordable form.

ARTICLE SEVENTH - CONSTRUCTION

A. The Port Authority shall be responsible for the performance of the construction work listed on Attachment I. The Assignor shall perform or cause to be performed the construction work set forth on Attachment I, and the Port Authority shall pay the costs therefor as more particularly set forth in the Sublease. In the event the Assignor fails to perform the construction work and the Port Authority also fails to perform the construction work after notice to do so from the City, such

(01000)

failure by the Port Authority shall be an event of default under ARTICLE TWENTIETH of the 1983 Lease subject to force majeure.

B. The Assignor shall undertake and the Port Authority shall pay it for, the preparation of an Environmental Impact Statement required for the construction of the improvements described in Attachment I.

C. The Port Authority will assure the dredging of the access channels to Howland Hook, and the berths at the Terminal, to a depth of forty feet below mean low water, and will maintain the berths at that depth, all subject to securing of all necessary governmental approvals and permits. The City shall support and, upon the request of the Port Authority, shall join in applications for permits necessary to provide dredging and all other work at the Terminal. The term "mean low water" as used herein shall mean mean low water as most recently at the effective date of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, the dredging of the berths shall be only such as shall produce (or leave in place) depths and slopes as may be required for underwater support of structures, in the opinion of the Director of Port Planning of the Port Authority and of the Chief Engineer of the Department of Ports and Terminals. It is the intention of the Port Authority that the dredging of the access channels to Howland Hook be completed concurrently with the dredging of the access channels to Port Newark/Elizabeth, assuming that the appropriate permits and approvals can be secured. The Port Authority will diligently pursue Congressional and other governmental approval, together with reimbursement by the federal government for access channel work, and, following Port Authority policy, for all other dredging work appropriate to maintain Howland Hook, Port Newark, Elizabeth and all other areas of the Port of New York and New Jersey as active elements in providing marine terminal services.

D. 1. The City will, in consultation with the Port Authority and the Assignor, commission immediately a consultant's study of the required access to and egress from the Terminal and the movement of Terminal traffic on proximate streets and thoroughfares. The full cost of the study will be borne by the City.

2. The City shall implement such of the recommendations of the traffic study, or such other traffic improvements, as shall be agreed upon by the three parties to this Agreement, and shall undertake improvement of the off-site utilities necessary for the use of the improvements described in Attachment I. The Port Authority shall pay the City up to the first \$5 million of the cost of the necessary off-site traffic and utility improvements, such payment to be made as follows: upon the effective date of this Agreement the Port Authority shall pay \$1,000,000.00 to the City to be held by the City for the purposes of paying the cost of the necessary off-site traffic and utility improvements, but to be returned to the Port Authority in the event this Agreement is terminated prior to any

such work pursuant to the terms hereof; thereafter when the City certifies that it has paid \$2,000,000.00, the Port Authority will pay it another \$1,000,000.00; when it certifies it has paid a total of \$3,000,000.00, the Port Authority will pay it an additional amount of \$1,000,000.00; when the City certifies that it has paid \$5,000,000.00, the Port Authority will pay the City the final \$2,000,000.00. All payments shall be made within thirty (30) days of the respective certification. The City will pay the balance of the cost of such improvements.

E. The Port Authority shall construct and improve, at its own cost, all on-site utilities necessary for the use of the improvements described in Attachment I the cost thereof to be part of the overall cost for the work described in Attachment I; and shall thereafter maintain the same during the term of the letting under this Agreement.

F. In undertaking the expansion of the Terminal and in operating the Terminal during the letting under this Agreement, the Port Authority will, as a matter of policy, conform to the enactments, ordinances, resolutions, and regulations of the City and its various departments, boards, and bureaus in regard to the construction and maintenance of the improvements and structures and in regard to health and fire protection, which would be applicable if the Port Authority were a private corporation, to the extent the Port Authority finds it practicable to do so, without interfering with, impairing or affecting the efficiency or economy of the Terminal or its ability to operate the Terminal or its obligations, duties, and responsibilities to the States of New York and New Jersey, its bondholders, and the general public, but the decision of the Port Authority as to whether it is practicable so to do shall be controlling and conclusive. To that end, the Port Authority shall submit to the appropriate City officials, copies of the plans and specifications for the improvements and structures, together with two (2) copies thereof to be delivered to the Department of Ports and Terminals for information purposes only. It is specifically understood and agreed that no local law, enactment, ordinance, rule or regulation, permit or requirement of the City shall apply to the Terminal. The above notwithstanding, the Port Authority will ensure that each improvement and structure within the Terminal shall have a Certificate of Completion lawfully issued by the Department of Ports and Terminals not later than three years prior to the expiration of the letting under this Agreement. Construction performed by subtenants and approved by the Port Authority shall be treated as construction by the Port Authority. If in fact the Assignor has sent out for bids or commenced work under the 1983 Lease prior to the effective date of this Agreement and finishes it after such date, it shall conduct and complete the work in accordance with the requirements of the 1983 Lease. This shall not be deemed an acceptance by the Port Authority of the application to it of any such requirement.

G. The parties hereby acknowledge that the completion of the lay-out plan and the additions to the Terminal covered by Article Sixth, the construction covered by Paragraph A hereof,

the preparation of the environmental impact statement covered by Paragraph B hereof, the completion of the consultant study and the traffic and off-site utility improvements covered by Paragraph D hereof and the completion of the on-site utilities covered by Paragraph E hereof are interdependent elements of the arrangement hereunder and that each, regardless by whom it is to be accomplished, is part of one whole integrated project and that the objective of all the parties is that all the same be performed in a timely, orderly and sequential (as appropriate) manner.

H. Phase II of the construction work shall be commenced upon completion of the acquisition of the property covered in ARTICLE SIXTH hereof and the completion of required environmental clearance and shall be completed within two years thereafter. The completion of Phases I and II shall not be later than January 1, 1990 unless acquisition of the appropriate parcels and environmental clearance occur later than January 1, 1988. In such case the completion date shall be reasonably adjusted at that time. Delays or failures to perform caused solely by, but not limited to, acts of God, strikes or labor disputes (not brought about by any act or omission of any party hereto or a contractor or subcontractor of any of them) national emergency, statutes, orders or decrees issued by any court having jurisdiction over any of the parties, and other conditions entirely beyond the reasonable control of the party involved, shall not be deemed to be a default of such party.

I. The City, the Assignor and the Port Authority agree they will cooperate and act reasonably in all aspects of the arrangement regardless of which party has the obligation to discharge a particular task.

J. It is hereby acknowledged and agreed that the Port Authority's monetary obligations with respect to the construction covered by this ARTICLE SEVENTH including without limitation all costs of the acquisition of property, but excluding amounts required pursuant to Paragraph C of this ARTICLE SEVENTH used for initial dredging of access channels and not reimbursed and the \$5 million payable by the Port Authority under Paragraph D (2) of this ARTICLE SEVENTH, are covered by Schedule R.

ARTICLE EIGHTH - PERSONAL LIABILITY

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, nor any Commissioner acting for the City nor any officer, agent, or employee thereof, nor the Directors of the Assignor, nor any officer, agent or employee thereof, as individuals, shall be charged personally by the City, the Port Authority or United States Lines, (as the case may be) with any liability, or be held liable to the City or to the Port Authority or United States Lines (as the case may be) under any term or provision of this Agreement or in connection therewith.

ARTICLE NINTH - NON-DISCRIMINATION

The Port Authority will endeavor, as a matter of policy, to maintain standards and practices governing leasing and operation of marine terminals throughout the Port District which it operates pursuant to legislation of New York and New Jersey, and pledges to strive for fairness and non-discrimination with respect to the development and application of standards and practices in both states.

ARTICLE TENTH - MODIFICATION OF SUBLEASE

The Port Authority shall not, without the prior consent of the City, release, alter, or change any material obligations of the Assignor as subtenant under the Sublease. In the event the Assignor as subtenant defaults under the Sublease and such Sublease is terminated therefor, or by operation of law, or by order of a court of competent jurisdiction, the Port Authority will negotiate to sublease the Terminal to other shipping lines or terminal operators but the Port Authority shall not enter into any new sublease with such other tenants, except with the prior consent of the Commissioner; which consent the City agrees will not be unreasonably withheld or delayed.

ARTICLE ELEVENTH - APPROVALS

The terms of this Agreement are subject to the approval of the Board of Commissioners of the Port Authority, the Board of Estimate of the City, and the Board of Directors of United States Lines, Inc. Further, this Agreement is made expressly subject to permission from the Federal Maritime Commission, except in the event the said Commission shall determine that this Agreement is not subject to its jurisdiction. The parties hereto shall, after execution of this Agreement pursuant to authorization from their respective governing bodies, diligently and expeditiously seek such approval or determination.

ARTICLE TWELFTH - PARTICULAR AMENDMENTS

A. Paragraph (e) of ARTICLE FIRST (USE OF PROPERTY), and all of ARTICLES SIXTH, SEVENTH (SECURITY DEPOSIT), TENTH (REQUIREMENTS OF LAW), THIRTY-SEVENTH (CANCELLATION AND DISQUALIFICATION), FORTY-FIRST (NOISE CONTROL CODE), and FORTY-FOURTH (RECAPTURE FOR IMPROVEMENT) are hereby deleted from the 1983 Lease. The Port Authority agrees that it shall insert provisions in the Sublease imposing upon the Assignor the obligations of the Lessee set forth in paragraph (e) of ARTICLE FIRST, and in ARTICLES TENTH, THIRTY-SEVENTH, THIRTY-EIGHTH, FORTY-FIRST and FORTY-THIRD.

B. The following changes shall be made to the following ARTICLES of the 1983 Lease:

1. The Port Authority will construct or cause to be constructed, as part of Phase I, one permanent sign at or near the main land entry to the Terminal, on which shall be prominently displayed the names of the City, the Port Authority and the Assignor.

2. None of the provisions of ARTICLE EIGHTH shall apply to the Port Authority or to the Assignor, with respect to the work set forth in Attachment 1.

3. All references in ARTICLE NINTH (CONDEMNATION) to the City (Lessor) (or any agency, authority or person acting in the City's behalf exercising its power) as the condemning power of authority are hereby deleted from the 1983 Lease.

4. The provisions of ARTICLE THIRTEENTH shall not apply to the work to be performed by the Port Authority as set forth in Attachment I.

5. With respect to ARTICLE FOURTEENTH the parties hereto agree that a new survey of the Demised Premises will be conducted by the Port Authority with the participation of representatives of the City and the Assignor to determine the condition of the Demised Premises as of the effective date of this Agreement. The condition of the Demised Premises as described in the new survey shall be the condition in which the Demised Premises are delivered to the Port Authority. All construction in progress at the time of the survey shall be deemed in good order and condition as of the time of its completion. All construction as listed on Attachment I to be built by or on behalf of the Port Authority shall be deemed in good order and condition upon the date of completion of such construction. The Port Authority will assume no liability with respect to the Demised Premises or with respect to any obligation of the lessee under the 1983 Lease which shall have accrued prior to the effective date of this Agreement. The Assignor will be responsible for those deficiencies which the survey may show, for which the Assignor would have been responsible under the 1983 Lease, except for such deficiencies that the construction work listed in Attachment I will correct. The foregoing shall supply the standard for performance by the Port Authority of its obligations under ARTICLE FIFTEENTH. The City will hold the security deposit under the 1983 Lease, or a portion thereof at the City's discretion, until deficiencies shown on the survey which are the responsibility of the Assignor are corrected by the Assignor or waived by the City.

6. The following paragraphs (m), (n) and (o) are hereby added to Article SEVENTEENTH:

"(m) The Port Authority may from time to time and at any time, elect to become a self-insurer as to part or all of the risks of loss covered by insurance under the 1983 Lease as amended by this Agreement, on the same terms and general conditions as are provided in standard insurance policies covering such risks then in general use in the State of New York, and shall notify the City of each such election. In the event of a loss which, except for such self-insurance in fact elected, would have been covered by any such policy or policies, the Port Authority shall make available out of its own funds an amount equivalent to that which would have been paid by an insurance carrier under the same circumstances, and shall apply the said

amount in like manner as if the said amount were the proceeds of an insurance policy or policies obtained in accordance with this Section.

"(n) Every policy of insurance secured under the 1983 Lease as amended by this Agreement, in which the Port Authority, whether alone or with others, is a named insured, or from the proceeds of which the Port Authority may benefit, shall contain a provision that the insurer shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way (i) the jurisdiction of the tribunal over the person of the Port Authority, (ii) the immunity of the Port Authority, or of its Commissioners, officers, agents or employees, (iii) the governmental nature of the Port Authority or (iv) the provisions of any one or more statutes respecting suits against the Port Authority."

"(o) The Sublease shall provide that the City shall be included as an additional insured in every policy which so includes the Port Authority. In each case in which the Port Authority secures insurance directly or under the Sublease having comparable or better coverage than that required under the 1983 Lease, the City agrees such insurance coverage will be acceptable in lieu of the coverage required."

7. Whether the Port Authority carries insurance or becomes a self-insurer, the procedures set forth in ARTICLE SEVENTEENTH with respect to the settlement of claims and payments from insurance proceeds shall not be followed. The City and the Port Authority shall jointly settle any claims with the carriers and the proceeds shall be paid to the Port Authority, which shall hold the insurance proceeds in trust for use to fulfil the obligations set forth in the 1983 Lease as hereby amended for repair and reconstruction. In the event there is any excess of such proceeds over the cost of repair and reconstruction the same shall be paid to the City. Proceeds received prior to proper disbursement shall be kept in one or more interest bearing accounts.

8. ARTICLE TWENTIETH shall be changed by deleting the phrase "unless within fifteen (15) days" appearing therein and substituting the phrase "unless within forty-five (45) days" in lieu thereof.

9. It is agreed that in the event the Port Authority fails to have a subtenant in occupancy of the Demised Premises covered by the Sublease for more than twenty-four consecutive months, the City will have the right either (i) to procure a subtenant who is willing to sublease the Demised Premises at a rental equal to the lower of (1) the rental applicable to the Assignor at the time or (2) the then prevailing market rental in the industry, provided such proposed subtenant is prepared to execute a sublease with the Port Authority as sublessor in substantially the form of the Sublease with the Assignor with appropriate changes in commencement, expiration, and construction

(61085)

as necessary, and with a reasonable security deposit required by the Port Authority, or (ii) to buy out the Port Authority's leasehold interest under the 1983 Lease as amended by this Agreement at a price equal to the Port Authority's unamortized investment (as defined below) comprised of the Construction Cost (as such term is defined in the Sublease) plus an amount of up to six percent (6%) thereof for Port Authority engineering and construction administration costs, as defined in subparagraph (iii) below, based on the Port Authority's certified statements of said costs to the City in accordance with generally accepted accounting principles (hereinafter Phase I and Phase II Costs). Phase I and Phase II Costs shall be determined at the end of each fiscal year (as defined below) during which such Costs are incurred with respect to Phase I or Phase II. The Port Authority's unamortized investment shall be determined by the following formula:

$$UI = [A1+B1] F1 + [A2+B2] F2 + [A3+B3] F3 + \dots + [An+Bn] Fn$$

- "UI" means the Port Authority's unamortized investment.
- "A1" means the portion of Construction Cost (as defined in the Sublease) incurred in the first fiscal year.
- "B1" means an amount of up to 6% for Port Authority engineering and construction administration cost in connection with A1.
- "F1" means an amortization factor listed on Schedule 1 attached hereto corresponding to the number of years (including a partial year) then remaining of the term of the 1983 Lease, as amended by this Agreement, at the time the City exercises its buy-out option.
- "A2" means the portion of Construction Cost (as defined in the Sublease) incurred in the second fiscal year.
- "B2" means an amount of up to 6% for Port Authority engineering and construction administration cost in connection with A2.
- "F2" means an amortization factor listed on Schedule 2 attached hereto corresponding to the number of years (including a partial year) then remaining of the term of the 1983 Lease, as amended by this Agreement, at the time the City exercises its buy-out option.
- ...
- "An" means the portion of Construction Cost (as defined in the Sublease) incurred in the nth fiscal year.
- "Bn" means an amount of up to 6% for Port Authority engineering and construction administration cost in connection with An.
- "Fn" means an amortization factor applicable in the nth fiscal year corresponding to the number of years (including a partial year) then remaining of the term of the 1983 Lease, as amended by this Agreement, at the time the City exercises its buy-out option.

A "fiscal year" means a period of twelve consecutive months beginning on the effective date and on each anniversary thereafter.

(iii) The term "engineering and construction administration costs" as used in subparagraph (ii) means those disbursements or costs incurred by the Port Authority made for

the work listed in Attachment I which shall be documented by appropriate schedules, time sheets and such other documents as may be necessary to verify actual expenditures or costs incurred. The costs shall not include any amounts of allocated overhead or any other costs except as specifically incurred and expended on the work listed in Attachment I.

10. ARTICLE THIRTY-EIGHTH shall be amended to read as follows:

"ARTICLE THIRTY-EIGHTH - NO DISCRIMINATION

"The Port Authority agrees with regard to its operations at the Demised Premises (and agrees to require in all subleases and concession agreements with regard to operations on the Demised Premises) that the Port Authority, the subtenants and operators of concessions shall treat all employees and applicants for employment at the Terminal without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference, in all employment divisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment at the Terminal, except as provided by law, and shall state in all notices that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, sexual orientation or affectional preference."

11. ARTICLE FORTY-THIRD shall be changed by deleting the words "In accordance with Section 343.10.0 of the New York City Administrative Code," with respect to the Port Authority, and by putting a comma after the word "thereunder" and adding the following thereto: "unless the said legislation shall be repealed or otherwise become ineffective".

ARTICLE THIRTEENTH - MISCELLANEOUS

A. Article headings contained in this Agreement are inserted for reference only and in no way define, limit or describe the scope or intent of this Agreement or of the various articles.

B.1. All notices, demands and orders herein provided to be given to the Port Authority by the City or by the Assignor shall be in writing and shall be sent by messenger or by certified mail addressed as follows:

Executive Director
The Port Authority of New York and New Jersey
One World Trade Center
New York, New York 10048

2. All notices, demands and orders between or among the parties shall be effective upon delivery.

C. As hereby amended and assigned, the 1983 Lease shall continue in full force and effect, and the Port Authority shall have all the right, title and interest in the leasehold of the Demised Premises, the Terminal and additions thereto, held by the Lessee thereunder, and shall perform all the obligations of the Lessee thereunder, all as provided for in this Agreement.

D. The fact that the Assignor is a party to this Agreement shall not be deemed to cause any change whatsoever in the rights and obligations of the City and the Assignor set forth in the 1983 Lease effective for any period prior to the effective date of this Agreement or to grant any rights to the Assignor subsequent to the said effective date other than the right to the Sublease. Although the execution of this Agreement on behalf of the Port Authority has been authorized by Resolution of its Board of Commissioners, a copy of which is annexed hereto as Exhibit B, funds may not be expended for the purposes of this Agreement until the Terminal is certified as an additional facility of the Port Authority in accordance with the Consolidated Bond Resolution of October 9, 1952 and with other agreements with the holders of Port Authority obligations. It is expected that the Board of Commissioners at its meeting on June 13, 1985 will make the necessary certification and authorize its Committee on Finance to reaffirm that certification at the time bonds are sold for the purposes of this Agreement; but until the same has been done and all appropriate periods lapse, all obligations of the Port Authority under this Agreement shall be subject to such requirements.

ARTICLE FOURTEENTH

In lieu of all provisions for indemnification of the City in the 1983 Lease, the following shall be in effect and be part of the 1983 Lease:

"A. The Port Authority shall not do or permit any act or thing to be done upon the Demised Premises which subjects the City to any liability or responsibility for injury, damage to persons or property or to any liability by reason of any violation of applicable law or of any applicable legal requirement. With respect to such acts or things, the Port Authority shall indemnify and save harmless the City against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including without limitation reasonable architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against the City by reason of any of the following occurring in connection with its operations or occupancy under this Agreement during the term of the letting hereunder, unless caused by the negligence or willful misconduct of the City or its agents or employees, in their official capacities:

(i) Construction as set forth in Attachment I (exclusive of any work undertaken by the City to build off-site traffic or utility improvements), or any other work or thing done, in, on or about the Demised Premises,

- (ii) The ownership or any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Demised Premises or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part of the Demised Premises or the sidewalks adjacent thereto;
- (iii) Any act or failure to act on the part of the Port Authority or any subtenant or any of their respective agents, contractors, servants, employees, licensees or invitees acting in their official capacities;
- (iv) Any incident, injury (including death) or damage to any person or property occurring on the Demised Premises including any street, alley, sidewalk, curb, vault, passageway or space constituting a part of the Demised Premises or the sidewalks contiguous thereto;
- (v) Any failure on the part of the Port Authority to pay rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in the 1983 Lease as amended by this Agreement on its part to be performed or complied with and the exercise by the City of any remedy provided in the 1983 Lease as amended by this Agreement with respect thereto;
- (vi) Any lien or claim which may be alleged to have arisen against or on the Demised Premises;
- (vii) Any failure on the part of the Port Authority to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Demised Premises, on the part of the Port Authority to be kept, observed or performed;
- (viii) Any tax attributable to the execution, delivery or recording of this Agreement or a memorandum thereof.

"B. The obligations of the Port Authority under this Article shall not be affected in any way by the absence in any case of applicable insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Demised Premises."

"C. If any claim, action or proceeding is made or brought against the City by reason of any event to which reference is made in Paragraph A above, then upon demand by the City the Port Authority shall resist or defend such claim, action or proceeding in the name of the City by Port Authority attorneys or other attorneys chosen by the Port Authority, which may be those of its own insurance carrier. Notwithstanding the foregoing, the City may engage its own attorneys at its own expense to defend itself or to assist in its own defense; provided, however, that the City shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving 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 statute respecting suits against the Port

Authority."

"D. The provisions of this Article shall survive the term of the letting under this Agreement."

ARTICLE FIFTEENTH - ENTIRE AGREEMENT

The within Agreement consists of pages numbered 1 through 18 together with Schedules A, B, C, D and R, Schedules 1 through 20 and Attachment I. It constitutes the entire agreement among the City, the Port Authority and the Assignor on the subject matter, and may not be changed, modified, discharged or extended, except by written agreement. The parties agree that no representations or

warranties shall be binding unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the date hereinabove first set forth.

Approved as to Form:

Walter W. Reed
Acting Corporation Counsel

THE CITY OF NEW YORK

By [Signature]
Commissioner of
Ports and Terminals

Approved as to Form:

[Signature]
General Counsel

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

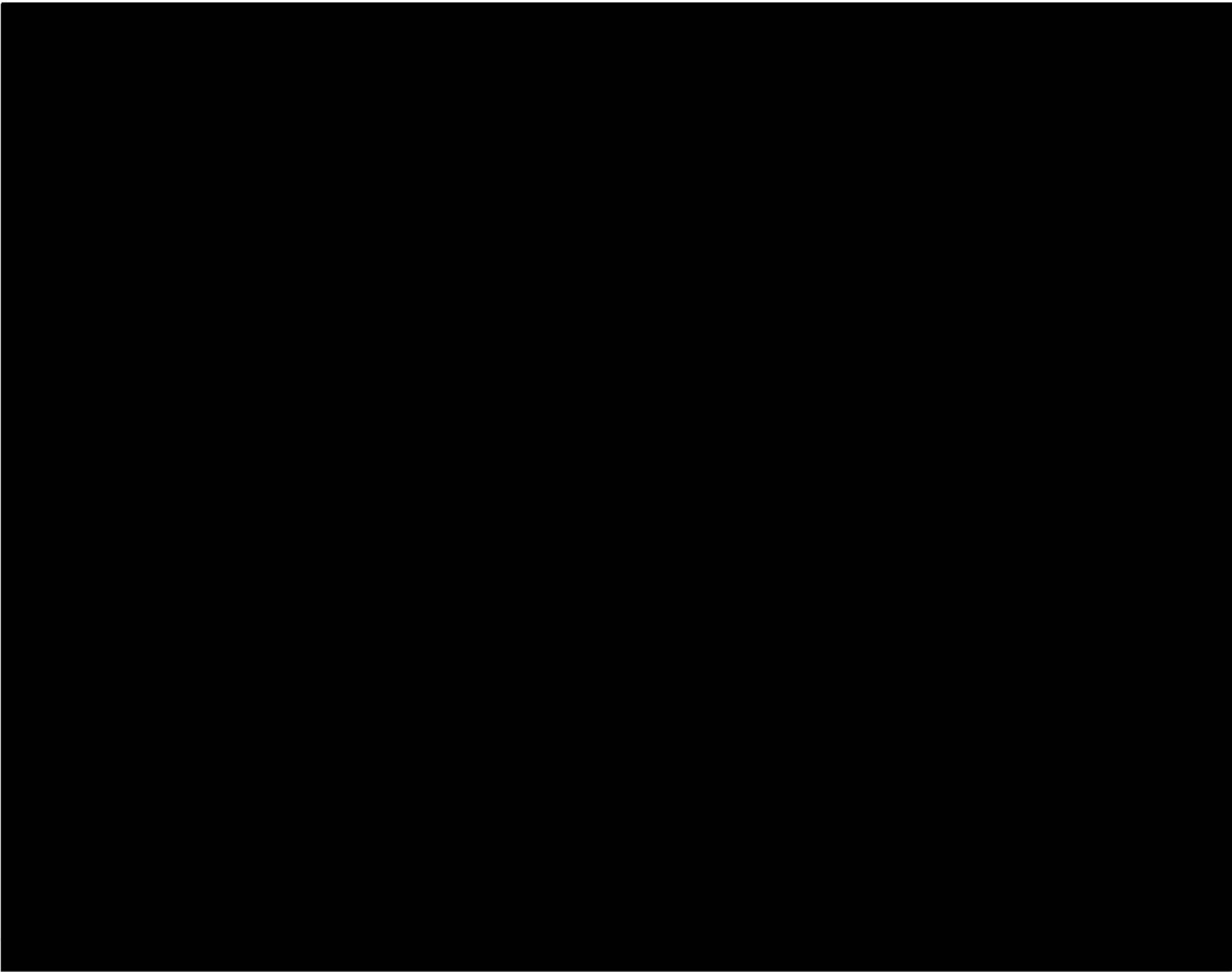
By [Signature]
(Title) EXECUTIVE DIRECTOR

Attest:

[Signature]
Secretary

UNITED STATES LINES, INC.

BY [Signature]
President



(61085)

SCHEDULE R

Under the Sublease referred to in the Agreement to which this is attached, the tenant under which is to be United States Lines, Inc., the following rental rates shall apply:

A. Rental Rates before completion of Phases I and II.

From the effective date of the Sublease to the completion dates for Phases I and II as set forth in Section 2 of the Sublease, at an annual rate in the sum of the following:

(1) The rent due the City from the Port Authority under the Basic Lease; plus,

(2)(i) Additional rental of up to \$5.5 million per year based upon payment or costs incurred by the Port Authority of up to \$60 Million for (a) costs of acquisition of additional parcels of land as mentioned in Section 2(a) of the Sublease and (b) the costs of the construction work in connection with Phase I, paid to the Lessee. As such costs are paid or incurred by the Port Authority, the Lessee will thereafter pay as increased additional rental such portion of the \$5.5 Million as reflects the ratio to that sum of the increment of payment or costs incurred to the \$60 Million.

(ii) If for any reason the \$60 million expenditure under Phase I must be exceeded (which will require the approval of both the Lessee and the Port Authority, which approval shall not be unreasonably withheld or delayed) the annual amount of the additional rental due under subparagraph (i) above will be increased to repay to the Port Authority the amount of such excess costs from time to time paid or incurred, on the basis of the then current cost to the Port Authority of borrowing money used for such payment times 1.0 coverage, plus 7.5%; for the purposes hereof, the "then current cost to the Port Authority of borrowing money used for such payment or cost incurred" with respect to this subdivision (ii) shall be determined by taking the average compiled weekly Twenty-five Year Revenue Bonds-Average Municipal Bond Yield, as published each Friday by The Bond Buyer, over the twenty-six (26) weekly periods prior to the first payment by the Port Authority to the Lessee or the first cost incurred under this subdivision (ii); plus

(3)(i) Further additional rental of up to \$1.375 million per year based upon payment or costs incurred by the Port

Authority of up to \$25.7 Million for (a) costs of acquisition of additional parcels of land as mentioned in Section 2(a) of the Sublease and (b) the costs of the construction work in connection with Phase II, paid to the Lessee. As such costs are paid or incurred by the Port Authority, the Lessee will thereafter pay as increased further additional rental such portion of the \$1.375 Million as reflects the ratio to that sum of the increment of payment or costs incurred to the \$25.7 Million; plus

(ii) If for any reason the \$25.7 million expenditure under Phase II must be exceeded (which will require the approval of both the Lessee and the Port Authority, which approval shall not be unreasonably withheld or delayed) the amount of the further additional rental due under subparagraph (i) above will be increased to repay to the Port Authority the amount of such excess costs from time to time paid or incurred on the basis of the then current cost to the Port Authority of borrowing money used for such payment times 1.0 coverage, plus 7.5%. For the purposes hereof, the "then current cost to the Port Authority of borrowing money used for such payment" with respect to this subdivision (ii) shall be determined by taking the average compiled weekly Twenty-five Year Revenue Bonds-Average Municipal Bond Yield, as published by The Bond Buyer, over the twenty-six (26) weekly periods prior to the first payment by the Port Authority to the Lessee or the first cost incurred under this subdivision (ii).

B. (1) From the later of the two completion dates of Phases I and II as set forth in Section 2 of the Sublease, in lieu of the rental set forth in Paragraph A, the Lessee will pay to the Port Authority:

(a) a basic rental at the annual rate of Six Million One Hundred Eighty-seven Thousand Five Hundred Dollars and No Cents (\$6,187,500.00) (to be increased only as provided in subparagraph (4)); plus

(b) a rental computed on the basis of a unit fee of Twenty-two Dollars and Fifty Cents (\$22.50) per container lift handled at the Terminal, with a minimum annual payment for 275,000 container lifts. The unit fee will be applicable for each container lifted on or off a vessel, whether or not such container is then carrying cargo. A transshipment as defined in the Sublease shall be one lift. The movement of a container from one place on a vessel to another place on the same vessel (whether or not such lift touches the ground) will not be considered a lift upon which a charge is due for the purposes of this Section. Charges for non-containerized cargo shall be for wharfage only, made on a tariff basis as stated in Port Authority Tariff No. 9. If the minimum yearly payment is not achieved in

any annual period, such tariff charges actually paid, on the basis that twenty (20) tons is the equivalent of one container, shall be credited toward such minimum.

(2) If at the time of the later of the completion dates of Phases I and II, the dredging of the Kill Van Kull and the Arthur Kill to Howland Hook to a depth of 40 feet below mean low water is not complete, then the annual basic rental set forth in (1)(a) above will be Four Million Eight Hundred Twelve Thousand Five Hundred Dollars and No Cents (\$4,812,500.00) and the unit fee set forth in (1)(b) above will be Seventeen Dollars and Fifty Cents (\$17.50). When such dredging is completed, the annual basic rental and the unit fee set forth in (1) above shall apply.

(3) The amount of the unit fee whether as set forth in paragraphs (1) or (2) above, will be escalated on the third anniversary of the later of the completion dates of Phases I and II by 7.5 percent and will be escalated by 7.5 percent on each subsequent three-year anniversary of the first escalation.

(4) The parties hereby expressly acknowledge that the expenditures to be made by the Port Authority for land acquisition and the construction work are estimated to total \$85.7 Million. It has been recognized in paragraphs A (2)(ii) and A (3)(ii) that should the sum of the expenditures for the two Phases exceed either \$60 Million or \$25.7 Million respectively, and total more than \$85.7 Million, which can occur only with the written approval of both the Lessee and the Port Authority. The amount of such additional expenditures will be payable only upon authorization by the Board of Commissioners. In such case, the basic rental set forth in B(1)(a) above will be increased by an amount which reflects the Port Authority cost of borrowing the money used for such excess times 1.0 coverage plus 7.5%, to be fully repaid in equal monthly installments over the remaining term of the letting; provided that any amortization for such expenditures during Phases I and II paid during the period construction is continuing shall be credited and reflected in making the calculation for the basic rental increase.

SCHEDULE 1

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
37	.995736
36	.991105
35	.986076
34	.980615
33	.974684
32	.968243
31	.961248
30	.953651
29	.945401
28	.936442
27	.926712
26	.916145
25	.904670
24	.892207
23	.878673
22	.863975
21	.848013
20	.830678
19	.811853
18	.791408
17	.769205
16	.745093
15	.718907
14	.690469
13	.659586
12	.626046
11	.589622
10	.550066
9	.507108
8	.460455
7	.409791
6	.354769
5	.295015
4	.230122
3	.159649
2	.083115
1	.000000

Interest Rate 8.6%

SCHEDULE 2

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
36	.995349
35	.990299
34	.984814
33	.978857
32	.972389
31	.965364
30	.957735
29	.949449
28	.940452
27	.930680
26	.920062
25	.908543
24	.896028
23	.882436
22	.867675
21	.851644
20	.834235
19	.815329
18	.794797
17	.772499
16	.748284
15	.721986
14	.693426
13	.662410
12	.628727
11	.592147
10	.552421
9	.509279
8	.462427
7	.411545
6	.356288
5	.296278
4	.231107
3	.160332
2	.083470
1	0

Interest Rate 8.6%

SCHEDULE 3

<u>Yrs Remaining on Lease</u>	<u>Amortization Factor</u>
35	.994926
34	.989415
33	.983431
32	.976932
31	.969874
30	.962209
29	.953885
28	.944846
27	.935028
26	.924367
25	.912789
24	.900214
23	.886559
22	.871729
21	.855624
20	.838133
19	.819139
18	.798511
17	.776109
16	.751780
15	.725359
14	.696666
13	.665506
12	.631665
11	.594914
10	.555003
9	.511659
8	.464588
7	.413469
6	.357953
5	.297663
4	.232188
3	.161082
2	.083862
1	0

Interest Rate 8.6%

SCHEDULE 4

Yrs. Remaining
on Lease

Amortization
Factor

34	.994461
33	.988446
32	.981914
31	.974820
30	.967117
29	.958750
28	.949664
27	.939797
26	.929081
25	.917444
24	.904805
23	.891080
22	.876175
21	.859987
20	.842408
19	.823316
18	.802583
17	.780067
16	.755614
15	.729058
14	.700219
13	.668899
12	.634886
11	.597948
10	.557833
9	.514268
8	.466957
7	.415577
6	.359778
5	.299181
4	.233372
3	.161903
2	.084288
1	0

Interest Rate 8.6%

SCHEDULE 5

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
33	.993951
32	.987383
31	.980249
30	.972503
29	.964090
28	.954953
27	.945031
26	.934255
25	.922553
24	.909844
23	.896043
22	.881054
21	.864777
20	.847099
19	.827901
18	.807053
17	.784411
16	.759822
15	.733119
14	.704119
13	.672625
12	.638422
11	.601278
10	.560940
9	.517132
8	.469557
7	.417891
6	.361782
5	.300847
4	.234671
3	.162805
2	.084757
1	.000000

Interest Rate 8.6%

SCHEDULE 6

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
32	993391
31	986214
30	978420
29	969956
28	960764
27	950782
26	939940
25	928167
24	915361
23	901495
22	886415
21	870039
20	852254
19	832939
18	811964
17	789184
16	764446
15	737580
14	708403
13	676718
12	642307
11	604937
10	564353
9	520279
8	472415
7	420434
6	363983
5	302677
4	236099
3	163795
2	85273
1	0

Interest Rate 8.6%

SCHEDULE 7

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
31	.992775
30	.984929
29	.976409
28	.967155
27	.957106
26	.946193
25	.934341
24	.921470
23	.907492
22	.892312
21	.875827
20	.857923
19	.838480
18	.817365
17	.794434
16	.769531
15	.742486
14	.713116
13	.681219
12	.646580
11	.608961
10	.568107
9	.523740
8	.475557
7	.423231
6	.366404
5	.304690
4	.237669
3	.164884
2	.085840
1	0

Interest Rate 8.6%

SCHEDULE 8

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
30	.992097
29	.983514
28	.974194
27	.964071
26	.953079
25	.941141
24	.928176
23	.914096
22	.898806
21	.882200
20	.864167
19	.844582
18	.823313
17	.800215
16	.775131
15	.747890
14	.718305
13	.686177
12	.651285
11	.613393
10	.572242
9	.527552
8	.479018
7	.426311
6	.369071
5	.306908
4	.239400
3	.166085
2	.086466
1	0

Interest Rate 8.6%

SCHEDULE 9

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
	.991349
29	.981954
28	.971751
27	.960671
26	.948638
25	.935570
24	.921378
23	.905965
22	.889228
21	.871050
20	.851310
19	.829872
18	.806590
17	.781306
16	.753847
15	.724027
14	.691643
13	.656473
12	.618279
11	.576800
10	.531754
9	.482834
8	.429707
7	.372011
6	.309353
5	.241307
4	.167409
3	.087155
2	.000000
1	

Interest Rate 8.6%

SCHEDULE 10

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
	.990523
28	.980231
27	.969054
26	.956916
25	.943734
24	.929418
23	.913871
22	.896987
21	.878651
20	.858739
19	.837113
18	.813628
17	.788124
16	.760425
15	.730345
14	.697678
13	.662202
12	.623674
11	.581833
10	.536394
9	.487048
8	.433457
7	.375257
6	.312053
5	.243412
4	.168869
3	. 87915
2	. 0
1	

Interest Rate 8.6%

SCHEDULE 11

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
	.989609
27	.978325
26	.966071
25	.952763
24	.938310
23	.922615
22	.905569
21	.887058
20	.866955
19	.845123
18	.821413
17	.795664
16	.767701
15	.737333
14	.704353
13	.668537
12	.629641
11	.587400
10	.541527
9	.491708
8	.437604
7	.378848
6	.315038
5	.245742
4	.170485
3	.88756
2	. 0.
1	

Interest Rate 8.6%

SCHEDULE 12

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
26	.988597
25	.976214
24	.962766
23	.948162
22	.932302
21	.915077
20	.896372
19	.876057
18	.853996
17	.830037
16	.804018
15	.775761
14	.745075
13	.711749
12	.675557
11	.636252
10	.593568
9	.547212
8	.496870
7	.442199
6	.382826
5	.318346
4	.248322
3	.172275
2	.089688
1	0

Interest Rate 8.6%

SCHEDULE 13

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
25	.987474
24	.973871
23	.959098
22	.943055
21	.925632
20	.906710
19	.886162
18	.863846
17	.839611
16	.813291
15	.784709
14	.753668
13	.719958
12	.683348
11	.643591
10	.600414
9	.553524
8	.502601
7	.447299
6	.387241
5	.322018
4	.251186
3	.174262
2	. 90723
1	. 0

Interest Rate 8.6%

SCHEDULE 14

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
24	.986224
23	.971264
22	.955017
21	.937373
20	.918211
19	.897402
18	.874803
17	.850261
16	.823608
15	.794663
14	.763228
13	.729090
12	.692017
11	.651754
10	.608030
9	.560545
8	.508976
7	.452973
6	.392153
5	.326103
4	.254372
3	.176472
2	. 91874
1	. 0

Interest Rate 8.6%

SCHEDULE 15

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
23	.984830
22	.968357
21	.950466
20	.931037
19	.909937
18	.887022
17	.862137
16	.835112
15	.805762
14	.773889
13	.739274
12	.701682
11	.660858
10	.616523
9	.568374
8	.516085
7	.459300
6	.397630
5	.330657
4	.257924
3	.178937
2	. 93156
1	0

Interest Rate 8.6%

SCHEDULE 16

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
22	.983272
21	.965106
20	.945378
19	.923953
18	.900685
17	.875417
16	.847975
15	.818174
14	.785809
13	.750661
12	.712491
11	.671037
10	.626019
9	.577129
8	.524035
7	.466375
6	.403755
5	.335751
4	.261898
3	.181694
2	. 94592
1	. 0

Interest Rate 8.6%

SCHEDULE 17

Yrs. Remaining
on Lease

Amortization
Factor

21	.981524
20	.961460
19	.939671
18	.916008
17	.890309
16	.862401
15	.832092
14	.799177
13	.763431
12	.724612
11	.682453
10	.636669
9	.586948
8	.532950
7	.474309
6	.410624
5	.341463
4	.266354
3	.184785
2	. 96201
1	. 0

Interest Rate 8.6%

SCHEDULE 18

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
20	.979558
19	.957358
18	.933250
17	.907067
16	.878634
15	.847755
14	.814220
13	.777801
12	.738251
11	.695299
10	.648653
9	.597996
8	.542982
7	.483236
6	.418353
5	.347890
4	.271367
3	.188263
2	.098012
1	0

Interest Rate 8.6%

SCHEDULE 19

Yrs. Remaining
on Lease

Amortization
Factor

19	.977337
18	.952725
17	.925996
16	.896969
15	.865446
14	.831211
13	.794033
12	.753657
11	.709808
10	.662189
9	.610474
8	.554312
7	.493320
6	.427083
5	.355150
4	.277030
3	.192191
2	.100057
1	.0

Interest Rate 8.6%

SCHEDULE 20

<u>Yrs. Remaining on Lease</u>	<u>Amortization Factor</u>
18	.974817
17	.947469
16	.917768
15	.885514
14	.850486
13	.812445
12	.771133
11	.726268
10	.677544
9	.624630
8	.567166
7	.504760
6	.436987
5	.363385
4	.283454
3	.196648
2	.102377
1	0

Interest Rate 8.6%

ATTACHMENT I

PHASE I

- Dredge berth to 40 feet (2500' x 120'), approximately 500 LF remains to be dredged.
- Raise and otherwise modify existing container cranes.
- Construct multi-story administration building (approximately 60,000 S.F.). *
- Purchase or otherwise acquire entry site property (approximately 7 acres).*
- Improve entry site.*
- Construct multi-lane entry complex.*
- Construct employee parking area.*
- Demolish existing roadability station, administration building, gate complex, LCL buildings 1 and 2, and other miscellaneous structures.
- Construct new M&R building (approximately 50,000 S.F.).*
- Convert existing building to roadability station (approximately 18,000 S.F.).
- Construct power and facility maintenance shop.
- Construct fueling system.
- Improve entrance at Western Avenue.
- Purchase and install additional container cranes and install necessary securing devices.
- Construct marine building (approximately 25,000 S.F.).
- Add to Customs building.
- Rehabilitate portions of marshalling yard and other leasehold areas or improvements.
- Conduct E.I.S.
- Relocate and rehabilitate electrical sub-station and related distribution system.
- Construct new LCL building (approximately 100,000 S.F.).*
- Construct intermodal rail yard.*

- Construct marine storage building.*
- Construct wharf service building(s) and provide shore power connections for vessels.
- Engineering, contingency and improvements of temporary nature.
- Entry sign.

PHASE II

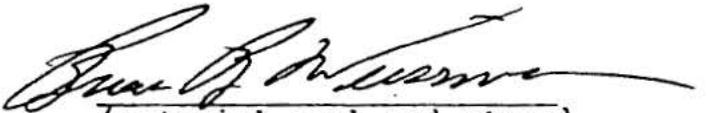
- Construct extension of berth (700+ lf).
- Develop Area C for parking (15 acres).
- Engineering and contingency.

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

On the *12th* day of *June*, 1985, before me personally came SUSAN FRANK, to me known, who, being by me duly sworn, did depose and say that she resides at



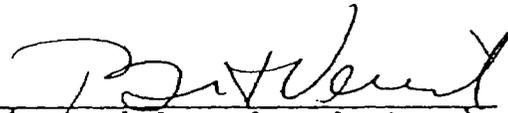
that she is the Commissioner of Ports and Terminals of The City of New York, one of the corporations described in and which executed the foregoing instrument; that she knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Estimate of the City; and that she signed her name thereto by like order.


(notarial seal and stamp)

BRUCE B. WEISSMAN
Notary Public State of New York
No. 3-021797
Qualified in New York County
Commission Expires March 30, 1987

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

On the 11th day of June, 1985, before me personally came Peter Goldmark, to me known, who, being by me duly sworn, did depose and say that he resides at 9 Prospect Park West, Brooklyn, New York 11215, that he is the Executive Director of the Port Authority of New York and New Jersey, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Commissioners of the said corporation; and that he signed his name thereto by like order.


(notarial seal and stamp)

RALPH T. VERRILLE
NOTARY PUBLIC, STATE OF NEW YORK
No. 52-9461025
Qualified in Suffolk County
Commission Expires March 30, 1986

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

On the _____ day of _____, 1985, before me personally came Anthony J. Tozzoli, to me known, who, being by me duly sworn, did depose and say that he resides at _____ that he is the Director, Port Department, of the Port Authority of New York and New Jersey, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Commissioners of the said corporation; and that he signed his name thereto by like order.

(notarial seal and stamp)

STATE OF NEW JERSEY)
)ss.
COUNTY OF UNION)

On the 10th day of June, _____, 1985, before me personally came M.P. McLean, Jr. _____ to me known, who, being by me duly sworn, did depose and say that he resides at _____

_____ that he is the President of United States Lines, Inc., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the board of directors of the said corporation; and that he signed his name thereto by like order.

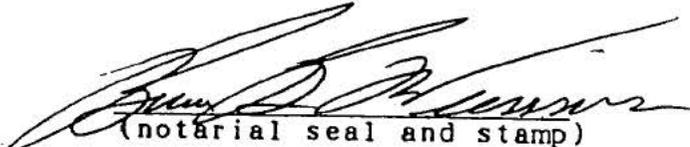
Anne Rubin
(notarial seal and stamp)

ANNE RUBIN -
A Notary Public of New Jersey
My Commission Expires November 12, 1986

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

On the *12th* day of *JUNE*, 1985, before me personally came SUSAN FRANK, to me known, who, being by me duly sworn, did depose and say that she resides at


that she is the Commissioner of Ports and Terminals of The City of New York, one of the corporations described in and which executed the foregoing instrument; that she knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Estimate of the City; and that she signed her name thereto by like order.


(notarial seal and stamp)

BRUCE B. WEISSMAN
Notary Public, State of New York
No. 31-4621797
Qualified in New York County
Commission Expires March 30, 1987

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

On the 11th day of June, 1985, before me personally came Peter Goldmark, to me known, who, being by me duly sworn, did depose and say that he resides at [REDACTED] that he is the Executive Director of the Port Authority of New York and New Jersey, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Commissioners of the said corporation; and that he signed his name thereto by like order.


(notarial seal and stamp)

RALPH T. VERRILL
NOTARY PUBLIC, STATE OF NEW YORK
No. 52-9461025
Qualified in Suffolk County
Commission Expires March 20, 1986

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

On the _____ day of _____, 1985, before me personally came Anthony J. Tozzoli, to me known, who, being by me duly sworn, did depose and say that he resides at [REDACTED], [REDACTED], [REDACTED], [REDACTED], that he is the Director, Port Department, of the Port Authority of New York and New Jersey, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Commissioners of the said corporation; and that he signed his name thereto by like order.

(notarial seal and stamp)

STATE OF NEW JERSEY)
)ss.
COUNTY OF UNION)

On the 10th day of June, 1985, before me personally came M.P. McLean, Jr. to me known, who, being by me duly sworn, did depose and say that he resides at [REDACTED], [REDACTED], [REDACTED], [REDACTED].

that he is the President of United States Lines, Inc., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the board of directors of the said corporation; and that he signed his name thereto by like order.

Anne Ruben
(notarial seal and stamp)

ANNE RUBEN
A Notary Public of New Jersey
My Commission Expires November 12, 1988

Account Nos.

AMENDED AND RESTATED
AGREEMENT
OF
LEASE

between

THE CITY OF NEW YORK
DEPARTMENT OF PORTS AND TERMINALS,

Lessor,

and

UNITED STATES LINES, INC.,

Lessee.

Dated as of: June 30, 1983

Premises: Howland Hook Marine Terminal
Staten Island, New York

TABLE OF CONTENTS

<u>Article</u>		<u>Page</u>
	Premises	2
	Initial Term	3
1.	Use of Property	4
2.	Assignment or Mortgage	6
3.	Subleases	9
4.	Rent	10
5.	Renewal	12
6.	Advertising	14
7.	Security Deposit	15
8.	Work to be Performed	16
9.	Condemnation	24
10.	Requirements of Law, Severability	33
11.	Bankruptcy or Insolvency	34
12.	Acceptance of Rental No Waiver	36
13.	Erection of Structures	37
14.	Condition of Premises	38
15.	Repairs, Maintenance	38
16.	Fees and Expenses	39
17.	Insurance, Damage or Destruction	40
18.	Waiver of Liability	49
19.	Accidents	50
20.	Termination on Default	51
21.	Notices	51
22.	Definitions: Commissioner, Chief Engineer	52
23.	Surrender	52
24.	Default	53
25.	No Surrender Without Resolution, No Oral Modification	54
26.	Damages Collectible as Rent	55
27.	No Right of Redemption	55
28.	Access	56
29.	Water, Gas, Heat and Electricity	57

TABLE OF CONTENTS (CONT'D)

<u>Article</u>	Page
30. Sunken Craft	58
31. Right of Entry	59
32. Depth of Water	59
33. Quiet Enjoyment	60
34. Telephones, Vending Machines and Concession	60
35. Binding on Successors	60
36. Liens, Easements	60
37. Cancellation and Disqualification	62
38. No Discrimination	63
39. Waiver of Trial by Jury	64
40. Survival Rights	65
41. Noise Control Code	65
42. Concurrent Surrender Agreement	66
43. International Boycott	66
44. Recapture for Improvements	66
45. Leasehold Mortgages	68
46. Titles and Headings	70
47. FMC and FCB Approval	70
48. Entire Agreement	70
<u>Schedule</u>	
A - Resolution	
B - Description of Demised Premises	
C - Improvements with Limited Useful Life	
D - Work to be Performed	

THE CITY OF NEW YORK

DEPARTMENT OF PORTS AND TERMINALS

THIS AMENDED AND RESTATED LEASE (the "Lease") made as of the 30th day of June, 1983 between the City of New York ("Lessor") acting by and through its Commissioner of Ports and Terminals ("Commissioner"), and UNITED STATES LINES, INC., a corporation organized and acting under and by virtue of the laws of the State of Delaware, having a place for transaction of its business at 27 Commerce Drive, Cranford, New Jersey, 07016, ("Lessee");

WHEREAS, Lessor, acting by and through the Commissioner of the Department of Ports and Terminals of the then Economic Development Administration, did enter into a certain lease dated as of the 21st day of December, 1973 (the "Original Lease"), and

WHEREAS, by Local Law 28 of 1977, the Department of Ports and Terminals has succeeded to all the rights, duties and responsibilities of the Economic Development Administration in connection with the Original Lease; and

WHEREAS, the Original Lease contains a Schedule B which is a Work Scope for improvements which the parties intended to make to the premises demised thereunder, which improvements have been substantially completed; and

WHEREAS, the parties wish to set forth in this Lease an updated work scope which provides for necessary capital rehabilitation of certain portions of the demised premises and otherwise amend and clarify the Original Lease; and

WHEREAS, the parties intend that, subject to the availability of funds in the New York City Capital Budget, and subject to the consent of Lessee, Lessor will reimburse Lessee for the cost of rehabilitating these portions of the demised premises and that the rent due under the Lease will be increased to reflect the cost of this work; and

WHEREAS, this Lease has been approved by resolution of the Board of Estimate, , 1983 (Cal. No.), a copy of which resolution is annexed hereto and made a part hereof as Schedule A;

NOW THEREFORE, the original lease is hereby amended and restated as follows:

Lessor, for and in consideration of the rents, covenants, terms and conditions hereinafter to be paid, performed, kept and observed, by these presents does lease, and Lessee does lease from Lessor, the premises hereinafter described (the "Demised Premises").

PREMISES

The Demised Premises shall consist of the following property situated on the Arthur Kill, in the County of Richmond, City of New York, including all structures, buildings, improvements owned by Lessor and situated thereon:

- A. The real property described by metes and bounds in Schedule B-1 attached hereto, within the area generally outlined in red on the print attached

hereto as Schedule B-2 and designated thereon as Parcels A (comprising approximately 12.5 acres), B (comprising approximately 175 acres), and C (comprising approximately 15 acres) including upland areas, creek beds and banks and the area between the mean water line and the pierhead and bulkhead line as shown thereon.

- B. In the event of any discrepancy between the description by metes and bounds and the general outline shown on Schedule B-2, the description by metes and bounds shall control.
- C. All structures, buildings, improvements, filled areas, fixtures, crane rails and developments already made or to be made, erected, constructed or installed by Lessee on the aforesaid areas.
- D. Five (5) container cranes, four (4) of which are known as the "Pepsico" cranes and one (1) of which is known as the "Peiner" crane.

Lessor also permits Lessee and any other person permitted upon the Demised Premises by the terms of this Lease to use in connection with the permitted operation of the Demised Premises all waters over which the City of New York may have ownership or jurisdiction which are adjacent to the Demised Premises or which may be necessary or convenient to afford access thereto for vessels using said premises.

INITIAL TERM

This Lease is an amendment and restatement of the Original Lease. The initial term of this Lease and the Original Lease began on March 7, 1974 (the "Effective Date") and shall expire on August 30, 2006. The terms contained herein shall

become effective and shall supersede the terms of the Original Lease as of the date hereinabove first stated. The Original Lease commenced on August 30, 1976 (the "Commencement Date").

Lessee and Lessor, for themselves, their successors and assigns, hereby covenant, promise and agree to the following terms, covenants and conditions.

USE OF PROPERTY

FIRST: (a) Lessee will use the Demised Premises for marine related purposes only, and for no other purpose except with the prior written approval of the Commissioner in each instance. As used herein, "marine related purposes" shall include, without limitation, the use of the Demised Premises by vessels owned, chartered or operated by Lessee or any sub-tenant permitted by Article THIRD of this Lease, or by any other party for whom a wharf facility operating firm operating on the premises as permitted by this Lease is providing services at the Demised Premises for loading and off-loading cargo, receiving, storing, packing, unpacking such cargo, and any containers or other equipment used in transporting said cargo, whether such cargo is moved to or from the Demised Premises by truck, rail or otherwise, and for any and all operations ancillary to the above, including warehousing.

(b) Lessor makes no representation as to the legality of the use of the Demised Premises for Lessee's intended purposes. If the proposed use is declared illegal by a court of competent jurisdiction, Lessee agrees that --

Lessor, its agents, officers, employees and Commissioner, or any person whatsoever, shall not be liable for any damages arising out of or related to such illegal use or proposed use.

(c) Lessee may, however, in the event of such a declaration of illegality by a court of competent jurisdiction, and notwithstanding the provisions of Article TENTH herein, terminate this Lease by giving notice of termination to the Commissioner within ninety (90) days of a final order of a court making such declaration. In such event, Lessee shall have no further obligations under this Lease after the effective date of termination specified in such notice for termination.

(d) Lessee shall not use the Demised Premises in any manner which is inconsistent with the provisions of Section 30 of that certain lease, made as of August 30, 1971, between The City of New York, and the Port Authority of New York and New Jersey for the construction and operation of a Consolidated Passenger Vessel Terminal and this Lease is subject to the provisions of said Section 30. In accordance with said Lease the Demised Premises shall not be used to accommodate or berth a seagoing vessel or vessels engaged primarily in carrying more than 320 persons as passengers and loading not more than 1,000 long tons of cargo on voyages extending for not less than 24 hours, without the prior written approval of the Commissioner in each instance. This prohibition shall be inapplicable to vessels which are

engaged in military or naval service. In the event that there is a berthing or accommodation of such a vessel or vessels at the Demised Premises, all revenues derived therefrom shall be payable to The Port Authority of New York and New Jersey, notwithstanding the fact that such berthing or accommodation may be occasional, casual or inadvertent. Such payment is in addition to any other remedy which The City of New York may have against Lessee for said breach, including, but not limited to termination of this Lease.

(e) Lessee agrees to use the Demised Premises under the Lease as its principal wharf facility for all of its containerships which call at the Port of New York and New Jersey throughout the initial term and any renewal terms of the Lease. Lessee further agrees to use its best efforts to maximize the flow of its containers and cargo through the Demised Premises, subject to all applicable laws and the rules and regulations of the Federal Maritime Commission and any other governmental bodies having jurisdiction.

ASSIGNMENT OR MORTGAGE

SECOND: Except as otherwise provided in this Lease, Lessee shall not at any time assign, mortgage, or pledge this Lease or any part thereof, or in any way charge or encumber the rights or property granted herein, or any part thereof, or issue or grant any permit or license to use the Demised Premises or any part thereof, whether for wharfage or any

other purpose except as otherwise expressly permitted by the terms of this Lease, without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. No such consent shall provide for the amount of rental to be charged by Lessee for any assignment of the Demised Premises or any part thereof or the granting of any permit to use the said Demised Premises or any part thereof by persons other than Lessee, its officers, employees and agents.

The granting by Lessor of consent to any of the foregoing in one or more instances shall not dispense with the necessity for Lessee thereafter to obtain consent as to any further assignment, mortgage, pledge, charges, encumbrances, permit or license, as aforementioned. Insofar as this Article affects wharfage of vessels, in those instances of emergency where it is impracticable to obtain prior written consent, then such consent may be obtained orally or by telephone at the time of emergency, and thereafter promptly confirmed in writing. Nothing in this Article contained shall require Lessee to make a wharfage or other charge to those whom it permits to use the Demised Premises as an accommodation, or require Lessor's consent to any use of the property by others in the regular course of Lessee's business.

Notwithstanding anything to the contrary hereinbefore in this Article provided, Lessee shall have the absolute right to assign this Lease to any subsidiary controlled by Lessee,

or to any corporation in which Lessee has an interest, provided that in the latter case, Lessee shall execute and deliver a guarantee of the performance by such assignee of its obligations under the Lease; or to any successor corporation which shall be created as a result of merger, consolidation, or reorganization of Lessee. Any such assignment shall provide that the assignee covenants to perform all the obligations imposed on the Lessee by this Lease but otherwise may be on such terms as Lessee in its sole discretion may determine, and the restrictions contained in the first two paragraphs of this Article SECOND shall not apply to such assignment. Further, Lessee shall have the absolute right to contract with one or more third parties for the provision of wharf facility, warehousing, cargo operating, stevedoring and associated inland services at the Demised Premises, on such terms and conditions as Lessee in its sole discretion may determine, and in connection therewith said third parties may use all of the facilities and equipment on the Demised Premises and may provide such services for Lessee and for subtenants under subleases permitted or approved in accordance with this Lease, and such use and activities shall not be deemed to violate any of the provisions of Article SECOND or Article THIRD of this Lease. Parties other than Lessee and permitted subtenants may also bring vessels to the facility and receive services from any terminal operator on terms determined by the Lessee, provided Lessor shall have given prior written

consent thereto, but such consent shall not stipulate rentals or other charges and Lessor shall not be entitled to receive any portion thereof.

SUBLEASES

THIRD: Lessee shall have the absolute right to sublease all or portions of the demised premises to one or more bona-fide wharf facility, stevedoring or other marine or associated operating firms, which may but need not include firms in which Lessee shall have an interest, provided that promptly after the execution of each such sublease, Lessee shall notify Lessor, in writing of the existence of such sublease, the name of the subtenant thereunder, and the duration thereof, and provided further that no such sublease shall be deemed to relieve Lessee of any obligation to Lessor hereunder, including specifically but without limitation the obligation to pay rent as provided in this Lease. Any such sub-lease as aforesaid shall be for such periods and on such terms and conditions as Lessee may in its sole discretion determine. With the exception of the subleases provided for hereinabove, no other sublease shall be made by Lessee except with the prior consent of the Commissioner in each instance. The use of the demised premises by a permitted sub-tenant in accordance with this Lease shall not be deemed to violate any of the provisions of Article SECOND of this Lease, nor be conditioned in any way on sharing of revenues by Lessor.

RENT

FOURTH:

A. Lessee will pay or cause to be paid to Lessor, its successors or assigns, at the office of the Commissioner:

- (1) From the Effective Date Base Rent of Two Million Two Hundred Thousand Dollars (\$2,200,000) plus Fifty-four Thousand Five Hundred Dollars (\$54,500) from March 7, 1977 for the rental of 12.5 acres of Parcel A.
- (2) From the Commencement Date, Four Hundred Fifty Nine Thousand One Hundred Ninety Four Dollars (\$459,194.) per annum, representing an annual sum equal to one thirtieth (1/30th) of the sum of (i) \$4,824,095.83 (being the amount owing by Lessee to Lessor as of the date hereof as rent under that certain Lease dated May 23, 1961 covering Piers 59, 60, 61, 62 and 76 North River) and (ii) any other amount payable by Lessee to Lessor in accordance with said Lease for deferred maintenance, repairs and dredging.
- (3) From the Commencement Date, any additional amount paid or payable by Lessor after October 1, 1973 with respect to claims by third parties for payment of construction costs for work done in accordance with the provisions of the aforesaid Lease dated May 23, 1961, as amended, divided by the number of years or portions thereof remaining unexpired under the initial term of this Lease at the time such payment shall have been made by Lessor.
- (4) From the date of execution of this amended and restated lease, One Million Four Hundred Ninety-three Thousand Six Hundred Fifty-two Dollars and twenty-nine cents (\$1,493,652.29) per annum, representing an amount equal to, eight point one eight one per cent (8.181%) annually of the total actual construction cost of the Improvements as certified by the Chief Engineer. The actual cost of construction shall include, without limitation: (i) expenditures for construction, surveys, appraisals, subsurface exploration, fill and site preparations, grading, sewer and other utility installations, demolitions, surfacing of roadways, sidewalks and parking areas, design consulting, engineering and

architectural fees, insurance and surety bond during construction; (ii) costs incidental to the foregoing.

- (5) From September 23, 1976, an annual amount equal to \$450,000 for the Pepsico cranes and from August 30, 1976 a further annual amount of \$98,172 for the Peiner Crane.
- (6) For Improvements made pursuant to Article Eighth hereof after the date of this Lease and any of the improvements listed in Schedule D-2 for which Lessee is reimbursed, an annual amount which would be sufficient to amortize each sum reimbursed to Lessee over a period of twenty years with interest at twelve percent (12%) per annum. This amount shall be calculated as of November 30 each year during the term of this Lease and shall be based on the reimbursements to Lessee during the previous year. For the purposes of the calculation, the amount reimbursed to Lessee shall be increased by adding interest on the amounts reimbursed to Lessee at twelve percent (12%) per annum for the period from the date which is 5 business days after the New York City Department of Finance cuts a check to Lessee pursuant to Article Eighth hereof to January 7 of the next year. If Lessee can prove that it did not cash the check within 5 business days from the date it was cut by the Department of Finance, Lessor will adjust the interest charges accordingly. Payment of rent pursuant to this Article 4A.(6) shall commence on January 7, 1984 and shall continue to be made on the seventh day of each quarter during the Initial Term of this Lease.

B. Payment of rent hereunder shall be made in advance in quarterly installments on the Effective Date and each three months thereafter. In the event of termination of this Lease, for any reason other than default by

Lessee, Lessor shall repay to Lessee any rent in excess of that accrued pro rata to the date of such termination.

- C. In the event that payment of any of the rent or other charges due under this Lease shall become overdue for thirty (30) days beyond the date on which it is due and payable as in this Lease provided, a late charge of 1.5% per month (computed on a 30 day month) on the sums so overdue shall become immediately due and payable to Lessor as liquidated damages for the administrative costs and expenses incurred by Lessor by reason of Lessee's failure to make prompt payment and said late charges shall be payable by Lessee without notice or demand. No failure by Lessor to insist upon the strict performance by Lessee or Lessee's obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance thereafter occurring.

RENEWAL

FIFTH: (a) Lessee shall have the right, exercisable by notice to Lessor given not less than three months before the expiration of the initial or any renewal term of this Lease as herein provided, to renew this Lease for seven successive periods, the first six renewal terms to be each for ten (10) years; and the seventh and last to be for six and

one half (6 1/2) years. In the event such notice is given, and provided Lessee shall have kept and observed all the terms, covenants and conditions in this Lease contained, except for such defaults as have been cured or waived then in that case this Lease will be deemed renewed for the pertinent renewal term on the same terms, covenants and conditions as are contained in this Lease, except for appropriate modification of the periods for which successive renewals may be had and an increase in rentals as provided immediately hereafter. For each renewal term, the annual rental shall be the annual rent paid during the preceeding term plus an addition of 5.25% of the preceeding term's annual rent, provided, however, that the rental during the first renewal term shall be equal to the sum of the amounts paid annually during the initial term for Base Rent plus the amounts paid annually pursuant to clauses (4), (5) and (6) of "A" of Article FOURTH, plus 5.25% of this sum.

(b) Notwithstanding Article FIFTH (a) above, after the expiration of the Initial Term of this Lease:

(1) Lessee shall have the right to exclude any or all of the Pepsico cranes and the Peiner crane from this Lease, in which case the total rental which would have been payable pursuant to Article FOURTH A (5) upon renewal of this Lease shall be reduced by \$118,406 per annum for each Pepsico Crane so excluded and by \$103,326 per annum if the Peiner crane is excluded; and

(2) In the event that Lessor and Lessee agree

that any of the Improvements set forth in Schedule C attached hereto has deteriorated to the point where it must be replaced or completely rehabilitated, the rental which would have been payable pursuant to Article FOURTH A (6) upon renewal of this Lease shall be reduced by the amount or amounts calculated as set forth on Schedule C, provided, however, that Lessee shall pay rent with respect to each amount reimbursed to Lessee pursuant to Article FOURTH A (6) for a period of not less than twenty (20) years. For instance, for reimbursements made prior to November 30, 1983, Lessee shall commence paying rent on January 7, 1984 and shall continue paying rent until at least January 7, 2004. Similarly, for reimbursements made between November 30, 1983 and November 30, 1984. Lessee shall commence rental payments on January 7, 1985 and shall continue paying rent until at least January 7, 2005.

ADVERTISING

SIXTH: No advertisement, notice or sign shall be placed or fixed to any of the structures, appurtenances, or any other part of the outside or inside of the Demised Premises, except such as shall have first received the written approval of the Commissioner.

The Commissioner may place and affix to any of the structures, appurtenances or any other part of the outside or inside of the Demised Premises, but not so as to interfere with the use and occupancy thereof by Lessee, an appropriate sign or

signs designating the Demised Premises as City owned under the jurisdiction of the Department of Ports and Terminals.

SECURITY DEPOSIT

SEVENTH: Lessee shall furnish either a surety bond or irrevocable letter of credit from an Institutional Lender (as such term is defined in Article 45) equal to one-fourth (1/4th) of the annual Base Rent. Any such letter of credit shall contain an "evergreen clause," i.e., a clause stating that the letter of credit shall automatically be renewed for a one year period upon each anniversary of its commencement date unless at least 30 days prior to such date the bank notifies Lessor and Lessee in writing that it elects not to renew such letter of credit. In such event, Lessor may draw funds under the letter of credit by presentation of its sight draft only, provided, however that such funds may be drawn only if Lessee has failed to provide Lessor with alternative security which satisfies the terms of this Lease within 15 days of the date of the banks' notification of the Lessor of its decision not to renew the letter of credit. Any dispute under any such letter of credit shall be heard and determined in the courts of the United States or the courts of the State of New York located in the City and County of New York. In place of such bond or letter of credit Lessee may deposit with the Comptroller securities of The City of New York, the market value of which shall be in an amount equal to one-fourth (1/4th) of the annual Base Rent, as security for the faithful performance of each

and every term, condition, and covenant of this Lease. Interest paid on any securities of The City of New York so deposited by Lessee shall belong to Lessee and shall be paid or paid over directly to Lessee.

WORK TO BE PERFORMED BY LESSEE

EIGHTH: Lessor may, subject to the availability of funds in the New York City Capital Budget, and subject to the consent of Lessee, elect to finance the construction of all or any portion of the Capital Improvements to the Demised Premises set forth in Schedules D-1 and D-2 attached hereto (the "Improvements") notwithstanding the fact that the work described in Schedule D-2 may have been completed prior to the date of this Lease. Lessor may not elect to finance the cost of any of the Improvements unless the Office of Management and Budget of The City of New York has issued a Capital Project Number ("CP Number") for the Improvement or otherwise certified that funds are available for the Improvement.

If Lessor elects to finance the Improvements, Lessee agrees to sell, and Lessor agrees to purchase all of the materials other than consumable Lessee supplies required, necessary or proper for or incidental to the construction of any such Improvements. The price of such materials shall be their cost to Lessee.

If Lessor elects to finance the Improvements, Lessee agrees to construct the work and to perform all work, labor

and services, necessary or proper for or incidental to the construction of any such Improvements. Lessor shall pay for such construction, work, labor and services, the actual cost thereof to Lessee, up to the amount set forth in the CP Number or other certification, as the same may be amended from time to time.

The enumerated items of work in Schedules D-1 and D-2 are of necessity general in nature and are set forth primarily for descriptive purposes.

Lessee shall file with the Commissioner of the Department of Ports and Terminals, for her review and subject to her approval, all plans and specifications for all Improvements to be performed hereunder, and all contracts with engineers, architects, surveyors, general contractors, contract documents, bidding procedures, award of contracts, engineering contracts between Lessee and consulting engineers, and other major agreements affecting the construction of all the aforesaid Improvements.

All work to be performed, whether specifically described in Schedule D or otherwise required, shall be subject to final plans and specifications to be prepared by Lessee and approved by the Commissioner. The final plans and specifications may be modified or revised with the approval of the Commissioner.

It is the intent of the parties that the Improvements shall be scheduled, so far as practicable, in the order outlined in the Phase Plan incorporated as Schedule D-3.

The final plans and specifications, when approved by the Commissioner, shall be deemed incorporated without further

action as part of this Lease, as shall such modifications or revisions of these final plans and specifications approved by the Commissioner.

All work shall be performed in accordance with sound engineering procedures and in a good and workmanlike manner to the satisfaction of, approval of and acceptance by the Commissioner, and

(a) in accordance with the final contracts, plans and specifications and any modifications or revisions thereof approved by the Commissioner.

(b) in accordance with applicable Federal, State and City Laws, Rules and Regulations.

It is the intent of this Lease that the work proceed with due diligence, and Lessee undertakes on its part, to expedite the work to the best of its ability.

Delays caused solely by, but not limited to, acts of God, strikes or labor disputes (not brought about by any act or omission of Lessee or its contractor or subcontractors), war, national emergencies making performance temporarily impossible or illegal, injunctions or stays issued by any Court having jurisdiction over Lessor or Lessee, and other supervening condition entirely beyond the reasonable control of either party, shall not be deemed to be a default of Lessee.

Prior to the commencement by Lessee of any construction or improvement as hereunder provided, Lessee or its contractor, contractors, or sub-contractors shall furnish the Commissioner

with standard payment and performance bonds of a surety company authorized to do business in the State of New York, with evidence that the premiums therefor are fully paid, to secure the faithful performance of each contract and as security for the payment of persons performing labor or furnishing materials under each said contract.

When any work hereunder for which a bond has been furnished has been completed, said bond shall be surrendered by Lessor and Lessee to the bonding company for cancellation thereof, accompanied by a statement by the Commissioner that said bond is no longer required.

All materials hereunder sold to Lessor shall become the property of Lessor upon delivery to the work site and prior to installation.

The purchase by Lessee of the materials sold hereunder shall be a purchase or procurement for resale to Lessor. With respect to the materials to be furnished by Lessee hereunder, Lessee at the request of Lessor shall furnish to Lessor such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to The City of New York title to such materials free of liens or encumbrances, and Lessee shall make or otherwise identify all such materials as the property of the City. Notwithstanding the transfer of title of such materials upon delivery to the Demised Premises, Lessee shall have the full and continuing responsibility to install such materials, protect them, maintain them

in a proper condition and forth-with repair, replace them and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without additional cost to Lessor until such time as the work to be performed under this Lease is fully accepted by Lessor. Such transfer of title shall in no way affect any of Lessee's obligations hereunder. If, after title has passed to The City of New York but before installation, any of such materials are rejected as being defective or otherwise unsatisfactory, title to all such materials shall be deemed to have been transferred back to Lessee.

The purchase by sub-contractors of materials to be sold hereunder shall also be a purchase or procurement for resale to Lessor (either directly or through other sub-contractors). Subcontract agreements shall provide for the resale of such materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and for the separation of the sale of materials from the work and labor, services, consumable supplies and any other matters to be provided.

All sub-contract agreements made in connection with this Lease shall provide for separate prices for (1) materials and (2) all other services and matters.

Such sub-contract agreements shall provide for the separation of the sale of materials from providing and performance of the work and labor and other things to be provided. Such

separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other work and labor and other things to be provided.

Where required for tax exemption, Lessee and its subcontractors and material men shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a "Contractor Exempt Purchase Certificate" or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the work covered by, and to be resold under, the terms of this Lease.

Unless such subcontracts, including subcontracts made by subcontractors, are as hereinabove required as to form and substance, no payment for the cost of any of the materials or services furnished pursuant to such contracts shall be made by Lessor. Proposals for change orders must be submitted to and approved by Lessor before Lessee can request payment for the work authorized by the change order.

From time to time during the performance of the work, but not more than once every thirty (30) days, Lessor shall by agreement set a date upon which all contractors performing work pursuant to this Article 8 shall be required to submit tentative or "penciled" copies of their requests for payment containing description of the work for which payment is sought. If payment is sought for work authorized by a change order, copies of the approved change order must be attached to the

requisition on a form approved by Lessor. Within five 5 days of this date, representatives of Lessor, Lessee, the contractors, and, if applicable, any consulting engineer engaged by Lessee (the "Consulting Engineer") shall meet to review each such "penciled" requisition. The parties will agree upon the dollar amounts of all contract work and change orders that have been completed and can be requisitioned for payment. Any disputed items will be paid on a partial basis as agreed by all parties or stricken from the requisition to be resolved at the next monthly meeting.

The contractors will then finalize their requisitions in accordance with the agreements reached at the meeting and re-submit copies of it to Lessee's representative who will arrange to have them signed as approved by representatives of Lessor, Lessee, and, if applicable, the Consulting Engineer. Lessee's representative will then forward four fully executed copies of the requisitions to Lessor's office at the Battery Maritime Building, Foot of Whitehall Street, NYC, NY 10004, to the attention of Lessor's Project Manager. These requisitions shall be accompanied by:

(a) cancelled checks, invoices marked paid or such other evidence as may be reasonably satisfactory to Lessor that contractors and consultants have been paid by Lessee;

(b) a verified statement in the form prescribed by Lessor's Engineering Audit Officer setting forth the information required by Section 220 of the NYS Labor Law;

(c) Non-Discrimination Certificate Form 40;

(d) four (4) originals of all invoices and bills and a numbered cover letter summarizing all bills for which payment is sought, broken out by contract.

All final requisitions will be subject to review and sign-off by Lessor's Chief Engineer and, finally, to pre-audit and sign-off by Lessor's Engineering Audit Officer. After signing off, Lessor's Engineering Audit Officer will send a payment voucher to the New York City Finance Department with a copy to Lessee's representative. The Finance Department will then make payment to Lessee within seven (7) business days.

Lessee, in awarding or entering into any contracts for the accomplishment of the Improvements, when the entire cost of such work shall exceed \$50,000, shall prepare separate specifications for (1) plumbing and gas fitting, (2) steam heating, hot water; heating, ventilating and air conditioning apparatus and (3) electric wiring and standard illuminating fixtures. Lessee shall award separate contracts for the work covered by such separate specifications.

The cost of repairing, replacing or making good, in accordance with the foregoing provisions of this Article EIGHTH, (as distinct from Article FIFTEENTH), any materials damaged, stolen, rendered unusable, or which have disappeared or been rejected shall, to the extent not covered by insurance or repaired, replaced or made good by the supplier thereof to Lessee, be considered part of the actual cost of the Improvements.

Lessee shall provide or cause to be provided insurance on the materials delivered to the Demised Premises against loss from fire, theft, disappearance, and other perils as may be specified by the Commissioner for the full replacement value thereof in accordance with Article 17 and shall use due diligence to compel suppliers at their own sole cost and expense to repair, replace or make good materials damaged, lost, stolen or rendered unusable. The cost of the aforesaid insurance shall be part of the actual cost of the Improvements, but the fees and expenses of Lessee's attorneys shall not be so included in actual costs.

CONDEMNATION

NINTH: A. If, at any time during the term of this Lease, all of the leasehold interest of the Lessee hereunder shall be taken for any public or quasi-public purpose by any competent power or authority, by the exercise of any right of public domain or in any condemnation proceeding, and if the fee interest of the Lessor in the Demised Premises and the buildings and Improvements shall not be so taken at such time, or if the Lessor (or any agency, authority or person acting in the Lessor's behalf or exercising its power) shall be the condemning power of authority, then

(1) This Lease and the term hereof shall cease and terminate as of the date of such taking and the rentals, charges and all other monetary obligations arising under this Lease shall be apportioned as of said date; and

(2) The Lessee shall be entitled to the entire award for such taking of the structures and improvements made and paid for by Lessee and not reimbursed by Lessor in accordance with Article EIGHTH above, except that the Lessee shall not be entitled to any award for the value of the leasehold interest.

B. If, at any time during the term of this Lease only part of the Lessee's leasehold interest shall be taken for any public or quasi-public purpose by any competent power or authority by the exercise of any right of public domain or in any condemnation proceeding, and if the fee interest of the Lessor in the land and buildings and improvements with respect thereto shall not be so taken or if the Lessor (or any agency, authority or person acting in the Lessor's behalf or exercising its power) shall be the condemning power or authority, and if such taking of said part shall make it impracticable for Lessee to use the remainder in its business for the purposes of this Lease or if the part not so taken is insufficient for the continued operation of the Demised Premises for the uses herein stated, then such taking shall be deemed a total taking and this Lease and the term hereof shall cease and terminate as of the date of such taking and the rentals, charges and all other monetary obligations arising under this Lease shall be apportioned as of said date and the Lessee shall be entitled to the entire award for such taking for the structures and improvements made and paid for by Lessee and not reimbursed by Lessor in

accordance with Article EIGHTH above, except that the Lessee shall not be entitled to any award for the value of the leasehold interest.

C. If, at any time during the term of this Lease only a part of the leasehold interest of the Lessee shall be taken for any public or quasi-public purpose by any competent power or authority by the exercise of any right of public domain or in any condemnation proceeding, and if the fee interest of the Lessor in the land and the building and improvements with respect thereto shall not be so taken at such time or if the Lessor, or any agency, authority or person acting in the Lessor's behalf or exercising its power shall be the condemning power or authority, and if this Lease does not terminate pursuant to the provisions of Section B hereof by reason of such taking, then

(1) this Lease and the term hereof shall cease and terminate as of the date of such taking with respect to the part so taken and shall continue in full force and effect as to the remaining portion of the Demised Premises covered by this Lease and the rentals, charges and other monetary obligations arising under the terms of this Lease with respect to the part so taken shall be apportioned as of said date, and the Lessee shall be entitled thereafter to a pro rata reduction in such rentals, charges and all other monetary obligations payable by the Lessee under this Lease for the part so taken; and

(2) the award for the structures and improvements made and paid for by Lessee and not reimbursed by Lessor in accordance with Article EIGHTH shall be used and paid in

the following priority:

(a) first, so much thereof as shall be necessary to repair and restore the buildings and improvements to make the same a complete architectural unit or units nearly as reasonably possible to the condition existing prior to the taking shall be used for such purpose, such repair or restoration to be performed by Lessee with no responsibility for same on the part of Lessor; and

(b) the balance of said award shall be paid to the Lessee, except that the Lessee shall not be entitled to any award for the value of its leasehold interest. The division of any award for consequential damages to the part not so taken shall be determined by any Court or tribunal which has jurisdiction over the condemnation proceedings, on the basis of the respective consequential damages suffered by the Lessor and Lessee.

D. If, at any time during the term of this Lease all of the Demised Premises and the buildings and improvements with respect thereto shall be taken for any public or quasi-public purpose by any competent power or authority (except the Lessor or any agency, authority or person acting in the Lessor's behalf or exercising its power, which situation is intended to be covered by the provisions of Section A of this Article) by exercising any right of public domain or in any condemnation proceeding, or in lieu thereof by agreement between the Lessor, the Lessee and those authorized to exercise such

right; then

(1) this Lease and the term hereof shall cease and terminate as of the date of such taking and the rentals, charges and all other monetary obligations arising under this Lease shall be apportioned as of said date; and

(2) the award shall be divided between the Lessor and the Lessee in the following priority:

(a) the award for the value of the land will be paid to the Lessor;

(b) the Lessee shall receive out of the award for the building and improvements made and paid for by Lessee and not reimbursed by Lessor in accordance with Article EIGHTH above that part thereof which is equal to the following stated "amortization rate" percentage of said award for each year of the then term of this Lease which would then remain after the vesting of title and proportionately for part of a year together with interest payable by the condemning authority on the amount payable to the Lessee. The amortization rate percentage shall be determined by dividing 100 by the number of calendar months between the completion date of the buildings and improvements and the then expiration date of this Lease (excluding unexercised option periods) and multiplying the result of such division by 12. If at the time of such taking, a Leasehold Mortgage or Mortgages shall be outstanding on any portion of the Demised Premises and if the amount of the award to which the Lessee shall be entitled under this subparagraph with respect

to such portion of the Demised Premises shall be less than all sums due under said Leasehold Mortgage or Mortgages at such time, the Lessee shall be entitled to receive from the award made on account of such portion an amount that is equal to all sums due under said Leasehold Mortgage or Mortgages at such time, but in no event shall the Lessor receive from the total award an amount less than the then value of the land so taken on an improved basis;

(c) the remainder of the award shall be paid to the Lessor.

E. If, at any time during the term of this Lease only part of the Demised Premises and the buildings and improvements with respect thereto shall be taken for any public or quasipublic purpose by any competent power or authority (except the Lessor or any agency, authority or person acting in the Lessor's behalf or exercising its power, which situation is intended to be covered by the provisions of Section B of this Article) by the exercise of any right of public domain or in any condemnation proceeding, or in lieu thereof by agreement between the Lessor, the Lessee and those authorized to exercise such right, and such taking of said part shall make it impracticable for Lessee to use the remainder in its business for the purposes of this Lease, or if the part not so taken is insufficient for the continued operation of the Demised Premises for the uses herein stated, then such taking shall be deemed a total taking and this lease and the term hereof shall cease and terminate as of the date of such taking, and the

rentals, charges and all other monetary obligations arising under this Lease shall be apportioned as of said date and the award shall be paid and distributed as hereinabove provided in Section D.

F. If, at any time during the term of this Lease only a part of the Demised Premises and the buildings and improvements with respect thereto shall be taken for any public or quasi-public purpose by any competent power or authority (except the Lessor or any agency, authority or person acting in the Lessor's behalf, or exercising its power, which situation is intended to be covered by the provisions of Section C of this Article) by the exercise of any right of public domain or in any condemnation proceeding, or in lieu thereof by agreement between the Lessor, the Lessee and those authorized to exercise such right, and if this Lease does not terminate pursuant to the provisions of Section E hereof, then:

(1) this Lease and the term hereof shall cease and terminate as of the date of such taking with respect to the part so taken and shall continue in full force and effect as to the remaining portion of the Demised Premises covered by this Lease and the rentals, charges and all other monetary obligations arising under the terms of this Lease with respect to the part so taken, shall be apportioned as of said date and the Lessee shall be entitled thereafter to a pro rata reduction in such rentals, charges and all other monetary obligations payable by the Lessee under this Lease for the part so taken; and

(2) the award shall be used and paid in the following priority;

(a) the award for the value of the land will be paid to the Lessor;

(b) out of the award for the buildings and improvements,

(i) first, so much thereof as shall be necessary to repair and restore the buildings and improvements to make the same a complete architectural unit or units as reasonably near the condition existing prior to the taking shall be used for such purpose, such repair or restoration to be performed by Lessee with no responsibility for same on the part of Lessor;

(ii) second, there shall be paid to the Lessee that part of the balance of the award which is equal to the amortization rate percentage of the balance of said award for each year of the then term of this Lease which would then remain after the vesting of title and proportionately for part of a year, together with interest payable by the condemning authority on the amount payable to the Lessee; and

(iii) third, the remainder of such award shall be paid to the Lessor.

(c) notwithstanding any of the provisions of the foregoing, if at the time of such taking a Leasehold Mortgage or Mortgages shall be outstanding on any portion of the

Demised Premises, the aggregate total portions of the award for the buildings and improvements pursuant to (i) and (ii) of (b) above with respect to such portion of the Demised Premises shall not be less than all sums due under said Leasehold Mortgage or Mortgages at such time that were proportionately secured by the part of the Lessee's leasehold interest that was so taken at such time, provided that in no event shall the Lessor receive from the total award an amount less than the value of the land so taken on an unimproved basis.

G. In the case of a partial taking and if this Lease does not terminate as provided in Section B and Section E hereinabove, and the Lessee is obligated to repair and restore the Demised Premises and if the award is insufficient for such purpose, then the Lessee shall pay the excess costs.

H. In the event of a taking by governmental action of all or any part of the Demised Premises and the buildings and improvements for temporary use, the foregoing provisions of this Article shall be inapplicable thereto, this Lease shall continue in full force and effect without reduction or abatement in the rentals, charges and all other monetary obligations arising under this Lease and the Lessee alone shall be entitled to make claim for, recover and retain any award recoverable in respect of such temporary use whether in the form of rental or otherwise.

I. Notwithstanding any of the provisions of this Article to the contrary, if there is an outstanding Leasehold

Mortgage or Mortgages at the time of any condemnation award:

(1) any condemnation award payable to the Lessee hereunder shall be paid to any Leasehold Mortgagee to the extent of the outstanding mortgage indebtedness, if so provided in the Leasehold Mortgage;

(2) the Lessee shall not voluntarily agree to accept any condemnation award from which the amount that is payable to the Lessee shall be less than the outstanding amount of any Leasehold Mortgage indebtedness without the prior consent of the Leasehold Mortgagee, if so provided in the Leasehold Mortgage;

(3) the Lessee shall not agree,

(a) to any adjustment of the rentals, charged or monetary obligations pursuant to the provisions of Sections C and F without the prior consent of such Leasehold Mortgagee, if so provided in the Leasehold Mortgage.

J. Notwithstanding any of the provisions of this Article to the contrary, Lessee shall not be entitled to share in the proceeds of the award on improvements made or paid for by Lessor except as to that portion thereof the cost of which has been repaid to Lessor by Lessee.

REQUIREMENTS OF LAW, SEVERABILITY

TENTH: Lessee shall comply with and observe, and this Lease shall be subject to, the Waterfront Commission Act

(Laws of 1953, Chapters 882, 883, as amended) (McKinney's Unconsolidated §9801 et seq) and to any and all other laws, and to regulations and orders of any and all departments, bureaus, and boards of the federal and state governments.

Lessee shall also comply with and observe, and this Lease shall be subject to, any and all laws, and to regulations and orders of any and all departments, bureaus and boards of the City Government insofar as they may so act in their governmental capacities in the exercise of general police power as distinguished from the City's capacity as a landlord or exercise of its power as a landlord. Nothing contained in this Article shall require Lessee to make expenditures for capital improvements, as distinguished from maintenance and repairs.

If any term or provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law, provided that this shall not be deemed to modify or restrict in any way the provisions of paragraph (c) of Article FIRST of this Lease.

BANKRUPTCY OR INSOLVENCY

ELEVENTH: (a) If Lessee shall become a voluntary bankrupt, or proceedings in bankruptcy shall be instituted by Lessee, or a trustee or receiver of all or part of Lessee's assets shall be appointed, or Lessee shall be divested of its estate herein by other or any operation of law, or if Lessee

makes an assignment for the benefit of creditors, the Commissioner may cancel and terminate this Lease by a written notice, and the demised term shall thereupon cease and expire in the same manner and to the same effect as if that were the expiration of the original term.

(b) If an involuntary petition in bankruptcy is filed against Lessee or a receiver is appointed in an involuntary bankruptcy proceeding, the Commissioner may terminate this Lease by a written notice, and the demised term shall thereupon cease and expire in the same manner and to the same effect as if that were the expiration of the original term, unless such involuntary proceeding and/or receivership are vacated within sixty (60) days from the filing of the petition in involuntary bankruptcy.

(c) In the event of such cancellation by the Commissioner, all structures, additions, improvements, machinery or appurtenances then upon the Demised Premises shall be undisturbed and remain on the Demised Premises unless Lessor otherwise directs.

In the event of such cancellation by the Commissioner, the terms and conditions of any amortization agreement between the parties hereto shall be deemed abrogated and annulled and of no effect whatsoever. Lessor, in addition to any other rights and remedies given in this Lease or by virtue of any statute, or rules of law, may retain as liquidated damages any rent, security, deposit or monies received by it from

Lessee or others in behalf of Lessee as security for any damages sustained by Lessor. In the event of the termination of this Lease as provided in this Article and notwithstanding any other provision of law or of this Lease to the contrary, Lessor shall be entitled to recover from Lessee as liquidated damages an amount equal to the difference between the rent for the unexpired portion of the demised term and the rental value of the Demised Premises at the time of termination for the unexpired term or portion thereof, both discounted at the rate of eight percent (8%) per annum to present worth.

(d) In the event of the filing of a voluntary or involuntary petition in bankruptcy, no person claiming through or under Lessee by virtue of any statute or order of any Court shall be entitled to possession or to remain in possession of the Demised Premises and shall forthwith quit and surrender the Demised Premises.

It is the purpose and spirit of this Lease that the letting is to the above-mentioned Lessee only, subject to permitted assignments, sub-leases and uses.

ACCEPTANCE OF RENTAL NO WAIVER

TWELFTH: The acceptance of rental by Lessor for any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee, shall not be deemed a waiver of any right on the part of the Commissioner to cancel this

Lease for failure by Lessee so to perform, keep or observe any of the terms, covenants or conditions of this Lease. No waiver of default by Lessor of any of the terms, covenants or conditions hereof, to be performed, kept and observed by Lessee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee.

ERECTION OF STRUCTURES

THIRTEENTH: Lessee will not erect nor maintain nor permit to be erected or maintained, upon the Demised Premises, structures of any kind other than those now on said property or specifically authorized by this Lease, without the consent in writing of the Commissioner. Lessee will, at Lessor's option, within twenty-four hours after receiving notice so to do, remove any and all structures that may, after the date of this Lease, have been placed by it on said property without such consent of the Commissioner and in case of its failure to remove the same, the Commissioner may remove such structures, and Lessee shall pay the cost of such removal and of the storage of the material which Lessor may, if Lessor so elects, deal with as though it were abandoned property.

The structures, additions, alterations, changes or repairs shall become the property of Lessor immediately upon the commencement of the work of installation.

CONDITION OF PREMISES

FOURTEENTH: On the Commencement Date of this Lease, a joint survey of the Demised Premises was conducted. To the extent that such joint survey does not cover new construction performed by Lessee under this Lease, it shall be assumed that such construction has been done according to the plans and specifications approved by Lessor. The condition of the Demised Premises as described in (a) the joint survey or (b) the plans and specifications, shall be the condition in which the Demised Premises are delivered by Lessor to Lessee. All new construction by the Lessee shall be deemed to be in good order and condition upon the date of completion of such construction. Lessee shall not make any claim that the Demised Premises, or any building, structure or improvement thereon, at the time of commencement of the term of this Lease, are not or were not in the good order and condition as shown by the joint survey. Lessee shall not make any claim for damages, reduction of rent or otherwise for loss of wharfage or other damage arising from any work Lessor may do or cause to be done under this Lease.

REPAIRS, MAINTENANCE

FIFTEENTH: Lessee will at its own cost and expense during the initial term hereof, keep and maintain the Demised Premises and every part thereof, including all signs erected or placed thereon, and the structures thereon or to be

erected thereon, in as good and sufficient repair and condition as indicated in Article FOURTEENTH hereof, and during any renewal term in as good and sufficient repair and condition, ordinary wear and tear excepted. Nothing contained in this Article, however, shall be deemed to require Lessee to make any capital improvements to the Demised Premises, nor shall Lessee be liable for insured damage to the extent that insurance proceeds are in fact paid to Lessor.

FEES AND EXPENSES

SIXTEENTH: If Lessee shall default in the performance of any covenant on Lessee's part to be performed by virtue of any provision in any Article in this Lease contained, Lessor may, unless within ten (10) days after notice of such default, Lessee shall take action to remedy such default, perform the same for the account of Lessee in the name of, or as agent of Lessee, or otherwise. If Lessor at any time elects to pay any sum of money, by reason of Lessee's failure to comply with any provision hereof, or if Lessor is compelled to incur any expenses in instituting, prosecuting or defending any action or proceeding, instituted by reason of any default of Lessee hereunder, the sum or sums so paid by Lessor with all interest, costs and damages shall be deemed to be additional rent hereunder and shall be due from Lessee to Lessor on the first day of the month following the incurring of such respective expenses.

INSURANCE, DAMAGE OR DESTRUCTION

SEVENTEENTH: (a) During any work or construction, Lessee shall furnish, or cause to be furnished by its contractors, Builder's Risk Insurance-Completed Value Form, for the benefit of Lessor insuring against loss or damage by fire, standard extended coverage perils, pier and wharf coverage and such other perils as the Commissioner may from time to time certify as perils to be insured against, provided insurance against such perils so certified is available.

(b) Prior to the commencement of any work or construction, Lessee shall furnish Owner's Protective Liability Insurance for the benefit of Lessor and Lessee within limits of at least \$1,000,000 for property damage and at least \$1,000,000 for one person and \$5,000,000 for more than one person injured or killed in any one occurrence. A duplicate original of such policy shall be furnished to Lessor.

(c) During the term of this Lease, Lessee shall furnish liability insurance for the protection of Lessor against any claims, suits, demands or judgments by reason of personal injuries including death, and for any claims of damage to property occurring on or in proximity to the Demised Premises or arising out of or as a result of the occupancy thereof by Lessee. Such liability insurance shall provide limits of at least one million (\$1,000,000) dollars for property damage and at least one million dollars

(\$1,000,000) for one (1) person, and five million dollars (\$5,000,000) for more than one (1) person injured or killed in any one (1) occurrence.

(d) During the term of this Lease, Lessee, for the benefit of Lessor, shall keep the Demised Premises and the buildings, structures, container cranes, improvements and bulkheads thereon insured against loss or damage by fire, standard extended coverage perils, pier and wharf coverage, vandalism and malicious mischief, sprinkler leakage, and such other hazards, casualties and contingencies as the Commissioner may from time to time certify as risks to be insured against, in an amount determined in the manner hereinafter set forth, equal to the full replacement value of the Demised Premises and the buildings, structures, improvements and bulkheads thereon, without deduction for depreciation and including the cost of the removal of the debris.

(e) At the commencement of the term of this Lease, the full replacement value shall be fixed by the Commissioner. Once every year thereafter, an engineer, appraiser or other representative of the Commissioner shall inspect and examine the Demised Premises and determine the replacement value (without deduction for depreciation and including the cost of debris removal) of the buildings, structures, improvements and bulkheads to be covered by insurance. The amount so ascertained, which shall be fair

and reasonable, shall be certified to the Commissioner. Upon such certification, the Commissioner shall notify Lessee in writing of the amount so certified and within one (1) week after receipt of such notice (if the amount of outstanding insurance is greater or lesser than the amount so certified), Lessee shall increase or decrease the said insurance so as to make it equal to and conform with the amount so certified.

(f) All insurance policies to be furnished under this Article shall be issued by such insurance company or companies as are satisfactory to the Commissioner. All insurance policies shall insure Lessor and loss shall be adjusted with and payable solely and unconditionally to Lessor, who shall however consult with Lessee prior to any such settlement, without restriction or regard as to whether or not Lessee carried additional or other insurance. All policies of insurance required by this Article shall contain the terms and conditions of policies and endorsements available for such risks. If other, different or additional usual and reasonable types of insurance or clauses thereafter become available Lessee shall furnish such new policies on demand by the Commissioner. All insurance policies required by this Article shall be filed in the office of the Commissioner, with proof that the premiums therefor have been fully paid, or agreement made for payment in installments and proof that the first such installment has been paid and, in the case of subsequent installments, with proof furnished no later than the date each such installment is to be paid that such installment has been paid.

All insurance policies shall be subject to approval by the Commissioner as to form and sufficiency of coverage.

Lessee shall execute and deliver any additional instruments and do or cause to be done all acts and things that may be requested by Lessor to insure Lessor against all damage and loss as herein provided. If such an endorsement is available, the insurance policy or policies furnished shall provide that there be no subrogation against Lessee or Lessor.

If Lessee neglects, refuses or is unable to obtain any of the insurance required in this Lease, then Lessor may procure same, wherever available, at the expense of Lessee. All amounts due from Lessee to Lessor, under the several paragraphs of this Article, shall be deemed additional rent, payable with and collectible as rent.

(g) If Lessee is unable to obtain the type of insurance required under paragraph (d) of this Article at rates no higher than those fixed for such risks by the Insurance Services Office of New York State, then Lessee, at its cost, shall obtain the required insurance wherever the same may be purchasable, whether in this State or Country or elsewhere and irrespective of the amount of the premium therefor, in an amount equal to the depreciated value of the Demised Premises, as such depreciated value is determined by the Commissioner.

(h) The furnishing of any insurance policy or policies required under this Lease with respect to the risks insured thereby and while such policy or policies are actually in force shall constitute a complete fulfillment and satisfaction of Lessee's liability to Lessor with respect to any loss, damage or obligation to make repairs to the Demised Premises from the perils described in such policy or policies. Lessee, however, shall be, continue and remain liable for any uninsured destruction, loss or damage from any cause arising from breach of the terms, covenants and conditions of this Lease by Lessee. In the event of any such loss or damage for which Lessee becomes liable as aforesaid, Lessee shall, at its sole cost and expense, promptly repair or replace the property (including the buildings, structures, improvements and bulkheads) so lost or damaged, in accordance with plans and specifications approved by the Commissioner.

(i) If all or any part of the Demised Premises shall be destroyed or damaged in whole or in part by fire or other casualty of any kind or nature, foreseen or unforeseen, Lessee shall give to Lessor prompt notice thereof, and Lessee, with reasonable promptness and reasonable diligence, shall repair, alter, restore, replace and rebuild (collectively "Restore") the same, at least to the extent of the value and

as nearly as reasonably possible to the character of the Demised Premises immediately existing prior to such occurrence. However, if such restoration is necessary, Lessee may, with Lessor's prior written consent, which consent may not be unreasonably withheld, modernize the configuration of the Demised Premises as required by advances in cargo-handling technology. If Lessee shall fail or neglect to Restore the Demised Premises or the portion thereof so damaged or destroyed with reasonable diligence or having so commenced such Restoration shall fail to complete the same with reasonable diligence in accordance with the terms of this Lease or if, prior to the completion of any such Restoration by Lessee, this Lease shall expire or be terminated for any reason, Lessor may complete the Restoration. All such Restoration work shall be done in a good and workmanlike manner and otherwise in accordance with the provisions of this Lease. The extent of either Lessor's or Lessee's responsibility to supply funding to achieve the Restoration shall be limited to the proceeds of insurance, provided, however, that the Lessee shall be responsible for a refusal by the insurer of the Demised Premises to pay or compromise a valid claim under policies of insurance due to the fault of the Lessee or the failure of Lessee to provide the insurance required by this Lease, in which case Lessee shall provide reasonable security for the completion of the Restoration.

(j) Subject to the provisions of Section (k) of Article SEVENTEENTH hereof, Lessor shall pay over to Lessee from time to time any proceeds which may be received by Lessor from insurance furnished by Lessee. In the alternative, Lessee may provide Lessor with an irrevocable letter of credit containing the so-called "evergreen clause" (see ARTICLE SEVENTH) from an institutional lender or equivalent security reasonably satisfactory to Lessor in an amount equal to the insurance proceeds received by Lessor, in which case Lessor shall pay over the entire amount of insurance proceeds received by Lessor immediately upon receipt of such letter of credit or other security, which Lessor shall hold as security for the completion of the Restoration. In the event that Lessee elects to make use of this alternative procedure, then instead of making payments of insurance proceeds to Lessee as the restoration progresses as hereafter provided, Lessor shall allow Lessee to reduce the amount of the letter of credit or other security as the restoration progresses. Prior to the making of any Restoration, Lessee shall furnish Lessor with an estimate of the cost of such Restoration prepared by a licensed architect or engineer selected by Lessee and approved by Lessor which approval shall not be unreasonably withheld or delayed, and such insurance proceeds shall be paid to Lessee from time to time thereafter in installments as the Restoration progresses, upon application to be submitted by Lessee to Lessor and showing the cost of labor and material incorporated in the Restoration, or incorporated therein since the last

previous application, and paid for or which is then payable by Lessee. If any vendor's, mechanic's, laborers, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien is created or permitted to be created by Lessee and is filed against Lessor, Lessee shall not be entitled to receive any further installment until such lien is satisfied or otherwise bonded or discharged. If Lessor and Lessee agree in writing that an amount is legitimately due and payable to a third party, Lessor may make a payment directly to such third party. Upon completion of and payment for the Restoration by Lessee, the balance of any an all insurance proceeds held by Lessor shall be paid over to Lessee. Notwithstanding the foregoing, if Lessor makes the Restoration as provided in Section (j) above, then Lessor shall retain all proceeds which may be received by Lessor from insurance furnished by Lessee.

(k) The following shall be conditions precedent to each payment made to Lessee as provided in Section (j), above.

(i) there shall be submitted to Lessor the certificate of the Lessee's architect or engineer stating (a) that the sum then requested to be withdrawn either has been paid by Lessee and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and

giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate; (b) that no part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of insurance proceeds received by Lessor; (c) that the sum requested does not exceed the reasonable value of the services and materials described in the certificate; and (d) the architect's then current estimate of the cost of completing the Restoration;

(ii) there shall be furnished to Lessor evidence reasonably satisfactory to Lessor, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien which has not been discharged; and

(1) In the event of total destruction or in the event of partial destruction so extensive as to render the Demised Premises unsuitable for the purpose of this Lease, Lessee's obligation to pay rent shall continue unabated, provided, however, that if such destruction did not occur as a result of the act, fault or neglect of (a) Lessee, its servants, agents, employees or representatives or (b) others on or at the Demised Premises with Lessee's consent, then, within sixty (60) days from the date of such destruction, Lessee may terminate this Lease as of the date

of the exercise of such option by Lessee. Such sixty (60) day option shall be conditioned as follows:

(a) There shall be no abatement of rent by reason of such destruction, from the date of the destruction to the time of the exercise of the option by Lessee; and

(b) Lessee shall immediately after such destruction and pending such exercise of the option, take all necessary safety measures and measures for preservation of the Demised Premises, and in default of Lessee taking such measures promptly, Lessor may do so at Lessee's expense. If, however, Lessee shall not elect to terminate this Lease, then the term of this Lease and the Rental due hereunder shall be held in abeyance until a Restoration is substantially complete. Lessor and Lessee intend that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

WAIVER OF LIABILITY

EIGHTEENTH: Lessee further covenants and agrees that Lessor shall not be liable for any damage, injury or liability that may be sustained by Lessee or any other person whatsoever, or to their goods and chattels from any cause whatsoever, arising from or out of the occupancy of the Demised Premises, including but not limited to damage by the elements, leakage, obstruction, or other defect of water pipes, gas pipes, soil pipes, electric apparatus, other leakage in or about the Demised Premises or in any and from any

other part of the structure or structures of which the Demised Premises are part, or any patent condition of the Demised Premises or any part thereof; and Lessee hereby expressly releases and discharges Lessor from any and all demands, claims, actions, and causes of action arising from any of the aforesaid.

ACCIDENTS

NINETEENTH: If at any time during the aforesaid term, in any action or actions brought to recover damages for injuries to any person or persons or property by reason of any accident happening on or in proximity to the Demised Premises, by reason of any act of Lessee or the occupancy of Lessee under this Lease, a final judgment shall be recovered against Lessor, then upon written demand being made upon it, Lessee, its successors or assigns, shall pay to Lessor, its successors or assigns, the amount of such judgment, together with all reasonable and proper costs, expenses, and counsel fees to which said Lessor may or shall be subject in defense of such action, less the amount of any insurance proceeds paid to Lessor thereon.

Lessor agrees to notify Lessee with reasonable promptness of any claim presented against Lessor for which it might desire to hold Lessee responsible and to permit counsel for Lessee to cooperate with counsel for Lessor in the defense of any such action.

TERMINATION ON DEFAULT

TWENTIETH: If Lessee shall fail to perform, keep, and observe any of the terms, covenants, or conditions herein contained on the part of Lessee to be performed, kept, or observed, the Commissioner may, unless within fifteen (15) days after notice of such default, Lessee shall take action and expeditiously proceed to remedy such default, terminate this Lease by a notice to be served as herein provided, and the term hereby demised shall thereupon cease and expire in the same manner and to the same effect as if that were the expiration of the original term.

NOTICES

TWENTY-FIRST: All notices, demands and orders herein provided to be given by Lessor to Lessee shall be in writing and served by certified mail addressed as follows:

United States Lines, Inc.
27 Commerce Drive
Cranford, New Jersey 07016
Attention: Secretary

or at such other address as Lessee shall designate in writing to Lessor. All notices or demands by Lessee to Lessor shall be in writing and served by certified mail addressed as follows:

Commissioner
Department of Ports and Terminals
The City of New York
Battery Maritime Building
Foot of Whitehall Street
New York, New York 10004

The date of mailing of any notice, demand or order herein provided shall be deemed the date of service thereof.

DEFINITIONS: COMMISSIONER, CHIEF ENGINEER

TWENTY-SECOND: Wherever the words "Commissioner" of Ports and Terminals are mentioned herein, they shall be construed to mean the officer or agent of the City who for the time being shall be exercising the same or equivalent functions to those now exercised by said Commissioner with respect to the Department of Ports and Terminals. Wherever the term "Chief Engineer" is used herein, it shall mean the Chief Engineer of the Department of Ports and Terminals.

SURRENDER

TWENTY-THIRD: Lessee will peaceably and quietly leave, surrender and yield up unto the possession of said Lessor, without any fraud or delay, the Demised Premises together with all structures, additions, alterations, changes or replacements made thereon, at the end of the original or any renewal term or other sooner termination thereof, and the property, structures and improvements thereon shall then be well and sufficiently repaired, painted and in good order and condition, as required to conform to Article FIFTEENTH, except, however, that Lessee shall have the right to remove any gantry or similar function container cranes which it may have supplied for use at the Demised Premises, such cranes to remain property of Lessee or other owner thereof.

In the event the Demised Premises at the end of this Lease term or any renewal thereof or sooner termination are in a state of disrepair resulting from the failure of

Lessee to keep, repair, paint, and maintain the Demised Premises during said term as required under the terms of this Lease, then and in that event or either of such events, Lessee shall be required to sufficiently repair, paint and place the Demised Premises in good order and condition as though all of such work had properly been done during such term.

DEFAULT

TWENTY-FOURTH: Lessee hereby further covenants that if any default be made in the payment of the said rent or any part thereof, at the time above specified, or if any default be made in the performance of any of the covenants and agreements herein contained, or if the Demised Premises shall become vacant, Lessor may, in addition to the right to re-enter without notice, and in addition to the right to regain possession by means of summary proceedings or any other method permitted by law, upon resuming possession, relet the Demised Premises without terminating this Lease, or in any manner affecting the obligation of Lessee to pay the amount herein covenanted to be paid as rent, in which event, however, there shall be credited to the account of Lessee the amount received from such reletting after deducting the expenses of such proceedings as may have been necessary in order to regain possession under this provision, as well as, the costs of reletting the Demised Premises, and the execution of a new lease for the Demised Premises regardless of the term and/or provision thereof, shall not terminate

Lessee's liability or obligations hereunder which shall, in all events, remain in full force and effect for the full term of this Lease; and if Lessee shall have once vacated the Demised Premises, Lessee may not re-enter.

NO SURRENDER WITHOUT RESOLUTION,

NO ORAL MODIFICATION

TWENTY-FIFTH: No act done by Lessor, or, its officers or agents, during the term hereby granted, shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement of surrender, or to accept a surrender thereof, shall be valid, unless the same shall be duly authorized by resolution of the Board of Estimate. This Lease may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by Lessor and Lessee and authorized by a resolution of the Board of Estimate.

DAMAGES COLLECTIBLE AS RENT

TWENTY-SIXTH: In the case of the re-entry or taking of possession by Lessor in the manner, or by the means provided or referred to in Article TWENTY-FOURTH of this Lease, the amount of damages or deficiency shall become due and payable quarterly on the first day of each month set forth in Article FOURTH hereof, as soon as the amount of such damage or deficiency shall have been ascertained in the manner herein provided, and separate actions may be maintained quarterly to recover the damage or deficiency then due, without waiting until the end of the term; and no notice or demand shall be necessary in order to maintain such action.

NO RIGHT OF REDEMPTION

TWENTY-SEVENTH: Lessee hereby expressly waives any and all rights of redemption granted by or under any any present or future laws, whether in the event of Lessee being evicted or dispossessed for any cause, or in the event of Lessor obtaining possession of the Demised Premises, by reason of the violation by Lessee of any of the covenants and conditions of this Lease, or otherwise.

ACCESS

TWENTY-EIGHTH: Lessee at all times during the term shall permit inspection of the Demised Premises during reasonable hours by Lessor's agents or representatives, and during the six months next preceding the expiration of this Lease shall permit inspection thereof by or on behalf of prospective future lessees, provided, however, that if Lessee elects to renew the Lease pursuant to Article FIFTH herof, the Lessee shall be under no obligation thereafter during the original or renewed term hereof, to permit inspection by future lessees. Lessee shall allow an adjoining owner desiring to excavate on such adjoining property, or Lessor desiring to excavate a nearby street, to enter the Demised Premises and shore up an intervening wall during such excavation.

In the event such work is done by Lessor, then Lessor agrees to hold Lessee harmless from any and all claims whatsoever for damages to person or property resulting from such work by Lessor. In the event, however, such work is done by an adjacent owner or lessee of such adjoining property desiring to excavate on his property, then and in that event, as a condition for the granting of a permit for the performance of such work, Lessor shall require such adjacent owner or lessee of such adjoining property to furnish appropriate insurance to protect Lessor and Lessee herein from any loss or damage to person or property by reason of the performance of such work. Lessee herein agrees to promptly notify Lessor of any

claim presented against it by reason of such work by Lessor and to permit the Corporation Counsel of Lessor to either conduct the defense on behalf of Lessee herein by reason of such claim or to permit such Corporation Counsel to cooperate with the counsel for Lessee herein in the defense of any such action.

WATER, GAS, HEAT AND ELECTRICITY

TWENTY-NINTH: Lessee shall pay for all water, gas, heat and electricity consumed and used in the Demised Premises and shall procure at Lessee's own cost and expense, all meters, permits, approvals, and licenses necessary to effectuate this provision. Lessee shall also pay all sewer charges.

Lessee will in no event make any charge to or accept any money, commission, premium, bonus or other valuable consideration from any person, firm or corporation for the sale of water, gas, heat or electricity, or for any sewer charge, in excess of the rates actually charged to or paid therefor by Lessee; and Lessee will make no charge to or accept any money from any person, firm, or corporation for any handling services rendered by Lessee in connection with any such sewer charge, or sale of water, gas, heat or electricity in excess of a reasonable sum expended by Lessee.

SUNKEN CRAFT

THIRTIETH: If any of the land under water included in the Demised Premises (Schedule B) shall become obstructed in whole or in part by the sinking of any waterborne craft (other than a waterborne craft owned or operated by The City of New York), Lessee, after notice from the Commissioner, shall promptly remove such obstruction, or cause the same to be removed, without cost or expense to Lessor.

If, after notice from the Commissioner, Lessee fails to remove such obstruction, Lessor may in its discretion undertake the removal thereof, and in such event Lessee shall reimburse Lessor for the expense so incurred.

If during the term of this Lease the area outlined in blue on the Lease Print attached hereto shall become obstructed in whole or in part by the sinking of any waterborne craft owned or operated by The City of New York, through no fault or negligence of Lessee, then Lessor, after written notice served upon the Commissioner by Lessee, shall promptly remove such obstruction or cause the same to be removed, without cost or expense to Lessee. If, after notice from Lessee, Lessor fails to remove such obstruction, Lessee may in its discretion undertake the removal thereof, and in such event Lessor shall reimburse Lessee for the expenses so incurred.

To the extent that any such obstruction does not interfere with the docking of vessels at or the use of the Demised Premises, the respective obligations of the parties

hereunder shall not be required to be carried out in such a way as to prejudice the rights of either party as against any third party which may be primarily responsible, under the law, for the removal of such obstruction.

RIGHT OF ENTRY

THIRTY-FIRST: In the event that this Lease shall be terminated as hereinbefore provided, or by summary proceedings or otherwise, or in the event that the Demised Premises, or any part thereof, shall be abandoned by Lessee, or shall become vacant during the said term, Lessor, or its agents, servants, or representatives, may immediately or at any time thereafter, re-enter and resume possession of said property or such part thereof, and remove all persons and property therefrom either by summary dispossess proceedings or by a suitable action or proceeding at law, or otherwise, without being liable for any damages therefor unless such damages result from the negligence of Lessor, its agents, servants or representatives. No re-entry by Lessor shall be deemed an acceptance of a surrender of this Lease.

DEPTH OF WATER

THIRTY-SECOND: Lessee shall, at its own cost and expense do such dredging or other work as may be required from time to time during the term hereby granted to conduct its operations.

QUIET ENJOYMENT

THIRTY-THIRD: Lessor covenants and agrees that Lessee on paying the rent herein reserved promptly when due, and on performing all of the other terms, covenants and conditions set forth in this Lease promptly as required, shall and may peaceably have, hold and enjoy the Demised Premises for the term stated, unless such term shall cease, close or expire sooner as hereinbefore provided.

TELEPHONES, VENDING MACHINES AND CONCESSIONS

THIRTY-FOURTH: No telephone booths, merchandise vending machine or concessions shall be installed on the Demised Premises without the written permission of the Commissioner.

BINDING ON SUCCESSORS

THIRTY-FIFTH: Each and every of the terms, covenants and provisions of this Lease shall inure to the benefit of and be binding upon the parties hereto, and, except as herein otherwise provided, their respective legal representatives, successors and assigns.

LIENS; EASEMENTS

THIRTY-SIXTH: If any mechanics' liens or other liens or orders for the payment of money shall be filed against the Demised Premises or any building or improvement thereon or against Lessor as owner thereof, or against any funds of

Lessor by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or for Lessee at the Demised Premises or for or by reason of any addition, change or alteration or the cost or expense thereof, or any contract relating thereto, Lessee shall within thirty (30) days after notice thereof, cause the same to be cancelled and discharged of record by bond or otherwise at the expense of Lessee. Lessee shall also defend, on behalf of Lessor, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens or orders and Lessee will pay any damages and discharge any judgment entered therein and save harmless Lessor from any claim or damage resulting therefrom.

Lessee takes this Lease subject to (1) Rights and easements, if any, of public utility companies, service companies and others to operate, use, maintain, inspect, repair and replace when necessary, electrical, steam, telephone, telegraph, alarm and signal lines and water and gas pipes and all conduits, tunnels, poles and all other appurtenances thereof, whether created by written or oral agreement, by implication, permit or adverse use or otherwise, and (2) all further easements as shown on Schedule B attached hereto and as also shown on the survey dated January 4, 1974 prepared by Carton B. Ettlenger and entitled "Map of Survey of Property of American Export Industries and others for Acquisition by The City of

New York in the Borough of Richmond". Said survey may be seen at the Department of Ports and Terminals or the office of the Borough President of Staten Island.

No compensation shall be paid to Lessee by Lessor for any easement or easements contained in this Lease.

CANCELLATION AND DISQUALIFICATION

THIRTY-SEVENTH: Upon refusal of a person, when called before a grand jury, governmental department, a commission, agency or any other body which is empowered to compel the attendance of witnesses and examine them under oath, to testify concerning a transaction, contract, lease, permit or license entered into with The City of New York (City), the State, or any political subdivision thereof, or a public authority or with any public department, agency or official of the State or a political subdivision thereof, upon being advised that neither his or her statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding:

(a) Such person, or any firm, partnership, corporation or other entity related to the aforesaid testimony of which he or she was at the time of the testimony a member, partner, director, officer, fiduciary, principal or employee may be disqualified for a period not to exceed five years after such refusal from submitting bids for or entering into or obtaining any contract, lease, permit or license which

will be paid in whole or in part out of monies under the control of or collected by the City and

(b) Any and all such existing City contracts, leases, permits or licenses that said refusal to testify concerned may be cancelled or terminated by the City or the contracting agency and/or be subject to such other action appropriate under the circumstances thereto, in the discretion of the City for cause after a hearing, without the City incurring any penalty or damages on account of such cancellation or termination, but any monies owing for goods delivered, work done, rentals, permit or license fees due, prior to the cancellation or termination, shall be paid by the City.

(c) The term license or permit as used herein shall be defined as a license, permit, franchise or concession not granted as a matter right.

(d) Any disqualification, cancellation or termination hereunder shall be made by the City Commissioner or agency head who is or would be a party to the contract, lease, permit or license that is the subject of the aforesaid disqualification, cancellation and/or termination, after a hearing upon not less than two (2) days written notice to the parties involved.

NO DISCRIMINATION

THIRTY-EIGHTH: Lessee agrees that in the performance of work, labor and services to be rendered under this

Lease and in the use or occupancy of the Demised Premises there shall be no discrimination against any person because of age, marital status, disability, religion, sex, race, creed, color, national origin, sexual orientation, affectional preference or ancestry, and Lessee will comply with all provisions of Executive Order No. 50, dated April 25, 1980 and Executive Order No. 53, dated August 1, 1980, of the Mayor of The City of New York and any amendments thereof, and with the rules, regulations and orders issued pursuant hereto, the receipt of copies of which is hereby acknowledged.

WAIVER OF TRIAL BY JURY

THIRTY-NINTH: Lessee waives all rights to trial by jury in any summary proceeding hereafter instituted by Lessor against Lessee or on any counterclaim interposed by Lessee in respect to the Demised Premises and in any action hereafter brought to recover rent or in any proceeding, counterclaim or action or any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease or the Demised Premises on any matters whatsoever arising out of or in any way connected with this Lease, including, but not limited to, the relationship of Lessor and Lessee or Lessee's use or occupancy of the Demised Premises.

SURVIVAL RIGHTS

FORTIETH: The provisions of this Lease relating to waiver of a jury trial and the right of re-entry upon revocation shall survive the expiration date of this Lease.

NOISE CONTROL CODE AND ABATEMENT

FORTY-FIRST: In accordance with the provisions of Section 1403.3-2.25 of the Administrative Code of the City of New York, Lessee agrees that:

1. Devices and activities which will be operated, conducted or manufactured on or at the Demised Premises and which are subject to the provisions of the New York City Noise Control Code, New York City Administrative Code §§1403.3-1.01 et seq (hereinafter in this Article, "the Code") will be operated, conducted and constructed without causing a violation of the Code; and

2. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities; and

3. Lessee will comply with any and all regulations issued by the Commissioner of Environmental Protection pursuant to New York City Administrative Code §1403.-2.25(c).

CONCURRENT SURRENDER AGREEMENT

FORTY-SECOND: The Original Lease was executed simultaneously with the execution of an agreement between Lessor and Lessee, surrendering the Lease dated May 23, 1961, as amended between Lessor and the predecessor in interest of Lessee, covering certain piers on the North River.

INTERNATIONAL BOYCOTT

FORTY-THIRD: In accordance with §343-10.0 of the New York City Administrative Code, Lessee agrees that neither it nor any affiliated company owned by it is participating or shall participate in an international boycott, in violation of the Export Administration Act of 1969, as amended (50 U.S.C.A. Appendix §2401 et seq.) or the regulations of the United States Department of Commerce promulgated thereunder.

RECAPTURE FOR IMPROVEMENTS

FORTY-FOURTH: If, pursuant to an existing or future law or plan, Lessor determines to proceed with the construction of improvements for public purpose, other than those purposes stated in Article FIRST, within an area embracing all or a part of the Demised Premises and for such purpose it shall be necessary to enter upon and repossess all of the Demised Premises or such a substantial part of the Demised Premises as shall make it impractical for Lessee to use the remainder in its business for the purposes set forth in this Lease, then upon

two (2) years prior written notice to Lessee to that effect (describing the Demised Premises or the part thereof required for such purposes), this Lease shall terminate. If an insubstantial part of the Demised Premises is required as above, then upon one hundred and eighty (180) days' prior written notice to that effect (describing the part of the Demised Premises required for such purposes), this Lease shall terminate as to the property stated to be required by such notice.

No damage or compensation shall be required of or paid by Lessor by reason of such entry, possession and termination, or for any structure or improvements constructed by Lessee upon the recaptured property. If only an insubstantial part of the Demised Premises shall be required by and described in the notice, the rent shall be reduced in such proportion as the Commissioner shall deem reasonable and just. If the recapture of a part of the Demised Premises shall make it impracticable for Lessee to use the remainder in its business for the purposes set forth in this Lease, Lessee shall have the right to consider such termination as to part of the Demised Premises to be a termination as to the whole of the Demised Premises. Lessee shall give Lessor thirty (30) days' prior written notice of its intention so to terminate within thirty (30) days of Lessor's notice to recapture.

LEASEHOLD MORTGAGES

FORTY-FIFTH: 1. For the purposes of this Lease, unless the context otherwise requires:

(a) "Leasehold Mortgage" means a mortgage covering this Lease. Lessee's leasehold without the fee interest herein, including a construction or building loan leasehold mortgage, a combination thereof, and any replacement, renewal, modification, consolidation and extension thereof.

(b) "Institutional Lender" shall mean a savings and loan association, a commercial bank or trust company, pension fund or insurance company which has either a net worth of not less than \$100,000,000 or assets of at least \$500,000,000 and is subject to service of process in the State of New York.

2. Lessee shall have the right during the initial term and any renewal term or terms of this Lease, on such terms as Lessee may deem desirable and without the approval of Lessor,

(i) to mortgage this Lease and Lessee's leasehold interest herein to one or more Institutional Lenders; and

(ii) to assign this Lease and existing or future subleases to one or more Institutional Lenders as additional collateral security for the payment of the Leasehold Mortgage indebtedness only;

but only if the proceeds of the note or notes secured by any such mortgage or assignment are used to construct improvements to the Demised Premises pursuant to Article 13 of this Lease.

3. The total aggregate amount of all mortgages shall not exceed the amount of the verified costs of construction including the cost of all plant and equipment installed in the improvements so constructed.

(a) Lessee shall submit to Lessor and to mortgagees a sworn statement of such costs by the architect and/or engineer employed by the Lessee, approved by the Leasehold Mortgagee, within thirty days of the issuance of a permanent Certificate of Occupancy or Completion for the facility, or, in the case of a building or construction loan, within thirty (30) days of the advance of monies by the primary Leasehold Mortgagee pursuant to such loan, or such other, longer period as said Leasehold Mortgage or building or construction loan agreement may provide.

4. Lessor assumes no liability for the payment of any mortgage and shall not be liable for the debt of the Lessee for which any mortgage is given as security and each and every mortgage shall expressly therein so state. Any and all mortgages shall provide that notice by the Leasehold Mortgagee shall be given to the Lessor in the event of any default by Lessee, such notice to be given to the Lessor by certified or registered mail, return receipt requested, at the same time as notice of default is given to Lessee.

5. Any and all mortgages shall provide that Lessor shall have the same right to perform the Mortgagor's obligations and the same right to prepay the mortgage as Lessee does at

any time if Lessee defaults, provided, no such action by the Lessor and no provision of this Lease shall be deemed to limit the rights of the Lessee, as such Mortgagor, to cure any default under such mortgage, or redeem the same as provided by law.

TITLES AND HEADING

FORTY-SIXTH: The titles and headings are inserted for reference only and in no way define, limit or describe the scope or intent of this Lease, nor affect the Lease in any way.

FMC AND FCB APPROVAL

FORTY-SEVENTH: This Lease shall be ineffective for all purposes and of no force or effect unless and until it shall have been approved by the Federal Maritime Commission and the New York State Financial Control Board (if such approval is required by law at the time).

ENTIRE AGREEMENT

FORTY-EIGHTH: This Lease consists of pages 1 through together with Exhibits A through D. It constitutes the entire agreement between the Lessor and Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed by the Lessor and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon Lessor unless expressed in

writing in this Lease. This Lease has been executed in several counterparts, each of which shall be an original.

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

THE CITY OF NEW YORK, Lessor

ATTEST:

By *Linda M. Shale*
Commissioner of Ports and
Terminals

Secretary

ATTEST:

Maria C. Toman
Secretary

UNITED STATES LINES, INC., Lessee

By *William B. Brown*
President

Approved as to Form

Sheila M. [Signature]
Acting Corporation Counsel

FK

STATE OF NEW JERSEY :
COUNTY OF UNION .. SS

On the 28 day of June 1983 , before me
personally came William B. Bru to me known, who being
by me duly sworn did depose and say that he resides at
[REDACTED] that he is

the President of UNITED STATES LINES, INC., the Corporation
described in and which executed the above instrument; that he
knows the seal of said Corporation; that the seal affixed to
said instrument is such corporate seal; that it was so affixed
by order of the Board of Directors of said Corporation; and
that he signed his name thereto by like order.

Anne Rubin
Notary Public

ANNE RUBIN
A Notary Public of New Jersey
Commission Expires November 12, 1983

STATE OF NEW YORK)
)
)
COUNTY OF NEW YORK)

ON THIS *30th* DAY OF *JUNE, 1983*, before me personally came Linda W. Seale, to me known, and known to me to be the Commissioner of Ports and Terminals of The City of New York and the same person who executed the foregoing instrument, and she acknowledged that she executed the foregoing instrument on behalf of The City of New York pursuant to the authority vested in her by resolution of the Board of Estimate adopted *JUNE 16th*, 1983, Calendar No. *39*.

Theodore I. Kanner
Notary Public

THEODORE I. KANNER
Notary Public, State of New York
No. (31-7153550)
Qualified in New York County
Commission Expires March 30, 1984.

SCHEDULE A

BOARD OF ESTIMATE

RESOLUTION

CITY OF NEW YORK
BOARD OF ESTIMATE
BUREAU OF SECRETARY.

RECEIVED JUL 12 1985

REFERRED CALENDAR
Reg. No. 607 Vol. No. 150

Schedule A

BOARD OF ESTIMATE
CITY OF NEW YORK
(Cal. No. 40)

~~CITY OF NEW YORK
BOARD OF ESTIMATE
BUREAU OF SECRETARY
RECEIVED JUL 13 1985~~

~~REFERRED CALENDAR
Reg. No. 603 Vol. No. 150~~

WHEREAS, pursuant to a resolution adopted by its Board of Estimate on June 16, 1983 (Cal. No. 39), The City of New York, acting by and through the Commissioner of Ports and Terminals ("Commissioner"), did enter into an Amended and Restated Lease with United States Lines, Inc., dated as of the 30th day of June, 1983, concerning certain premises known as the Howland Hook Marine Terminal, Borough of Staten Island (the "1983 Lease"); and

WHEREAS, United States Lines, Inc. ("USL") desires to assign and the Port Authority of New York and New Jersey (the "Port Authority") desires to accept the 1983 Lease and all the interest, rights, obligations and liabilities of USL thereunder; and

WHEREAS, The City of New York (the "City") is willing to consent to such assignment on certain terms, provisions, covenants and conditions; and

WHEREAS, the Port Authority and the City desire to amend the 1983 Lease from and after the effective date (as hereinafter defined) of the assignment; and

WHEREAS, the Commissioner has submitted to this Board a proposed Assignment of Lease with Amendments;

NOW, THEREFORE, BE IT RESOLVED:

That the Board of Estimate, pursuant to Section 704(g) of the New York City Charter, does hereby approve of the submitted proposed Assignment of Lease with Amendments, by and among the City, Port Authority and USL (the "Assignment") and authorized its execution by the Commissioner, after approval as to form by the Corporation Counsel, and further authorizes the Commissioner, after approval as to form by the Corporation Counsel, to enter into an option agreement and subsequent lease with USL providing for the continued occupancy of the Howland Hook Marine Terminal by USL following the expiration of the Assignment.

I. The salient terms and conditions of the Assignment are as follows:

Demised Premises: The demised premises under the 1983 Lease expanded to include an additional area near the gate complex, as

more particularly shown diagonally hatched in Exhibit "D" of the Assignment, (the "Terminal").

Term: The term of the Assignment shall be for a period of thirty-five (35) years commencing upon the third anniversary of the date the Assignment becomes effective, as hereinafter defined. All options and rights to extend the term under the 1983 Lease are extinguished.

Sublease: Port Authority will sublease, subject to the Commissioner's consent, the Terminal to USL (the "Sublease"). The Sublease shall provide that the Terminal will remain the principal wharf facility of USL for all its container ships which call at the Port of New York and New Jersey. There shall be no modification of any material obligation of USL under the Sublease, without the prior consent of the Commissioner.

Effective Dates: A. The Assignment shall not be effective until the latest of the following dates; [REDACTED]

(i) The date on which the Assignment is executed by appropriate officers of the Port Authority acting pursuant to a valid resolution of the Board of Commissioners of the Port Authority;

(ii) The date on which the Assignment is executed by appropriate officers of the City acting under a valid resolution of the Board of Estimate;

(iii) The date on which the Assignment is executed by appropriate officers of USL acting under a valid authorization of the governing body of that corporation;

(iv) The date on which (a) the Assignment is permitted to become effective pursuant to the Shipping Act of 1984 (46 USCA pp. 2701 et seq.) and Regulations of the Federal Maritime Commission ("FMC") issued pursuant thereto; or (b) the FMC determines that it has no jurisdiction over the Assignment; or

(v) The date on which the Sublease becomes effective, in accordance with Section B below. [REDACTED]

B. The Sublease shall not be effective prior to the latest of the following dates:

(i) The date on which the Commissioner consents to the Sublease, which shall not be sooner than the execution of the Sublease by appropriate officers of the Port Authority acting pursuant to a valid resolution of the Board of Commissioners of the Port Authority and the execution by appropriate officers of USL acting under a valid authorization of its governing body; or

(ii) The date on which (a) the Sublease is permitted to become effective pursuant to the Shipping Act of 1984 (46 USCA pp. 2701 et seq.) and Regulations of the FMC issued pursuant thereto; or (b) the FMC determines that it has no

jurisdiction over the Sublease.

C. Neither the Assignment nor the Sublease shall be in effect for any purpose whatsoever prior to the effective date thereof, determined as set forth in Section A or B above. In the event not all the conditions hereinabove set forth have occurred so that the Assignment does not become effective on or before January 31, 1986, then the Assignment shall be null and void, and the 1983 Lease without any of the amendments contained in the Assignment shall remain in effect between the City and USL.

Rental: The Port Authority will pay to the City, commencing with the effective date of the Assignment, the same basic rental as USL would have paid under the 1983 Lease as set forth in Section A of Article FOURTH of the 1983 Lease (a sum not to exceed \$5.7 Million annually) through August 31, 2006, with the said sum to be adjusted by reductions as provided in the 1983 Lease and by the 5 1/4% increase as set forth in Paragraph (a) of Article FIFTH thereof to be applied on September 1, 2006 to the basic rental in effect as of September 1, 2006 and to be applied on September 1, 2016 to the basic rental in effect as of September 1, 2016.

Expansion of the Terminal: A. The Port Authority shall be responsible for the performance of the construction work involved in the estimated \$85.7 Million expansion of the Terminal, described in Attachment I of the Assignment, and all necessary on-site utilities necessitated thereby, and up to the first \$5 Million of necessary off-site traffic and utility improvements. The Port Authority, subject to all necessary governmental approvals and permits, will assure the dredging of the access channels to Howland Hook to a depth of forty feet below mean low water.

B. USL will undertake and the Port Authority shall pay for the required Environmental Impact Statement for the expansion of the Terminal.

C. The City will undertake a traffic study of the access roads serving the Terminal, at its own cost and expense, and will implement agreed upon traffic improvements. The City shall undertake off-site utility improvements necessary for the use of the improvements described in Attachment I.

Remaining Terms, Covenants and Conditions: The remaining terms, covenants and conditions of the Assignment shall be substantially similar to the proposed Assignment as submitted to the Board of Estimate by the Commissioner of Ports and Terminals.

II. The salient terms and conditions of the proposed Option Agreement are as follows:

Option: Providing USL is in substantial compliance with all of the terms, covenants and conditions of the Sublease, and is not otherwise in default ~~to the City~~, USL shall have the

non-assignable right, exercisable by written notice to the Commissioner given not more than three years nor less than one year prior to the expiration of the term of the Assignment, to enter into a lease with the City for the Terminal upon the following terms and conditions:

Term: Initial term of ten years commencing at 12:01 a.m. on the day following the expiration of the Assignment, with renewal terms up to the final expiration date of February 28, 2073; each renewal term shall be for a period of ten years except where the remaining period of time prior to the final expiration date is less than ten years, then such renewal term will be limited to said remaining period.

Rent: USL shall pay the City rent and other charges in accordance with the formula and rental provisions specified in the Sublease.

Remaining Terms, Covenants and Conditions: The remaining terms, covenants and conditions of the lease shall be substantially similar to those contained in the Sublease, with appropriate modifications to reflect the change from a sublease with the Port Authority to a lease with the City, and subject to such other terms and conditions as may be required by the Corporation Counsel.

Approved as to form


Acting Corporation Counsel *SC*

A TRUE COPY OF RESOLUTION NO. 40 DATED JUL 18 1985

ADOPTED BY THE BOARD OF ESTIMATE.


Secretary

No. 369

R-6543

COMMUNICATION dated June 7, 1985, from the Commissioner, Department of Ports and Terminals, transmitting for approval, pursuant to Section 704 (g) of the New York City Charter, the following:

Proposed Agreement among the City of New York, the Port Authority of New York and New Jersey, and United States Lines, Inc. regarding the premises located at Howland Hook, Staten Island. Also transmitted is the existing lease between the City of New York and United States Lines, the draft Sublease between the Port Authority and United States Lines, and proposed resolution authorizing the Commissioner of Ports and Terminals to execute the proposed agreement.

The proposed agreement allows United States Lines to assign its existing lease to the Port Authority for 38 years. The agreement then amends the lease to reflect the new arrangement, allowing the Port Authority to sublease the terminal back to United States Lines. This agreement will provide for the expansion of the Howland Hook Marine Terminal, for which the Port Authority has committed more than \$90 million. The expansion will allow United States Lines to create at least 500 additional permanent jobs. The City will retain its current revenue stream of approximately \$5 million. Upon expiration of the agreement, United States Lines will have the option to continue the lease with the City at increased terms until 2073.

Refer to the Corporation Counsel and the Director of Management and Budget.

No. 370

R-1361

COMMUNICATION dated June 5, 1985, from the President, New York City Public Development Corporation, transmitting resolution authorizing and restating a resolution previously adopted on May 2, 1985 (Cal. No. 281) which amended and restated a resolution previously adopted on December 6, 1984 (Cal. No. 44).

The only substantive difference between this resolution and the resolution adopted on May 2, 1985 (Cal. No. 281) is that the financing which may be subordinate or equal to the mortgage securing the note given to New York City Public Development Corporation by Pepsi-Cola Bottling Company of N.Y. has been modified.

Resolution for adoption.

No. 371

R-1328

COMMUNICATION dated June 10, 1985, from the President, New York City Public Development Corporation, transmitting pursuant to Section 2.04(c) of the (Consolidated) Contract between the City and the New York City Public Development

BOARD OF ESTIMATE

CITY OF NEW YORK

(CAL. NO. 39)

WHEREAS, pursuant to a resolution adopted by its Board of Estimate on December 6, 1973 (Cal. No. 15), the City of New York acting by and through the Commissioner of the Department of Ports and Terminals of the then Economic Development Administration, did enter into a certain lease with United States Lines, Inc. ("U.S. Lines"), dated as of the 21st day of December, 1973, concerning certain premises known as the Howland Hook Marine Terminal, Borough of Staten Island ("the Original Lease"); and

WHEREAS, by Local Law 28 of 1977, the Department of Ports and Terminals ("the Department") has succeeded to all the rights, duties and responsibilities of the Economic Development Administration in connection with the Original Lease; and

WHEREAS, the Original Lease contained a Schedule B which is a Work Scope for improvements which the parties intended to make to the premises demised thereunder, which improvements have been substantially completed; and

WHEREAS, the Department and U.S. Lines wish to amend and restate the original lease to set forth an updated Work Scope which provides for necessary capital rehabilitation of certain portions of the demised premises; and

WHEREAS, the Department and U.S. Lines intend that, subject to the availability of funds in the New York City Capital Budget, and subject to the consent of U.S. Lines, the Department will reimburse U.S. Lines for the cost of rehabilitating these portions of the demised premises and the rent due under the lease will be increased to reflect the cost of this work; and

WHEREAS, the Commissioner of the Department ("the Commissioner") has submitted to this Board a draft of a new lease which amends and restates the Original Lease, as an enclosure with her letter to the Secretary of this Board dated May 13, 1983 ("the Draft Lease");

NOW, THEREFORE, BE IT RESOLVED:

That the Commissioner is hereby authorized to enter into a new lease, which amends and restates the Original Lease, provided that the terms and conditions of the amended and restated lease are substantially similar to the terms and conditions of the Draft Lease which was submitted by the Commissioner as an enclosure with her letter to the Secretary of this Board, dated May 17, 1983, and provided that the amended and restated lease has been approved as to form by the Corporation Counsel. In particular, the amended and restated lease may contain the following terms:

- (a) Subject to the availability of funds in the New York City Capital Budget, the Department may elect to reimburse U.S. Lines for the cost of the work set forth in schedule D of the Draft Lease (including a maximum of \$590,000 for improvements which have already been commenced or completed), provided, however, that the rent due under the lease will be increased by an amount sufficient to amortize each sum reimbursed to U.S. Lines over a period of twenty years with interest at 12% per annum.
- (b) After the expiration of the initial term of the lease, U.S. Lines shall have the right to exclude any or all of the Pepsico cranes and the Peiner crane from the lease. In such case, the rental payable upon renewal of the lease shall be reduced by \$118,406 per annum for each excluded Pepsico Crane and by \$103,326 per annum if the Peiner crane is excluded.
- (c) Schedule C of the Draft Lease provides a list of "Improvements with Limited Useful Life." If, upon or after the expiration of the initial term of Lease, the parties agree that any of the improvements set forth in Schedule C has deteriorated to the point where it must be replaced or completely rehabilitated, then the rental payable upon renewal of lease shall be reduced pursuant to the terms set forth in Schedule C, and ARTICLE FIFTH, par. b, subd. (2) of the Draft Lease.

A TRUE COPY OF RESOLUTION NO. ²⁰1 DATED June 16 1983
ADOPTED BY THE BOARD OF ESTIMATE.

Theodore M. McKinis
Secretary (E.H.)

SCHEDULE B

DESCRIPTION OF DEMISED PREMISES

Schedule B

I, DORIS E. LANDRE, the Secretary of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, 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, hereby certify

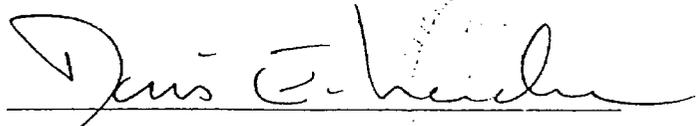
THAT annexed hereto is a true and correct transcript from the Official Minutes of a meeting of The Port Authority of New York and New Jersey, duly held on the 9th day of May, 1985, containing the following resolution or resolutions:

Howland Hook Marine Terminal - Agreements with The City of New York, United States Lines, Inc. and other Appropriate Parties

THAT (except as hereinafter stated) it appears from the Official Minutes of The Port Authority of New York and New Jersey that the said resolution or resolutions were duly and unanimously adopted by the Commissioners of The Port Authority of New York and New Jersey and are now in full force and effect.

No exceptions.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the Official Seal of The Port Authority of New York and New Jersey this 2nd day of August, 1985.



Secretary of
The Port Authority of New York and New Jersey

Howland Hook Marine Terminal - Agreements with The City of New York,
United States Lines, Inc. and other Appropriate Parties

RESOLVED, that a project for the development and modernization of New York City's Howland Hook Container Terminal in Staten Island, including new cranes, buildings, berth expansions and rail intermodal improvements at an estimated cost of \$100-\$110 million be authorized; and it is further

RESOLVED, that the Board authorize the Executive Director to: (a) enter into an agreement or agreements with The City of New York and United States Lines, Inc. covering the assignment to the Port Authority of its lease covering the Howland Hook Marine Terminal, with appropriate amendments; (b) enter into a sublease with respect to the Terminal with United States Lines, Inc.; (c) enter into agreements with United States Lines, Inc., or others, or both, with respect to improvements and acquisitions to and for the Terminal; (d) enter into an agreement or agreements with The City of New York to reimburse the City for off-site improvements and (e) enter into such other agreements and take such other actions as may be necessary and appropriate to accomplish the foregoing; and it is further

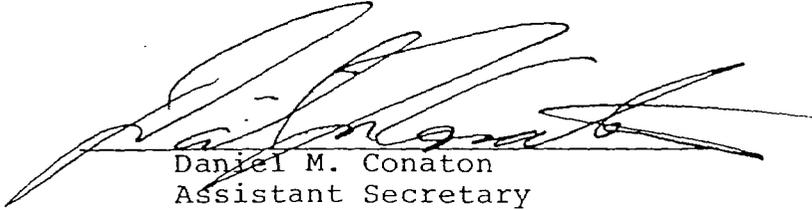
RESOLVED, that the form of all the agreements be subject to the approval of General Counsel or his designated representative.

Schedule C

CERTIFICATE OF CORPORATE RESOLUTION

The undersigned does hereby certify that he is the Assistant Secretary of United States Lines, Inc., a corporation duly organized and existing under the laws of the State of Delaware. The attached is a true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation at a meeting thereof duly called and held and at which a quorum was present on April 15, 1985 and the said resolution has not been amended, modified or rescinded and remains in full force and effect.

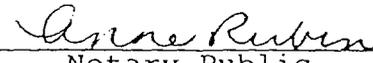
IN WITNESS WHEREOF, the undersigned has hereunto placed his hand and affixed the seal of said Corporation on this 2nd day of August, 1985.


Daniel M. Conaton
Assistant Secretary

(Corporate Seal)

STATE OF NEW JERSEY)
COUNTY OF UNION) ss.:

On this 2nd day of August, 1985, before me, a Notary Public of the State of New Jersey, personally appeared Daniel M. Conaton, Assistant Secretary of United States Lines, Inc., to me known and known to me to be the individual described in and who is the duly authorized individual to execute the within instrument on behalf of said corporation, and that he duly acknowledged to me that he executed the same.



Notary Public

ANNE RUBIN
A Notary Public of New Jersey
My Commission Expires November 12, 1988

RESOLVED, that the Chairman of the Board, President and Chief Executive Officer, any Vice President (the "Designated Officers") of the Corporation be, and each of them hereby is, authorized and empowered (any one of them acting alone) for and in the name of and on behalf of the Corporation to negotiate, execute and deliver all such instruments and documents and to perform all such acts and deeds as may be necessary or appropriate to enter into a new agreement for the rental of expanded facilities at Howland Hook, Staten Island, New York, including but not limited to, agreements between the City of New York, the Port Authority of New York and New Jersey and United States Lines, Inc. and agreements including letters of intent between the Port Authority of New York and New Jersey and United States Lines, Inc. for the rental and expansion of the Howland Hook facility.

224-010773

(61085)

RECEIVED

'85 JUN 24 11:54

FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETARY

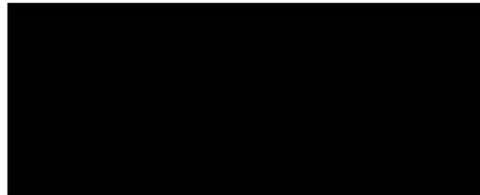
AGREEMENT

AMONG

THE CITY OF NEW YORK,
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
AND
UNITED STATES LINES, INC.

HOWLAND HOOK MARINE TERMINAL

DATED AS OF JUNE 11, 1985



THIS AGREEMENT, made this 12th day of June, 1985, by and among The City of New York (the "City"), the Port Authority of New York and New Jersey (the "Port Authority") and United States Lines, Inc. ("USL").

W I T N E S S E T H

WHEREAS, the City, the Port Authority and USL are entering into an Assignment of Lease with Amendments (the "Assignment") modifying a certain Amended and Restated Agreement of Lease, dated as of June 30, 1983, between the City, as lessor, and USL, as lessee, regarding the Howland Hook Marine Terminal in Staten Island (the "Terminal"); and

WHEREAS, as part of the arrangement hereunder the Port Authority expects to be entering into a Sublease (the "Sublease") with USL regarding the Terminal within seven (7) days after the date hereof which Sublease requires the consent of the City (the Assignment and the Sublease being hereinafter called "the Agreements"); and

WHEREAS, to expedite the review of the Agreements by the Federal Maritime Commission (the "FMC"), the parties hereto desire to execute and submit the Agreements to the FMC prior to the approval of the Assignment by the Board of Estimate of the City (the "Board");

NOW, THEREFORE, the parties hereto agree as follows:

1. The Port Authority and USL will execute four counterparts of the Assignment.
2. The Commissioner of Ports and Terminals (the "Commissioner") will execute four counterparts of the Assignment, subject to the subsequent approval by the Board of a resolution authorizing the Commissioner to execute the Assignment.
3. Upon delivery to the Commissioner of four counterparts of the Sublease executed on behalf of the Port Authority and USL and provided the Sublease is satisfactory to her, the Commissioner will consent to four counterparts of the Sublease, subject to the subsequent approval by the Board of a resolution authorizing the Commissioner to execute the Assignment.
4. It is understood that the Commissioner's execution of the Assignment and consent to the Sublease is solely for the purpose of submitting the Agreements to the FMC.

5. The Commissioner's execution of the Agreements will be of no force and effect against the City, unless and until the Board approves the Assignment.

6. It is understood and agreed that there is and shall be no reliance on the Commissioner's execution of the Agreements unless and until the Board approves the Assignment. The failure of the Board to approve the Assignment shall not give rise to any claim for loss, damage or liability of any kind whatsoever or for any actions for specific performance against the City or the Commissioner.

7. The Commissioner will deliver one executed counterpart of the Assignment and Sublease to USL for delivery to FMC and hold three executed counterparts of the Agreements in escrow until the Board approves the Assignment and upon the approval of the Board the Commissioner will promptly deliver a fully executed copy of the Agreements to USL and to the Port Authority. The Commissioner will attach the resolution of the Board to all executed copies of the Assignment and if the other resolutions are not presently attached they will be provided by the respective parties to the Commissioner for attachment and be attached. If the Board does not approve the Assignment by January 31, 1986, the Commissioner will return to USL and to the Port Authority a fully executed counterpart of the Agreements but the Agreements shall be null and void in accordance with Article Fourth of the Assignment.

8. USL will be responsible for forwarding the executed Agreements, together with a copy of this Agreement, to FMC. If FMC approves prior to the approval of the Board the FMC will be advised of the approval of the Board.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

THE CITY OF NEW YORK

By: [Signature]
Commissioner of Ports and Terminals

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By: [Signature]
GENERAL COUNSEL / ASST. EXECUTIVE DIRECTOR
UNITED STATES LINES, INC.

By: [Signature]
Asst Gen'l Counsel

APPROVED AS TO FORM:

[Signature]
ACTING CORPORATION COUNSEL

SCHEDULE C
HOWLAND HOOK LEASE AMENDMENT
IMPROVEMENTS WITH LIMITED USEFUL LIFE

<u>ITEM</u>	<u>ESTIMATED 82 COST</u>	<u>EST. LIFE</u>
Crane Rail Foundation	600,000	20 yr
Main Elect Sub Sta	40,000	20 yr
Sheet Pile Wall	400,000	30 yr
Pavement	100,000	20 yr
Elect Switches	270,000	20 yr
	1,410,000	

Upon substantial completion of the work set forth in items 1-16 of Schedule D, Lessee shall request that Lessor prepare a schedule showing the actual cost of each of the items of work listed above. Each of these Cost Figures shall be multiplied by 1.0525 and the product shall be used for the purposes set forth in ARTICLE FIFTH (b)(2). The total rental payable pursuant to Article FOURTH A (6) shall in no event be reduced by more than thirty percent (30%).

HOWLAND HOOK LEASE AGREEMENT

SCHEDULE D-1

SCOPE OF WORK

NOTE Priority of items or phases of items shall be subject to periodic review and mutual agreement between the Commissioner of Ports and Terminals and Lessee to determine scheduling and financing.

1. Install new and revamp existing fire hydrant system to conform to system and standards as adopted by the Board of Standards & Appeals.
2. Rehabilitation of crane rail foundations.
3. Modification and upgrading of electrical distribution system including safety interlocks at bus bar.
4. Construct two extensions to sheet pile wall of approximately 500LF including pavement modifications for proper drainage and operations.
5. Modify, replace or improve paving and drainage as necessary for proper run off and operations.
6. Reconstruct or replace light tower foundations as required to correct settlement problems.
7. Modify maintenance and administration building to provide proper personnel facilities and separation of non-terminal functions from operating functions.
8. Construct ramp and dock to special cargo building.
9. Install additional counterweights to cranes.
10. Provide additional employee parking areas as required with markings to facilitate operations.
11. Install insulation to scale house floor.
12. Provide proper communication lines to customs viewing platform and wharf area.
13. Rehabilitation of wharf service building #1 to correct settlement problems.
14. Construct railroad ramp.
15. Miscellaneous work in connection with above.
16. Engineering design and inspection for above.

Lessee shall have the right to perform the work described below at any time during the term of the Lease, provided, however, that Lessor shall not reimburse Lessee for the cost of performing this work unless the Board of Estimate of The City of New York approves an amendment to this Lease providing for a rent increase to reflect the value of the work.

17. Provide proper equipment wash facility to meet EPA standards.
18. Construct extension to crane wharf in area of Parcel C.
19. Prepare site, including utilities, grading, paving and drainage for approximately 15 acra in Parcel C.
20. Construct additional wharf service buildings.
21. Construct Ro/Ro ramp.
22. Construct additions to maintenance and administration facilities.
23. Provide and erect additional crane.
24. Miscellaneous work in connection with above.
25. Engineering design and inspection in connection with above.

HOWLAND HOOK LEASE AGREEMENT

SCHEDULE D-2

PROJECTS PRE-AMENDMENT

<u>A. COMPLETED.</u>	<u>Ref Sched D-1</u>	
1. Upgrading Feeder 2	3	160,000
2. Upgrading Feeder 5	3	85,000
3. Design Hydrant System	16	30,000
4. Design Sheet Pile Wall	16	10,000
		<hr/>
		\$285,000
<u>B. IN PROGRESS</u>		
1. Aerial Line Feeders 2 & 5 at Creek	3	40,000
2. W.S.B. #1 Stabilization	13	40,000
3. Crane Rail Base 400' Sect	2	80,000
4. Engineering	16	10,000
		<hr/>
		\$170,000
<u>C ABOUT TO START</u>		
1. Design of Light Tower Replacement	16	10,000
2. Design of Revamped Substation	16	65,000
3. Detail Design-Hydrant Sys	16	30,000
4. Refurbishment of Portion of Hydrant System	1	20,000
5. Miscellaneous	15	10,000
		<hr/>
		\$135,000
		<hr/>
		\$590,000

SCHEDULE D-3

HOWLAND HOOK CAPITAL PROJECTS

PROJECTS PER SCHEDULE B	PRE-AMENDMENT	EXPENDITURES - IN THOUSANDS OF DOLLARS				TOTAL
		YEAR 1	YEAR 2	YEAR 3	TOTAL	
1 Hydrants Refurb	20	Upland	200 C.Y.	500 Finish	280	1,0
2 Crane Rail	400'Sect 80	2100' Bal	420			5
3 Elect.Syst	FDR 2&5 245	Main S/S	350	Main S/S	500	TransSW 270
	Creek Crossing 40			Bus Bar	75	1,4
4 Sheet Pile		Complete	600			6
5 Drainage, Pavg.					Complete 300	3
6 Light Tower		FDNS	35	Towers	100	1
7 Admin. Mods		Alter	50	Interiors	100	Finish 100 2
8 Ramp LCL					Total	30
9 Counterwts		4 Cranes	30			
10 Parking					All	10
11 Insul. Sl. Hs.				Complete	25	
12 Comm. Lines				Lay Wire	50	Connect 100
13 WSB #1	Critical 40	Balance	40			
14 R.R. Ramp					Complete	25
15 Misc.(Insp)	10		35		30	30
16 Engineering	Hydrants 60	AdminBldg	25	Trans SW	20	Misc. 25
	Sheet Pile 10	Bus Bar	10	Drainage	25	
	Creek & WSB 10	CommLines	10	Parking	1	
	Sub Sta 65	Ramps	5	Insul	2	
	Lights 10			Misc.	2	
TOTALS	590		1810		1430	1170 5,0

AMENDMENT OF LEASE

between

THE CITY OF NEW YORK, Landlord

And

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, Tenant

THIS AMENDMENT OF LEASE (this "2009 Amendment"), made as of the 27th day of August, 2009, by and between THE CITY OF NEW YORK, acting by and through its Department of Small Business Services, successor in interest to the Department of Ports and Terminals and Department of Ports and Trade, as landlord, (the "Landlord" or the "City"), having an address at 110 William Street, 7th Floor, New York, New York 10038 and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by and between the States of New York and New Jersey with the consent of the Congress of the United States of America, having an office at 225 Park Avenue South, New York, New York 10003 (the "Tenant" or the "Port Authority").

WITNESSETH

WHEREAS, the City and United States Lines, Inc. ("United States Lines, Inc.") entered into an agreement of lease dated as of December 21, 1973. By amendment and restatement dated June 30, 1983 (the "1983 Lease"), the City leased and United States Lines, Inc. hired and took from the City land and improvements (the "Facility", the "Premises", the "premises", the "Demised Premises" or the "Terminal" as it may be referred to from time to time) in the Borough of Staten Island, in the County of Richmond, in the City and State of New York, all as described in the Lease for a term set forth therein, with rights to extend the letting;

WHEREAS, the 1983 Lease was assigned by United States Lines, Inc. to the Port Authority and amended by a certain agreement dated June 11, 1985, made by and among the City, the Port Authority, and United States Lines, Inc. (the "1985 Amendment");

WHEREAS, the 1983 Lease, as amended by the 1985 Amendment, required the Port Authority to sublease the Premises thereunder to United States Lines, Inc. and pursuant thereto the Port Authority and United States Lines, Inc. entered into an agreement of sublease dated June 19, 1985 (the "Sublease");

WHEREAS, subsequent to the execution of the Sublease, United States Lines, Inc. filed a voluntary petition in bankruptcy and disaffirmed the Sublease;

WHEREAS, by Agreement dated as of May 10, 1990, the Port Authority and the City amended the 1983 Lease, as amended by the 1985 Amendment, to reflect the bankruptcy of



United States Lines, Inc. and the disaffirmance of the Sublease, and otherwise amended the terms of the 1983 Lease, as amended by the 1985 Amendment (the "1990 Amendment"; the 1983 Lease, as amended by the 1985 Amendment and the 1990 Amendment, collectively, the "Lease");

WHEREAS, the City and Port Authority wish to further amend the Lease as follows to adjust a number of the terms including but not limited to the term, the rent structure, and the capital investment; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the City and the Port Authority hereby agree as follows:

1. Definitions. All capitalized terms used herein shall have the meanings ascribed to them in the Lease, unless otherwise specifically set forth herein to the contrary. For the purposes of this 2009 Amendment,

"Base Rent" shall mean Original Term Base Rent and Extended Term Base Rent (including without limitation Percentage Rent, as defined in Section 5(b)(1)(ii)).

"Business Days" shall exclude Saturdays, Sundays and all days observed by the State of New York or Federal Government as legal holidays.

"Capital Investment" shall have the meaning provided in Section 7(a) below.

"Capital Investment Work" shall have the meaning provided in Section 7(a) below.

"Governmental Authority(ies)" means the United States of America, the State of New York, City, and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Terminal or any portion thereof or any berth, channel, street, road, avenue or sidewalk comprising a part of, adjacent to or in front of, the Terminal, but only to the extent any of the foregoing is acting in its governmental capacity.

"Gross Revenue(s)" means all revenues, amounts, monies, and income of every kind paid or payable to the Port Authority or otherwise derived by the Port Authority (without any deductions therefrom) from or in connection with the operations permitted under the Lease as amended, including but not limited to all such amounts paid or payable to the Port Authority by any sublessee or other third party; provided, however, that any taxes imposed by law which are separately stated to and paid by the customer and directly payable to the taxing authority by the Port Authority, shall be excluded therefrom. For the avoidance of doubt, the parties hereto hereby acknowledge that "Gross Revenue(s)" shall in no event include any revenues, amounts, monies, and income of any kind derived or arising from the Port Ivory premises, adjacent to the Terminal.

"Hazardous Substances" means any material or substance regulated from time to time as a toxic or hazardous waste or substance under any applicable federal, state, or local law,

regulation, rule, or ordinance, because of its potential risk to human health or the environment, including, but not limited to any material or substance that:

(i) Contains any of the hazardous characteristics or constituents set forth in 40 C.F.R. Sec. 261.20 et seq., as replaced or amended;

(ii) Is listed as a hazardous waste pursuant to 40 C.F.R. Sect. 261.30 et seq., as replaced or amended;

(iii) Is defined as a hazardous substance in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as replaced or amended;

(iv) Is defined as a toxic or hazardous waste in the Solid Waste Disposal Act, 42 U.S.C. Sect. 6901 et seq., as replaced or amended; or

(v) Is defined as a hazardous waste or hazardous substance under the statutes and regulations of the State, including the Environmental Conservation Law, Section 27, as replaced or amended, or constitutes petroleum as defined within the Navigation Law, Article 12.

Hazardous Substances shall also mean “hazardous waste”, “Regulated Medical Waste”, “hazardous material”, “hazardous substance”, “radioactive material”; and “Regulated Medical Waste” and “petroleum product and by-product” as defined in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Material Transportation Act, the Federal Water Pollution Control Act and the Superfund Amendments and Reauthorization Act of 1986, the National Oil and Hazardous Substances Pollution Contingency Plan, the New York State Environmental Conservation Law, the New York State Navigation Law, and the New York City Charter, Administrative Code and Rules and Regulations, and any laws relating to underground storage tanks, and any similar or successor federal law, state law or local statutes and ordinances and any rules, regulations and policies promulgated thereunder, as any of such federal, state and local statutes, ordinances and regulations may be amended from time to time (collectively, “Environmental Laws”).

“Improvements” means any and all channel or berth deepening, structures or other improvements and appurtenances of every kind and description now existing on the Terminal or hereafter erected, constructed or placed upon the Terminal or any portion thereof (other than trade fixtures), and any and all alterations, replacements and substitutions thereof, including, but not limited to, the Capital Investment Work, repairs and all equipment incorporated in or attached to the Terminal at any time during the Term as hereinafter defined, including but not limited to the Capital Investment Work.

“Lease Administrator” means the New York City Economic Development Corporation (“NYCEDC”) until such time as the Lease Administrator is changed, and its agent the Apple Industrial Development Corp.

“Lease as amended” shall mean the 1983 Lease as amended by the 1985 Amendment, 1990 Amendment, and this 2009 Amendment, except where the context clearly indicates to the contrary.

“Lease Year” shall mean a period of twelve (12) consecutive full calendar months commencing with January 1, 2009 and the succeeding anniversaries thereof .

“Mean Low Water” shall mean the mean low water as most recently at the Effective Date determined by observations of the United States Coast and Geodetic Survey.

“Person” shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, any federal, state, county or municipal government, or any bureau, department or agency thereof, any governmental authority, governmental instrumentality, any fiduciary acting in such capacity on behalf of any of the foregoing, or otherwise.

“Rental” or “Rent” or “rent” or “rental” as it is referred to from time to time throughout the Lease as amended, shall include but not be limited to, the Base Rent, additional rent and all other sums due and owing to the City in connection with the letting of the Terminal.

“Representatives” means the employees, agents, servants, officers, president, members, consultants, independent contractors, subcontractor and authorized personnel of a Person or entity.

“Requirement(s)” shall mean:

Any and all present and future laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, and requirements of all Governmental Authorities applicable to the Terminal or any street, road, avenue, or sidewalk comprising a part of, or in front of, the Terminal or any vault in, or under the Premises (including, without limitation, the Building Code of New York City and the laws, rules, regulations, orders, ordinances, statutes, codes, and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

“Substantial Completion”, “Substantially Complete”, Substantially Completed” - and other form variations of the phrase – means, with respect to all work constructed by the Port Authority in accordance with the Lease as amended, including, without limitation, the Capital Investment Work, that the City has determined that the following conditions have been satisfied: (a) the Governmental Authority having jurisdiction over the Terminal has issued a temporary certificate (or certificates) of occupancy or completion, or chairman’s certificate with respect to waterfront zoning as the case may be or the like as applicable, for the Terminal; (b) all utilities, as applicable, are connected; (c) the Port Authority may use and occupy the entire Premises for the use and purpose authorized by the Lease as amended, (d) all work, as applicable, has been completed in accordance with the plans and specifications, all systems of the Terminal are operating and such work and systems have been accepted by the Port Authority (as evidenced by controlled inspection reports to be submitted by the Port Authority to the City, if such type of work is customarily subjected to testing under controlled conditions), except for minor repairs, corrections, and adjustments of a “punch list” nature which can be completed promptly and with minimal interference to the occupancy and use of the Terminal by the Port Authority; and (e) the architect, the Port Authority, the contractor and the City have approved in writing a final punch list of such minor repairs, corrections and adjustments; it being agreed, however, that

construction shall not be deemed Substantially Complete notwithstanding the issuance or reissuance of a temporary certificate of occupancy if the Terminal cannot reasonably be operated for the purposes set forth in the Lease on account of such outstanding work.

“Term” shall mean the term of the Lease as amended.

2. Amendment of Lease.

This 2009 Amendment shall be annexed to and is hereby made a part of the Lease. Notwithstanding the foregoing, in the event any provision in this 2009 Amendment conflicts with any provision in the Lease, the terms of this 2009 Amendment shall supersede and govern.

3. Effective Date. This 2009 Amendment is effective as of the date hereof (the “Effective Date”).

4. Modification of Term. As of the Effective Date, the “Initial Term” section of the 1983 Lease and Article Second of the 1985 Amendment shall be modified as follows:

(a) Term. The term of the letting under the Lease is hereby extended , in accordance with the terms of Lease as amended, until June 30, 2058 at 11:59 p.m. subject to earlier termination in accordance with the terms of the Lease as amended.

(b) Option to Terminate. In the event the Port Authority fails to make the full Capital Investment in the Terminal as set forth in Section 7 herein, provided that (x) the Lease as amended shall then be in full force and effect in accordance with its terms, (y) there shall not then exist any uncured default hereunder at the time of exercise of the Option to Terminate, hereinafter defined, and at the effective date of termination and (z) the Port Authority is the tenant under the Lease as amended and either it or its subtenant is occupying all of the Terminal, the Port Authority shall have the option to terminate the Lease as amended and the term of letting thereunder effective as of July 18, 2023 (the “Option to Terminate”) by giving written notice to the City of its election no later than January 18, 2022. The Port Authority and the City hereby mutually acknowledge that it is their intention that the Port Authority’s exercise of the Option to Terminate constitutes the same exercise of option to terminate referred to in Section 2(c) of Port Authority Lease No. BP-311 between the Port Authority and NYCEDC dated as of January 1, 2009 for the Brooklyn Cruise Terminal, such that, in accordance with the provisions of the said Section 2(c), upon the Port Authority’s exercise of the Option to Terminate, NYCEDC will no longer have the option to extend the term of the letting under the said Lease No. BP-311 beyond December 31, 2029.

5. Modification of Rent. As of the Effective Date, Section 3 of the 1990 Amendment is hereby modified as follows:

(a) Original Term Base Rent. In lieu of the rental set forth in paragraphs “A.” and “B.” of Article Fourth of the 1983 Lease and Sections 3(a) and (b) of the 1990 Amendment, for the period starting with July 1, 2008 through December 31,

2023, the Port Authority shall pay to the City a basic rental for each Lease Year at the annual rate of \$3,377,052.84, payable in advance in quarterly installments of \$844,263.21 on each January 1, April 1, July 1, and October 1 during such period (the "Original Term Base Rent");

(b) Extended Term Base Rent. For the period from January 1, 2024 through June 30, 2058, the Port Authority shall pay to the City a basic rental (the "Extended Term Base Rent") as follows:

(1) If the Capital Investment has been fully made by July 18, 2023, the Port Authority shall pay to the City for each Lease Year, the period from January 1, 2024 through June 30, 2058, the following:

(i) a fixed rental for each Lease Year at the annual rate of \$1,000,000.00, payable in advance in quarterly installments of \$250,000.00 on each January 1, April 1, July 1, and October 1 during such period, plus

(ii) a percentage rental ("Percentage Rent") in the amount of twenty-five (25%) percent of total Gross Revenues generated to the Port Authority from the Terminal that exceeds the minimum revenue threshold stated in Exhibit A attached hereto, payable in advance in estimated quarterly installments on each January 1, April 1, July 1, and October 1 during such period, each installment in an amount based on the Gross Revenues for the same quarter in the previous Lease Year. Following the end of each Lease Year, a reconciliation, as required, shall be made based on the actual Gross Revenues for such Lease Year as set forth in Section 5(c) below.

(2) If the Capital Investment has not been fully made by July 18, 2023 and the Port Authority has not duly exercised its Option to Terminate, the Port Authority shall pay to the City for each Lease Year for the period from July 1, 2023 through June 30, 2058, the following:

(i) a fixed rent at the annual rate of \$4,500,509.00, payable in advance in quarterly installments of \$1,125,127.25 on each January 1, April 1, July 1, and October 1 during such period, and

(ii) for each Lease Year thereafter, at an annual rate equal to 102% of the annual rate theretofore payable, payable in advance in equal quarterly installments on each January 1, April 1, July 1, and October 1 during such period .

(c) Gross Revenue Quarterly Report; Gross Revenue Annual Report.

Commencing from when the provisions of Section 5(b)(1)(ii) relating to Percentage Rent apply, a Gross Revenue Quarterly Report as defined hereinafter shall be due pursuant to the terms set forth in this Section 5(c) as follows:

(1) Within forty-five days following each calendar quarter commencing

with the calendar quarter ending on March 31, 2024, the Port Authority shall render to the Lease Administrator a statement (the "Gross Revenue Quarterly Report") certified by a responsible officer of the Port Authority, showing the Gross Revenues for the preceding quarter and the cumulative Gross Revenues from the date of the commencement of the Lease Year for which the Gross Revenue Quarterly Report is made through the last day of such preceding quarter. The Gross Revenue Quarterly Report made for the last quarter of each Lease Year shall include a reconciliation of the amount of the Percentage Rent payable for the preceding Lease Year and the Port Authority shall pay, within fifteen (15) days of rendering such Gross Revenue Quarterly Report any amount of the Percentage Rent then owed to the City. In the event that the aforesaid reconciliation shall show that the Port Authority has paid in excess of the Percentage Rent owed for such Lease Year, the difference shall be credited against the Rentals next payable under the Lease as amended.

- (2) Upon any termination of the letting (even if stated to have the same effect as expiration), the Port Authority shall within sixty (60) days after the effective date of termination render to the Lease Administrator a statement certified by a responsible officer of the Port Authority setting forth the information required to be set forth in the Gross Revenue Quarterly Report pursuant to the provisions of subparagraph (1) of Section 5(c), with respect to the last quarter of the Lease Year through the effective date of termination except that (i) the statement shall set forth the Gross Revenues for the quarter period or portion thereof through the effective date of termination and, if not already set forth therein, the cumulative Gross Revenues from the date of the commencement of the Lease Year in which the effective date of termination occurred through the effective date of termination, and (ii) the final calculation of the Percentage Rent shall be made for the period from the first day of the Lease Year in which the effective date of termination shall occur through the effective date of termination. Any amount of the Percentage Rent determined to be owed to the Port Authority pursuant to such final calculation shall be paid by the Port Authority within fifteen (15) days of rendering the statement such Gross Revenue Quarterly Report.

(d) Place and Manner of Payment; Prorations.

- (1) All Rent payable under the Lease as amended shall be paid to Apple Industrial Development Corp., as the Lease Administrator, at c/o New York City Development Corporation, 110 William Street, New York, New York 10038, Attn.: Accounting, or to such other entity or person and at such other address as the City may designate by written notice. The Port Authority agrees to pay all Rent due pursuant to the Lease as amended in lawful money of the United States which shall be legal tender in payment

of all debts and dues, public and private, at the time of payment, without any set off or deduction whatsoever.

- (2) Base Rent shall be paid in quarterly installments in advance on the first day of each quarter during that term regardless of receipt of an invoice or another form of request for payment. All Base Rent due for less than a payment period specified herein shall be pro-rated and appropriately apportioned on the basis of twelve (12) equal monthly installments per year; and for any period less than a month, appropriately apportioned on the basis of the number of calendar days in such month.

(e) Late Charges:

If the Port Authority fails to pay any amount required under the Lease as amended when due to the City, including without limitation any payment of Rent or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the City may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period herein below described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period ("Late Charge Rate"). 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 City as the result of audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under the Lease as amended. Each late charge shall be payable immediately upon demand made at any time there for by the City. No acceptance by the City of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the City to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the City in the same manner and with like remedies as if it were originally a part of the Rent as set forth in the Lease as amended. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the City under the Lease as amended, including without limitation the City's rights of specific performance and termination or (ii) any obligations of the Port Authority under the Lease as amended. Further, no failure by the City to insist upon the strict performance by the Port Authority of its obligations to pay Late Charges shall constitute a waiver by the City of its right to enforce the provisions of this Section 5(e) in any instance thereafter occurring. The provisions of this Section 5(e) shall not be construed in any way to extend the grace periods or notice periods provided for in any default section in the Lease as amended. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under the Lease as amended shall be payable instead at such legal maximum.

(f) Abatement, Deduction, Counterclaim and Offsets. It is the intention of the City and the Port Authority that except as provided herein (a) the Base Rent shall be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, so that each Lease Year of the Term shall yield, net to Landlord, all the Base Rent, and additional rent as demanded pursuant to the terms set forth herein, and (b) the Port Authority pay all costs, expenses and charges of every kind relating to the Terminal that may arise or become due or payable during or after (but attributable to a period falling within) the term of letting under the Lease as amended.

6. Condition of the Premises. As of the Effective Date, Article FOURTEENTH of the 1983 Lease shall be modified by adding the following paragraph as a new paragraph following the first paragraph:

Without otherwise limiting the generality of Article FOURTEENTH of the 1983 Lease, from and after the Effective Date, the Port Authority shall continue to accept the Terminal "as is" and without any representations or warranties of any kind or nature by the City, except as otherwise provided in the Lease as amended, agree not to make any claim that the Terminal is not suitable for the uses set forth in the Lease as amended, and agree not to make any claim regarding the condition of the Terminal.

7. Capital Investment, Improvements, Access and Maintenance and Repairs. As of the Effective Date, Section 4 of the 1990 Amendment is hereby modified as follows:

- (a) Improvements under Capital Investment. The parties acknowledge that the improvements set forth in Articles Sixth and Seventh of the 1985 Amendment and Section 4(a)-(d) of the 1990 Amendment have been completed. From January 1, 2008 through July 18, 2023, it is the Port Authority's intention to spend an amount not less than One Hundred Ten Million Dollars and No Cents (\$110,000,000.00) (the "Capital Investment") on Improvement work for the benefit of the Terminal (the "Capital Investment Work") to be performed through its employees, agents, Representatives, contractors and subcontractors. The Capital Investment Work shall include capital improvements made for the benefit of the Terminal, including, but not be limited to, external and internal roadway improvements constructed to benefit the Terminal, the deepening of the access channels serving the Terminal (as shown on the site map attached hereto as Exhibit B) to a depth of fifty (50) feet below Mean Low Water, or, in the event of development of the land adjacent to the Terminal, deepening the access channels to such adjacent site to 50 feet while deepening the remainder of the access channels serving the Terminal to a depth of 45 feet, and any environmental remediation performed in connection therewith. The Capital Investment Work shall not include any dredging to maintain the berths at the Terminal at agreed upon depths, any dredging to maintain the access channels to the Terminal (as opposed to dredging to deepen the access channels and berths beyond agreed upon depths), or any work to clean up or mitigate any environmentally hazardous

wastes or substances which may be found at the Terminal or in its berths and channels. The Port Authority will perform all work, except as otherwise authorized herein, including but not limited to the Capital Investment Work and general maintenance work, as referenced below, at its own cost and expense. The Port Authority will pursue Congressional and other governmental approvals required for the deepening work herein and to maintain the channels generally.

- (b) Annual Capital Investment Report . By March 31 of each Lease Year through and including the Lease Year occurring during 2023, the Port Authority shall provide an annual report, certified by a responsible officer of the Port Authority, to the City of the prior calendar year's Capital Investment expenditure for the benefit of the Terminal (the "Annual Capital Investment Report"), setting forth the amount of the Capital Investment Work performed by the Port Authority's employees, agents, Representatives, contractors and subcontractors during the preceding Lease Year, showing separately each project performed, a project description, the projected cost of each such project, and the amount paid by the Port Authority on account of such costs. The Port Authority shall provide additional information upon request. The Annual Capital Investment Report shall also include (or there shall be separately provided upon their becoming available) long term capital spending plans at or around the Terminal ("Long Term Capital Plans" or "Long Term Capital Project(s)") and planned capital projects for the Terminal over the next five years. The Port Authority shall update the information and provide a status (including, as available, the information relating to the Long Term Capital Plans) each year in the Annual Capital Investment Report next due and shall provide any scope, location, and cost estimate for each such project as the same is available.

Notwithstanding the above, the Annual Capital Investment Report for January 2009 through December 31, 2009 shall also include, but not be limited to, the required information set forth in Section 7(b) with regard to the period from January 1, 2008 through December 31, 2008.

- (c) As-Builts. Within three (3) months of completion of each Capital Investment Work and/or Long Term Capital Plan project, the Port Authority shall submit "as built" drawings to the City for its files.
- (d) Intentionally deleted.
- (e) Access. In lieu of the access provision set forth the first sentence of Article TWENTY-EIGHTH of the 1983 Lease and the last sentence of Section 4(a) of the 1990 Amendment, from and after the Effective Date, the Port Authority agrees, on reasonable advance notice from the City, to permit the City, by its employees, agents and Representative, during regular business hours, to inspect the Terminal, and, during the last six months of the Term, shall permit inspection thereof by or on behalf of prospective future lessees accompanied by employees or Representatives of the City or as otherwise approved by the parties. Notwithstanding the foregoing, in the event of exigent circumstances, the City shall be permitted entry at any time without notice or with reasonable notice considering the circumstances. The Port Authority also agrees, on

reasonable advance written notice from the City, to permit the City by its employees and Representatives to examine and audit such books and records of the Port Authority during normal business hours which pertain to the performance of all work at the Terminal including, but not limited to, the Capital Investment Work and will substantiate the amounts spent by the Port Authority on such work. The Port Authority will, upon the City's reasonable request, provide materials and information to substantiate the amounts spent by the Port Authority on the Capital Investment Work

- (f) Inspection. The Port Authority shall inspect the Terminal on a regular basis in accordance with the Port Authority's normal procedures as set forth in the Port Authority manual # AI45-1.07 attached hereto as Exhibit C which may be amended from time to time. The Port Authority shall provide a copy of each inspection report to the City. Upon request, the Port Authority shall permit the City to contact the inspector with additional questions and provide additional information.
- (g) Maintenance and Repairs. Notwithstanding the provisions of Paragraph B. of Article TWELFTH of the 1985 Amendment, and without otherwise limiting the generality thereof and Article FIFTEENTH of the 1983 Lease, from and after the Effective Date, the Port Authority shall, at its own cost and expense, keep and maintain in reasonably good and safe order and condition, ordinary wear and tear excepted, and repair, operate and take good care of (or cause to be repaired, maintained, operated and taken good care of) every part of the Terminal. The Port Authority shall neither commit nor suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Terminal. All repairs made by or caused to be made by the Port Authority shall be equal in quality and class to the industry standard and shall be made in compliance with applicable law. As used in this Section, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions. The Port Authority shall have sole responsibility, and the City shall have none, for the maintenance and repairs of the Terminal, including but not limited to the Improvements, berths and access channels, and repairs of or replacements to the Improvements, including but not limited to the structure of the pier and the decking, fender system, backing logs, and standard fixed mooring devices. The work described in this paragraph shall be the responsibility and sole cost of the Port Authority and shall be performed based on the condition of the Terminal or upon the reasonable request of the City, and, where required, subject to the approval of the Port Authority's Board of Commissioners, the recommendation of which approval shall not be unreasonably withheld or delayed by the staff of the Port Authority.

If the Port Authority fails, after twenty (20) days notice (or without notice in the case of an emergency) from the City or other, to proceed with due diligence to make repairs required to be made by the Port Authority, the repairs may be, but shall not be obligated to be, made by the City at the expense of the Port Authority, and the reasonable expenses thereof incurred by the City as well as for the payment of those repairs to the Terminal shall be collectible, in addition to the Base Rent as additional rent, within 15 days after

rendition of a bill or statement therefor.

- (h) Force Majeure. The Force Majeure provision set forth in Section 4 (b) of the 1990 Amendment, shall be modified and set forth in this Section 8(h) as follows:

The Port Authority shall not be liable for any failure, delay or interruption in performing its obligation under the Lease as amended, caused by unavoidable casualty, national emergency, governmental restrictions, enemy action, civil commotion, strikes, lockouts, labor troubles, inability to obtain labor or materials, failure of power, riots, insurrection, wars or national defense pre-emptions, an act of God, injunctions or stays issued by any Court having jurisdiction over the City or the Port Authority or any other similar event beyond the reasonable control of and not caused by the Port Authority (a "Force Majeure Event"). Unavailability of funds shall not be deemed a Force Majeure Event.

- (i) Law. In lieu of Section 4(c) of the 1990 Amendment and Article SEVENTH of the 1985 Amendment, the Port Authority agrees that in all matters of operating the Terminal and performance of work, including but not limited to Capital Investment Work, environmental remediation, repair, maintenance and the like during the letting of the Terminal, the Port Authority will conform with all Requirements, provided, however, that it is specifically understood and agreed that no local law, enactment, ordinance, rule or regulation, permit or requirement of the City shall apply to such operation of the Terminal and performance of work under the Lease as amended so long as the Port Authority is the Tenant. Notwithstanding the foregoing, the Port Authority, as a matter of policy, will conform to the enactments, ordinances, resolutions, and regulations of the City and its various departments, boards, and bureaus in regard to the construction and maintenance of the improvements and structures and in regard to health and fire protection as if the Port Authority were a private corporation, to the extent that the Port Authority finds it practicable to do so, without interfering with, impairing, or affecting the efficiency or economy of the Terminal, or its ability to operate the Terminal, or its obligations, duties, and responsibilities to the States of New York and New Jersey, its bondholders, and the general public, but the decision of the Port Authority as to whether it is practicable to do so shall be controlling and conclusive. The above notwithstanding, the Port Authority will obtain a Certificate(s) of Completion or its equivalent, for all improvements or structures currently on the Terminal and to be built on the Terminal in the future, no later than three years prior to the expiration of the letting under this Lease as amended. Nothing contained herein shall be deemed an acceptance by the Port Authority to the application to itself of any local law, enactment, ordinance, rule, or regulation, permit or requirement of the City, nor an acceptance by the City of the immunity of the Port Authority from any local law, enactment, ordinance, rule, or regulation, permit or requirement of the City.

Further, subject to the foregoing, the Port Authority shall comply or cause to be complied with all applicable federal, state, and local laws related to the health and safety of its employees.

8. Security. The Port Authority shall procure and pay for all security for the Terminal, as is reasonable and customary for like properties and required by law.
9. Insurance. As of the Effective Date of this 2009 Amendment, with respect to Article SEVENTEENTH of the 1983 Lease, as amended by Sections B.6 and B.7 of Article TWELFTH of the 1985 Amendment, paragraphs (i), (j), (k), (l), (n) and (o) shall remain in full force and effect and paragraphs (a) through (h) and (m) are hereby amended and restated as follows:

Section 9.01. Insurance Requirements. At all times during the remainder of the Term, the Port Authority, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types or insuring the described risks and in the minimum limits set forth below:

(a) Insurance During Any Construction Work: Builder's Risk Property, Liability and Statutory Coverage. In addition to the amounts of coverage specified herein, from the time of the commencement of any work, including but not limited to the Capital Investment Work, at the Terminal throughout the Term which construction has a cost in excess of fifty thousand (\$50,000.00) dollars, and until the architect has certified to the City that the construction has been Substantially Completed, or upon Substantial Completion of any other work which does not require the supervision of the architect, the Port Authority at its sole cost and expense shall carry or cause to be carried:

(i) Builder's Risk Insurance. Builder's Risk Insurance (standard "All Risk" or equivalent coverage), in the amount of not less than one hundred percent (100%) of the replacement cost of the Improvements which are to be constructed (which shall be deemed to be equal to the stipulated sum set forth in the construction contract). The Builder's Risk Insurance shall be written on a completed value (non-reporting) basis, naming the Port Authority as a named insured. In addition, such insurance policy (A) shall contain a written acknowledgement (annexed to the policy) by the insurance company that its right of subrogation has been waived with respect to the City and Lease Administrator, and any holders of mortgages named in such policy and, if required by the City, an endorsement stating that "permission is granted to complete and occupy"; (B) if any off-site storage location is used, shall cover, for full insurable value, all materials and equipment on or about any such off-site storage location intended, or while in transit, for use with respect to the improvement and/or betterments and/or the Terminal; (C) shall cover (w) the same perils covered by the ISO Special form or its equivalent; (x) loss of materials, equipment, machinery and supplies, or of any temporary structure, hoist, or scaffolding; (y) soft costs, plans, specifications, blueprints and models; and (z) demolition and increased cost of construction, including increased costs arising from changes in the Requirements at the time of restoration and coverage for operation of building laws, all subject to a sub-limit satisfactory to the City; and (D) unless approved

by the City, shall contain no exclusions other than those that are reasonable and customary in Builder's Risk insurance policies issued in connection with work similar in all material respects to the Improvements, Capital Investment Work, repairs and any other work being performed.

(ii) Liability Insurance Coverage.

(A) Commercial General Liability Insurance. Commercial General Liability Insurance, on an occurrence basis, written on the ISO Form CG 00 01 (or its equivalent), including, without limitation, all applicable coverages enumerated herein with the addition of the following coverages to the extent not already set forth herein: contractual liability coverage (covering, to the maximum extent permitted by law, the Port Authority's, and/or their contractor's or subcontractor's, as applicable, obligation to indemnify the City and Lease Administrator, as required under the indemnity provisions of this Lease, any sublease and any construction contracts applicable to the Terminal), completed operations coverage, broad form property damage endorsement covering the operations of all contractors, subcontractors, and consultants and with no exclusions that are not part of the ISO Form CG 00 01 (or its equivalent), and the completed operations coverage shall protect the City and Lease Administrator as additional insureds on form CG 20-37 (or its equivalent), unless specifically approved in writing in each instance by the City at its sole discretion and providing that the contractors, subcontractors, the Port Authority, the City, and, at the City's election, the City's construction manager (if any), including their respective Representatives, are named as Additional Insureds, all on a primary and non-contributory basis, and providing liability limits as reasonably required by the City from time to time, taking into account the hazards associated with any work, but in any event, not less than at least twenty five million dollars (\$25,000,000) per occurrence during any work including but not limited to Capital Investment Work and repairs. This limit of liability can be secured through a combination of General Liability and Umbrella/Excess Liability coverage.

(B) Automobile Liability. Automobile liability covering owned, non-owned and hired vehicles with limits as reasonably required by the City and/or Lease Administrator from time to time, but, in any event, with limits not less than a combined single limit per occurrence for bodily injury and property damage of two million dollars (\$2,000,000) with respect to bodily and personal injury, death and property damage. This limit can be secured through a combination of Automobile Liability and Umbrella/Excess Liability coverage.

(C) Pollution/Environmental Liability Insurance. To the extent certain work may involve pollution/environmental exposure, Pollution/Environmental Liability Insurance covering bodily injury and property damage, including loss of use of damaged property or property that has not been physically injured, which in any event shall not be less than five million dollars (\$5,000,000) per occurrence unless otherwise approved in writing by the City which approval will not be unreasonably withheld or delayed. Such insurance shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including, without limitation, any Hazardous Substances), including any loss, cost or expense incurred as a result of any cleanup of pollutants (including, without limitation, any Hazardous Substances) or in the

investigation, settlement or defense of any claim, suit or proceeding against each of the Additional Insureds (as defined in Section 9.16) arising from the activities and operations under this Lease. Such insurance shall name the Additional Insureds, as additional insureds on a primary and non-contributory basis. The City reserves the right, based upon in its reasonable evaluation of the risk and exposures from the proposed use, Improvements, work, including but not limited to Capital Investment Work, and/or repairs and/or during work on such and to require, from time to time, an additional increase, when commercially available, in the amount of the minimum limits of the Pollution/Environmental Liability Insurance as warranted by the risk and exposure.

(D) Intentionally deleted.

(E) Professional Liability Insurance, which in any event shall not be less than five million dollars (\$5,000,000) per occurrence, to the extent applicable to the activities and operations at the Terminal, including but not limited to the berths and access channels, performed by or on behalf of the Port Authority or its contractors, subcontractors and consultants, for a period from the Effective Date until three (3) years after the completion of the professional services rendered, as applicable.

(F) Umbrella Liability Coverage. The City reserves the right, based upon in its reasonable evaluation of the risk and exposures from the proposed Improvements, work, including but not limited to Capital Investment Work and/or repairs to require additional liability limits of coverage to protect the Additional Insureds secured by Umbrella Liability coverage. Such Umbrella Liability coverage must be in compliance with all the provisions of the primary coverages, including, without limitation, the specified coverage for all insureds and Additional Insureds required to be named as insureds and Additional Insureds hereunder.

(G) Statutory Insurance. Worker's Compensation Insurance and Employer's Liability Insurance, New York State disability benefits and other statutory forms of insurance in form and limits as required by law covering contractors or subcontractors with respect to all of their employees.

(H) Wrap Up Insurance, OCIP and CCIP. To the extent applicable, the Port Authority (directly or through the Port Authority's contractor) may to procure and maintain (or cause to be procured and maintained), to the extent permitted under applicable law, a wrap up insurance policy through an Owner Controlled Insurance Program (OCIP) or through a Contractor Controlled Insurance Program (CCIP) which will satisfy the requirements of the foregoing Section pertaining to Commercial General Liability Insurance, Builder's Risk Insurance, Workers' Compensation/Disability/Employer's Liability, Pollution/Environmental Liability Insurance, and, to the extent commercially available, Professional Liability Insurance, during periods of construction, provided that the terms and limits of coverage provided thereunder generally conform to the requirements of this Section and are otherwise reasonably acceptable to the City.

(I) Marine Protection and Indemnity Insurance. If applicable in light of the nature of the business activities of the subtenant, licensee, permittee or concessionaire, Marine protection and indemnity insurance in an amount not less than ten million dollars

(\$10,000,000), per occurrence. Coverage must be in compliance with all the provisions of the primary coverages, including, without limitation, the specified coverage for all insureds and Additional Insureds required to be named as insureds and Additional Insureds hereunder.

(J) Miscellaneous Insurance. Such other insurance, in such amounts as from time to time reasonably may be required by the City.

(K) Self Insurance. In lieu of providing coverage for the risks described in Section 9.01 (a) above, the Port Authority may elect to provide by self-insurance, in whole or in part, for itself and its contractors, agents, subtenants and other representatives, primary coverage for such risks upon the same terms and conditions as would be provided by an insurance carrier. The Port Authority agrees that in the event of a loss, it shall make available out of its own funds such amounts as would be paid by an insurance carrier providing the coverage which the Port Authority has elected to provide by self-insurance and its obligation to pay any loss hereunder shall not be limited other than by limitations on coverage what would have been made available from such insurance carrier. If the Port Authority elects to provide any insurance coverage pursuant to this paragraph (K) it shall provide a letter to the City which (i) shall be signed by a duly authorized officer of the Port Authority, (ii) shall attest to the existence of the Port Authority's self-insurance program (iii) shall identify the coverage or coverages which the Port Authority elects to provide pursuant to this paragraph (K).

(b) Insurance Upon Substantial Completion of Commercial Improvements. "All Risk" property damage insurance protecting the Port Authority and the City against loss of or damage to the Terminal by fire and all other risks of physical loss or damage now or hereafter embraced by ISO Cause of Loss – Special Form in the amount of not less than the full Replacement Value of the Terminal (without depreciation or obsolescence clause) and all improvements, protecting the Port Authority and the City against loss to the Improvements, work, including but not limited to Capital Investment Work. Such insurance shall designate the City and the Lease Administrator as loss payee and shall include the following coverages and clauses:

(i) if not otherwise included within the "All Risk" coverage specified above, coverage against damage by explosion caused by steam pressure-fired vessels, by earthquake and/or by hurricane;

(ii) contingent liability from operation of building laws;

(iii) demolition cost for undamaged portion coverage;

(iv) intentionally deleted;

(v) increased cost of construction coverage specifying that the proceeds of such insurance shall be available to pay all costs of dredging, demolition, including the costs of debris removal, grading and fencing and all increased costs of construction in the event that any insured hazard results in a loss;

(vi) an agreed or stipulated amount endorsement negating any co-insurance requirements

(vii) flood coverage to the maximum extent available under the National Flood Insurance Act of 1968, as amended, with a sublimit of not less than ten percent (10%) of the value of the Improvements, work, including but not limited Capital Investment Work, and repairs;

(viii) intentionally deleted;

(ix) coverage for piers, docks, wharfs, slips and other related improvements for such structures.

If the Port Authority elects to insure the Port Authority's trade fixtures and other personal property used in connection with the Terminal, the Replacement Value shall be increased in the amount of such personal property, and payments on the Port Authority's claims for loss of personal property shall be paid to Port Authority after notice to the City and/or Lease Administrator.

(c) Intentionally deleted.

(d) Statutory Workers' Compensation and Disability Benefits Insurance. Statutory Workers' Compensation including but not limited to Employers' Liability coverage and New York Disability Benefits Insurance, and, if applicable, Jones Act Insurance, U.S. Harbor Worker's Insurance and Long Shoremen's Compensation Insurance, in statutory amounts, as required by applicable law, and any other insurance required by law covering all persons employed by the Port Authority, contractors, subcontractors, or any entity performing work on or for the Premises.

(e) Boiler and Machinery Insurance. Boiler and Machinery Insurance, covering all boilers, ventilation, heating, unfired pressure vessels, air conditioning equipment, elevators, piping and wiring, located on any portion of the Premises, whether or not same is a trade fixture, all steam, mechanical and electrical equipment, including, without limitation, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the full replacement cost of such equipment, and which shall designate the City and Lease Administrator as loss payees for the benefit of the City and the Port Authority, as their interests may appear.

(f) Automobile Liability Insurance. Automobile Liability insurance covering owned and non-owned vehicles with limits as reasonably designated by the City from time to time but in any event with limits of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence with respect to personal and bodily injury, death and property damage which shall designate the City and Lease Administrator as Additional Insureds.

(g) Intentionally deleted.

(h) Marine Protection and Indemnity Insurance. Marine Protection and Indemnity Insurance incorporating U.K. Rules or the equivalent shall be provided

with a limit of liability of not less than ten million dollars (\$10,000,000) per occurrence, at all times when the Port Authority or any of its contractors or subcontractors utilizes floating equipment, barges or floats, or performs marine-related construction, covering any and all claims for personal injury, death and property damage arising out of or in connection with the Terminal. The policy must designate the City and Lease Administrator as additional insureds on a primary and non-contributory basis.

(i) Environmental/Pollution Insurance. To the extent environmental exposure is an issue for the business operations in connection with the Terminal of the Port Authority or any subtenant, licensee or concessionaire, Pollution Liability Insurance policy, on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions with a limit of liability of not less than five million dollars (\$5,000,000) per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water. The policy shall include coverage for gradual and sudden and accidental pollution coverage, with a time element of no less than seven (7) days' notice and thirty (30) days' reporting. The policy shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy. The policy must designate the City and Lease Administrator as additional insureds on a primary and non-contributory basis.

The policy shall provide coverage including but not limited to:

(i) transportation coverage for the hauling of hazardous materials from the Premises to the final disposition location.

(ii) Such other insurance, in such amounts as from time to time commercially available and reasonably may be required by the City.

(iii) contain no exclusion for waterfront activities;

(iv) contain no exclusion for Water Damage or Sprinkler Leakage Legal Liability or any other hazard customarily covered by such insurance.

(v) contain no exclusions, except as specifically authorized herein, and contain no deductibles unless specifically approved in each instance by The City.

(j) Intentionally deleted.

(k) Intentionally deleted.

(l) Commercial General Liability Insurance. Commercial general liability insurance written on coverage form ISO CG 00 01 or its equivalent with respect to the Terminal and the Improvements, work, including but not limited Capital Investment Work, and repairs, and the operations related thereto, whether conducted at the Terminal or access channels and berths related thereto, in an amount of not less than ten million dollars (\$10,000,000) per occurrence, \$10,000,000 annual per location

General Aggregate, designating the Port Authority as named insured and the City and the Lease Administrator as Additional Insureds on a primary and non-contributory basis.

(m) Subtenant, Licensee, and/or Occupant Insurance. Additionally, the Port Authority shall cause any individual, company, corporation or entity, including, but not limited to subtenants, licensees and concessionaires, subletting or otherwise occupying space on the Terminal or docking at or on the Pier to procure and maintain the following insurance policies:

(i) Commercial General Liability Insurance. Commercial general liability insurance in an amount to be approved by the City and/or the Lease Administrator prior to the commencement of the relevant sublease, license, permit or concession taking into account the nature and scope of the business of such individual, company, corporation or entity at the Premises, and the amount of space to be occupied by the same, which amount shall be not less than five million (\$5,000,000), five million (\$5,000,000) annual aggregate, per location. The policy must designate the City and the Lease Administrator as additional insureds on a primary and non-contributory basis.

(ii) Automobile Liability. Automobile liability for a combined single limit per occurrence for bodily injury and property damage of not less than one million dollars (\$1,000,000).

(iii) Statutory Worker's Compensation and Employer's Liability Insurance.

(iv) Marine Protection and Indemnity Insurance. If applicable in light of the nature of the business activities of the subtenant, licensee, permittee or concessionaire, Marine protection and indemnity insurance in an amount not less than ten million dollars (\$10,000,000), per occurrence. The policy must designate the City and the Lease Administrator as Additional Insureds on a primary and non-contributory basis.

(v) Liquor Legal Liability. If the retail activities of the tenant, subtenant, licensee and/or concessionaire (as applicable) shall include but not be limited to the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages, Liquor Legal liability coverage in an amount not less than five million dollars (\$5,000,000), per occurrence. The policy must designate the City and the Lease Administrator as Additional Insureds on a primary and non-contributory basis.

(vi) Miscellaneous Insurance. Such other insurance, in such amounts as from time to time reasonably may be required by the City.

(n) Self Insurance. In lieu of providing coverage for the risks described in Section 9.01 (b) above, the Port Authority may elect to provide by self-insurance, in whole or in part, for itself and its contractors, agents, subtenants and other representatives, primary coverage for such risks upon the same terms and conditions as would be provided by an insurance carrier. The Port Authority agrees that in the event of a loss, it shall make available out of its own funds such amounts as would be paid by an insurance carrier providing the coverage which the Port Authority has elected to provide by self-insurance and its obligation to pay any loss hereunder

shall not be limited other than by limitations on coverage what would have been made available from such insurance carrier. If the Port Authority elects to provide any insurance coverage pursuant to this paragraph (n) it shall provide a letter to the City which (i) shall be signed by a duly authorized officer of the Port Authority, (ii) shall attest to the existence of the Port Authority's self-insurance program (iii) shall identify the coverage or coverages which the Port Authority elects to provide pursuant to this paragraph (n).

Section 9.02. Treatment of Proceeds.

(a) Proceeds of Insurance in General. Insurance proceeds payable with respect to a loss covered by the policy outlined in 9.01(b) above shall be paid jointly to all loss payees to be held for the purpose of paying for the cost of the restoration, and such proceeds shall be applied to the payment of the cost of such restoration. The City and/or Lease Administrator shall apply any insurance proceeds so received in accordance with the provisions of the Lease as amended. The City and the Port Authority hereby irrevocably appoint Lease Administrator as attorney-in-fact with the power to endorse any instrument respecting loss proceeds to the order of the City or Lease Administrator for deposit and disposition in accordance with provisions of this Section 9. The City and/or Lease Administrator shall have no liability with regard to any proceeds received by it and retained in good faith and in accordance with the provisions of the Lease as amended. If the Port Authority believes that the City and/or Lease Administrator has not applied the insurance proceeds in accordance with the Lease as amended, the Port Authority's sole remedy shall be to bring an action to have the proceeds applied in accordance with the Lease as amended. Insurance proceeds payable with respect to a property loss on account of trade fixtures shall be payable to the Port Authority.

(b) Cooperation in Collection of Proceeds. The Port Authority and the City and/or Lease Administrator shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and the Port Authority and the City and/or Lease Administrator shall execute and deliver such proofs of loss and other instruments as may be required of the Port Authority, its subtenants or the City and/or Lease Administrator, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

Section 9.03. General Requirements Applicable to Policies.

(a) Insurance Companies and Required Forms. All of the insurance policies required by this Section shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A-VII" or better or another comparable rating reasonably acceptable to The City. All references to forms and coverages in this Section shall be those used by the Insurance Services Office of New York or equivalent forms satisfactory to the City and/or Lease Administrator all material respects.

(b) Term. The Port Authority shall procure or cause to be carried policies for all insurance required by the Lease as amended for periods of not less than one (1) year and shall keep and maintain such insurance at all times during the Term. The Port Authority shall provide the City and/or Lease Administrator evidence of

renewals thereof from time to time and as soon as is practicable.

(c) Waiver of Subrogation. All policies of insurance required under this Lease shall include a waiver of the right of subrogation with respect to all the named insureds and additional insureds as allowed by law.

(d) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Section shall contain (i) a provision that no act or omission of the Port Authority, including, without limitation, any use or occupation of the Terminal for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by the City and/or Lease Administrator, (ii) an agreement by the insurer that such policy shall not be cancelled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days' prior written notice to the City and Lease Administrator, including, cancellation or non-renewal for non-payment of premium, and (iii) a provision that notice of accident or claim to the insurer by the first named insured ("First Named Insured") shall be deemed notice by all Persons having rights in said policy. If the Port Authority neglects, refuses or is unable to obtain or cause to be obtained any of the insurance required in this Lease as amended, then the City and/or the Lease Administrator may procure same, wherever available, at the expense of the Port Authority. All amounts due from the Port Authority to the City and/or the Lease Administrator, in connection with the insurance, shall be deemed additional rent, payable and collectible as Rent. Notwithstanding the above, the Port Authority shall continue and remain liable for any uninsured destruction, loss, or damage from any cause arising from breach of the terms, covenants and conditions of the Lease as amended except as set forth therein.

(e) Notices. Notices from the insurer or the Port Authority to the City and Lease Administrator shall be (i) personally delivered to the party or to the duly designated officer or representative of such party during regular business hours, or (ii) or, if directed to the Port Authority, delivered to the Premises during regular business hours, or (iii) forwarded to such party, officer or representative at the office address by registered mail. All notices and correspondences from the insurer to the City must be delivered to the following addresses or to such other addresses as the City or Lease Administrator may notify the insurer of from time to time:

To The City:

Commissioner
New York City Department of Small Business Services
110 William Street
New York, New York 10038

with a copy to:

New York City Law Department
100 Church Street
New York, New York 10007

Attention: Chief, Economic Development Division

To Lease Administrator:

New York City Economic Development Corporation
Asset Management Department
110 William Street
New York, New York 10038
Attention: Senior Vice President for Asset Management

(f) Primary Protection. All insurance policies required by this Section 9 shall be primary protection. The City and Lease Administrator shall not be called upon to contribute to any loss.

(g) Adjustments of Claims. All insurance policies required by this Section shall provide that all adjustments of claims with the insurers shall be made by or cause to be made by the Port Authority and/or any associated subtenants.

Section 9.04. Evidence of Insurance. Prior to the Port Authority entering into possession of the Terminal and at least thirty (30) days prior to the expiration of any of the policies to be maintained or caused to be maintained by the Port Authority, the Port Authority shall deliver or cause to be delivered to the City and/or the Lease Administrator certificates of insurance, in standard Acord form or its equivalent, providing for thirty (30) days' prior written notice to the City and Lease Administrator by the insurance company of cancellation or non-renewal of a policy or replacement or renewal of any policies expiring during the Term. At the City's or Lease Administrator's request, Port Authority shall deliver a copy of each entire original policy required hereby. All certificates issued must reflect that the certificate holder is an additional insured on all liability policies shown on the certificate.

Section 9.05. Compliance With Policy Requirements. The Port Authority shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Section 9. The Port Authority shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies on the Port Authority's part to be performed, and, shall give and shall cause its contractors to give, the insurer, the City and Lease Administrator notice of all claims, accidents and losses promptly, but in any event no later than ten (10) days after the Port Authority, or any of its contractors, as the case may be, acquires actual knowledge of the same.

Section 9.06. Intentionally deleted.

Section 9.07. Increases in Coverage and Additional Insurance. The City shall have the right, at any time and from time to time, to reasonably modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required by this Section 9 to conform such requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises comparable to the Terminal, or are commonly carried by businesses of the size and nature of the business

conducted at the Terminal. From time to time, the City may require the Port Authority to increase or cause to be increased the amount of coverage provided under the policies of insurance required hereunder, or change the types of insurance required hereunder, provided that in any such event, the City reasonably demonstrates the need for such increase of coverage. The amount of any such increased coverage shall not exceed the amount of similar coverage that are commonly carried by owners of comparable property or in connection with similar businesses.

Section 9.08. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by the Port Authority hereunder shall not constitute a representation or warranty by the City that such insurance is in any respect adequate.

Section 9.09. Blanket and/or Master Policies. The insurance required by the provisions of this Section 9 may, at the Port Authority's option, be effected by blanket and/or umbrella policies issued to the Port Authority and/or its subtenant(s) covering the Terminal and other properties owned or leased by the Port Authority and/or its subtenant(s), provided such policies otherwise comply with the provisions of the Lease as amended and allocate to the Terminal the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as "named insureds" or "additional insureds" hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by the Lease as amended shall be effected by any such blanket or umbrella policies, upon the City's (or Lease Administrator's) request, the Port Authority shall furnish to the City and Lease Administrator certified copies of such policies together with schedules annexed thereto setting forth the amount of insurance applicable to the Terminal and proof reasonably satisfactory to the City that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

Section 9.10. Intentionally deleted.

Section 9.11. Other Insurance Not Required Under this Lease. The Port Authority may effect for its own account any insurance not required under the provisions of the Lease as amended, provided same shall not directly or indirectly result in a diminution of the insurance coverage specified in Section 9.01 hereof. If any such insurance, as permitted above, shall affect the City's insurance coverage, prior to purchase thereof, the Port Authority shall provide a summary of the anticipated coverage to the City for its approval.

Section 9.12. Modification By Insurer. Without limiting any of the Port Authority's obligations or the City's rights under this Section 9, in the event that an insurer modifies, in any material respect, any insurance policy that the Port Authority is required to maintain in accordance with the Lease as amended, the Port Authority shall give notice to the City and Lease Administrator of such modification within thirty (30) days after the Port Authority's receipt of notice thereof.

Section 9.13. Interpretation. All insurance terms used in this Section 9 shall have the meanings ascribed by the Insurance Services Offices.

Section 9.14. Determination of Replacement Value.

(a) Definition. The current replacement value of the Terminal (the "Replacement Value") shall be the full cost of replacing the Terminal, including, without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including without limitation, architect's and development fees. Replacement Value shall be determined periodically by an appraiser, selected and paid by the Port Authority and reasonably approved by the City, initially on the Substantial Completion Date and thereafter on each Revaluation Date and at such additional times as the City, may reasonably request. If the insurance required by Section 9.01 above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such appraisal, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

(b) Adjustment. The amount of Replacement Value shall be adjusted on each anniversary of the initial determination of Replacement Value and of each subsequent decennial redetermination of Replacement Value throughout the Term by a percentage equal to the percentage change in the Building Index in effect on such anniversary date as compared to the Building Index in effect on the date of Substantial Completion or prior redetermination, whichever is latest.

(c) Building Index. As used herein, the "Building Index" shall mean the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by the City and reasonably agreed to by the Port Authority, provided that such index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Terminal

Section 9.15. Unavailability.

If any of the insurance required to be carried under the Lease as amended shall not, after diligent efforts by the Port Authority, and through no act or omission on the part of the Port Authority, be obtainable from domestic carriers customarily insuring premises similar to the Terminal and business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted by the Port Authority at the Terminal, then the Port Authority shall promptly notify the City of the Port Authority's inability to obtain such insurance and the City shall have the right, but not the obligation, to arrange for the Port Authority to obtain such insurance. If the City shall be able to arrange for the Port Authority to obtain such insurance, the Port Authority shall obtain the same up to the maximum limits provided for herein. If the City shall be unable to arrange for the Port Authority to obtain the insurance required hereunder, the Port Authority shall promptly obtain the maximum insurance obtainable, and in such case, the failure of the Port Authority to carry the insurance which is unobtainable shall not be a default hereunder for as long as such insurance shall remain unobtainable. Types or amounts of insurance shall be deemed unobtainable if such types or amounts of insurance are (a) actually unobtainable, or (b) virtually unobtainable as a result of commercially unreasonable premiums for such insurance with respect to premises similar to the Terminal, located in New York City and used for purposes similar to those for which the Terminal are used.

Section 9.16. Definitions. For purposes of this Section 9 pertaining to Insurance, the following definitions shall apply:

(a) the term "Additional Insureds" shall mean the City, Lease Administrator (currently, the New York City Economic Development Corporation and Apple Industrial Development Corp.), their successors or assigns and shall include all of their respective Representatives, and further may, at the City's election, also include additional parties upon written notice to the Port Authority, as their respective interests appear; and

(b) the term "Improvements" shall mean all "improvements" as commonly defined or described in the insurance industry and/or as ascribed by the Insurance Service Offices, and shall also include, if not already included therein, the Improvements (as defined in the Lease as amended) including, without limitation, Capital Investment Work and repairs.

10. Use; Hazardous Substances.

The Port Authority shall not cause or permit, as the result of any act or omission on the part of the Port Authority and/or its subtenants, and/or their respective Representatives, occupants, invitees and licensees, the release of Hazardous Substances in, from, at or onto any portion of the Terminal in violation of any Environmental Laws. The Port Authority shall assume all liability for Hazardous Substances (in connection with its tenancy) at the Terminal for the Term including but not limited to the disturbance of any pre-existing conditions. In the event any Hazardous Substances shall be found within, under, or upon the Terminal, the Port Authority shall take or cause to be taken any action required by under any applicable environmental laws with respect to such Hazardous Substances. The expense for such action shall be the sole responsibility of the Port Authority unless otherwise set forth in Section 8(b) of the 1990 Amendment or a certain Dredging Agreement between the parties dated as of June 19, 1995, and the parties hereby acknowledge and agree that the parties do not intend, and nothing in this 2009 Amendment (including without limitation the definition of "Hazardous Substances" herein) shall, narrow, broaden, serve to interpret or elaborate on, or otherwise modify the understandings and agreements set forth in such Section 8(b) and the Dredging Agreement. Notwithstanding the above, the Port Authority shall have the right to challenge and defer compliance with such Requirement if no dangerous or hazardous condition then exists or would be caused by such deferral and the Port Authority complies with the reasonable Requirements of the City regarding the Hazardous Substances at issue. All action with respect to any Hazardous Substances on the Terminal shall be performed in accordance with all Requirements. In addition, prior to commencing any work of removal, repair, restoration or any other construction work under this section, the Port Authority shall submit or cause to be submitted to the City a schedule indicating the estimated dates on which the various phases of all such work will be commenced and completed. The Port Authority shall have the right to amend and change such schedule without prejudice and, upon each such amendment or

change, shall provide the City with an updated schedule. The Port Authority shall comply with or cause to be complied with all applicable federal, state and local laws (including but not limited to and as well as any applicable FDA and/or CDC standards) concerning any Hazardous Substance, that the Port Authority or occupant of the Terminal produces, brings on, keeps, uses, stores, disposes or treats in, at or about the Terminal or transported from the Terminal.

11. Cooperation. The City and the Port Authority agree that they will cooperate and act reasonably in all respects of the arrangement under the Lease as amended, regardless of which party has the obligation to discharge a particular task. The Port Authority agrees that, subject to a certain Agreement of Lease between the Port Authority and the Howland Hook Container Terminal dated as of June 30, 1995 as it has been amended and assigned from time to time (“NYCT Sublease”), it will demand the same cooperation of its subtenants at the Terminal. Notwithstanding the above, if the NYCT Sublease does not contain the appropriate cooperation provision, the Port Authority will take all necessary steps to include such language in the next amendment of the NYCT Sublease or renewal thereof, as the case may be.
12. Approvals. The terms of this 2009 Amendment are subject to the approval of the Board of Commissioners of the Port Authority and the City Council pursuant to Section 1301(2)(f) of the New York City Charter. Further, this 2009 Amendment is made subject to permission from the Federal Maritime Commission, except in the event it is determined that this 2009 Amendment is not subject to its jurisdiction. The parties hereto shall, after execution of this 2009 Amendment pursuant to authorization from their respective governing bodies, diligently and expeditiously seek such approval and determination.
13. Indemnification. As of the Effective Date, Article FOURTEENTH of the 1985 Amendment is hereby modified as follows:

The second sentence of paragraph A shall be modified to add the term “, defend” after the word “indemnify on the second line. Further, the word “gross” shall be added after the term “caused by the” on the tenth line.

Subsection A.(v) shall be modified as follows:

“(v) Any failure on the part of the Port Authority to pay rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in the Lease as amended on its part to be performed or complied with and the exercise by the City of any remedy provided in the Lease as amended with respect thereto.”

Subsection “E” and “F” shall be added after subsection D and shall state as follows:

“E. The provisions of this Article shall extend to the Lease Administrator and the City’s and Lease Administrator’s agents and Representatives.

F. The Port Authority shall, subject to a certain Agreement of Lease between the Port Authority and the Howland Hook Container Terminal dated as of June

30, 1995 as it has been amended and assigned from time to time ("NYCT Sublease"), require its subtenants to provide the City and its Lease Administrator with the same or greater indemnification. Notwithstanding the above, if the NYCT Sublease does not contain the appropriate indemnification provision, the Port Authority will take all necessary steps to include such language in the next amendment of the NYCT Sublease or renewal thereof, as the case may be."

14. Governing Law. The Lease as amended and its performance shall be governed by and construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflict of laws and any rule requiring construction against the party drafting the Lease as amended.
15. Department of Small Business Services. All references to New York City Departments of Ports and Terminals and New York City Department of Ports and Trades, are replaced by the New York City Department of Small Business Services.
16. Notices.

(a) Notices to be in Writing. Except as otherwise provided in this Lease as amended, all demands and notices or other communications (collectively, "Notices") which any party may be required or may desire to give to any other party relating to this Agreement, including any change to an address specified below, shall be effective only if in writing and either (i) mailed by certified or registered mail, return receipt requested, postage prepaid or (ii) personally delivered or (iii) delivered by Federal Express or other nationally known overnight courier service, in each event to the receiving party with a copy to such party's counsel, addressed as follows:

To The City:

Commissioner
New York City Department of Small Business Services
110 William Street
New York, New York 10038

with a copy to:

New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

To Lease Administrator:

New York City Economic Development Corporation
Asset Management Department
110 William Street
New York, New York 10038
Attention: Senior Vice President for Asset Management

New York City Economic Development Corporation
Legal Department
110 William Street
New York, New York 10038
Attention: General Counsel

To the Port Authority:

The Port Authority of New York and New Jersey
225 Park Avenue South, 11th Floor
New York, New York 10003

Attention: Director, Port Commerce Department
with a copy to:

The Port Authority of New York and New Jersey
225 Park Avenue South, 15th Floor
New York, New York 10003

Attention: General Counsel

(b) Effectiveness. All Notices shall be deemed given and effective as of the date and time received, as evidenced by the written receipt therefor; and in the event delivery of a notice is refused, such notice shall be deemed given and effective as of the date and time delivery was attempted.

17. Unenforceability. If any term or provision of this 2009 Amendment shall be invalid and unenforceable, the remainder of this 2009 Amendment shall be valid and enforceable to the fullest extent permitted by law.
18. Entire Agreement and No Oral Modification. All prior statements, understandings, representations and agreements between the parties, oral or written, are superseded by and merged in this 2009 Amendment, which alone fully and entirely expresses the agreement between them in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this 2009 Amendment. This 2009 Amendment may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the City and the Port Authority.
19. Signatures in Counterparts. This 2009 Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
20. Ratification and Continuation. The terms and conditions of the Lease as heretofore amended are hereby ratified and reaffirmed and shall continue in full force and effect without any change or modification and shall apply for the balance of the Term.

IN WITNESS WHEREOF, the Tenant and Landlord have executed this 2009 Amendment as of the date and year first above written.

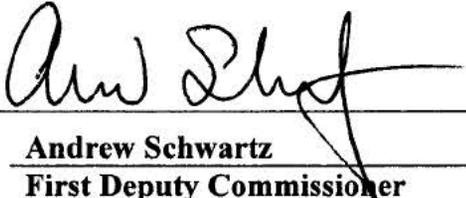
[Signatures appear on the following page]

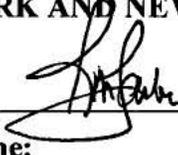
LANDLORD:

TENANT:

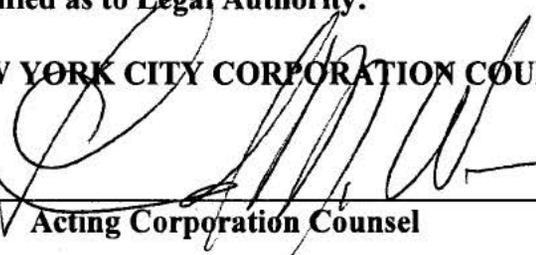
THE CITY OF NEW YORK

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: 
 Name: Andrew Schwartz
 Title: First Deputy Commissioner
 Department of Small Business
 Services

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

Approved as to Form
 Certified as to Legal Authority:

NEW YORK CITY CORPORATION COUNSEL
 By: 
 Acting Corporation Counsel

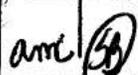
APPROVED:	
FORM	TERMS
	



Exhibit A

Schedule A

Minimum Revenue Threshold



Minimum Revenue Threshold

March 18, 2009

<u>Year</u>	<u>Minimum Revenue Threshold</u>
2024	\$25,000,000
2025	\$26,000,000
2026	\$27,000,000
2027	\$28,000,000
2028	\$29,000,000
2029	\$30,000,000
2030	\$31,000,000
2031	\$35,500,000
2032	\$36,210,000
2033	\$36,934,200
2034	\$37,672,884
2035	\$38,426,342
2036	\$39,194,869
2037	\$39,978,766
2038	\$40,778,341
2039	\$41,593,908
2040	\$42,425,786
2041	\$43,274,302
2042	\$44,139,788
2043	\$45,022,584
2044	\$45,923,035
2045	\$46,841,496
2046	\$47,778,326
2047	\$48,733,893
2048	\$49,708,570
2049	\$50,702,742
2050	\$51,716,797
2051	\$52,751,133
2052	\$53,806,155
2053	\$54,882,278
2054	\$55,979,924
2055	\$57,099,522
2056	\$58,241,513
2057	\$59,406,343
2058	\$60,594,470



Exhibit B

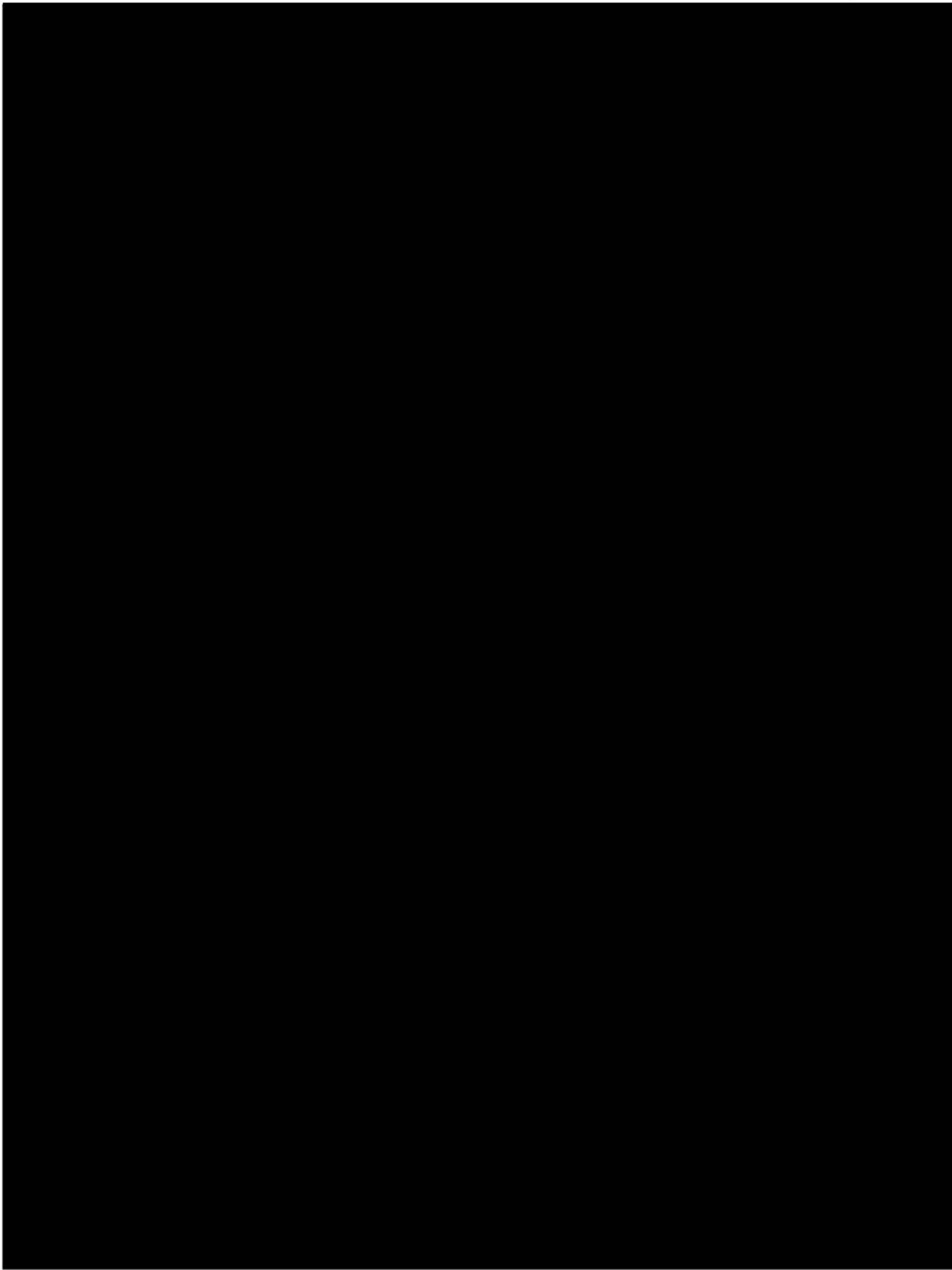
Howland Hook Marine Terminal
Boundary Survey
August 2008

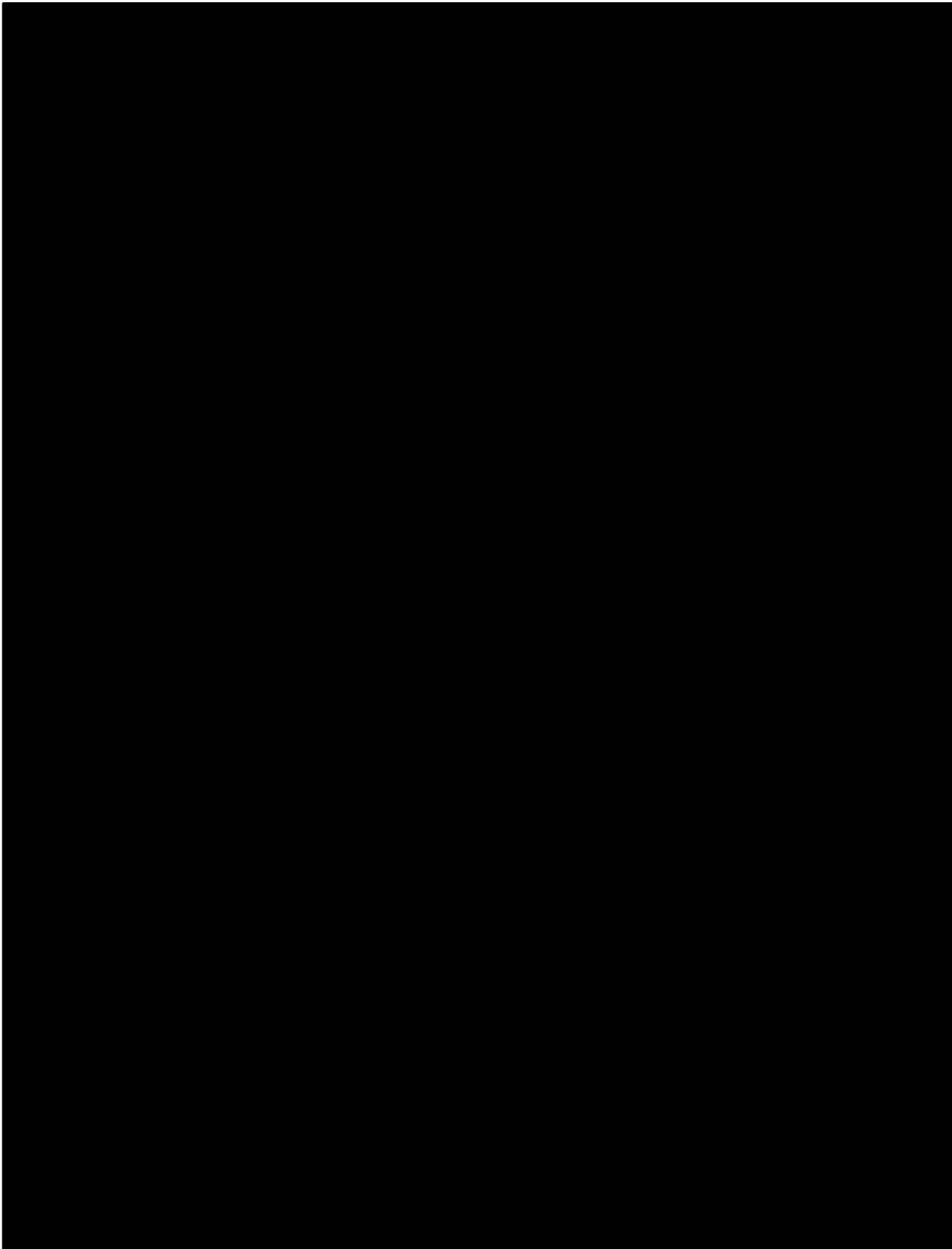
Rogers Surveying, PLLC
1632 Richmond Terrace
Staten Island, NY 10310
(718) 447-7311

File No. 32514

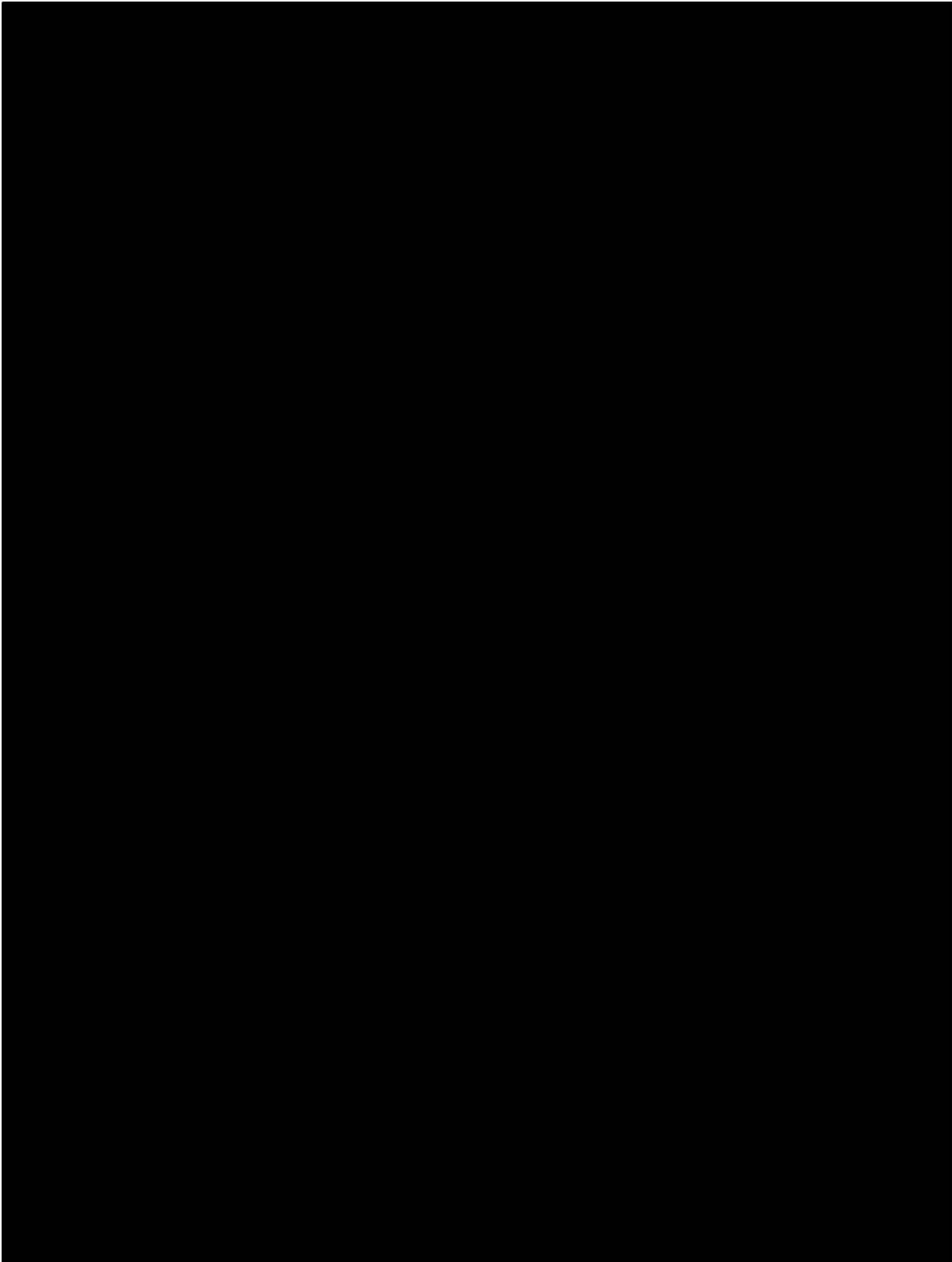


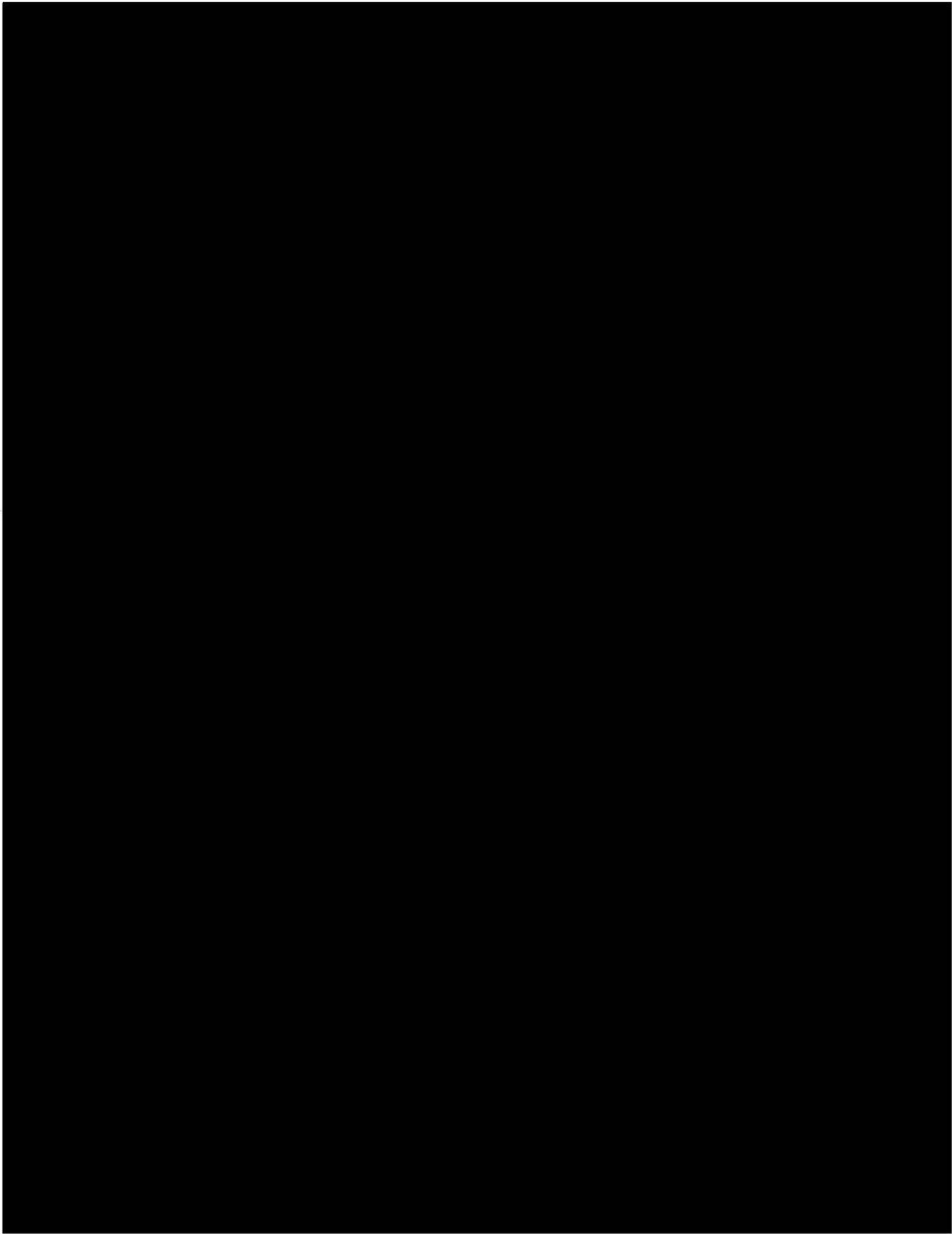
Exhibit C
Inspection Manual

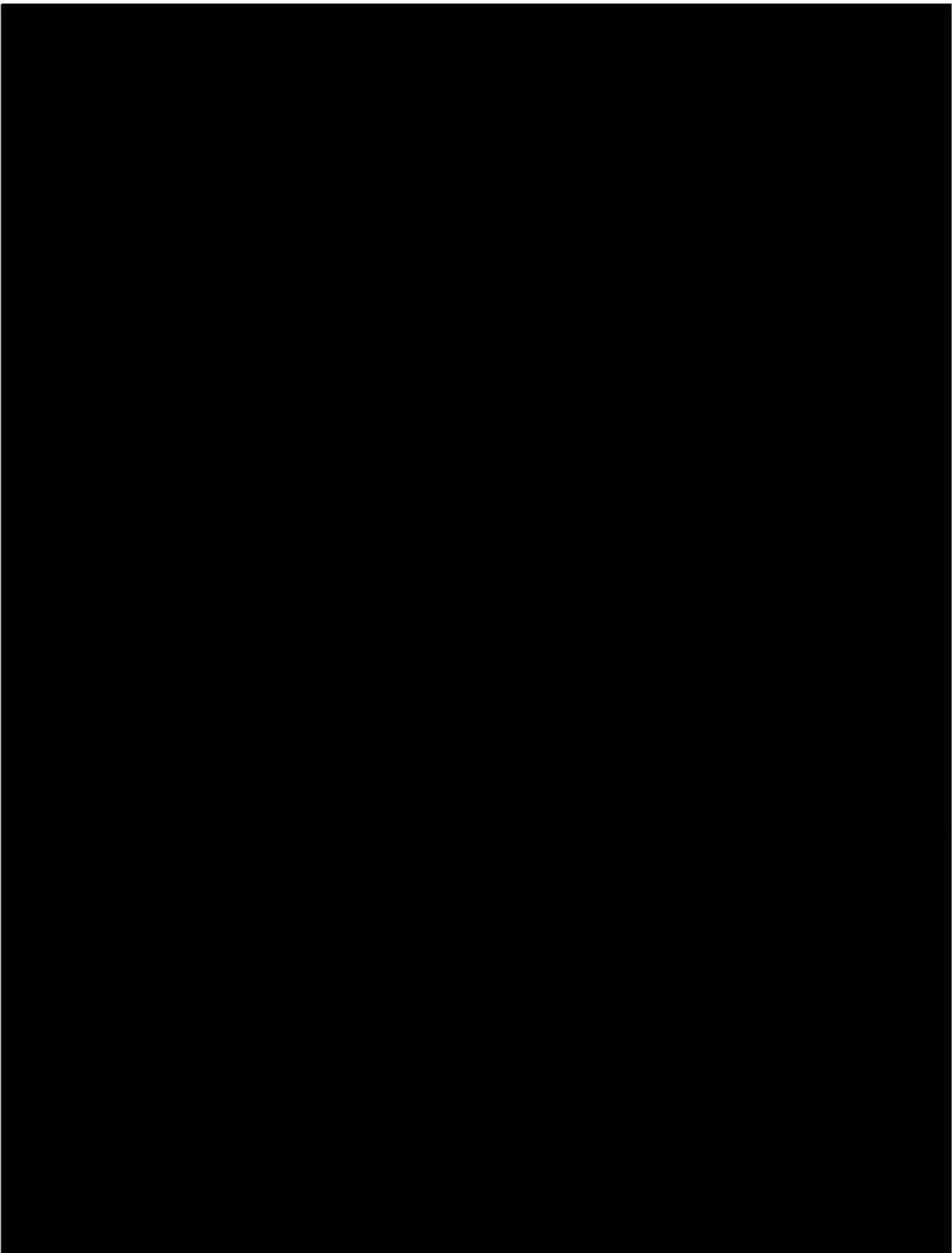


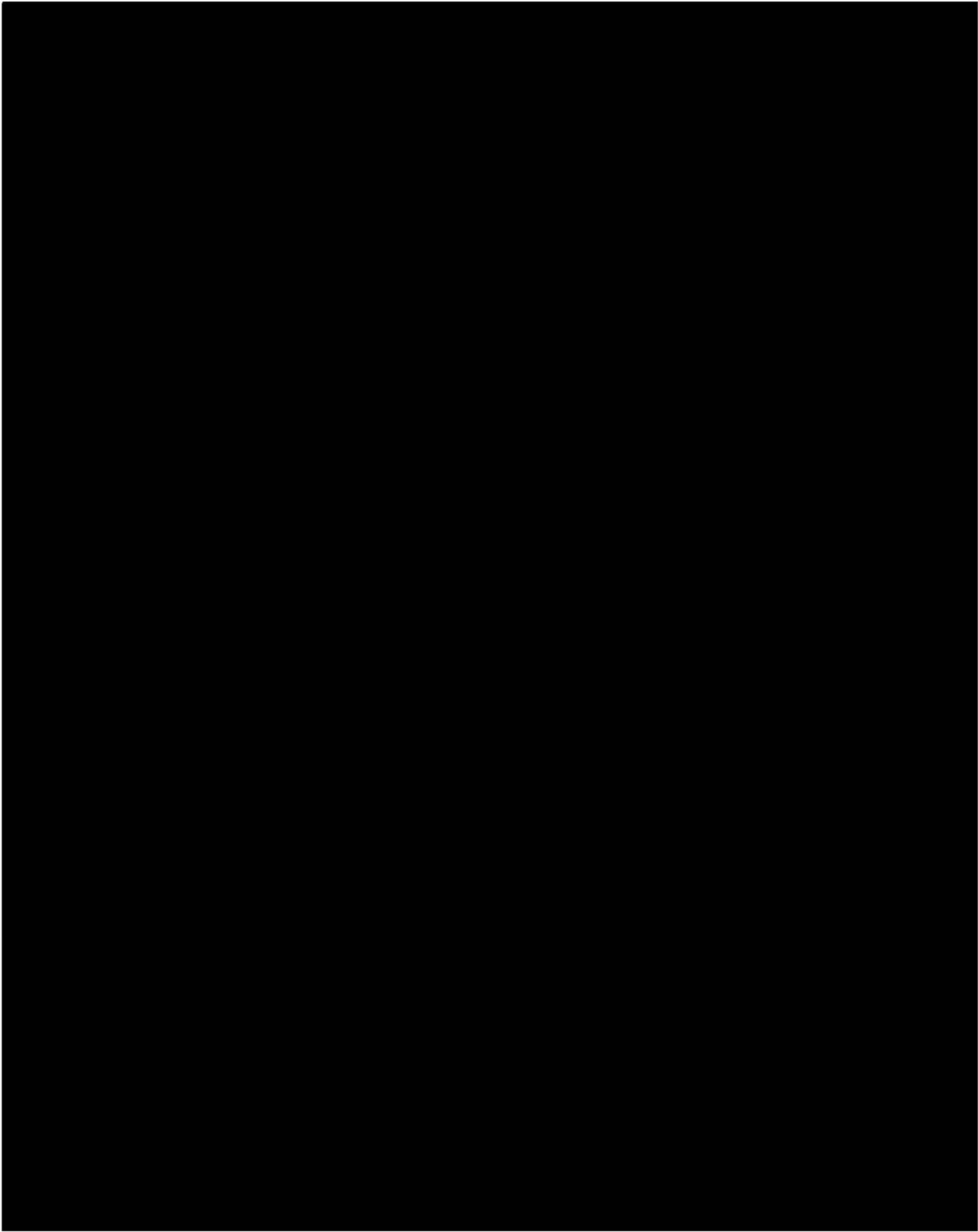


1000-1000









AMENDED AND RESTATED AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

And

NEW YORK CONTAINER TERMINAL, LLC

Dated as of January 1, 2013

TABLE OF CONTENTS

Section 1.	Definitions	1
Section 2.	Letting.....	11
Section 3.	Term.....	11
Section 4.	Base Rent	12
Section 5.	Containerized Municipal Solid Waste Rental.....	12
Section 6.	Container Throughput Rental	13
Section 7.	[Intentionally Omitted]	15
Section 8.	Non-Container Cargo Throughput Rental	15
Section 9.	Rights of User	15
Section 10.	Lessee's Construction Work.....	17
Section 11.	Minimum Capital Expenditure Requirement.....	27
Section 12.	Equipment.....	28
Section 13.	Environmental Responsibilities	29
Section 14.	Ingress and Egress	33
Section 15.	Governmental and Other Requirements	34
Section 16.	Rules and Regulations	35
Section 17.	Method of Operation.....	36
Section 18.	Signs.....	38
Section 19.	Indemnity and Liability Insurance	39
Section 20.	Maintenance and Repair	42
Section 21.	Casualty	47
Section 22.	Assignment and Sublease	49
Section 23.	Condemnation.....	50
Section 24.	Construction Reimbursement	52
Section 25.	Additional Rent and Charges	52
Section 26.	Rights of Entry Reserved.....	53
Section 27.	Limitation of Rights and Privileges Granted	54
Section 28.	Prohibited Acts	55
Section 29.	Termination.....	57
Section 30.	Right of Re-entry	59

Section 31.	Waiver of Redemption.....	59
Section 32.	Survival of the Obligations	60
Section 33.	Reletting by the Port Authority.....	62
Section 34.	Remedies to Be Nonexclusive	62
Section 35.	Surrender.....	62
Section 36.	Acceptance of Surrender of Lease	63
Section 37.	Notices	63
Section 38.	General.....	64
Section 39.	Payments.....	67
Section 40.	Premises	67
Section 41.	Force Majeure	68
Section 42.	Brokerage.....	69
Section 43.	Non-Liability of Individuals	69
Section 44.	Services.....	69
Section 45.	Reporting Obligations.....	70
Section 46.	Security Deposit.....	72
Section 47.	Affirmative Action.....	73
Section 48.	Right of Termination – Ownership and Control	75
Section 49.	Late Charges	77
Section 50.	Labor Matters.....	78
Section 51.	Holdover Rent.....	78
Section 52.	Audit Fee.....	79
Section 53.	Release and Covenant Not To Sue	79
Section 54.	Certain Capital Expenditures	81
Section 55.	Conformance.....	82
Section 56.	Terminal Guarantee	84
Section 57.	Existing Lease Superseded	85
Section 58.	Sustainable Design.....	86
Section 59.	Container Cranes.....	86
Section 60.	NYCT Reimbursement Program	86
Section 61.	Entire Agreement.....	92

EXHIBITS

- Exhibit A - Premises
- Exhibit B - NYCT Reimbursement Program
- Exhibit C - NYCT Reimbursement Program – PA-NYCT Business Rules
- Exhibit D - NYCT Reimbursement Program – Participant Rules
- Exhibit E - Lessee’s Ownership Structure

SCHEDULES

- Schedule A - Base Rental Rates
- Schedule B - Tier 1 & Tier 2 Rental Rates
- Schedule C - Guidelines
- Schedule D - CMSW Rates
- Schedule E - The Port Leases

THIS AMENDED AND RESTATED AGREEMENT OF LEASE (this “Agreement”), made as of the first day of January 2013 (the “Commencement Date”), by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the “Port Authority”), a body corporate and politic created by compact between the States of New Jersey and New York, with the consent of the United States Congress, and having an office and place of business at 225 Park Avenue South, 15th Floor, New York, New York 10003-1604; and NEW YORK CONTAINER TERMINAL, LLC (“Lessee”), a limited liability company organized under the laws of the State of New York and having an office and place of business at 300 Western Avenue, Staten Island, New York 10303, whose representative is: James Devine.

WHEREAS, as of June 30, 1995, the Port Authority and Lessee (successor-in-interest to Howland Hook Container Terminal, Inc.) entered into that certain Agreement of Lease known as Lease No. HHT-4, which was later amended and supplemented by certain Supplemental Agreements between the Port Authority and Lessee numbered 1 through 14, i.e. Supplement No. 1 dated as of July 14, 1995, Supplemental No. 2 dated as of October 30, 1995, Supplement No. 3 dated as of June 17, 1997, Supplement No. 4 dated as of September 16, 1997, Supplement No. 5 dated as of March 15, 1998, Supplement No. 6 dated as of March 30, 1998, Supplement No. 7 dated as of July 15, 1998, Supplement No. 8 dated as of October 14, 1998, Supplement No. 9 dated as of March 31, 1999, Supplement No. 10 dated as of September 30, 1999, Supplement No. 11 dated as of April 8, 2003, Supplement No. 12 dated as of December 31, 2004, Supplement No. 13 dated as of November 1, 2005 and Supplement No. 14 dated as of June 6, 2007 (collectively, as so amended and supplemented, the “Existing Lease”);

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

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

Section 1. Definitions

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

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

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

“Agreement” shall mean this Amended and Restated Agreement of Lease between the Port Authority and Lessee known as Lease Number HHT-4, together with all schedules and exhibits hereto, and as may be amended or supplemented in writing by the parties hereto from time to time.

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

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

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

“Audit Findings” shall have the meaning set forth in Section 52.

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

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

“Base Rental Rate” shall mean the per acre rates set forth on Schedule A.

“Basic Lease” shall mean that certain Amended and Restated Agreement of Lease dated as of June 30, 1983, between the City of New York and U.S. Lines, Inc. as subsequently assigned to the Port Authority and as amended pursuant to that certain Agreement dated as of June 11, 1985, among the City of New York, the Port Authority and U.S. Lines, Inc., as further amended by that certain Agreement between the City of New York and the Port Authority dated as of May 10, 1990 and that certain Amendment of Lease between the City of New York and the Port Authority dated as of August 27, 2009, as may be further amended, restated, supplemented or otherwise modified from time to time.

“Cargo Facility Charge” shall mean the Cargo Facility Charge imposed pursuant to Section H of the Tariff.

“Change of Control” shall have the meaning set forth in Section 48(e).

“CMSW” shall mean containerized municipal solid waste.

“CMSW Barge Fender System” shall have the meaning set forth in Section 15(d).

“CMSW Container” shall mean a specialized container designed for the transport of CMSW, whether full or empty, or arriving at or departing from the Premises.

“CMSW Rate” shall be equal to the amount set forth on Schedule D for each applicable Lease Year, which amount is inclusive of the Cargo Facility Charge due for each CMSW Container pursuant to the Tariff and in accordance with Section 5(d).

“CMSW Throughput Rental” shall have the meaning set forth in Section 5(a).

“CTLLC” shall mean Consolidated Terminals, LLC, a limited liability company organized and existing under the laws of the State of New York and having an office and place of business at 300 Western Avenue, Staten Island, New York 10303.

“Commencement Date” shall mean the date of this Agreement.

“Construction Cost Index” shall have the meaning set forth in Section 20(e)(6).

“Construction Cost Percentage Change” shall have the meaning set forth in Section 20(e)(6).

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

“Container Throughput Rental Commencement Date” shall mean January 1 of the Lease Year following the completion of the Forty-Five Foot Channel Deepening.

“Control” shall mean the direct or indirect power through contract, arrangement, understanding, relationship, ownership of other business entities or otherwise to dispose of or to direct the disposal of, or to vote or to direct the voting of, voting securities or voting membership of any Person.

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

“Credit Agreement” shall mean that certain Credit Agreement dated as of January 10, 2007, among Lessee Parent, TSI Terminal Systems Inc., CTLLC, Lessee, Global Container & Terminal Services LLC, the Lenders (as defined in the Credit Agreement), the Royal Bank of Scotland plc and the Royal Bank of Canada (as the same may be amended, restated, supplemented or otherwise modified from time to time).

“Disposal” shall have the meaning set forth in Section 13(i).

“Environmental Damages” shall mean losses or damages arising out of any one or more of the following:

1. the presence of any Hazardous Substance in, on, under, or migrating from the Premises in violation of, or requiring action under any Environmental Requirements, and/or
2. the disposal, discharge, release or threatened release of any Hazardous Substance from the Premises or of any Hazardous Substance from under the Premises in violation of, or requiring action under any Environmental Requirements, and/or
3. any personal injury, including wrongful death, or property damage arising out of or related to any release of any Hazardous Substance described in (i) or (ii) above, and/or
4. the violation of any Environmental Requirement.

“Environmental Requirements” shall mean in the plural and “Environmental Requirement” shall mean in the singular all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, “best management practices plans”, and other voluntary programs adopted and agreements made by the Port Authority with any governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, the foregoing to include without limitation:

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

(ii) All requirements pertaining to the protection of the health and safety of employees or the public with respect to or in connection with Hazardous Substances.

“Equity Securities” shall mean any share of capital stock, membership interest or other equity or debt interest which gives the holder thereof the right to vote generally in the election of directors of the issuer thereof (or, if the issuer is not a corporation, the individuals who perform comparable functions for such issuer) and shall

include any security convertible into, or exercisable or exchangeable for, any such share or interest.

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

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

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

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

“Expiration Date” shall mean December 31, 2029 unless the Term is earlier terminated in accordance with Section 11 and otherwise in accordance with the terms of the Agreement.

“Facility” shall have the meaning set forth in Section 2.

“FMC” shall mean the Federal Maritime Commission.

“Forty-Five Foot Berth Dredging Work” shall have the meaning set forth in Section 24(a).

“Forty-Five Foot Berth Dredging Work Rental” shall have the meaning set forth in Section 24(b).

“Forty-Five Foot Channel Deepening” shall mean the following work to be performed by the United States Army Corps of Engineers or such successor or other United States agency performing the present functions of the United States Army Corps of Engineers: the completion of a channel of a depth of at least forty-five (45) feet below Mean Low Water in the Kill Van Kull and the northernmost portion of the Arthur Kill sufficient to allow passage of a single ship at one time to or from the Premises.

“GAAP” shall mean generally accepted accounting principles in the United States of America as in effect from time to time.

“Governmental Authority” and “Governmental Authorities” shall mean all governmental agencies, authorities, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, except that it shall not be construed to include The Port Authority of New York and New Jersey, the lessor under this Agreement.

“Guaranteed Rental” shall have the meaning set forth in Section 56(a).

“Hazardous Substances” shall mean and include in the plural and “Hazardous Substance” shall mean and include in the singular any pollutant,

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

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

"LCL Building" shall mean the building on the Premises shaded in cross-hatching on the drawing attached as Exhibit A, and "LCL Building Work" shall mean the demolition of the LCL Building, subject to the consent (via tenant alteration application in accordance with Section 10) of the Port Authority and at the sole cost and expense of Lessee (but subject to reimbursement, as provided in Section 54).

"Lease Year" shall mean any twelve (12) month period commencing on January 1 and ending on the following December 31 throughout the Term, provided that the first Lease Year shall be the period commencing on the Commencement Date and ending on December 31, 2013.

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

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

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

"Lessee's Parent" shall mean GCT Global Container Terminals, Inc., a corporation organized and existing under the laws of the Province of Ontario.

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

"MBE" shall mean Minority Business Enterprise.

“Matter” shall have the meaning set forth in Section 13(i).

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

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

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

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

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

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

“Penderley” shall mean Penderley Investments Limited, a limited company organized under the laws of Jersey, the Channel Islands.

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

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

“Port Authority” shall mean The Port Authority of New York and New Jersey.

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

“Premises” shall have the meaning set forth in Section 2.

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

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

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

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

(4) that has been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any state or federal governmental agency in the United States or any United States controlled territory, in the preceding ten (10) years;

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

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

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

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

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

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

(11) whose involvement, presence or ownership of any interest, in the Premises is deemed by the Port Authority to be unsuitable, in a manner consistent with the criteria established under that portion of the Official Minutes of the Port Authority adopted February 22, 2007, entitled "*Port Facilities – Consent to Transfers of Leases and Changes of Ownership Interests*";

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

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

“Qualified Containers” shall mean cargo containers (or similar cargo conveyances, if any, which shall generally replace, succeed, complement or are functionally equivalent to present cargo containers) loaded onto or discharged from seagoing vessels berthing at the Premises (whether or not stuffed or stripped at the Premises, whether or not so loaded or discharged by means of container cranes, and whether or not empty or containing cargo), including without limitation any specialized cargo containers such as flat-racks (flat-racks when empty and bundled together as one unit shall be counted as one container), mafis, trailers and vehicles (provided that every five vehicles shall be counted as one container); but shall not mean (i) a CMSW Container, (ii) containers arriving on shipboard and departing on the same ship and the same voyage if such containers are merely unloaded from the ship at the Premises and reloaded in the course of a restowing operation or are merely moved from one location to another location on the same ship in the course of a shifting operation or (iii) any container arriving at the Premises from another terminal in the Port or departing from the Premises for delivery to another terminal in the Port (so-called “inter-harbor moves”). A container discharged from a vessel berthing at the Premises and loaded onto another vessel berthing at the Premises in the course of a transshipment operation shall be deemed to have been discharged and loaded in one discrete operation and counted as one

(1) Qualified Container for purposes of the computation of the rental payable under Section 6.

“Qualifying Expenditures” shall have the meaning set forth in Section 11(d).

“Releasers” shall mean, collectively, Lessee and Lessee’s Parent.

“Rent” or “rental” shall mean collectively Base Rent, CMSW Throughput Rental, Container Throughput Rental, Non-container Cargo Throughput Rental, Forty-Five Foot Berth Dredging Work Rental and any other sums payable by Lessee to the Port Authority under this Agreement.

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

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

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

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

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

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

“Subsidiary” shall mean any Person of which at least a 51% of the total voting power and total economic interests of all of the issued and outstanding equity securities of such Person are Controlled, directly or indirectly, by Teachers, any of its other Subsidiaries or any combination thereof.

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

“Teachers” shall mean Ontario Teachers’ Pension Plan Board, a pension plan organized and existing under and governed by the Ontario Teachers Pension Act, and having an office and place of business at 5650 Yonge Street, Toronto, Ontario M2M4H5.

“Term” shall have the meaning set forth in Section 3.

“Terminal Guarantee Number” shall have the meaning set forth in Section 56(a).

“Throughput Threshold Number” shall mean one hundred and twenty-two thousand four hundred (122,400) Qualified Containers. The Throughput Threshold Number shall increase by eight hundred (800) Qualified Containers per acre with respect to each acre (if any) that is added to the Premises after the Commencement Date.

“Tier 1 Number of Containers” shall mean the number of Qualified Containers exceeding the Throughput Threshold Number through and including the number of Qualified Containers calculated by multiplying the number of acres then comprising the Premises by 2200.

“Tier 2 Number of Containers” shall mean the number of Qualified Containers in excess of the number calculated by multiplying the number of acres then comprising the Premises by 2200.

“Tier 1 Rental Rate” shall mean, from the Container Throughput Rental Commencement Date through the Expiration Date, the per Qualified Container charge as set forth on Schedule B attached hereto.

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

“Unpaid Amount” shall have the meaning set forth in Section 24(a).

“WBE” shall mean Women-owned Business Enterprise.

Section 2. Letting

(a) The Port Authority hereby lets to Lessee and Lessee hereby hires and takes from the Port Authority, at the premises located in the Howland Hook Marine Terminal (the “Facility”), in the Borough of Staten Island, in the County of Richmond and the State of New York, the open area, and enclosed spaces shown in diagonal cross-hatching, as so shown on the sketches hereto attached, hereby made a part hereof, and marked “Exhibit A”, containing approximately 153 acres of land presently operated by Lessee as a marine container terminal, together with all easements, rights of way, tideland rights, riparian rights or riparian grants benefiting the above described land, together with any buildings, structures, fixtures, improvements located thereon, collectively, the “Premises”.

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

Section 3. Term

(a) The parties acknowledge that Lessee, prior to the Commencement Date has occupied and currently continues to occupy the Premises pursuant to the Existing Lease and will continue to so occupy the Premises pursuant to the terms of this Agreement, uninterruptedly, on and after the date hereof. For purposes of this

Agreement, the term of the letting of the Premises (the "Term") shall commence at 12:01 A.M. on the Commencement Date and, unless sooner terminated, shall expire at 11:59 P.M. on the Expiration Date.

(b) In the event that Lessee's anticipated contract with Covanta 4 Recovery, L.P. (or any replacement thereof) for the transportation of CMSW is extended beyond the Expiration Date, Lessee and the Port Authority intend to negotiate for an extension of this Agreement at such rental rates and on such other terms as the parties may agree. Any such extension shall be subject in all respects to the approval of the Board of Commissioners of the Port Authority.

Section 4. Base Rent

(a) Lessee shall pay, with respect to the land from time to time comprising the Premises, Base Rent to the Port Authority during the Term until the Expiration Date, at the annual per acre rate of Fifty-One Thousand Four Hundred Twenty Dollars and Eighty-Six Cents (\$51,420.86), subject to annual increases of 2% as specified on Schedule A attached hereto, in equal monthly installments.

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

Section 5. Containerized Municipal Solid Waste Rental

(a) Lessee shall pay to the Port Authority a CMSW Container throughput rental (the "CMSW Throughput Rental") for each Lease Year from the Commencement Date through the Expiration Date equal to the product obtained by multiplying the CMSW Rate applicable for the relevant Lease Year by the total number of CMSW Containers arriving at or leaving the Premises, regardless of the mode of transportation of any such CMSW Container and regardless of whether any such CMSW Container is full or empty, during such Lease Year.

(b) The computation of the CMSW Throughput Rental for each Lease Year, or a portion of a Lease Year, shall be individual to such Lease Year, or such portion of a Lease Year, and without relation to any other Lease Year, or any other portion of any Lease Year. The CMSW Throughput Rental shall be payable on a monthly basis, as set

forth in subsection (c) of this Section, based on the number of CMSW Containers arriving at or leaving the Premises, regardless of the mode of transportation of any such CMSW Container and regardless of whether any such CMSW Container is full or empty, during the month.

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

(d) Lessee's payment of CMSW Throughput Rental due under this Section shall be reduced by the amount Lessee remits to the Port Authority resulting from the collection of the Cargo Facility Charge pursuant to the Tariff with respect to each CMSW Container, which amount shall be collected by Lessee and remitted to the Port Authority separately in accordance with the Tariff.

(e) Except for the reduction provided in the foregoing subsection (d), the CMSW Throughput Rental payable under this Section shall not be subject to abatement or suspension or reduction for any reason whatsoever, and for the avoidance of doubt shall be payable irrespective of the completion of the Forty-Five Foot Channel Deepening.

Section 6. Container Throughput Rental

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

Containers loaded onto or discharged from vessels berthing at the Premises during such Lease Year.

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

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

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

Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during such Lease Year, and (2) the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during such Lease Year, after adjusting the Throughput Threshold Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers as follows: multiplying each number by a fraction, the numerator of which shall be the number of days from the commencement of such Lease Year to the effective date of termination and the denominator of which shall be 365. Any amount of the Container Throughput Rental determined to be owed to the Port Authority pursuant to such calculation shall be paid by Lessee at the time of rendering the statement.

(e) The Container Throughput Rental payable under this Section shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 7. [Intentionally Omitted]

Section 8. Non-Container Cargo Throughput Rental

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

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

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

Section 9. Rights of User

(a) Lessee shall use the Premises exclusively for the operation of a marine terminal facility which use shall be for activities relating to the receipt, handling and storage of loaded or empty containers ("Marine Container Terminal Facility"). The following activities, and no others, shall be permitted at the Premises: (i) the loading and unloading predominately of cargo housed in containers, and also of non-containerized cargo, such bulk cargo as, subject to Section 8(a) of this Agreement, shall have the prior and continuing consent of the Port Authority, and ships' stores, supplies and gear on or

from seagoing vessels and other craft permitted to be berthed in the berthing area; (ii) the receipt, handling, delivery, and storage incidental to the transportation of cargo (whether or not in cargo containers) transported or to be transported by seagoing vessels permitted to be berthed in the berthing area, and of ships, stores, supplies and gear for such vessels; (iii) the storage and repair of cargo-containers, chassis, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of Lessee under this Agreement; (iv) the parking of motor vehicles, trailers and semi-trailers owned or operated by Lessee or by the employees of Lessee or by persons doing business with it at the Premises for the purposes set forth in this Section and (v) the maintenance of office space for purposes incidental to the operations of Lessee set forth in this Section.

(b) Lessee shall have the right to berth in the berthing area seagoing vessels for which Lessee acts as stevedore or terminal operator, and operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority, carrying or about to carry general cargo, and tugboats, barges, lighters and other harbor craft serving such seagoing vessels, for loading or discharge of cargo, ships' stores, supplies and gear. Such loading and discharge from seagoing vessels may be accomplished in the berthing area through the medium of barges, lighters, and other harbor craft moored inshore or offshore. Seagoing vessels may not use the berthing area which are engaged primarily in carrying more than three hundred twenty (320) persons as passengers, on voyages extending for not less than twenty-four (24) hours. Lessee shall have the exclusive right to collect dockage and wharf usage charges from seagoing vessels and all other craft, subject to all the terms and provisions of this Agreement. Lessee shall not use or permit the use of the berthing area except as hereinabove provided.

(c) Lessee understands and agrees that any passenger-related operations permitted under subsections (a) and (b) above, shall be incidental to the other operations permitted hereunder.

(d) Lessee shall have the right to receive and transport CMSW in CMSW Containers. No CMSW Container may be opened, filled or emptied on the Premises and Lessee may only act as transfer agent for the receipt and transportation of CMSW Containers. Lessee shall deliver to the Port Authority, at least 6 months prior to commencing such activity, an operational plan for CMSW Container operations, including sketches and diagrams showing proposed location of barges at the Premises. Lessee shall not commence the receipt and transport of CMSW until Lessee has duly modified or replaced the fender system at the wharf where CMSW will be handled, so that such fender system will appropriately accommodate the barges used to transport CMSW, in accordance with plans approved by the Port Authority pursuant to the provisions of Section 10 below (as so modified or replaced, the **"CMSW Barge Fender System"**).

Section 10. Lessee's Construction Work

(a) Except as expressly provided in this Section 10, Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the Term, or install any fixtures without the prior written consent of the Port Authority. The procedures for such construction work shall be the same as for Lessee's Construction Work as set forth this section.

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

(c) Lessee understands that development and construction work may be required by the Port Authority or undertaken by Lessee from time to time with respect to its occupancy of and operations on the Premises, and Lessee agrees to and shall perform such development and construction work with respect to the Premises ("Lessee's Construction Work"). Lessee shall perform Lessee's Construction Work at its sole cost and expense and the Port Authority shall have no obligation to pay for any of Lessee's Construction Work.

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

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

(2) The risk of death, injury or damage, direct or consequential, to the Port Authority, and its Commissioners, officers, agents and employees, and to its or

their property, arising out of or in connection with the performance of Lessee's Construction Work; and

(3) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of Lessee's Construction Work. Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, against and from all such claims and demands, and for all loss and expense incurred by it and by them in the defense, settlement or satisfaction thereof including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential.

(e) Prior to the commencement of any of Lessee's Construction Work, Lessee shall submit to the Port Authority for its written approval a construction application ("Lessee's Construction Application") in accordance with the Port Authority's "*Tenant Construction and Alteration Process Manual*", a copy of which has been delivered to the Lessee. Lessee's Construction Application shall contain such terms and conditions consistent within this Agreement as the Port Authority may include, and shall set forth in detail by appropriate plans and specifications the work Lessee proposes to perform and the manner of and estimated time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by Lessee shall identify each of the items constituting Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by Lessee. Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for Lessee's Construction Work. The plans and specifications to be submitted by Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of Lessee's submissions under this Section, Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of Lessee's Construction Application and plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find reasonably necessary. Each Lessee Construction Application and plans and specifications and/or revision or modification thereof shall be prepared in accordance with the highest professional standards, of uniformly high quality and well coordinated with respect to all engineering and architectural disciplines. Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor, and the contract such contractor is operating under, have been approved by the Port Authority. Lessee shall include in any such contract or subcontract such provisions as are required in

accordance with the provisions of this Agreement and Lessee's Construction Application approved by the Port Authority. Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in subsections (m) and (n) of this Section and performance bonds reasonably acceptable to the Port Authority with respect to completion of the work. All of Lessee's Construction Work shall be performed by Lessee in accordance with Lessee's Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon final completion of all of Lessee's Construction Work, Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of Lessee and by the architect or engineer who sealed Lessee's plans pursuant to the provisions of this subsection certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and Lessee shall supply the Port Authority with one (1) set of as-built drawings of Lessee's Construction Work in such form as the Port Authority shall determine. Lessee shall keep said drawings current during the Term. No changes or modifications to Lessee's Construction Work shall be made without the prior written consent of the Port Authority. Following its receipt of Lessee's certificate, the Port Authority shall promptly inspect Lessee's Construction Work and unless such certification is not correct, or the Port Authority determines that the Premises is unsuitable for occupancy and use by Lessee, a certificate of final completion shall be delivered to Lessee by the Port Authority.

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

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

written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of Lessee's Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

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

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

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

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

(5) The fact that Lessee has performed any item of Partial Approval Work and that the Port Authority has consented to the performance thereof shall not affect or limit the obligations of Lessee under this Agreement with respect to any of Lessee's Construction Work. Lessee specifically understands that neither the Port Authority's approval of any Lessee's Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work nor the performance by Lessee of any item of Partial Approval Work pursuant to such approval shall obligate the Port

Authority to approve a construction application and plans and specifications submitted by Lessee for the balance of any Lessee's Construction Work or shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent Partial Approval Work to be performed. Without limiting the generality of the provisions of this subsection (g), it is specifically understood that the Port Authority may withhold its approval of a construction application and Partial Approval Work Plans covering any item of Partial Approval Work if the Port Authority determines that review of subsequent items of Partial Approval Work is required before the Port Authority can approve, reject, or comment upon such Partial Approval Work Plans.

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

(7) It is hereby expressly understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of any Partial Approval Work by Lessee and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Port Authority has not exercised its right to require Lessee to cease performance of all or any part of the Partial Approval Work shall not be or be deemed to be an agreement or acknowledgment on the part of the Port Authority that Lessee has, in fact, performed such work in accordance with the terms of this Agreement, Lessee's Construction Application and plans and specifications covering such work, or

the conditions of the Port Authority's approval of such work, nor shall such fact be or be deemed to be a waiver by the Port Authority of any of the requirements of this Agreement with respect to such work, or any of the requirements of Lessee's Construction Application and plans and specifications covering such work, or any of the conditions of the Port Authority's approval of such work.

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

(i) Subject to the provisions of this Agreement, Lessee shall construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth in this subsection, and, without limiting the generality of the foregoing, such construction shall be subject to the Port Authority's review and approval in accordance with the provisions of this Section.

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

(k) Without limiting or affecting any other term or provision of this Agreement but subject to Section 20(f), Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Premises by Lessee and all other improvements, additions,

fixtures, finishes, decorations and equipment made or installed by Lessee in the Premises and shall do all preventive maintenance and make all repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear and tear which does not (i) adversely affect the efficient or proper utilization of any part of the Premises, or (ii) adversely affect the appearance of any part of the Premises.

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

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

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

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

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

(4) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual

and sudden occurrences of \$5,000,000.00, including coverage for environmental clean-up on land, in air and on water.

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

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

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

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

(q) Title to and property in all improvements and fixtures placed, constructed or installed in or on the Premises, including all such improvements and fixtures as shall constitute Lessee's Construction Work (except for Lessee's personal property and trade fixtures that can be removed without damage to the Premises), shall vest in the Port Authority upon placement, construction or installation thereof; provided, however, that title to and property in any and all equipment and trade fixtures removable without substantial injury to the Premises placed in or installed upon the Premises, the cost of which has not been reimbursed by the Port Authority to Lessee, shall vest in Lessee upon installation thereof. No equipment or trade fixtures shall be removed by Lessee prior to the Expiration Date unless replaced with substantially similar property (unless such equipment or trade fixture is obsolete or otherwise unnecessary for operation of the Premises). Subject to the following sentence, upon notice given by the Port Authority prior to the expiration or earlier termination of the letting of the Premises under this Agreement, Lessee shall remove from the Premises any improvements, fixtures, trade fixtures, or equipment as the Port Authority may specify in its notice, and shall promptly repair any damage to the Premises caused by such removal. Notwithstanding the foregoing, Lessee shall not be required to remove any items which are usual and customary for a marine container terminal and which are permanently affixed to the Premises.

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

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

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

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

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

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

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

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

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

Section 11. Minimum Capital Expenditure Requirement

(a) On or before December 31, 2018, Lessee shall invest not less than an aggregate amount of \$10,000,000 of Qualifying Expenditures (the "Minimum Capital Expenditure Requirement").

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

(c) Lessee's failure to satisfy the Minimum Capital Expenditure Requirement shall be a default under this Agreement and will entitle the Port Authority to exercise any and all remedies available in accordance with this Agreement. Notwithstanding the foregoing, however, in the event that Lessee notifies the Port Authority prior to December 31, 2017 that Lessee will be unable to satisfy the Minimum Capital Expenditure Requirement by December 31, 2018, and provides the Port Authority with such information about its projected Qualifying Expenditures as the relevant Port Authority staff may request, then Port Authority staff will seek authorization from the Port Authority's Board of Commissioners for an extension of the Minimum Capital Expenditure Requirement beyond December 31, 2018; provided, however, that any such extension shall be subject in all respects to the approval of such Board of Commissioners.

(d) (1) "Qualifying Expenditures" shall mean investments in capital improvements that qualify as capital expenditures under "generally accepted accounting principles" (or such other standard form of accounting as reasonably approved by the Port Authority), as certified by an Acceptable Accounting Firm in the manner provided below, and shall specifically include, without limitation, the costs of acquisition of any cargo handling equipment that has a per unit cost in excess of \$80,000, but shall explicitly exclude the first \$3,200,000 of costs associated with the LCL Building Work.

(2) From time to time, Lessee shall deliver to the Port Authority a statement detailing those investments by Lessee in Qualifying Expenditures made from and after January 1, 2013 for which Lessee is claiming credit against the Minimum Capital Expenditure Requirement, and such investments shall thereupon be deemed to be Qualifying Expenditures made towards satisfaction of the Minimum Capital Expenditure Requirement, provided that Lessee is able to provide the accountant's report described in the following subsection confirming that such expenditures were Qualifying Expenditures.

(3) On or before April 30, 2014, and on or before April 30 in each subsequent Lease Year, until the required Qualifying Expenditures have been made to satisfy the Minimum Capital Expenditure Requirement and, thereafter, on or before April 30 of any Lease Year immediately following a Lease Year in which the Port Authority has made a deposit into the Escrow Account established for the NYCT Reimbursement Program in response to Qualifying Expenditures made by the Lessee in that same year in accordance with Section 60(e)(1) below, Lessee shall deliver to the Port Authority a statement detailing Lessee's aggregate investment in capital improvements made from and after January 1, 2013, together with the written statement of an Acceptable Accounting Firm indicating the amount of such investment in capital improvements that is acceptable for treatment as a capital expenditure under "generally accepted accounting principles" or such other standard form of accounting as reasonably approved by the Port Authority. Such written statement shall explicitly confirm that the Port Authority may rely upon the statements made therein by the Acceptable Accounting Firm. "Acceptable Accounting Firm" shall mean any of the largest four international accounting firms, or such other nationally recognized accounting firm as the Port Authority may approve in its reasonable discretion. As of the date of this Agreement, Lessee's accounting firm is PricewaterhouseCoopers LLP, whom the Port Authority hereby approves.

Section 12. Equipment

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

Section 13. Environmental Responsibilities

(a) (1) Without limiting the generality of any of the other terms and provisions of this Agreement and subject to the terms and provisions of subsection (a)(2) below, the Lessee hereby expressly agrees to assume all responsibility for and relieve the Port Authority from and reimburse the Port Authority for any and all risks, claims, penalties, costs and expenses of any kind whatsoever relating to, caused by, arising out of or in connection with the conditions of the Premises, including the presence of any Hazardous Substances in, on, under or migrating from the Premises, whether any such conditions existed prior to, on or after the effective date of the letting of the Premises to the Lessee hereunder, including without limitation, all Environmental Damages and all Environmental Requirements which the Lessee is obligated to comply with pursuant to this Agreement.

(2) It is hereby agreed and understood that the Lessee shall not be responsible for the cost and expense associated with the remediation or removal of Hazardous Substances in, on, under or migrating from the Premises to the extent that the Lessee can demonstrate, by a preponderance of evidence, such Hazardous Substances (x) existed on the Premises prior to June 30, 1995, or (y) was caused solely by the Port Authority.

(b) Without limiting the Lessee's obligations elsewhere under this Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which or at any time are in effect during the term of the letting under this Agreement, the Lessee understands and agrees that it shall be obligated, at its cost and expense (except as provided for in subsection (a)(2) of this Section 13), to comply with and relieve the Port Authority from compliance with all Environmental Requirements which are applicable to or which affect (i) the Premises, (ii) the operations of the Lessee or others with the consent of the Lessee at the Premises, (iii) the occupancy and use of the Premises by the Lessee or by others with its consent or (iv) any Hazardous Substance which has migrated from or from under the Premises. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of the Lessee. Without limiting the generality of the foregoing and as part of the Lessee's fulfillment of the foregoing obligations, the Lessee shall be responsible, at its sole cost and expense (except as provided for in subsection (a)(2) of this Section 13) and subject to the direction of the Port Authority, for:

(1) the preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, remedial action workplan, no further action letter, remediation agreement or any other documentation or information;

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

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

(c) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall, at its sole cost and expense (except as provided for in subsection (a)(2) of this Section 13), upon notice from the Port Authority, and at the direction of and in the manner described by the Port Authority, and subject to the requirements of Section 10 hereof, promptly take all actions to:

(1) completely remove and remediate all Hazardous Substances in, on or under the Premises and at the Facility resulting from or in connection with the Lessee's use and occupancy of the Premises or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Facility by the Lessee or which have been disposed of, released, discharged or otherwise placed in, on or under the Premises during the term of the letting of the Premises under this Agreement or during the term of any previous agreement between the Lessee and the Port Authority covering the Lessee's use and/or occupancy of the Premises or any portion thereof; and

(2) remove and remediate all Hazardous Substances in, on or under the Premises or which have migrated from or from under the Premises necessary to mitigate any Environmental Damages or which any Governmental Authority or any Environmental Requirement or any violation thereof required to be remediated or removed.

(d) The obligations set forth in subsection (c) of this Section shall include but not be limited to the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans and the performance of any removal, remediation, containment, operation, maintenance, monitoring or restoration work; shall be performed in a good, safe and workmanlike manner; and shall minimize any impact on activities off the Premises. The Lessee shall promptly provide the Port Authority with copies of all test results and reports generated in connection with such obligations.

(e) Without limiting the Port Authority's remedies under this Agreement or at law or in equity, the Port Authority shall have the right during and after the term of the letting of the Premises under this Agreement to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Lessee of its environmental obligations under this Agreement including without limitation all the Lessee's obligations under this Section 13. In the event that the Lessee fails to comply with or perform any of such obligations, the Port Authority at any time during or subsequent to the termination, expiration or surrender of the letting of the Premises or any portion thereof may elect (but shall not be required) to perform such

obligations and upon demand the Lessee shall pay to the Port Authority as additional rent its Costs thereof and any other actual out of pocket costs including attorney's fees.

(f) Without limiting any other of the Lessee's obligations under this Agreement, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the Port Authority, at the cost and expense of the Lessee and at any time during or subsequent to the Term, with such information, documentation, records, correspondence, notices, reports, test results, certifications and any other information as the Port Authority shall request in connection with any Environmental Damages or any Environmental Requirement which the Lessee is obligated to comply with under this Agreement, and the Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same when and as directed by the Port Authority. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee at the Lessee's cost and expense. Further, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the Port Authority with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority and by a Governmental Authority to the Lessee within two (2) business days that the same are made available to or received by the Lessee with respect to any Environmental Damages and any Environmental Requirement which the Lessee is obligated to comply with pursuant to this Agreement.

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

(h) (1) Without limiting the generality of any provision of this Agreement, in the event that Environmental Requirements set forth more than one compliance standard, the Lessee agrees that except as otherwise designated by the Port Authority pursuant to subsection (h)(2) below the standard or standards to be applied in

connection with any obligation it may have under this Agreement with respect to any Environmental Requirement shall be the lowest standard allowable by the relevant Governmental Authority for commercial and industrial use; provided, however, that in the event such lowest level of one or more Hazardous Substance requires or allows the imposition of any restriction materially affecting the current and then planned uses of the Premises, including upon the use or occupancy of the Premises or any other portion of the Facility or upon any operations or activities conducted or to be conducted on the Premises or the Facility or upon the transfer of the Premises or the Facility, then the Lessee shall remediate such Hazardous Substances to such a level so that there is no such restriction placed upon the use and occupancy of the Premises or the Facility or upon any operations or activities conducted or to be conducted on the Premises or the Facility.

(2) The Lessee further agrees that, notwithstanding the terms and conditions of subsection (h)(1) above, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion and without any obligation whatsoever to the Lessee or otherwise to do so, to designate any higher level or levels of Hazardous Substances or less stringent standard or standards than those required by subsection (h)(1) above to be applied in connection with any obligation the Lessee may have under this Agreement with respect to any Environmental Requirement and such designation shall be binding upon the Lessee with respect to its obligations under this Agreement with respect to such Environmental Requirement; provided, however, that the Port Authority shall have no right to designate any level or standard pursuant to this subsection (h)(2) which would result in the Lessee being in violation of any Environmental Requirement.

(i) (1) It is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal and depositing (all of the foregoing, collectively, "Disposal"), whether on or off the Facility, of any soil, dirt, sand, silt, dredged material, water or other matter (collectively, the "Matter") excavated, disturbed or removed by the Lessee (or by any contractor or contractors of the Lessee) at, from or under the Premises (or any other area of the Facility) at any time or times and regardless of the nature or composition of such Matter, including without limitation, any and all Disposal of said Matter in connection with the performance of the Lessee's Construction Work (as defined in Section 10 of this Agreement) and any and all remediation and Disposal of said Matter and any and all other remediation and Disposal (whether soil, upper aquifer or otherwise) necessary, required or appropriate as a result of, caused by, incidental to or triggered by such excavation, disturbance or removal of the Matter or arising therefrom, and the taking or doing of any and all other action or actions necessary, required or appropriate in connection therewith, shall be the sole and complete responsibility of the Lessee including, without limitation, all costs and expenses thereof and any and all Environmental Damages, Environmental Requirements, claims, penalties and other expenses relating thereto.

(2) Without limiting the generality of any other term or condition of this Agreement, title to any Matter on the Premises or the Facility excavated by the Lessee and not used at the Premises shall vest in the Lessee upon the excavation

thereof and all such Material shall be delivered and deposited by the Lessee at the Lessee's sole cost and expense to a location off the Facility in accordance with the terms and conditions of this Agreement and all Environmental Requirements. The entire proceeds, if any, of the sale or other disposition of the Material shall belong to the Lessee.

(3) In the event the Lessee discovers any Hazardous Substance in, on or under the Premises at a concentration in excess of those allowed for under applicable Environmental Requirements, the Lessee shall immediately notify the Port Authority and, at the direction of the Port Authority, shall report the presence of such Hazardous Substances to the attention of such individual at the subject governmental authority as the Port Authority shall require in order to assure consistency in the environmental management of the Facility.

(4) Promptly upon final disposition of any Hazardous Substance from the Premises or the Facility, the Lessee shall submit to the Port Authority a "Certification of Final Disposal" stating the type and amount of material disposed, the method of disposal and the owner and location of the disposal facility. The format of such certification shall follow the requirements, if any, of governmental agencies having jurisdiction as if the Port Authority were a private organization and the name of the Port Authority shall not appear on any certificate or other document as a generator or owner of such material.

(j) Lessee agrees that the Port Authority shall have the right at any time and from time to time, upon forty-eight (48) hours' notice to the Lessee and without any obligation whatsoever to Lessee or otherwise to do so, to conduct an environmental assessment of the Premises and/or Facility satisfactory to the Port Authority. In the exercise of the foregoing right, the Port Authority and its designees (which designee will be selected by the Port Authority in accordance with its then current policies and procedures) shall not interfere in any material respect with the use and occupancy of the Premises by the Lessee.

(k) Without limiting the generality of any other term or provision of this Agreement, all of the obligations of the Lessee under this Section 13 shall survive the expiration or earlier termination of the letting of the Premises or any portion thereof.

(l) The terms and conditions of this Section 13 are intended to allocate obligations and responsibilities between the Lessee and the Port Authority, and nothing in this Section shall limit, modify or otherwise alter the rights and remedies which the Port Authority or the Lessee may have against third parties at law, equity or otherwise.

Section 14. Ingress and Egress

Lessee shall have the exclusive right of ingress and egress between the Premises and the city streets outside the Premises. Such right shall be exercised by means of such pedestrian or vehicular ways. 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 Marine Container Terminal Facility. The Port Authority may, as reasonably necessary, at any time temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Premises presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to Lessee, and such alternate access does not have a material adverse effect on Lessee's operations at the Premises. Lessee hereby releases and discharges the Port Authority and its successors and assigns, of and from any and all claims, demands, or causes of action which Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area whether within or outside the Premises; provided that a reasonably equivalent means of ingress and egress remains available. Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in, along, across or through any streets, ways and walks near the Premises.

Section 15. Governmental and Other Requirements

(a) Lessee shall be responsible for seeking and shall use commercially reasonable efforts to procure, from all governmental authorities having jurisdiction over the operations of Lessee hereunder, all licenses, certificates, permits and other authorizations which may be necessary for the conduct of such operations, and shall not engage in such operations until such necessary licenses, certificates, permits and other authorizations have been duly procured.

(b) Lessee shall observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items, including without limitation all Environmental Requirements, now or at any time during the occupancy of the Premises by Lessee which as a matter of law are applicable to or affect (i) the Premises, (ii) the operations of Lessee at the Premises or the Marine Container Terminal Facility, (iii) the use and occupancy of the Premises, (iv) the value of the Premises for current and planned future uses and/or (v) any Hazardous Substance in, on, under or migrating from the Premises. Lessee, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the Premises and perform all remediation work and clean up of Hazardous Substances required in order to fully satisfy the compliance obligations set forth in this Agreement.

(c) The obligation of Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Marine Container Terminal Facility, and proper operation by Lessee. Such provisions provided for herein are not to be construed as a submission by the Port Authority to the application to itself of such requirements. The Port Authority, after written notice to Lessee and the expiration of any applicable cure period, shall have the right to cause Lessee, the Premises, and/or the Marine Container Terminal to come into compliance with the legal requirements to the extent the Port Authority reasonably determines that Lessee has failed to do so; provided Lessee is

not actively contesting such requirement in accordance with subsection (d) below. Lessee shall indemnify the Port Authority for any Costs and any actual out of pocket expenses including attorney's fees incurred in connection with bringing Lessee, the Premises and or the Marine Container Terminal Facility into compliance or with respect to any claims or damages as a result of Lessee's failure to comply with legal requirements.

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

Section 16. Rules and Regulations

(a) Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the Premises with its consent, to observe and obey) the rules and regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the governing of the conduct and operations of Lessee as may from time to time during the Term be promulgated by the Port Authority, and applicable to substantially all other marine container terminal operators and users of such facilities owned or leased by the Port Authority, for reasons of safety, health, or preservation of property, for the maintenance of the good and orderly appearance of the Premises, for the safe or efficient operation of the Marine Container Terminal Facility or (as further described in subsection (d) below) for the reimbursement of the Port Authority of capital or operating costs incurred or anticipated in connection with improvements benefiting users of the Port Authority facilities. The Port Authority agrees that, except in cases of emergency, it will give notice to Lessee of every such further rule or regulation at least ten (10) days before Lessee shall be required to comply therewith.

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

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

(d) Lessee covenants and agrees that it shall, on behalf of the Port Authority, collect from users of the Marine Container Terminal Facility and remit to the Port Authority such user, facility or security fees as the Port Authority may impose from time to time (including, without limitation, the Cargo Facility Charge), provided that such fees are concurrently imposed on substantially all Port Authority marine terminal facilities.

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

Section 17. Method of Operation

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

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

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

(d) Lessee shall use reasonable efforts, consistent with the operation of an industrial property functioning as a Marine Container Terminal Facility, not to commit any nuisance or permit its employees or others on the Premises to commit or create any nuisance in or near the Premises.

(e) Lessee shall take all reasonable measures, consistent with the operation of an industrial property functioning as a Marine Container Terminal Facility, to eliminate vibrations which could reasonably be expected to cause material damage to the improvements at the Premises or any part thereof.

(f) Lessee shall use reasonable efforts, consistent with the operation of an industrial property functioning as a Marine Container Terminal Facility, not to produce or cause to be produced permeate, or emanate from the Premises, any unusual, noxious or objectionable smokes, gases, vapors or odors.

(g) Lessee shall use reasonable efforts, consistent with the operation of an industrial property functioning as a Marine Container Terminal Facility, not to do or permit to be done any act or thing at the Premises which shall or may subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

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

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

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

Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by Lessee and Section 15(d), make all improvements, alterations and repairs of the Premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of Lessee to comply with the provisions of this subsection, any rate for fire insurance, extended coverage or rental insurance on the Premises or any part thereof, shall at any time be higher than it otherwise would be, then Lessee shall pay to the Port Authority that part of any premiums paid by the Port Authority under any insurance policies which may be maintained by the Port Authority with respect to the Premises, if any, which shall have been charged because of such violation or failure by Lessee.

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

(l) Lessee shall promptly raise and remove, or cause to be raised and removed, any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), owned or operated by Lessee, or by a corporation, company or other organization or person associated, affiliated or connected with Lessee or for which Lessee acts as agent, stevedore or terminal operator (or of others going to or from the Premises on business with Lessee), which shall have sunk, settled or become partially or wholly submerged at the berthing area or any part of the Premises after June 30, 1995. The provisions of the immediately preceding sentence shall be applicable whether or not the aforesaid object is owned by Lessee or is connected in any way with Lessee or its occupancy of or operations at the Premises. Notwithstanding the foregoing, Lessee shall have no obligation to raise or remove any such object in the event its presence in the berthing area (x) is proved by Lessee to predate June 30, 1995 or (y) is the result of the sole negligence or willful act of the Port Authority, and in either such event the Port Authority shall be responsible for promptly raising and removing such object if it is causing any interference or other difficulty with Lessee's use and operation of the Premises in accordance with this Agreement.

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

Section 18. Signs

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

the Premises. Notwithstanding the foregoing, Lessee may, without the consent of the Port Authority, erect advertising signs directly related to its permitted operations under this Agreement, safety instruction signs, direction signs and signs setting forth public service information issued by the City of New York.

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

Section 19. Indemnity and Liability Insurance

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

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

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

(1) Commercial General Liability Insurance including but not limited to coverage for Premises operations and products liability-completed operations, which coverage shall not exclude claims arising out of or in connection with operations conducted within fifty (50) feet of railroad property, with a minimum combined single limit coverage for bodily injury and property damage of \$25,000,000.00. Said insurance

shall also include coverage for explosion, collapse and underground property damage hazards. If Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

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

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

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

(5) Such other insurance in such amounts as from time to time may be required by the Port Authority during the Term against such other insurance hazards as at that time are required by the Port Authority to be obtained by substantially all other lessees of the Port Authority operating Marine Container Terminal Facilities similar to the Premises; provided, however, that such additional insurance coverage requirement shall be consistent with Lessee's risk profile.

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

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

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

requirements at the other leases from the Port Authority made with respect to the operation of marine container terminal facilities, Lessee shall promptly obtain one or more new and satisfactory policies in replacement.

Section 20. Maintenance and Repair

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

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

(c) (1) Subject to the provisions of subsection (f) of this Section and Section 21 of this Agreement, throughout the Term, Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the Premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the Premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Premises or Lessee's operations being conducted thereon (if and to the extent such fixtures, machinery, or equipment is embedded within or otherwise part of the Premises), including without limitation thereto all maintenance, repair and replacement of the following items: (1) paving, which shall mean maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, catch basins, underground storm water pipes, and grate support systems, including repairs required above the structural concrete chamber of catch basins and manholes; such repairs shall include the concrete brick collar, concrete collar, brick collar, asphalt concrete pavement, Portland cement concrete pavement, the frame and grate or manhole cover and silt bucket when and where applicable; for the purpose of manhole and catch basin repair, the top of the structural chamber shall be the top of the concrete slab that covers the vertical walls of the underground manhole structure, and for the purpose of catch basin and manhole repair, the top of the structural chamber shall be the top of the (cast-in-place or pre-cast) vertical walls of the underground catch basin and manhole structure); (2) crane rails and rail foundations; (3) scales; (4) rail tracks on the Premises; (5) lights, light poles and light pole foundations; (6) sprinkler systems; (7) gas and electric from the meter (utility companies are responsible up to the meter); (8) [intentionally omitted]; (9) the electrical system, equipment and fixtures, including without limitation cables, ducts, reefer outlet assemblies, substations, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (10) the plumbing system, fixtures and equipment, and all finished plumbing; (11) buildings and

all parts thereof; (12) special mooring devices and special loading devices, whether mechanical, electrical, hydraulic or otherwise; (13) fencing; (14) signs; (15) fire extinguishers; (16) all painting; (17) the CMSW Barge Fender System; (18) all scales; and (19) any means of ingress, egress or other access, whether pedestrian or vehicular. Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement of the term of the letting thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the buildings or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises or the environmental condition thereof. Lessee shall make frequent periodic inspections of the Premises and shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(2) Lessee shall also be responsible for maintaining any tenant property, including by way of example communication systems, cranes and other material handling equipment, but, in the case of such tenant property, notwithstanding any provision of this Agreement to the contrary, the manner and standard of maintenance and repair shall be as Lessee may determine in its sole discretion, subject to applicable legal requirements.

(3) With respect to anything originally supplied or installed by the Port Authority in which title does not vest in the Port Authority, Lessee shall have the benefit of the warranty, if any, running to the Port Authority, to the extent assignment thereof does not impair or void the same; and if assignment would impair or void any such warranty, the Port Authority will cooperate with Lessee, as reasonably requested by Lessee, to enable Lessee to realize the benefit of such warranty.

(d) Without limiting the obligations of Lessee stated elsewhere in this Agreement, Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the Premises, excepting only loss, theft or damage which result solely from the affirmative negligent or willful acts of the Port Authority, its Commissioners, officers, employees and representatives, and shall promptly replace or repair the same in the ordinary course of Lessee's business; and Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at the commencement of the letting, reasonable wear not materially affecting the efficient use and functioning of the same excepted.

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

(2) Notwithstanding any other provision of this Section, in the event that the Port Authority shall determine that the Estimated Cubic Yard Cost will exceed One Hundred and Four Dollars and No Cents (\$104.00) subject to adjustment as provided in this Section 20 (the "Base Cost"), the Port Authority shall not be obligated to perform the dredging work set forth in sub-subsection (1) of this subsection (e) unless Lessee shall pay for any amount of the Estimated Cubic Yard Cost in excess of the Base Cost. The "Estimated Cubic Yard Cost" shall mean the cost on average of dredging the portion of the berthing area described in Lessee's notice given to the Port Authority under the aforesaid sub-subsection per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations (including normal overdredge amounts) called for hereunder, with such estimate to include, but not be limited to, the cost of dredging, transportation, processing (including amendment, separation, removal, transportation and disposal of trash and debris), disposal (including mobilization at disposal sites) of any dredged material, insurances, compliance with Environmental Requirements and obtaining necessary permits, work to address unanticipated site conditions, and an amount equal to one hundred fifteen percent (115%) of all of the direct staff costs to the Port Authority attributable to all of the foregoing. In the event that the Port Authority shall determine that the Estimated Cubic Yard Cost of any such dredging will exceed the Base Cost, the Port Authority shall so notify Lessee and Lessee shall have the right to elect to have the dredging performed subject to its obligation to pay for any such excess cost. In the event that Lessee shall not elect to pay such excess cost of the dredging, the Port Authority shall be relieved of its obligation to perform such dredging until such time, if ever, that it shall determine that the Estimated Cubic Yard Cost of such dredging does not exceed the Base Cost. The Base Cost shall be subject to adjustment during the term of the letting under this Agreement in accordance with the provisions of sub-subsection (4) of this subsection (e).

(3) Commencing on each January 1 and for the period commencing with such January 1 and continuing through December 31 of the same year, or the expiration date of the term of the letting under this Agreement, as the case may be, the Base Cost set forth in sub-subsection (2) of this subsection (e) shall be adjusted by adding to or subtracting from the Base Cost, as the case may be, the product obtained by multiplying the Base Cost by the Construction Cost Percentage Change for such January 1. For purposes of any adjustment under this sub-subsection, the Base Cost employed in the calculation described in the immediately preceding sentence shall be the Base Cost as previously adjusted under this subsection.

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

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

(6) For purposes of this subsection (e) the following definitions shall apply:

“Construction Cost Index” shall mean the Construction Cost Index published by ENR Magazine.

“Construction Cost Percentage Change” shall mean the percentage of change in the Construction Cost Index each January 1, equal to a fraction of which the numerator shall be the difference between (a) the Construction Cost Index for the month of October immediately preceding such January 1 minus (b) the Construction Cost Index

for the month of October that is one year earlier than such immediately preceding October, and the denominator shall be the Construction Cost Index for the October that is one year earlier than such immediately preceding October.

(f) Except under circumstances as to which subsection (b) of this Section applies, and subject to subsection (g) and (h) of this section, upon receipt of notice that repair or replacement of such of the following as are located in or are a part of the Premises is required: (1) the structure of the wharf, including wharf decking and wharf and crane rail foundation piles, fender systems (but not backing logs or bumpers) other than the CMSW Barge Fender System (which is covered under item 17 of subsection 20(c) above), and standard mooring devices; (2) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the Premises or closest meter on the Premises servicing said water pit (but in no event the ships' water pits themselves); and (3) underground sanitary systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the Premises in a reasonably good condition for the operations of Lessee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the Premises to a better condition than that existing on the Commencement Date (or in the case of improvements made during the Term, the condition as at the time of the installation or construction thereof) to the extent such part of the Premises is in serviceable condition for Lessee's operations on the Commencement Date (or such time of installation or construction). The Port Authority's responsibilities under this subsection shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of Lessee under any other provision of this Agreement. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable, except as expressly provided in Section 21 of this Agreement. If the Port Authority shall fail, after a reasonable period of time to perform its repair and replacement obligations under this subsection, Lessee, as its sole remedy, shall, following written notice to the Port Authority, perform the work, and the Port Authority shall on demand pay Lessee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to Lessee a credit against its rental obligations under this Agreement in an amount equal to such expenditures. Furthermore, prior to the commencement by the Port Authority of any work set forth in Lessee's notice to the Port Authority, Lessee shall take all precautions necessary to protect persons or property at the Premises, including the immediate performance by Lessee of any work required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse Lessee for such work as provided in this subsection. Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, Lessee's officers, employees, agents, and

representatives which may arise from the condition of the Premises or any part thereof, or from the failure of Lessee to notify the Port Authority of conditions requiring repair or replacement, or from the failure of Lessee to make timely corrections of dangerous or potentially dangerous conditions at the Premises. Except for the matters that are the responsibility of the Port Authority as set forth above, with respect to which the Lessee reserves all claims, Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, employees, agents, and representatives from any liability for damages to Lessee, consequential, or otherwise, in connection with any of the provisions of this subsection concerning repairs or replacements to any portion of the Premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(g) The obligation of Lessee as set forth in subsections (b) and (c) of this Section and in Section 21 in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured (including, but not limited to, fire, extended coverage or pier and wharf insurance) is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that if at any time because of this release the insurance carrier of any policy covering the Premises or any part thereof shall increase the premiums otherwise payable for fire, extended coverage or rental coverage applicable to the Premises, Lessee shall pay to the Port Authority an amount equivalent to such increase or increases on demand; and provided, further, that if at any time this release shall invalidate any such policy of insurance or reduce, limit, or void the rights of the Port Authority thereunder, or if because of this release, any such insurance carrier shall cancel such endorsement or refuse to renew the same or shall take any other action to alter, decrease or diminish the benefits of the Port Authority under the policy, then the release shall be void and of no effect.

Section 21. Casualty

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

(1) All risk property damage insurance covering the full replacement cost of any property owned, leased, or within the care, custody or control of Lessee and now or in the future located on or constituting a part of the Premises, except for any personal property owned by the Port Authority. Full replacement cost shall be determined by the Port Authority. No omission on the part of the Port Authority to make such determination shall relieve Lessee of its obligations to maintain the appropriate insurance under this subsection. 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 York, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and boiler and machinery hazards and risks, and, if the Port Authority so requests, also covering nuclear property losses and contamination (if said coverage regarding nuclear property losses and contamination is or becomes available and substantially all of the other Port Authority marine container terminal tenants are also required to obtain comparable coverage consistent with their risk profile).

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

The proceeds of insurance from coverages secured in accordance with Section 21(a)(1) shall be made available to Lessee and shall be applied by Lessee strictly and solely to the repair, replacement, or rebuilding of the Premises as provided in this

Agreement. The procedures for such rebuilding shall be the same as for Lessee's Construction Work as set forth in Section 10 hereof. Lessee shall not be entitled to any abatement of the Rent payable hereunder at any time by reason of such casualty.

(b) The Port Authority and Lessee hereby stipulate that 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.

(c) In the event of damage to or a partial or total destruction of the Premises or improvements thereon, Lessee shall within thirty (30) days after the occurrence commence to remove from the Premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by Lessee to the Port Authority, with any balance remaining to be paid to Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, Lessee shall pay such excess to the Port Authority on demand without limiting any term or provision of this Agreement, and Lessee shall indemnify and save harmless the Port Authority, its Commissioners, officers, agents, representatives, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise, excepting the affirmative negligent or willful acts of the Port Authority, its Commissioners, officers, agents, representatives, employees, contractors and subcontractors.

Section 22. Assignment and Sublease

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

Sublease of all or any part of the Premises shall be assigned or otherwise encumbered. No Assignment of this Agreement and the term and estate hereby granted, and no Sublease of all or any portion of the Premises, shall relieve Lessee of its obligation to obtain the Port Authority's prior written consent to any further Assignment or Sublease. In the event of an Assignment permitted pursuant to the terms of this Agreement or otherwise consented to by the Port Authority, the Port Authority will agree to release Lessee from all liabilities and obligations under this Agreement accruing from and after the effective date of such Assignment.

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

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

(d) Notwithstanding anything to the contrary set forth in this Lease, nothing in this Section shall be deemed to prohibit or restrict any indirect transfer or assignment of this Lease or any interest in Lessee, all of which shall be governed by Section 48 below, and so long as no Change of Control of Lessee occurs, no Assignment or deemed Assignment shall be prohibited.

Section 23. Condemnation

(a) Upon the acquisition by condemnation or the exercise of the power of eminent domain by any body having a superior power of eminent domain of an interest in all or any part of the Premises, or in the case of any deed, lease or other conveyance in lieu thereof (any such acquisition under this Section 23, a "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, except for a possible claim to an award for trade fixtures installed by the Lessee and/or an award for moving expenses, but only if (x) such claim is then allowed by law *and* (y) such award is made separate and apart from the award made or to be made to the Port Authority in such

proceeding *and* (z) any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority.

(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 to Lessee, given ninety (90) days in advance if practicable, terminate the letting with respect to all or such portion of the Premises so required. Such termination shall be effective on the date specified in the notice. Lessee hereby agrees to deliver possession of all or such portion of the Premises so required upon the effective date of such termination in the same condition as that required for the delivery of the Premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. No taking by or conveyance to any governmental authority as described in subsection (a) of this Section, nor any delivery by the Lessee nor taking by the Port Authority pursuant to this subsection, 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. All of the provisions of Section 23(a) shall also govern and be applicable in connection with any termination pursuant to Section 23(b).

(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 subsection (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 subsection (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.

(e) In the event that the taking or conveyance or the delivery by Lessee or taking by the Port Authority pursuant to subsection (b) of this Section covers fifty per cent (50%) or more of the total usable area of the Premises including both open and enclosed space, then 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.

(f) In the event that a taking substantially and materially diminishes Lessee's ability to operate its business at the Premises, then Lessee shall have an option exercisable by notice given within ten (10) days after the effective date of such taking to terminate the letting hereunder with respect to the Premises not taken, as of the date of such taking, and such termination shall be effective as if the date of such taking were the

original date of expiration hereof. If the letting of the entire Premises is not terminated, the Base Rent payable on the portion of the Premises subject to the taking immediately preceding the date of the final condemnation order with respect to such taking shall abate.

Section 24. Construction Reimbursement

(a) Lessee acknowledges that pursuant to the Existing Lease, the Port Authority in 2005-2006 performed the dredging of a portion of the berthing area at the Premises to a depth of forty-five (45) feet below Mean Low Water (the "Forty-Five Foot Berth Dredging Work"), the total cost of which was \$8,293,880.40; and that as of the Commencement Date the outstanding balance of the Forty-Five Foot Berth Dredging Work is equal to \$4,465,935.60 (the "Unpaid Amount").

(b) In addition to all other rentals payable by Lessee under this Agreement, Lessee shall pay to the Port Authority a rental (the "Forty-Five Foot Berth Dredging Work Rental") at a monthly rate equal to \$53,165.90, payable on the first day of each calendar month during the period commencing on the Commencement Date and ending on December 31, 2019. Notwithstanding any other provision of this Agreement, the Forty-Five Foot Berth Dredging Work Rental payable pursuant to this subsection (b) shall not be subject to abatement, suspension or reduction for any reason whatsoever.

(c) In the event that the Term of this Agreement is shortened for any reason whatsoever before the payment in full of the Unpaid Amount, the then outstanding portion of the Unpaid Amount will be accelerated as of, and due and payable in full on the date of such termination; provided, however, that notwithstanding the foregoing, in the event of a termination of this Agreement by the Port Authority or Lessee pursuant to Section 23 in connection with a condemnation, Lessee shall not be liable for any outstanding portion of the Unpaid Amount beyond the monthly amounts payable, pursuant to the foregoing subsection (b), up through the effective date of such termination.

Section 25. Additional Rent and Charges

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of Lessee contrary to the said conditions, covenants and agreements, Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, Costs, damages and penalties, and the same may be added to any installment of Base Rent thereafter due hereunder, and each and every part of the same shall be and become Rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of any of the rentals set forth in this Agreement. If practicable, and except in case of emergency, the Port Authority will provide Lessee with fifteen (15) days notice prior to the Port

Authority's making any such payment or incurring any such obligation or expense. No payment made by Lessee to the Port Authority under this Section shall be or be deemed a waiver by Lessee of any right to contest its making of such payment.

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

Section 26. Rights of Entry Reserved

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

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

(c) Prior to exercising any right of entry reserved to it under this Section, the Port Authority agrees, other than in the case of an emergency, to give Lessee reasonable prior oral notice of its intention to enter the Premises.

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

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

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

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

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

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

Section 27. Limitation of Rights and Privileges Granted

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

regulations and restrictions, if any, of the United States the municipality or State in which the Premises are located, or other governmental authority.

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

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

Section 28. Prohibited Acts

(a) Subject to all the applicable terms and provisions of this Agreement, Lessee may install vending machines or devices designed to dispense or sell food, beverages, tobacco or tobacco products, or arrange for the installation and operation of such machines, subject to the Port Authority's approval of the type and method of installation thereof and Lessee may use an independent contractor, operator or supplier for such machines selected by Lessee unless the Port Authority determines that said contractor, operator or supplier will adversely affect or interfere with operations at the Premises or will cause or contribute to the causing of labor problems or disturbances thereat. Such vending machines shall be installed and operated solely for use by Lessee's officers, members, employees, contractors, customers, guests and invitees. Lessee's agreement with any contractor, operator or supplier of vending machines shall permit cancellation by Lessee in the event the Port Authority notifies Lessee that such contractor, operator or supplier fails to meet the standards described in this subsection. Lessee shall be fully responsible for insuring that its contractor, operator or supplier shall comply with all of the applicable provisions of this Agreement and all acts and omissions of such contractor, operator or supplier shall be deemed acts and omissions of Lessee and Lessee and the contractor, operator or supplier shall be jointly and severally responsible therefor to the Port Authority only.

(b) Subject to all of the provisions of this Agreement, and pursuant to an approved tenant construction or alteration application under Section 10 of this Agreement, Lessee may install a coffee shop, and may arrange for the presence at the Premises of a mobile coffee wagon, and may operate such facilities with its own employees, or arrange for the operation thereof by an independent contractor or operator selected by Lessee unless the Port Authority determines that said contractor or operator will adversely affect or interfere with operations at the Premises or will cause or

contribute to the causing of labor problems or disturbances thereat. Such coffee shop and mobile coffee wagon shall be installed and operated solely for use by Lessee's officers, members, employees, contractors, customers, guests, and invitees. Lessee shall be fully responsible for insuring that its contractor or operator shall comply with all of the applicable provisions of this Agreement and all acts and omissions of such contractor or operator shall be deemed acts and omissions of Lessee and Lessee and the contractor or operator shall be jointly and severally responsible therefor to the Port Authority only.

(c) [Intentionally omitted]

(d) [Intentionally omitted]

(e) 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.

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

(g) 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.

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

(i) 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 Port Authority.

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

(k) 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.

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

Section 29. Termination

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

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

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

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

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

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

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

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

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

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

(10) Lessee shall fail to obtain any insurance policy required to be maintained by Lessee under this Agreement or shall allow any such policy to lapse without renewing same within thirty (30) days after such lapse; or

(11) Any lien shall be filed against the Premises or any part thereof because of any act or omission of Lessee and shall not be discharged or bonded within sixty (60) days; or

(12) [Intentionally omitted]

(13) If Lessee shall default in the performance of or fail to comply with any of the provisions contained in this Agreement (other than those referred to in Section 29(a)(1) – (11) above), and either such default or failure shall continue for a period of thirty (30) days after Lessee's receipt of notice from the Port Authority, or, in the case of a default or a contingency which is susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days, Lessee fails to proceed with all due diligence within such period of thirty (30) days to commence the cure of the same and thereafter to prosecute the curing of such default with all due diligence (it being intended that in connection with a default susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days that the time period will be extended as may be necessary to complete the curing thereof with

all due diligence); provided, however, that if the default or noncompliance is not susceptible of being cured with due diligence but such default shall not materially affect Lessee's performance of this Agreement or the value of the Premises, the taking of steps by Lessee to prevent reoccurrence shall be deemed a cure of such default;

then, upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Port Authority may, by five (5) days' written notice, after the expiration of any applicable cure period, if any, terminate the letting and the rights of Lessee under this Agreement with respect to any or all of the Premises upon the date specified in such notice.

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

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

Section 30. Right of Re-entry

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

Section 31. Waiver of Redemption

Lessee hereby waives any and all rights to recover or regain possession of the Premises and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains possession of the Premises in any lawful manner.

Section 32. Survival of the Obligations

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

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

(1) the amount of all unfulfilled monetary obligations of Lessee under this Agreement, including, without limitation thereto, all sums constituting the Rent, including but not limited to under Sections 4, 6, 8 and 24 of this Agreement (and including Container Throughput Rental for the remainder of the Term of this Agreement based on the 12 month period immediately preceding the date of termination) and all sums constituting additional rental under Section 25 of this Agreement, whether accrued prior to the effective date of termination or which would have accrued after such date, through the end of the Term of this Agreement, and the cost to and expenses of the Port Authority for fulfilling all other obligations of Lessee which would have accrued or matured during the balance of the Term or on the Expiration Date or within a stated time after expiration or termination; and

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

(c) Notwithstanding any other provision of this Section, and without limiting the generality thereof, Lessee shall pay to the Port Authority liquidated damages in the amounts set forth below in this subsection. The aforesaid liquidated damages shall be payable in full by Lessee to the Port Authority on the first day of the first calendar month next following the termination or cancellation (or re-entry, regaining or resumption of possession), and, assuming such amount is timely paid to the Port Authority, shall be credited back to Lessee against other amounts due under this Section 32 as and when all such other amounts have been paid in full to the Port Authority. The said liquidated damages shall not be subject to reduction under the provisions of Section 33 hereof:

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

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

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

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

Section 33. Reletting by the Port Authority

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

Section 34. Remedies to Be Nonexclusive

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

Section 35. Surrender

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

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

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

Section 36. Acceptance of Surrender of Lease

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

Section 37. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port Authority or Lessee, except as otherwise expressly provided herein, shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an office of such party, officer or representative during regular business hours; or (iii) delivered to the residence of such party, officer or representative at any time; (iv) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar courier service or (v) sent by facsimile with

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

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

Section 38. General

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

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

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

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

except that Lessee may use contractors, in the performance of its obligations to maintain and repair the Premises, to perform Lessee's Construction Work, to conduct environmental assessments and to supply watching and stevedoring services, including coopering, clerking, checking, and extra labor functions at the Premises, provided that if separate contractors are engaged to perform any of the foregoing services, nevertheless, the active management, direction, administration and executive action involved in the operations of Lessee shall all be performed at all times during the letting solely by Lessee, its officers and employees, and provided further that Lessee shall be fully responsible to the Port Authority for the acts and omissions of such contractors and their officers, agents, representatives, employees and persons on the Premises with their consent to the same extent as if the same were the employees of Lessee. None of the provisions of this Section 38(a) shall be taken to alter, amend or diminish any obligation of Lessee assumed in relation to its invitees, business visitors, agents, representatives,

contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Premises with its consent.

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

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

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

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

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

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

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

(i) In the event that obstruction lights are now or in the future shall be installed on the Premises, Lessee agrees to furnish the Port Authority without charge, electricity for energizing such obstruction lights daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and

sunrise may vary from day to day throughout the year) and for such other periods as may be requested by the Port Authority.

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

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

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

(m) Without in any way limiting the obligations of Lessee as elsewhere stated in this Agreement, Lessee shall be liable to the Port Authority for any damage done to the Premises or to any part thereof, or to any property of the Port Authority thereon through any act or omission of those in charge of any one or more vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment while the same are at, coming to or leaving the Premises.

(n) The rights of the Port Authority in the Premises are those acquired by it pursuant to the Basic Lease, and no greater rights are granted or intended to be granted to Lessee hereunder than the Port Authority has power thereunder to grant. The letting shall in any event terminate simultaneously with the termination or expiration of the Basic Lease. Lessee shall have no surviving obligations to pay any then unpaid rents to the Port Authority in the event of a termination of the letting under this Agreement as a result of a termination or expiration of the Basic Lease.

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

(p) This Agreement and the letting hereunder are and shall be subject and subordinate to all mortgages which may now or hereafter affect the Premises, and to

all renewals, modifications, consolidations, replacements and extensions thereof, and although the provisions of this subsection (p) shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of Lessee, Lessee shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this subsection (p) as the Port Authority may request.

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

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

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

Section 39. Payments

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

Bank: TD Bank
ABA Number: 031201360
Account Number: [REDACTED]

Section 40. Premises

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

(b) Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Premises or the suitability thereof for the operations permitted on

the Premises by this Agreement. Lessee, prior to the execution of this Agreement, has thoroughly examined the Premises as existing and has found the same to be suitable and satisfactory for the operations of Lessee contemplated and permitted under this Agreement. Without limiting any obligation of Lessee to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, Lessee agrees that no portion of the Premises will be used initially or at any time during the Term which is in a condition unsafe or improper for the conduct of the operations of Lessee, so that there is possibility of injury or damage to life or property, and Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

Section 41. Force Majeure

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

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

(c) Except as otherwise set forth herein, no abatement, diminution or reduction of the Rent or other charges payable by Lessee shall be claimed by or allowed to Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the state, county or city government, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 42. Brokerage

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

Section 43. Non-Liability of Individuals

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

Section 44. Services

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

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

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

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the Premises or to any tenant, lessee, occupant or user thereof, or to the structures or

buildings, which, or a portion or portions of which, are included in the Premises, Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to Lessee, pay, in accordance with any such notice, such charge, fee, rent or assessment or such increase thereof for the portion thereof allocated by the Port Authority to the Premises (or to the operations of Lessee under this Agreement) either directly to the governmental body, authority or agency, or to the public utility or other entity, or directly to the Port Authority, as such notice may direct. All such payments shall constitute items of additional Rent.

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

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

Section 45. Reporting Obligations

(a) Lessee shall, subject to the confidentiality restrictions in subsection (d) below, provide to the Port Authority, its designated agents and advisors at the same time, and in any event as soon as practicable after providing the same to the lenders under the Credit Agreement, a copy of the certificates required to be provided by any of the independent public accountants, the chief financial officer or the chief executive officer of Lessee Parent under the Credit Agreement with respect to (1) in the case of the independent public accountants, compliance with the financial covenants thereunder and (2) in the case of the chief financial officer or chief executive officer of Lessee Parent, the absence of any default or event of default thereunder; provided, however, that any such certificate(s) from the independent public accountants shall only be provided to the Port Authority hereunder to the extent the same is required to be delivered to the lenders pursuant to the Credit Agreement.

(b) In the event that (i) Lessee fails to provide any of the compliance certificates to be delivered to the Port Authority pursuant to subsection (a) above within five (5) business days after it receives a request from the Port Authority to provide such certificate(s) that have been delivered to the lenders pursuant to subsection (a) above, or (ii) any of the compliance certificates provided pursuant to subsection (a) above indicates noncompliance with the financial covenants or a default or event of default under the Credit Agreement, then for the period covered by such certificate or so long as such noncompliance or default or event of default shall be continuing, as applicable, Lessee shall make available to the Port Authority, during normal business hours upon the Port

Authority's reasonable prior notice to Lessee, at the office of Lessee or one of its agents or advisors solely for review by the Port Authority and its agents at such location and without taking any copies, each of the following:

(1) As soon as available, and in any event within sixty (60) days after the end of the first six (6) months of each fiscal year, the unaudited balance sheet of Lessee as of the close of such six (6) months and related statements of income and cash flow for such six (6) months, setting forth in comparative form the figures for the corresponding period in the prior fiscal year certified by the chief executive officer of Lessee as fairly presenting in all material respects the financial position, results of operations and cash flow of Lessee as at the dates indicated and for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments); and

(2) As soon as available, and in any event within one hundred and twenty (120) days after the end of each fiscal year, the balance sheet of Lessee as of the end of such year and related statements of income, stockholders' equity and cash flow for such fiscal year, each prepared in accordance with United States GAAP, together with a certification by independent certified public accountants for the Lessee that such financial statements fairly present in all material respects the financial position, results of operations and cash flow of Lessee as at the dates indicated and for the periods indicated therein in accordance with GAAP.

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

(d) The Port Authority agrees that (i) all information delivered pursuant to this Section 45, and (ii) all notes, reports and analyses prepared by the Port Authority, its representatives or its advisors in connection with their review of materials provided or made available pursuant to this Section 45, will, to the fullest extent permitted by applicable law, be treated confidentially and protected from disclosure by the Port Authority, including, without limitation, pursuant to any available exceptions or exemptions under the Port Authority's "Freedom of Information Policy and Procedure". If the Port Authority receives any request to disclose any of the information provided hereunder, the Port Authority agrees to provide Lessee with prior written notice of such requirement so that Lessee may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this provision. If such protective order or other remedy is not obtained, or if Lessee waives compliance with the provisions hereof,

the Port Authority agrees to disclose only that portion of the information that it is advised by counsel is legally required and it will exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such information.

Section 46. Security Deposit

(a) Upon the Commencement Date and subsequently as set forth in Section 46(h), Lessee shall deliver to the Port Authority as security for the full, faithful and prompt performance of and compliance with, on the part of Lessee, all of the terms, provisions, covenants and conditions of this Agreement on its part to be fulfilled, kept, performed or observed, clean, irrevocable letters of credit issued to and in favor of the Port Authority by a banking institution satisfactory to the Port Authority and having its main office within the Port, in the respective amounts set forth in Section 46(h) for the respective periods therein indicated. The form and terms of each letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority, which approval shall not be unreasonably withheld or delayed. Such letter of credit shall provide that it shall continue throughout the Term and for a period of not less than six (6) months thereafter. Such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory clean, irrevocable letter of credit. Upon notice of cancellation of a letter of credit, Lessee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under this Section 46.

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

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

(d) Failure to provide a letter of credit in accordance with the terms and provisions of this Section at any time during the Term and for a period of six (6) months thereafter valid and available to the Port Authority and any failure of any banking institution issuing a letter of credit in favor of the Port Authority to make one or more payments as provided in such letter of credit, shall be and be deemed to be a breach of Lessee's obligations under this Agreement. If at any time and from time to time during

the Term and for a period of six (6) months thereafter a payment is made to the Port Authority under any letter of credit running in its favor as provided in this Section, Lessee shall cause to be delivered to the Port Authority on demand and within two (2) days thereafter, an additional clean, irrevocable letter of credit satisfactory to and issued in favor of the Port Authority by a banking institution satisfactory to the Port Authority, in such an amount so that at all times during the Term and for a period of six (6) months thereafter the Port Authority shall have a clean, irrevocable letter of credit in the amount required by Section 46(h). The form and content of said letter of credit shall have been approved by the Port Authority in advance.

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

(f) Upon the expiration of the Term and a period of six (6) months thereafter, and upon the condition that Lessee shall then not be in default after applicable notice and cure periods of any of its obligations under this Agreement the Port Authority will return the letter of credit to Lessee less the amount of any and all unpaid claims and demands (included estimated damages) of the Port Authority by reason of default or breach by Lessee of any of its obligations under this Agreement.

(g) In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use any deposit or any part thereof resulting from a draw down of all or any part of a letter of credit provided by Lessee under this Section 46 in whole or partial satisfaction of any of the Port Authority's claims or demands against Lessee arising under this Agreement. There shall be no obligation on the Port Authority to exercise such right and neither the exercise of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of Lessee.

(h) The letter of credit to be provided by Lessee to the Port Authority under this Section 46 shall be maintained in an initial amount equal to Nine Million Dollars and No Cents (\$9,000,000.00) (the "Security Amount"). The Port Authority reserves the right from time to time, but not more frequently than once every three (3) Lease Years, to require a letter of credit in such higher amount as the Port Authority may determine in its sole discretion in accordance with its then current policies for other terminal operators in the Port; provided, however, that such higher amount, if any, shall not exceed the sum of Base Rent that was payable by Lessee during the twelve (12) months preceding the month in which the increase is to take effect.

Section 47. Affirmative Action

(a) Lessee shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital

status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

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

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

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

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

Section 48. Right of Termination – Ownership and Control

(a) The Lessee hereby represents as to itself and its Affiliates, knowing that the Port Authority is relying on the accuracy of such representations, that as of the date hereof:

(1) Lessee is a duly organized and validly existing corporation, limited liability company, partnership or other entity, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and is duly qualified or authorized to do business as a foreign corporation or entity and is in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification or authorization;

(2) Lessee hereby represents, as of the Commencement Date, knowing that the Port Authority is relying in the accuracy of such representation, that Teachers is the indirect owner of 100% of the membership interests of Lessee and that the organization chart attached as Exhibit E is a true, correct and complete representation of Lessee's ownership structure;

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

(4) Upon or following the consummation of any transaction (or series of transactions) constituting a Change of Control of Lessee undertaken without the consent of the Port Authority, the Port Authority shall have the right, in accordance with the Official Minutes of the Port Authority adopted February 22, 2007 entitled "*Port Facilities – Consent to Transfers of Leases and Changes of Ownership Interests*", as amended or replaced, to terminate this Agreement in accordance with Section 29 hereof;

(5) In the event that either Lessee or any of its direct or indirect owners enters into a binding, definitive agreement to engage in a transaction that is likely to result in a Change of Control, Lessee shall provide the Port Authority written notice of such proposed transaction, as soon as permissible, but in no event later than three (3) business days following the execution of such a definitive agreement. Such notice shall contain a description of the transaction and copies of a definitive transaction agreement, redacted as may be required to preserve the confidentiality of any sensitive information, including without limitation, the economic terms of the transaction. Following receipt by the Port Authority of such written notice, the Port Authority shall notify Lessee whether

or not it will consent to the proposed transaction that is likely to result in a Change of Control. The Port Authority shall provide such notice to Lessee, in writing, not later than the forty-fifth (45th) day following the Port Authority's receipt of such notice from Lessee; provided, however, that any failure to provide such notice in writing prior to such date shall not constitute a waiver by the Port Authority of its right to terminate this agreement upon a Change of Control. The parties acknowledge and agree that in determining whether to terminate this Agreement upon a Change of Control, the Port Authority may act in its discretion, and may determine to terminate this Agreement, or not to terminate this Agreement, in accordance with the Official Minutes of the Port Authority adopted February 22, 2007, entitled "*Port Facilities – Consent to Transfers of Leases and Changes of Ownership Interests*", as the same shall be amended or replaced subsequent to the date hereof. The parties further acknowledge and agree that, in consideration for any agreement, on the part of the Port Authority, not to terminate this Agreement upon or following the consummation of any particular transaction constituting a Change of Control, the Port Authority shall be entitled to seek additional compensation, the amendment of any term of this Agreement, the imposition of restrictions on the operation of Lessee or other concessions from Lessee or any other party.

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

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

(d) Lessee shall promptly advise the Port Authority of any change in the representations made in Section 48(a)(1) and (2).

(e) The term "Change of Control" shall mean the occurrence of any of the following:

(1) except as otherwise permitted by the terms of this Agreement, the direct or indirect sale, transfer, conveyance or other disposition, in one or a series of related transactions, of 51% or more of the assets of Lessee and its Subsidiaries (if any), taken as a whole, to any person or entity other than any Affiliate of Lessee, Lessee's Parent or Teachers;

(2) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization) the result of which is that Teachers ceases to control, directly or

indirectly, at least 51% of the voting power to direct the actions of Lessee (or any successor thereto); or

(3) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, recapitalization or reorganization), the result of which is that Teachers ceases to own, directly or indirectly, at least fifty-one percent (51%) of the outstanding Equity Securities of Lessee (or any successor thereto).

Notwithstanding the foregoing, (i) the approval of the Port Authority shall not be required for any direct or indirect transfer in Lessee that would not constitute a “Change of Control” as defined hereunder, and (ii) for purposes of determining Teachers percentage of voting power and equity ownership, as provided in Sections 48(a)(2), 48(e)(2) and 48(e)(3) above, Teachers shall be deemed to own any Equity Securities held by Penderley (or any similar successor thereto that holds such Equity Securities for the same purpose and on substantially the same terms and conditions as Penderley as of the Commencement Date) at any time during which Teachers maintains an enforceable contractual right (pursuant to that certain Shareholders Agreement by and between Teachers and Penderley, dated as of January 10, 2007, or any renewal or replacement thereof containing substantially the same terms) to vote such Equity Securities, or to cause such Equity Securities to be voted, provided that a copy of the agreement creating such right shall have been provided to the Port Authority.

Section 49. Late Charges

If Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of Rent or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period herein below described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight tenths of one percent (0.8%) of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time there for by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it

were originally a part of the rentals as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 29 of this Agreement entitled "Termination" or (ii) any obligations of Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 50. Labor Matters

During the Term, and to the extent within its reasonable control, Lessee shall not permit any situation or condition to arise or continue that causes any Labor Troubles at, or emanating from, the Premises which interferes in any material respect with the operations (including any construction work) at the Premises. Upon written notice from the Port Authority (and provided the Port Authority has obtained a corresponding understanding and agreement from the New York Shipping Association with respect to the actions requested in such notice), Lessee will (or will cause its contractor to, as applicable) take such actions as are within its control and commercially reasonable under the circumstances to rectify any condition causing or contributing to Labor Troubles as specified in such notice. In the event of failure by Lessee (or any of its contractors, as applicable) to timely comply with the requirements of this subsection, the Port Authority, after consultation with, and approval by, the New York Shipping Association, will have the right, by notice from the Port Authority to Lessee, to require Lessee to (1) suspend the Port Authority's permission to Lessee to proceed with the applicable portion of each specific construction project of Lessee's Construction Work or other construction work being performed by or on behalf of Lessee (i.e., the portion to which the underlying Labor Trouble relates), or suspend the Port Authority's permission to Lessee to continue such other specific operations as reasonably necessary to immediately terminate such Labor Troubles, and Lessee will thereupon immediately cease the same, and/or (2) take such other actions, supported by the New York Shipping Association, as reasonably necessary to terminate such Labor Troubles. When Labor Troubles will be so settled that such interference no longer exists and the danger thereof has been substantially mitigated, the Port Authority by notice to Lessee will (i) reinstate the permission to Lessee to perform the subject specific construction project of Lessee's Construction Work or other construction work on all the same terms and conditions as before the suspension and/or (ii) permit Lessee to resume such other suspended activities at the Premises.

Section 51. Holdover Rent

Unless otherwise notified by the Port Authority in writing at least ninety (90) days prior to the expiration or earlier termination of this Agreement, in the event that Lessee remains in possession of the Premises after the expiration or earlier termination of the Term, Lessee shall be deemed a "holdover tenant" and upon notice from the Port Authority shall be obligated to pay holdover rent in accordance with applicable law as a

result of Lessee's status as a holdover tenant. Nothing herein contained will be deemed to give Lessee any right to remain in possession of the Premises after the expiration or earlier termination of this Agreement.

Section 52. Audit Fee

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

Section 53. Release and Covenant Not To Sue

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

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

(c) Lessee acknowledges that it had the opportunity to review the terms of the leases listed on Schedule E attached hereto for all other marine container

terminals owned by the Port Authority (such leases, as provided to Lessee in the electronic files referred to below, and without taking into account any amendments or other modifications not specifically identified on such Schedule and included in such electronic files, the "Port Leases") and has fully considered the terms of this Agreement as well as the terms of such other leases as Lessee deemed relevant. The Port Authority represents that it has made available for inspection true and complete copies of each of the leases contained on the compact disc, previously provided to Lessee and included on Schedule E attached hereto, and that the Port Leases represent all other leases from the Port Authority with marine terminal tenants in the Port. In accepting the concessions and benefits it is receiving hereunder Lessee believes and expressly agrees that the Agreed Rental Terms are fair and not unreasonably or unduly discriminatory or preferential, and that any differences between the Agreed Rental Terms and the economic, business and legal terms of the Port Leases are justified by legitimate transportation considerations, policy objectives and reasonable business judgments.

(d) In consideration of the above, Releasors, for themselves and for their respective representatives, successors, and assigns, hereby release and forever discharge the Port Authority, and its representatives, successors, and assigns of and from any and all actions, causes of action and claims arising from or relating to any attempt to challenge or otherwise invalidate the Agreed Rental Terms pursuant to the Shipping Act, or any other law, on grounds that such Agreed Rental Terms are unreasonable, discriminatory, unduly burdensome; or result in any undue or unreasonable prejudice or disadvantage to Lessee, in each case when compared with the terms of any of the Port Leases. For the avoidance of doubt, Releasors specifically reserve and do not release all actions, causes of action and/or claims not released in the foregoing sentence, specifically including any claims that may arise from any lease (including any supplement or amendment thereto, but excluding the Port Leases) between the Port Authority and any other marine terminal tenant in the Port entered into after the Commencement Date.

(e) In agreeing to the release set forth in this Section, each Releasor hereby covenants and agrees not to sue the Port Authority on any claim challenging the Agreed Rental Terms on any theory that such terms are unreasonable, discriminatory, unduly burdensome; or result in any undue or unreasonable prejudice or disadvantage to Lessee, in each case when compared to the terms of any of the Port Leases. For the avoidance of doubt, each Releasor specifically reserves, and does not agree to refrain from exercising, its right to sue the Port Authority on other claims not set forth in the foregoing sentence, specifically including any claims that may arise from any lease (including any supplement or amendment thereto, and including any supplement or amendment to, or any replacement of, any Port Leases) between the Port Authority and any marine terminal tenant in the Port that is not a Port Lease or that is or was entered into after the Commencement Date. Releasors agree that the Port Authority shall have the right to assert any claim for breach of this Section in the federal or state courts of New York or, sitting in New York County and Releasors hereby consent to the jurisdiction of such courts.

(f) Releasors and the Port Authority acknowledge and agree that the damages the Port Authority would suffer in the event that either or both Releasors were to commence a lawsuit against the Port Authority in breach of subsection (e) above would be uncertain in amount and/or difficult to calculate and, therefore, if said breach is established, each Releasor:

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

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

(3) agrees that the Port Authority will be entitled to one of the following options, to be determined by Releasors in their sole discretion by written notice to the Port Authority delivered within thirty (30) days following receipt by them of the Port Authority's notice specifically invoking this Section 53(f)(3) and requesting that Releasors advise the Port Authority of their choice, either:

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

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

The foregoing rights shall be the only rights and remedies available to the Port Authority in the event of a breach of Section 53(e) above and the Port Authority confirms that notwithstanding anything else to the contrary herein such a breach, should it occur, would not be a basis for declaring a default under Section 29.

Section 54. Certain Capital Expenditures

(a) The Port Authority shall expend \$5,000,000 in the construction of ramp and roadwork improvements that facilitate or increase access to the Premises. Such improvements shall include certain repairs and improvements to Forrest Avenue and the adjoining ramp, with respect to which the design work has been completed as of the Commencement Date, the construction of which will be completed by the end of 2015, and such other work within such time frames as may be agreed upon by the Port Authority and Lessee.

(b) From and after January 1, 2017, the Port Authority shall reimburse Lessee up to \$3,200,000 for capital expenditures related to the LCL Building Work, as

and when such work is carried out (it being understood that reimbursement for capital expenditures incurred after the Effective Date and before January 1 2017, if any, will be made promptly after January 1, 2017, subject to the Port Authority's having received the documents provided in this sentence), with such payments in each case to be made by the Port Authority promptly following receipt from Lessee of a certificate identifying the amount and nature of the expenditure and accompanied by a copy of the contract or change order to which the expenditure relates, if applicable, and proof of payment (*e.g.*, copy of a cancelled check, evidence of an electronic funds transfer or wire transfer information). Lessee has advised the Port Authority that, absent any legal or regulatory requirement and absent a change in Lessee's needs with respect to the LCL Building or the area that it occupies, Lessee does not intend to commence the LCL Building Work until after January 1, 2017.

Section 55. Conformance

The Port Authority has agreed in the Basic Lease to include the following provisions in this Agreement for the benefit of the City of New York:

(a) Lessee shall comply with and observe, and its operations under this Agreement shall be subject to, the Waterfront Commission Act (Laws of 1953 – Chapters 882, 883 as amended; McKinney's Unconsolidated Laws Sec. 9801, *et seq.*) and to any and all other laws, regulations and orders of any and all departments, bureaus and boards of the Federal and State Governments.

(b) Lessee shall also comply with and observe and its operations under this Agreement shall be subject to any and all laws, regulations and orders of any and all departments, bureaus and boards of the City of New York government insofar as they may act in their governmental capacities in the exercise of general police power as distinguished from the City of New York's capacity as a landlord or exercise of its power as a landlord. Nothing contained in this Section shall require Lessee to make expenditures for capital improvements as distinguished from maintenance and repairs, but nothing contained herein shall limit or affect Lessee's obligation to make such improvements if so required by any other provision of this Agreement.

(c) With respect to Lessee, upon refusal of a person, when called before a grand jury, governmental department, a commission, agency or any other body which is empowered to compel the attendance of witnesses and examine them under oath, to testify concerning a transaction, contract, lease, permit or license entered into with the City of New York, the State of New York, or any political subdivision thereof, or a public authority or with any public department, agency or official of the State of New York or a political subdivision thereof, upon being advised that neither his or her statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding:

(1) Such person, or any firm, partnership, corporation or other entity related to the aforesaid testimony, of which he or she was at the time of the

testimony a member, partner, director, officer, fiduciary, principal or employee may be disqualified for a period not to exceed five (5) years after such refusal, from submitting bids for or entering into or obtaining any contract, lease, permit or license which will be paid in whole or in part out of monies under the control of or collected by the City of New York.

(2) Any and all such existing City of New York contracts, leases, permits or licenses that said refusal to testify concerned may be cancelled or terminated by the City of New York or the contracting agency and/or be subject to such other action appropriate under the circumstances thereto, in the discretion of the City of New York for cause after a hearing, without the City of New York incurring any penalty or damages on account of such cancellation or termination, but any monies owing for goods delivered, work done, rentals, permit or license fees due, prior to the cancellation or termination, shall be paid by the City of New York.

(3) The term license or permit as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(4) Any disqualification, cancellation or termination hereunder shall be made by the City of New York Commissioner or agency head who is or would be a part to the contract, lease, permit or license that is the subject of the aforesaid disqualification, cancellation and/or termination, after a hearing upon not less than two (2) days written notice to the parties involved.

(d) In accordance with the provisions of Section 1403.3–2.25 of the Administrative Code of the City of New York, Lessee agrees that:

(1) Devices and activities which will be operated, conducted or manufactured on or at the Premises and which are subject to the provisions of the New York City Noise Control Code, New York City Administrative Code §§1403.3-1.01, et seq. will be operated, conducted and constructed without causing a violation of the aforementioned Code;

(2) Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities; and

(3) Lessee will comply with any and all regulations issued by the Commissioner of Environmental Protection pursuant to New York City Administrative Code §1403.2.25(c).

(e) In accordance with §343-10.0 of the New York City Administrative Code, Lessee agrees that neither it nor any affiliated company owned by it is participating or shall participate in an international boycott, in violation of the Export Administration Act of 1969, as amended (50 U.S.C.A. Appendix §401, et seq.) or the regulations of the United States Department of Commerce promulgated thereunder.

(f) Lessee agrees with regard to its operations at the Premises (and agrees to require in all subleases and concession agreements with regard to its operations at the Premises) that Lessee, its subtenants, and operators of concessions shall treat all employees and applicants for employment at the premises without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference in all employment divisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off, and termination, and all other terms and conditions of employment at the Premises, except as provided by law, and shall state in all solicitations for employment at the Premises that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, sexual orientation or affectional preference. Nothing contained herein shall or shall be deemed to imply that Lessee has a right to have subtenants or operators of concessions at the premises.

(g) The insertion of the provisions of this Section shall not be or be deemed a commitment on the part of the Port Authority to enforce or implement any of such provisions, or any acknowledgment on the part of the Port Authority that any one or more of such provisions apply to the Port Authority whether in its operations conducted at the Premises or otherwise.

Section 56. Terminal Guarantee

(a) Lessee shall be subject to the payment of a guaranteed rental (the "Guaranteed Rental") for each Lease Year during the term of the letting under this Agreement as follows: in the event that the number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during any such Lease Year shall not exceed One Hundred Forty Thousand (140,000) (the "Terminal Guarantee Number"), Lessee shall pay to the Port Authority, in addition to all other rentals payable by Lessee under this Agreement, a Guaranteed Rental equal to the product obtained by multiplying (1) the difference between the Terminal Guarantee Number and the greater of (i) the number of Qualified Containers during that Lease Year and (ii) the Throughput Threshold Number by (2) the Tier 1 Rental Rate in effect on the last day of that Lease Year pursuant to the provisions hereof. Any Guaranteed Rental owed under this Section shall be paid by Lessee to the Port Authority on the twentieth (20th) day of the month following the last month of the applicable Lease Year.

(b) On the twentieth (20th) day of each month, Lessee shall render to the Port Authority a statement certified by a responsible officer of Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the preceding month and the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises from the date of the commencement of the Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the

month for which the report is made, and such statement shall also include terminal statistics and measures relating to containers handled at and discharged to and from the Premises as detailed and reasonably required from time to time by the Port Authority.

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

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

Section 57. Existing Lease Superseded

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

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

(c) All obligations of Lessee under the Existing Lease that arose or accrued during or with respect to the period prior to the Commencement Date shall survive the execution and delivery of this Agreement. Lessee shall not, by virtue of this

Agreement, be or be deemed to be released or discharged from any liabilities or obligations whatsoever arising under the Existing Lease or any other Port Authority permits or agreements including, but not limited to, any permits to make alterations all of which shall survive.

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

Section 58. Sustainable Design

Lessee agrees that in the performance of any work that is subject to the Section 10 of this Agreement, entitled “*Lessee’s Construction Work*”, it will comply with the Port Authority’s policy on sustainable design as set forth in the sustainable design guidelines promulgated by the Port Authority Engineering Department from time to time; provided that such guidelines shall be of general application with respect to all marine container terminal tenants within the Port.

Section 59. Container Cranes

Upon the expiration or earlier termination of this Agreement, the Port Authority shall have the right of first refusal to purchase Lessee’s container cranes located on the Premises (subject to any superior or prior right of first refusal of the City of York or any other entity with respect to the CMSW cranes) at the “as is, where is” fair market value of such container cranes as determined by one or more qualified equipment appraisers with substantial experience in the valuation of similar equipment as the Port Authority may propose and Lessee shall reasonably approve.

Section 60. NYCT Reimbursement Program

- (a) For purposes of this Section, the following defined terms shall apply:
- “**Adjusted Base Rate**” shall mean:
- (i) for calendar year 2013, \$6.67*, and
 - (ii) for each calendar year thereafter, an amount, rounded to the nearest cent, equal to the sum of (x) the Adjusted Base Rate for the preceding calendar year and (y) an amount equal to the Adjusted Base Rate for the preceding calendar year times the Percentage Increase for the current calendar year; provided, however, that
 - (iii) commencing with calendar year 2022 (*i.e.*, not including any calendar year prior to 2022), *if* in any two (2) consecutive calendar years the

number of Qualified Containers handled at the Premises equals 300,000 or more (the second of such consecutive calendar years, the “**Threshold Year**”) *then* the Adjusted Base Rate for the calendar year following the Threshold Year shall be reset to an amount equal to the sum of (x) the Adjusted Base Rate for the Threshold Year, further adjusted in accordance with clause (ii) above, and (y) \$2.00, and the Adjusted Base Rate for each subsequent calendar year shall be adjusted on the basis of the reset amount in accordance with clause (ii) above; provided, further, that

(iv) notwithstanding the foregoing and in all events (and irrespective of whether or not a reset has occurred pursuant to clause (iii) above), *if* in any two (2) consecutive calendar years during the Term (including calendar year 2013) the number of Qualified Containers handled at the Premises equals 550,000 or more (the second of such consecutive years, an “**Exceptional Threshold Year**”), *then* the Adjusted Base Rate for the calendar year following the Exceptional Threshold Year shall be reset to \$10.00, and the Adjusted Base Rate for each subsequent calendar year shall be adjusted on the basis of the reset amount in accordance with clause (ii) above; provided, still further, that

(v) notwithstanding the foregoing, in the event that the Adjusted Base Rate has been reset to \$10.00 pursuant to the foregoing clause (iv), *if* thereafter in any two (2) consecutive calendar years (including the year in which such reset to \$10.00 became effective) the number of Qualified Containers handled at the Premises is less than 550,000, *then* the Adjusted Base Rate for the calendar year following such two consecutive calendar years shall be reset back to the amount that it would have been if the reset provided in clause (iv) had never occurred (*i.e.*, reset back to an amount equal to the Adjusted Base Rate for the Exceptional Threshold Year, as adjusted in accordance with clause (ii)), and the Adjusted Base Rate for each subsequent calendar year shall be further adjusted on the basis of such reset amount in accordance with clause (ii) above.

The parties state, for the avoidance of doubt, that an Exceptional Threshold Year may occur with respect to any calendar year during the Term, and may occur more than once (*i.e.*, an Exceptional Threshold Year may reoccur following the adjustment provided in clause (v), in which event the adjustment provided in clause (iv) shall again be made).

For example, if the Percentage Increase for calendar year 2018 were 2.01%, the Adjusted Base Rate for calendar year 2018 would be the sum of (x) the Adjusted Base Rate for calendar year 2017 plus (y) an amount equal to the Adjusted Base Rate for calendar year 2017 times 2.01%.

*The parties acknowledge and agree that this amount of \$6.67 was derived by applying successive Percentage Increases to a base amount of \$6.00, year over year from a base period of December 2008, in the manner of the formula set forth in subdivision (ii) of this definition of Adjusted Base Rate.

“**Index**” shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT-PA (All Items, unadjusted 1982-84=100), Series Id CUURA101SA0, published by the Bureau of Labor Statistics of the United

States Department of Labor. In the event that the Index is hereafter converted to a different standard reference base or otherwise revised, or the United States Department of Labor shall cease to publish the Index, then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index, as the Port Authority may in its discretion determine.

“Index Increase” shall mean, with respect to each calendar year, a fraction of which the numerator shall be the Index for the month of October most recently preceding the commencement of such calendar year less the Index for the month of October one year earlier, and the denominator shall be the Index for such month of October one year earlier. For example, the Index Increase for calendar year 2019 would be a fraction of which the numerator is the Index for October 2018 less the Index for October 2017 and the denominator is the Index for October 2017.

“NYCT Reimbursement Program” shall mean Lessee’s program (of which a description is attached as Exhibit B and the “PA-NYCT Business Rules” and “Participant Rules” are attached as Exhibits C and D, respectively) to provide certain reimbursements to program participants who utilize the Port Authority-owned Staten Island crossings in order to transport cargo to or from the Premises. The PA-NYCT Business Rules and Participant Rules may be amended from time to time upon the mutual agreement of the Port Authority and Lessee.

“PA Reimbursement Rate” shall mean, in any calendar year, an amount per truck axle equal to the difference between the then applicable E-ZPass per axle “truck rate” charged at the Port Authority’s Staten Island crossings (the **“Current Truck Rate”**) and the Adjusted Base Rate for that calendar year.

For example, in calendar year 2013, the Adjusted Base Rate is \$6.67, so if the Current Truck Rate during peak hours is \$12.00, the PA Reimbursement Rate, for a peak hour crossing, is \$5.33.

“Percentage Increase” shall mean, with respect to each calendar year, a percentage equal to the Index Increase for that calendar year, unless such Index Increase is less than zero, in which case the Percentage Increase shall be zero.

(b) Subject to the provisions of this Section, the Port Authority shall contribute, at the PA Reimbursement Rate, to the reimbursements provided by Lessee to Lessee’s customers (**“Reimbursements”**) pursuant to the NYCT Reimbursement Program. Lessee acknowledges that the PA Reimbursement Rate constitutes, in all events, the Port Authority’s maximum contribution per Reimbursement.

(c) Notwithstanding the foregoing, and notwithstanding anything to the contrary herein or in any other document, the Port Authority’s obligation to contribute to Reimbursements in any calendar year shall be discharged when 350,000 Qualified Containers have been handled at the Premises in such calendar year (provided that the Port Authority shall have contributed all amounts required of it hereunder relating to the

Reimbursements due with respect to transactions occurring prior to the handling of the last of such 350,000 Qualified Containers), as follows:

(i) Lessee shall notify the Port Authority upon the Lessee's handling of the 350,000th Qualified Container (counted in the same manner as for purposes of the Throughput Threshold Number) in any calendar year.

(ii) Thereupon, upon the expiration of the week (*i.e.*, Monday through Sunday) in which such 350,000th Qualified Container was handled, the Port Authority's obligation to contribute to Reimbursements during such calendar year shall expire, and after such week, through the end of the same calendar year, the Port Authority shall have no obligation (other than any accrued obligations with respect to Reimbursements relating to transactions occurring prior to the expiration of such week) to contribute to Reimbursements.

(d) The Port Authority has established an escrow account (the "**Escrow Account**") for the accumulation of funds to be used by Lessee to pay Reimbursements. The Port Authority and Lessee shall deposit funds into the Escrow Account as provided in this Section. Except as provided in the next sentence (or in the event of deposits made in error), the Port Authority will not withdraw funds from the Escrow Account. Funds in the Escrow Account shall at all times be the property of the Port Authority, and, except to the extent provided in subsection (e)(4) below with respect to funds contributed to the Escrow Account by or on behalf of Lessee, all amounts remaining in the Escrow Account at the expiration (if applicable) or termination of the NYCT Reimbursement Program and payment of all amounts owing from the Escrow Account thereunder shall be returned to the Port Authority. The Lessee will be entitled to direct the escrow agent to disburse funds from the Escrow Account to a separate bank account that has been established and will be maintained by the Port Authority to enable the Lessee to pay Reimbursements (such account, the "**Operating Account**"). The Lessee shall have the exclusive right to direct disbursements from the Operating Account to pay Reimbursements, and the Port Authority will not withdraw funds from the Operating Account.

(e) The Escrow Account shall be funded as follows:

(1) Except with respect to Qualifying Expenditures designated by Lessee as made in fulfillment of the Minimum Capital Expenditure Requirement, the Port Authority shall, upon Lessee's making of each investment constituting a Qualifying Expenditure, deposit into the Escrow Account an amount equal to the amount of such Qualifying Expenditure, with each such deposit to be made by the Port Authority promptly following receipt of Lessee's request to make such deposit, together with a certificate identifying the amount and nature of the expenditure and accompanied by a copy of the contract or change order to which the expenditure relates, if applicable, and proof of payment (e.g., copy of a cancelled check, evidence of any electronic funds transfer or wire transfer information); provided, however, that notwithstanding the foregoing, the aggregate of such deposits by the Port Authority shall not exceed a maximum of \$30,000,000. The parties state, for the avoidance of doubt, that the amounts

so deposited by the Port Authority shall not be considered to be reimbursements to Lessee, for purposes of Section 24(b) or otherwise under this Agreement.

(2) The Port Authority shall deposit into the Escrow Account amounts equal to the amounts of CMSW Throughput Rental (net of the Cargo Facility Charge, as provided in Section 5(d)), Container Throughput Rental and Non-container Cargo Throughput Rental actually received by the Port Authority in respect of the Premises, and shall make such deposits promptly following receipt of such payments from Lessee.

(3) Lessee shall deposit into the Escrow Account, as and when received, amounts received from the Empire State Development Corporation pursuant to its program known as “NY Works – Capital Grant – Project #Y385” (the “**ESDC Subsidy**”); provided, however, that Lessee acknowledges that the ESDC Subsidy has been procured by the Port Authority, and accordingly agrees that all such amounts shall be deemed to constitute contributions by the Port Authority toward Reimbursements (but shall not reduce or offset the Port Authority’s obligation to contribute to Reimbursements in accordance with (e)(1) and (e)(2) above).

(4) Lessee shall deposit into the Escrow Account, promptly following each calendar quarter, amounts sufficient to fund the share of the Reimbursements paid in that preceding calendar quarter that is to be borne by Lessee pursuant to the NYCT Reimbursement Program (the “**Lessee’s Share**”). The Port Authority acknowledges, notwithstanding the foregoing, that the Lessee’s Share is determined solely by the NYCT Reimbursement Program and can be any amount or no amount (as the NYCT Reimbursement Program may provide), and that no independent obligation on Lessee’s part to contribute to Reimbursements is created by this Agreement; in no event will Lessee be considered to be in breach of this Agreement if it elects to reduce or eliminate its contributions to the NYCT Reimbursement Program. All amounts, if any, contributed by Lessee to the Escrow Account and not used to fund Reimbursements will be returned to Lessee upon expiration or termination of the NYCT Reimbursement Program (provided, that the foregoing shall not apply to Escrow Account funds originally received by NYCT as any part of the ESDC Subsidy, which are not deemed contributed by Lessee).

(f) (1) Lessee acknowledges that the Port Authority’s obligation to fund Reimbursements is limited to the amounts set forth in subsections (e)(1) through (e)(3) above and in subsection (f)(2) below.

(2) Notwithstanding the foregoing subsection (f)(1), however, from and after January 1, 2021, in the event that the balance maintained in the Escrow Account is, or at any time is reasonably projected by Lessee to be, insufficient to fund Reimbursements on a current basis, notwithstanding that (x) deposits have duly been made into the Escrow Account in accordance with subsections (e)(1) through (e)(3) and (y) the Lessee has duly deposited into the Escrow Account amounts required to fund the Lessee’s Share of Reimbursements (as then in effect) in accordance with subsection (e)(4) above, the Port Authority will allocate additional Port Authority funds or will secure non-Port Authority funds, in an aggregate amount of up to \$15,000,000, and make them available to the NYCT Reimbursement Program; provided, however, that in the

event the balance maintained in the Escrow Account is thereafter still insufficient to fund Reimbursements on a current basis, Port Authority staff will seek to have additional Port Authority funds allocated to the NYCT Reimbursement Program (which, if necessary, will include presenting a good faith request for such allocation to the Board of Commissioners at the next available opportunity); provided, further, that any such additional funding shall be subject in all respects to the approval of the Board of Commissioners of the Port Authority; and provided, still further, that the foregoing undertakings shall not apply in the event that Lessee is in default of its obligations to pay Rent hereunder.

(g) (1) So long as the NYCT Reimbursement Program is in effect, Lessee shall provide the Port Authority each month with the following reports:

(i) a report setting forth, with respect to the preceding month, (x) the identity of each E-ZPass account holder then participating in the NYCT Reimbursement Program (including name and account number), (y) the number, by axle count, of transactions reimbursed, and (z) the total dollar amount reimbursed; and

(ii) a “gate moves” report for the Premises, in the form of Lessee’s Form TCR094 or any successor form providing the same information.

(2) Lessee shall at all times maintain the books and records relating to the NYCT Reimbursement Program at the Premises, and the Port Authority may at any time, on reasonable notice to Lessee, perform an on-site audit of the systems, processes, business practices and records relating to the NYCT Reimbursement Program. In the event that funds deposited by the Port Authority into the Escrow Account (and any interest accrued thereon) are determined (whether by Port Authority audit or otherwise) to have been disbursed other than in accordance with this Agreement and the NYCT Reimbursement Program, such funds shall immediately be reimbursed to the Escrow Account (or to the Port Authority, as the Port Authority may direct) and Lessee hereby agrees to pay, to the Port Authority or the bank providing the Escrow account, as applicable, any banking fees charged by such bank in respect of such incorrect disbursements. The amount of each such banking fee shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental.

(h) Irrespective of whether Lessee is required, at any given time, to make available to the Port Authority the materials and information set forth in subsections (b)(1) and (b)(2) of Section 45 above, and notwithstanding that the Lessee may or may not, at any given time, actually be making such materials available to the Port Authority pursuant to such subsections, Lessee shall, upon the Port Authority’s request at any time and from time to time (but only so long as the Port Authority is making funds available for the NYCT Reimbursement Program), and subject to the confidentiality restrictions set forth in subsection (d) of Section 45 above, make available to the Port Authority, during normal business hours upon the Port Authority’s reasonable prior notice to Lessee, at the office of Lessee or one of its agents or advisors solely for review by the Port Authority’s Executive Director (or his/her successor in function) and one member of the audit staff or

the staff of the Chief Financial Officer (or his/her successor in function) of the Port Authority, at such location and without making any copies or taking any notes, the following: as soon as available, and in any event within thirty (30) days after the end of each calendar quarter specified by the Port Authority, the statement of income for such calendar quarter, showing earnings before interest, taxes, depreciation and amortization (“EBITDA”), setting forth in comparative form the figures for the corresponding period in the prior fiscal year certified by the chief financial officer of Lessee as fairly presenting in all material respects the financial position and results of operations of Lessee as at the dates indicated and for the periods indicated, in all respects (other than the use of EBITDA) in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

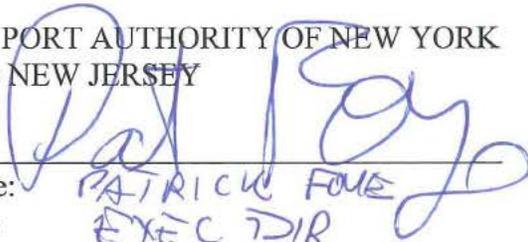
Section 61. Entire Agreement

This Agreement consists of Sections 1 through 61, together with Exhibits A through E and Schedules A through D. It constitutes the entire agreement between the Port Authority and Lessee on the letting of the Premises, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and Lessee. Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

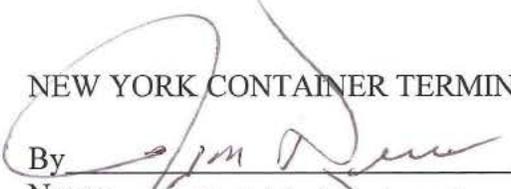
[Signatures on next page]

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

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By 
Name: PATRICK FONE
Title: EXEC DIR

NEW YORK CONTAINER TERMINAL, LLC

By 
Name: JAMES DEVIN
Title: President & CEO

IN WITNESS WHEREOF Lessee's Parent has executed this Agreement, with respect to Section 53 only, as of the date first above written.

GCT GLOBAL CONTAINER TERMINALS, INC.

By: _____
Name:
Title:

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

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

ATTEST:

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

Secretary

By _____
Name: Richard M. Larrabee
Title: Director Port Commerce Dept.

WITNESS:

NEW YORK CONTAINER TERMINAL, LLC

Anthony Roselle
Name: ANTHONY ROSELLE
Title: V.P. - FINANCE

By Jim Depina
Name: Jim Depina
Title: President & CEO

IN WITNESS WHEREOF Lessee's Parent has executed this Agreement, with respect to Section 53 only, as of the date first above written.

GCT GLOBAL CONTAINER TERMINALS, INC.

By: Stephen Edwards
Name: STEPHEN EDWARDS
Title: PRESIDENT & C.E.O.

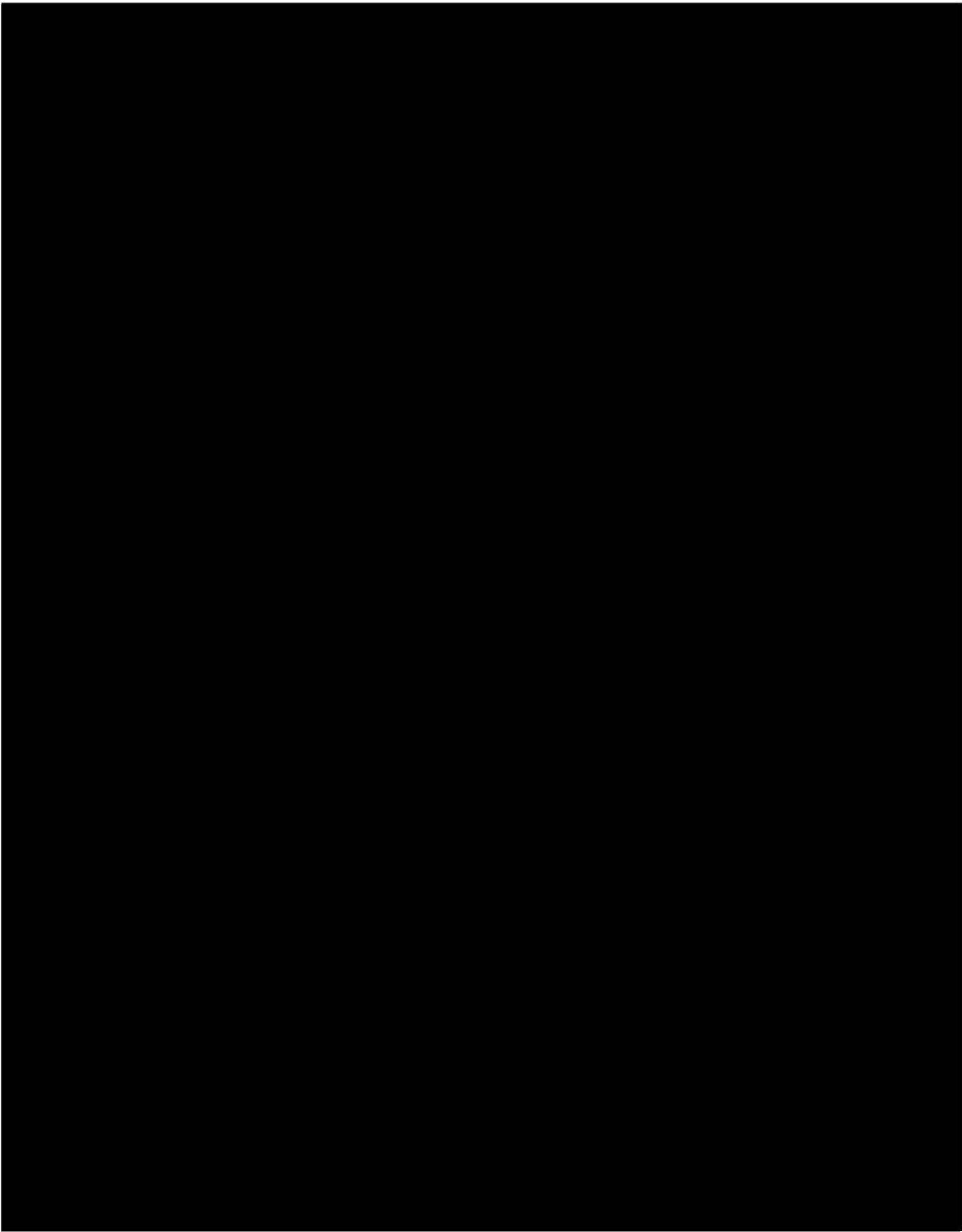


Exhibit B

NYCT Reimbursement Program

Summary. This Exhibit to the Amended and Restated Agreement of Lease dated as of January 1, 2013 (the “**Lease**”) between The Port Authority of New York and New Jersey (the “**PANYNJ**”) and New York Container Terminal, LLC (“**NYCT**”) describes the reimbursement program (the “**Program**”) pursuant to which enrolled truck operators (each a “**Participant**”) will be eligible to be partially reimbursed for tolls paid through E-ZPass at PANYNJ crossings onto Staten Island, New York, for the purpose of collecting or depositing container cargo or related equipment at NYCT’s marine terminal (the “**Terminal**”), as more fully described below.

Participants who pay tolls using E-ZPass at one of the Port Authority’s Staten Island Bridges will be eligible to receive a reimbursement, in United States Dollars, of all or a specified amount (initially to be all, but NYCT reserves the right to reduce that amount in the future in its sole discretion) of the portion of the toll paid that exceeds six and 00/100 dollars (\$6.00) per axle (the “**Base Toll**”), for up to six (6) axles. Whenever a Participant’s tag is linked to both eligible and non-eligible toll transactions in a given day, the qualified reimbursable crossing will be established by matching the toll transaction(s) occurring closest in time to the truck’s arrival time(s) at the Terminal. In order to qualify for the reimbursement, a Participant arriving between the hours of 5:00 a.m. ET and 2:59 p.m. ET must call on the Terminal within four (4) hours, and a Participant arriving between the hours of 3:00 p.m. ET and 4:59 a.m. ET must call on the Terminal within nineteen (19) hours, after crossing one of the Port Authority’s Staten Island Bridges for the purpose of collecting or depositing container cargo or related equipment. A Participant will be reimbursed periodically by electronic funds transfer (“**EFT**”) to the Participant’s designated bank account. Reimbursements will originate from an escrow account established by the PANYNJ at JPMorgan Chase Bank, N.A. or another major money-center bank for the purpose of facilitating the Program (the “**Escrow Account**”) and will flow through a separate operating account established to enable NYCT to implement specific reimbursements (the “**Operating Account**”).

The PANYNJ will contribute to the funding for the reimbursements, as provided in the Lease. NYCT will provide funding for a portion of each reimbursement equal to the amount of a Consumer Price Index (“**CPI**”) increase above the Base Toll, using 2008 as the base year and based on increases in the CPI for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT-PA (All items, unadjusted 1982-84=100) Series Id CUURA101SA0 published by the Bureau of Labor Statistics of the United States Department of Labor. The PANYNJ will satisfy its contribution obligations by depositing funds into the Escrow Account. The PANYNJ will bear sole responsibility for all fees and other costs of establishing and maintaining the Escrow Account and the

Operating Account, including service fees and other charges arising in connection with such accounts.

NYCT has established the Program as an accommodation only, and the Program will not create any right, title or interest on the part of any Participant, applicant or other person to join or continue to receive benefit under the Program. NYCT reserves the right to modify, suspend or terminate the Program in its entirety or with regard to any Participant at any time without notice and without any right to damages or compensation on the part of any Participant.

Eligible Participants. To be eligible to participate in the Program, a truck operator must have an active commercial E-ZPass account in good standing (i.e., the operator must have settled all outstanding violations that resulted in the assessment of tolls or fees to the PANYNJ) and must hold an E-ZPass tag issued by any E-ZPass member agency and designated for Class 2, 3, 4, 5 or 6 commercial vehicles.

In order to become a Participant, an eligible truck operator must have submitted all application materials and provide all information, consents, waivers and other authorizations as required by NYCT, and have agreed to the terms and conditions set forth in the New York Container Terminal Reimbursement Agreement as may be amended from time to time. NYCT reserves the right to deny or revoke enrollment in the Program to any applicant for any reason. If cleared for participation, a Participant will be eligible to commence participation in the Program no later than five (5) business days after approval of a complete package of all application materials.

Eligible Transactions. E-ZPass transactions by a Participant will be eligible for reimbursement only if each of the following conditions is satisfied: (i) the E-ZPass transaction was made within the applicable four (4) or nineteen (19) –hour gate crossing limitation, as set forth above; (ii) the E-ZPass transaction has been posted to the Participant’s E-ZPass account; and (iii) NYCT can match the qualified gate transaction to a recent E-ZPass transaction. A transaction will only be eligible for reimbursement after NYCT has verified all relevant transaction and payment information by matching the PANYNJ’s record of a Participant’s E-ZPass transaction at the applicable Port Authority Staten Island Bridge with NYCT’s record of the corresponding gate transaction.

Special Truck Transactions. Over-dimensional trucks and any “specials” requiring special accommodation by the PANYNJ due to size, weight or other issues will not be reimbursed under the Program unless they can pass through an E-ZPass toll lane. In such instances, the transaction data provided to NYCT will only represent the toll amount paid per axle (up to 6 axles). Neither the “special” toll nor any possible escort fees will be included.

Reimbursement Amount. For each eligible transaction made pursuant to the foregoing provisions, a Participant will be reimbursed in the amount calculated in accordance with the following formula, as may be amended from time to time (the “**Credit Formula**”):

the total toll amount paid in an eligible transaction, less the Base Toll (six and 00/100 dollars (\$6.00) per axle) for up to six (6) axles. NYCT reserves the right to increase or decrease the Base Toll amount used for this formula as it determines from time to time in its discretion.

Payment of Reimbursement Amounts. A Participant will be reimbursed on a periodic basis as determined by NYCT, currently expected to be weekly, subject to delay due to circumstances beyond NYCT's control. The reimbursement will be made by EFT from the Operating Account. The payment will be made to the ACH bank account of the E-ZPass account holder designated in the Participant's application materials or any supplement to those materials accepted by NYCT. E-ZPass toll transactions associated with E-ZPass tags not included on the E-ZPass account statement (or "summary view statement", as applicable) submitted as part of a Participant's application or any additional account statement submitted to NYCT will not be reimbursed. Payments out of the Escrow Account and the Operating Account will be made at the direction of NYCT and will be made only in accordance with the guidelines provided in this Exhibit B and the Lease.

Procedure for Release of Funds from Escrow. Subject to the PANYNJ's right, as provided in the escrow agreement, to direct the escrow agent to refund to the PANYNJ any amounts deposited in error by the PANYNJ into the Escrow Account, NYCT will have the exclusive right to direct the transfer of reimbursement amounts from the Escrow Account, and the escrow agent responsible for administering the Escrow Account will release the reimbursement amounts pursuant to NYCT's direction. To effect a release of the reimbursement amounts from escrow, NYCT will give the escrow agent notice of the amount to be disbursed, and, upon receipt of such notice, the escrow agent will transfer the designated amounts from the Escrow Account to the Operating Account or, if applicable, back to NYCT (e.g., to repay NYCT if NYCT has advanced funds on the Port Authority's behalf or in order to return to NYCT funds that NYCT contributed to the Escrow Account). NYCT will have the exclusive right to direct the transfer of reimbursement amounts from the Operating Account and the PANYNJ will ensure that the bank or other financial institution at which the Operating Account is maintained will release funds at NYCT's direction. NYCT will then transfer the designated amounts by EFT from the Operating Account to each designated ACH bank account.

Funding of Escrow Account. The PANYNJ will bear full responsibility for funding the Escrow Account as provided in the Lease, and Program reimbursements will be effected only if and to the extent the PANYNJ has provided sufficient funds for the portion of such reimbursements to be borne by the PANYNJ (subject to the limitations provided in the Lease). NYCT will be responsible for any portion of the Participant reimbursement amount that is the result of agreements NYCT has made or may make with truck operators for reimbursements in excess of the amount to be provided by the PANYNJ (the "NYCT Share"), and NYCT shall repay to the PANYNJ, by direct deposit into the Escrow Account, such amounts as are necessary from time to time to replace all amounts representing the NYCT Share that have been disbursed from the Escrow Account.

NYCT shall promptly notify the PANYNJ in the event of any changes in the Credit Formula or the amount of the NYCT Share.

In the event the amount of funds deposited in the Escrow Account by the PANYNJ is insufficient to completely fund the PANYNJ's share of all outstanding claims of Participants for reimbursement, NYCT will have the right (but no obligation), in its discretion, to advance funds to the Escrow Account as may be required to cover the shortfall and, in any such instance, as the Escrow Account is replenished NYCT will be able to withdraw a corresponding amount with interest to reimburse itself in respect of each such advance (or, if elected by NYCT, to treat any such advance funds and the interest thereon as a credit against NYCT's future reimbursement obligation in respect of Participant reimbursements paid from the Escrow Account and to require that the credit be satisfied in respect of subsequent reimbursements that otherwise would have been reimbursed to the PANYNJ by NYCT as described in the preceding paragraph).

The PANYNJ will retain ownership of the funds in the Escrow Account and the Operating Account, except to the extent that NYCT has deposited funds pursuant to the foregoing advance feature, in which case the parties will retain ownership of the funds pro rata based on the amount of funds deposited by each party until NYCT's pro rata share has been repaid to NYCT or offset by credits against amounts otherwise payable to the Escrow Fund by NYCT in connection with the program. Interest earned on funds held in the Escrow Account and the Operating Account will accrue to the benefit of the PANYNJ.

Reporting Obligations; Consent to Audit; Confidentiality. NYCT will provide to PANYNJ on a daily basis a list of Program Participants, including such identifying information as account holder names, contact information and E-ZPass account and tag numbers (the "**Participant File**"). The PANYNJ will provide to NYCT on a daily basis information about all eligible E-ZPass transactions conducted by Program Participants in the Participant File, including the time of the transaction, the toll plaza used in the transaction, the class of vehicle operated by the Participant, the number of axles on such vehicle and the amount of the toll collected, provided that the Participant has previously signed and provided to the PANYNJ an Authorization to Release E-ZPass Information in a form and manner approved by the PANYNJ. No information will be released by the PANYNJ in the absence of such an approved authorization.

NYCT will provide the PANYNJ with a quarterly summary report setting forth for the quarter: (i) all deposits into the Escrow Account by NYCT and the PANYNJ; (ii) all reimbursements made to Program Participants; (iii) Qualified Expenditures made by NYCT (if and to the extent that NYCT has requested that the Port Authority deposit a corresponding amount into the Escrow Account) and all throughput rent, if any, paid by NYCT to the Escrow Account; (iv) all additional amounts deposited by NYCT or the PANYNJ in the Escrow Account, if any, and the nature of such deposits; and (v) interest accrued on the Escrow Account funds.

In addition to the foregoing, NYCT will allow the PANYNJ to audit its systems, processes, business practices and records related to the Program during reasonable business hours, upon reasonable advance notice, and at the Terminal, in each case at PANYNJ's sole cost and expense. For purposes of such audits, NYCT will retain for not less than six (6) years all E-ZPass tag reader data and will provide a mechanism pursuant to which PANYNJ auditors have the ability to access both hard and electronic (in either Microsoft Excel or CSV format) copies of all archived records associated with the Program. In the event that PANYNJ auditors wish to remove any such data from the Terminal, they will be required to make a formal written request for such removal and shall sign a receipt for the dataset provided, at which time NYCT will be released from all confidentiality provisions relating to that specific dataset. All NYCT data associated with the Program will be backed up by NYCT daily, although such archiving will be subject to NYCT's system capacity.

NYCT and the PANYNJ will treat all data and information related to the Program in accordance with the Non-Disclosure and Confidentiality Agreement between NYCT and the PANYNJ, dated April 19, 2013.

Allocation of Other Program Costs. NYCT will install and maintain E-ZPass readers at the Terminal and will bear all associated costs. The PANYNJ will bear all of the costs of both creating an SFTP environment and delivering the daily reports of Participant transactions as described above to such SFTP environment. NYCT will bear all costs of developing the software necessary for both delivering the Participant Files to the SFTP environment and retrieving the Transaction Files from the SFTP environment, each on a daily basis.

A handwritten signature in black ink, appearing to be 'DLF' with a stylized flourish extending from the bottom right.

Exhibit C

New York Container Terminal (“NYCT”) Reimbursement Program
(the “Program”)

July 1, 2013

Port Authority-NYCT Business Rules

1. NYCT is responsible for validating ownership of the E-ZPass tags submitted by Program applicants to the extent supported by electronic processing of a PDF version of either applicants’ E-ZPass Account Statement(s) or E-ZPass Transaction View summary downloaded directly from the E-ZPass website. NYCT will not accept scanned documents.
2. NYCT will execute and abide by the requirements of the Non-Disclosure and Confidentiality Agreement between NYCT and the Port Authority, dated April 19, 2013 (the “NDA”).
3. NYCT will abide by the Port Authority’s “Audit Controls Requirement Contract Checklist” as amended and agreed to by both parties.
4. NYCT will provide to the Port Authority on a daily basis a list of Program participants, including such identifying information as account holder names, contact information and E-ZPass account and tag numbers (the “Participant File”).
5. The Port Authority will provide to NYCT on a daily basis only the following information about all eligible E-ZPass transactions conducted by Program participants: date and time of the transaction; toll plaza used in the transaction; class of vehicle operated by the participant; number of axles on such vehicle; and amount of the toll collected (the “Transaction File”).
6. A copy of each “Authorization to Release E-ZPass Information” letter submitted by Program applicants to NYCT as part of their application package will be forwarded to the Port Authority, either by NYCT or a third party e-signature provider.
7. To be eligible to participate in the Program, a truck operator must have an active commercial E-ZPass account in good standing (i.e., the operator must have settled all outstanding violations that resulted in the assessment of tolls or fees owed to the Port Authority) and must hold an E-ZPass tag issued by any E-ZPass member agency and designated for Class 2, 3, 4, 5 or 6 commercial vehicles.
8. Companies with outstanding violations resulting in tolls and/or fees owed to the Port Authority will not be eligible to participate in the Program unless and until the Port

Authority confirms that their accounts have been settled and returned to good standing. The tags of such ineligible participants will not be included in the Transaction Files and such participants who later settle their accounts with the Port Authority will not be retroactively reimbursed for otherwise eligible transactions which occurred during periods in which their accounts were not in good standing. NYCT will continue to make reimbursements to participants based upon the Transaction Files unless otherwise instructed by the Port Authority, and NYCT shall not be responsible for erroneous reimbursements made to participants based upon incorrect data in the Transaction Files.

9. Only E-Z Pass transactions for Class 2, 3, 4, 5 or 6 commercial vehicles detected at the three Staten Island bridges (Bayonne Bridge, Goethals Bridge, Outerbridge Crossing), which have been posted to an E-Z pass account will be eligible for reimbursement. Such transactions will only be reimbursed if an associated transaction has been conducted at the NYCT within the following timeframes:

<u>Time of E-ZPass Transaction</u>	<u>Allowable Hours for Arrival at NYCT Gate</u>
5:00 a.m. - 2:59 p.m.	4 hours
3:00 p.m. - 4:59 a.m.	19 hours

10. Program participants are also eligible for participation in the Port Authority’s Truck Volume Discount Program.
11. NYCT will allow the Port Authority to audit its systems, processes, business practices and records related to the Program at any time with appropriate advanced notice.
12. NYCT must retain the entire contents of tag read data for a period of 6 years for audit purposes including all instances where Port Authority toll transactions have been matched to NYCT entrance transaction data.
13. NYCT will allow and provide a mechanism whereby Port Authority auditors are to be able to access both hard and electronic (Excel or CSV format) copies and all archived records associated with the Program. Auditors will request written permission to remove any data from the NYCT premises. Once removed, all liability for security and confidentiality will rest strictly with the Port Authority for data removed.
14. All Program data is to be backed up daily with archiving frequency being determined by system capacity (i.e. – smaller capacity requires more frequent archiving).
15. Should a stolen tag be reported to NYCT in writing, the subsequent, updated participant file must include the end date of the tag’s participation in the Program. If the end date is not provided by the participant, the reported date will be used as the END DATE.

16. NYCT will ensure that the following fields are added to its “Lawson Accounts Payable System” for each participant: Bank ABA No; ACH Bank account No.; dollar amount.
17. Whenever a tag is linked to both eligible and non-eligible toll transactions in a given day, the amount to be reimbursed will be established by matching the toll transaction(s) occurring closest in time to the truck’s arrival time(s) at NYCT.
18. NYCT and the Port Authority will treat all data and information related to the Program in accordance with their respective obligations under the NDA.
19. E-ZPass transactions will become eligible for reimbursement not more than 5 business days after registration has been completed and accepted by NYCT.
20. Over-dimensional trucks or any “specials” requiring special accommodations by the Port Authority due to size, weight or other issues will not be reimbursed through this program unless they can pass through an E-ZPass toll lane. In such instances, the transaction data provided to NYCT will only represent the toll amount paid per axle (up to 6 axles) exclusive of any toll or fees related to “special” accommodations. Neither the “special” toll nor any possible escort fees will be included.
21. NYCT is to make every reasonable effort to obtain ownership of the source code developed for controlling the exchange of E-ZPass data between the Port Authority and NYCT.
22. Disputed claims received by NYCT relating to no-paid transactions, short-paid transactions, void-out transactions and/or out-of-gauge transactions must be resolved within 60 days of the receipt of any such valid claims by NYCT.
23. NYCT shall promptly notify the Port Authority in the event of any changes in the formula used to calculate the amounts to be reimbursed to Program participants for eligible transactions, as well as any changes in the portion of each reimbursement amount that is NYCT’s responsibility.

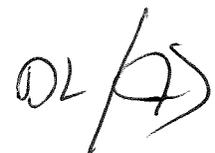


Exhibit D

New York Container Terminal (“NYCT”) Reimbursement Program
(the “Program”)
July 1, 2013

Participant Rules

1. To be eligible to participate in the Program, a truck operator must have an active commercial E-ZPass account in good standing (i.e., the operator must have settled all outstanding violations that resulted in the assessment of tolls or fees owed to the Port Authority) and must hold an E-ZPass tag issued by any E-ZPass member agency and designated for Class 2, 3, 4, 5 or 6 commercial vehicles.
2. Only toll transactions paid via E-ZPass will be eligible for reimbursement.
3. Participants will initially be reimbursed for those amounts paid in excess of \$6.00 per axle (maximum of 6 axles) at Port Authority Staten Island Bridges (Bayonne Bridge, Goethals Bridge, Outerbridge Crossing).
4. E-ZPass tags issued by any E-ZPass member agency will be eligible for participation in the program.
5. Either E-ZPass Account Statement(s) or E-ZPass Transaction View summaries reflecting all tags associated with the account to be registered must be downloaded directly from the E-ZPass website in PDF format and provided during program registration to allow for the verification of account and tag ownership. Toll transactions associated with any tags not included on the original E-ZPass Account Statement(s) or E-ZPass Transaction View Summaries submitted during program registration will not be eligible for reimbursement unless and until additional E-ZPass Account Statements or E-ZPass Transaction View summaries including such tags have been submitted to NYCT and NYCT has entered them into its Program system.
6. Consent letters authorizing the Port Authority to release E-ZPass transaction data must be signed by the E-ZPass account owner or, in the case of company-owned tags, an authorized representative. Such signature is to be provided electronically in accordance with NYCT’s on-line registration guidelines.
7. Once a Program account has been established with NYCT, any modifications to the tags included in the account must be made via NYCT’s on-line system. When tags are to be added, an email to NYCT and the Port Authority expressly granting permission for the Port Authority to release E-ZPass transaction data to NYCT will

be automatically generated and processed (without the need for a signature of any type).

8. E-ZPass transactions will become eligible for reimbursement not more than 5 business days after registration has been completed and accepted by NYCT.
9. Participants must inform NYCT of any changes to their E-ZPass account status as it relates to eligible tags (i.e. – additional tags, deleted tags, replacement tags, etc.). Toll transactions associated with any additional or replacement tags will not be eligible for reimbursement unless and until updated account information has been provided to NYCT and NYCT has entered such information into its Program system.
10. Over-dimensional trucks or any “specials” requiring special accommodations by the Port Authority due to size, weight or other issues will not be reimbursed through this program unless they can pass through an E-ZPass toll lane. In such instances, the amount to be reimbursed will only represent the toll amount paid per axle (up to 6 axles) exclusive of any toll or fees related to “special” accommodations. Neither the “special” toll nor any possible escort fees will be included.
11. Companies with outstanding violations resulting in tolls and/or fees owed to the Port Authority will not be eligible to participate in the Program unless and until the Port Authority confirms that the account has been settled.
12. Only E-Z Pass transactions for Class 2, 3, 4, 5 or 6 commercial vehicles detected at the three Staten Island bridges (Bayonne Bridge, Goethals Bridge, Outerbridge Crossing), which have been posted to an E-Z pass account will be eligible for reimbursement. Such transactions will only be reimbursed if an associated transaction has been conducted at the NYCT within the following timeframes:

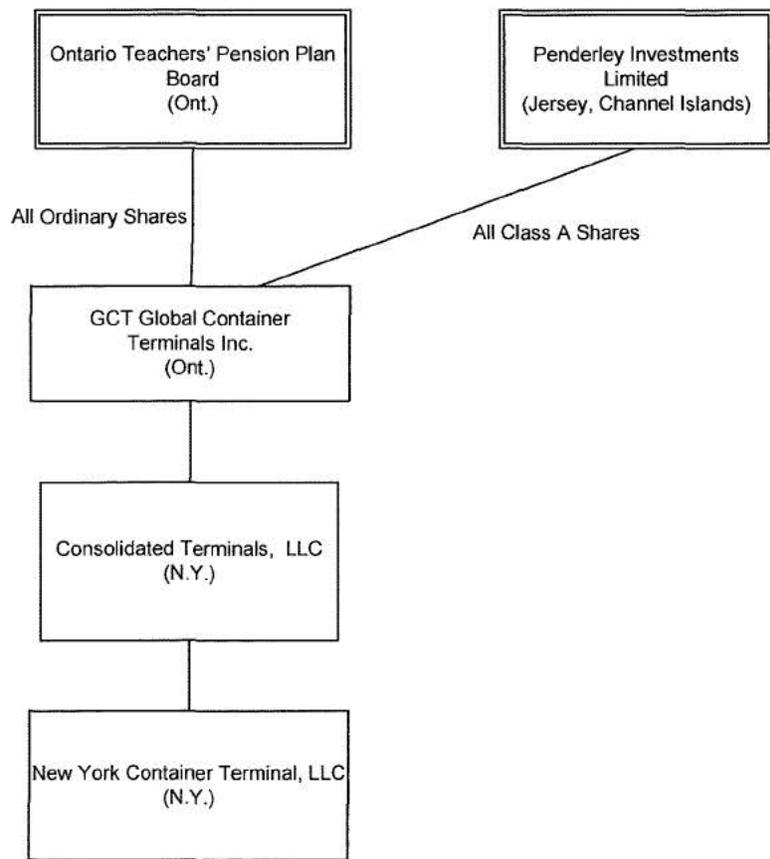
<u>Time of E-ZPass Transaction</u>	<u>Allowable Hours for Arrival at NYCT Gate</u>
5:00 a.m. - 2:59 p.m.	4 hours
3:00 p.m. - 4:59 a.m.	19 hours

13. NYCT reserves the right to modify, suspend or terminate the Program in its entirety or with regard to any participant at any time without notice and without any right to damages or compensation on the part of any participant.
14. NYCT reserves the right to refuse enrollment in the Program to any participant for any reason, including but not limited to failure of any applicant to meet the criteria established from time to time by NYCT.
15. For instances of participant misuse, misrepresentation or violations of Program rules, the Port Authority may, at its discretion, demand reparation from the participant for amounts previously reimbursed.

16. At any time, participants may be asked to provide additional documentation or information as deemed necessary by NYCT.
17. Participants who are voided out by NYCT are eligible for reimbursement unless NYCT voids the transactions for situations where such participant is deemed to be at fault.
18. Reimbursed amounts will only be disbursed electronically and directly deposited into the participant's bank account using the information provided with the program application. The electronic funds transfer will be done weekly. However, funds transferred may be delayed due to circumstances beyond NYCT's control, in which case transfer will occur when feasible.
19. Any changes to the bank account information originally provided during program enrollment must be made on-line using the login credentials established with NYCT during program enrollment. All information provided in the original application (i.e. - E-ZPass account number, E-ZPass account holder's name, tag numbers, old bank number, new bank number, name on bank account, Bank's ABA No., email address, contact phone number, etc.) must be provided.
20. Payee of reimbursed fund will be the E-ZPass Account owner.
21. NYCT may require participants to revalidate E-ZPass tags on their account periodically.
22. Participants must submit disputed claims within 90 days of the related qualified bridge crossing.
23. Claim forms and related attachments provided by NYCT (available on its website) are to be used for claims related to: no-paid transactions; short-paid transactions; void-out transactions and out-of-gauge transactions.
24. Participants are required to ensure that only one registered E-ZPass tag is mounted in or on a vehicle and presented to E-ZPass tag readers during the course of a qualified bridge crossing. Any additional E-ZPass tags present in the vehicle at the time of any qualified crossing are to be stored in "Read Prevention Bags", which are available through either E-ZPass Customer Service Centers or NYCT. In no instance will reimbursements be made for more than a single tag read/toll charge for each related qualified crossing.

EXHIBIT E

**Ownership Structure of
New York Container Terminal LLC**



Note:

1. All ownership interests are 100% unless otherwise noted.

OL/a

Schedule A

Base Rental Rates (153.01 Acres)

	Annual Rent (\$)	Monthly Rent (\$)	Per Acre Rate (\$)
2013	7,867,906.32	655,658.86	51,420.86
2014	8,025,264.45	668,772.04	52,449.28
2015	8,185,769.74	682,147.48	53,498.27
2016	8,349,485.13	695,790.43	54,568.23
2017	8,516,474.83	709,706.24	55,659.60
2018	8,686,804.33	723,900.36	56,772.79
2019	8,860,540.42	738,378.37	57,908.25
2020	9,037,751.22	753,145.94	59,066.41
2021	9,218,506.25	768,208.85	60,247.74
2022	9,402,876.37	783,573.03	61,452.69
2023	9,590,933.90	799,244.49	62,681.75
2024	9,782,752.58	815,229.38	63,935.38
2025	9,978,407.63	831,533.97	65,214.09
2026	10,177,975.78	848,164.65	66,518.37
2027	10,381,535.30	865,127.94	67,848.74
2028	10,589,166.00	882,430.50	69,205.71
2029	10,800,949.33	900,079.11	70,589.83

DL/AD

Schedule B

Tier 1 and Tier 2 Rental Rates

Lease Year Beginning	Tier 1 Rental Rate (\$) (Qualified Containers: 122,400 to 336,600)	Tier 2 Rental Rate (\$) (Qualified Containers: 336,601 and above)
January 1, 2013	21.00	15.75
January 1, 2014	21.00	15.75
January 1, 2015	23.00	17.25
January 1, 2016	23.00	17.25
January 1, 2017	23.00	17.25
January 1, 2018	25.00	18.75
January 1, 2019	25.00	18.75
January 1, 2020	25.00	18.75
January 1, 2021	27.00	20.25
January 1, 2022	27.00	20.25
January 1, 2023	27.00	20.25
January 1, 2024	29.00	21.75
January 1, 2025	29.00	21.75
January 1, 2026	29.00	21.75
January 1, 2027	31.00	23.25
January 1, 2028	31.00	23.25
January 1, 2029	31.00	23.25

DL/9D

SCHEDULE C

PART I

Affirmative Action Guidelines - Equal Employment Opportunity

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

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

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

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

- (1) Minority participation: 32%
- (2) Female participation: 6.9%

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

The Contractor's specific affirmative action obligations set forth herein of minority and female employment and training shall be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make good faith efforts to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to

project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract. Compliance with the goals will be measured against the total work hours performed.

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

(c) As used in these specifications:

- (1) "Employer Identification Number" shall mean the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- (2) "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

(e) The contractor shall implement the specific affirmative action standards provided in sub-subsections (1) through (16) of subsection (h) hereof. The goals set forth above are expressed as percentages of the total hours of employment and

training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the Premises. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in subsection (h) hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, Lessee shall proceed accordingly.

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

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

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

PART II

Minority Business Enterprises/Women-Owned Business Enterprises

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

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

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

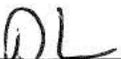
(c) Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.

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

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

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

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



For the Port Authority

Initialed:



For Lessee

Schedule D

CMSW Rates

<u>Year</u>	<u>Per Box Fee</u>
January 1, 2013	\$ 35.00
January 1, 2014	\$ 35.00
January 1, 2015	\$ 35.70
January 1, 2016	\$ 36.41
January 1, 2017	\$ 37.14
January 1, 2018	\$ 37.89
January 1, 2019	\$ 38.64
January 1, 2020	\$ 39.42
January 1, 2021	\$ 40.20
January 1, 2022	\$ 41.01
January 1, 2023	\$ 41.83
January 1, 2024	\$ 42.66
January 1, 2025	\$ 43.52
January 1, 2026	\$ 44.39
January 1, 2027	\$ 45.27
January 1, 2028	\$ 46.18
January 1, 2029	\$ 47.11

DL/AD

Schedule E
THE PORT LEASES

**Port Authority Marine Terminal Leases
(as of January 1, 2013)**

	<u>Tab</u>
Amended and Restated Agreement of Lease Between the Port Authority of New York and New Jersey and Port Newark Container Terminal LLC.....	1
Exhibits A, A-1 and A-2.....	2
Exhibit B.....	3
Exhibit C.....	4
Exhibit D-1.....	5
Exhibit D-2.....	6
Exhibit D-3.....	7
Exhibit D-3(1).....	8
Exhibit D-4.....	9
Exhibit E.....	10
Exhibit F.....	11
Exhibit G.....	12
Throughput Guaranty Agreement by MSC Mediterranean Shipping Company S.A. for the Benefit of the Port Authority of New York and New Jersey.....	13
 Agreement Between the Port Authority of New York and New Jersey and Global Terminal & Container Services, LLC.....	 14
Supplement 1.....	15
 Agreement of Lease EP-249 Between the Port Authority of New York and New Jersey and Maher Terminals, Inc.	 16
Supplement 1.....	17
Supplement 1a.....	18
 Agreement Between the Port Authority of New York and New Jersey and Maersk Container Service Company, Inc.	 19
Supplement 1.....	20
Supplement 2.....	21
Supplement 3.....	22

THE PORT AUTHORITY OF NY & NJ

R.M. Larrabee
Director, Port Commerce Department

July 24, 2013

NEW YORK CONTAINER TERMINAL, LLC
300 Western Avenue
Staten Island, New York 10303

RE: Howland Hook Marine Terminal – Lease No. HHT-4 between The Port Authority of New York and New Jersey (the “**Port Authority**”) and New York Container Terminal, LLC (“**NYCT**”) - Dated as of June 30, 1995, as amended (the “**Lease**”)

Ladies and Gentlemen:

In the course of the negotiation of the Amended and Restated Agreement of Lease dated as of January 1, 2013 between the Port Authority and yourselves (the “**Amended Lease**”), amending and restating the Lease, you have raised issues relating to the settlement of the pavement (the “**Settlement Problem**”) in the portion of the leased premises known as the “Patio Area”, the boundaries of which are shown on Exhibit A, comprising approximately 11.2 acres +/- . You have said that the Port Authority bears responsibility, pursuant to the Lease, for remedying the Settlement Problem. We disagree with your position, and feel that the Lease clearly allocates to you the responsibility for addressing the Settlement Problem.

In the interest of resolving this issue, however, the Port Authority will work with you in good faith to determine the root causes of the Settlement Problem. In this connection, we understand that you have retained an engineering consultant to investigate the condition of the storm drainage system under the Patio Area (the “**Storm Drainage System**”), including the design and construction of and paving over the Storm Drainage System from 1999 through 2002 and various repairs made thereto by the Port Authority prior to January 1, 2011 (the “**Port Authority Design and Repairs**”), and the degree to which the manner and extent of the Port Authority Design and Repairs have contributed to the Settlement Problem. The Port Authority, in addition to cooperating with your consultant, will undertake a similar investigation.

Working with our respective consultants and, to the extent necessary, with a third, independent consultant, we will endeavor to arrive at a common understanding as to the underlying causes of the Settlement Problem. Specifically, we will attempt to arrive at a common understanding as to the following issue (the “**Issue**”): Whether the Port Authority Design and Repairs have, to any degree (including any failure of or inadequacy in the performance of the same), contributed to the cause of the Settlement Problem; and, if so, the percentage contributed to such causation

225 Park Avenue South, 11th Floor
New York, NY 10003
T: 212 435 4218 F: 212 435 4201
rlarrabee@panynj.gov

NEW YORK CONTAINER TERMINAL, LLC

July 24, 2013

(such percentage, the “**Port Authority Share**”). We will endeavor to reach a common understanding by November 30, 2013 (or such later date as we both may agree).

In the event that the parties have not reached a common understanding by that date, we recognize your preference to have an impartial, binding process to settle the Issue, and accordingly we agree to a reference of the Issue to arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “**AAA**”), conducted in Manhattan. The arbitrator will be chosen by the AAA if the parties are unable to agree on a single individual. Each party shall submit to the arbitrator and exchange with each other in advance of the hearing such party’s final position as to what the percentage should be that constitutes the Port Authority Share, and the arbitrator shall be limited to selecting only one or the other of the two percentages submitted. Subject to the foregoing, we will work with you to prepare and agree on such other rules relating to the arbitration as would allow the Issue to be resolved in a fair and commercially reasonable manner. The costs of the arbitration will be shared equally by the parties to this letter, provided, that each party shall be responsible for the costs of its own counsel, consultants and other persons acting on its behalf.

To the extent that the Issue is resolved by a determination, by either the parties’ mutual understanding or the arbitrator’s decision, that the Port Authority Design and Repairs have contributed to the Settlement Problem, the Port Authority shall implement the following remedy: upon such determination, and from time to time thereafter upon NYCT’s request, the Port Authority will excavate areas within the Patio Area where settlement has occurred, and will repair or replace in an appropriate manner (as determined by the Port Authority in its sole discretion, consistent with the continued use of the Patio Area for the storage of empty containers) portion(s) of the Storm Drainage System (if any) underlying such areas, and backfill and repave, and/or replace pavers in, such areas; provided, however, that in the event that the Port Authority Share is less than fifty percent (50%), the aforesaid manner of repair or replacement shall be at NYCT’S reasonable discretion (subject to the provisions of Section 20 of the Amended Lease, entitled “*Maintenance and Repair*”), and NYCT may, at its option, itself perform such repair or replacement (subject to the approval process for construction and repairs under the Amended Lease); provided, further, that irrespective of the percentage of the Port Authority Share, the Port Authority shall bear the Port Authority Share of the cost of such repair or replacement, and NYCT shall be responsible for the balance of such cost; provided, still further, that in the event that the Port Authority Share is zero, the provisions of this side letter shall be of no further force and effect.

In all events, it is understood that terms proposed by this side letter, in the event it is determined by the parties’ mutual understanding or by the arbitrator’s decision that the Port Authority Share is greater than zero, are subject to due Port Authority authorization, including, if necessary, authorization from the Port Authority’s Board of Commissioners. We agree with you that,

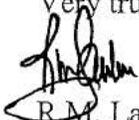
NEW YORK CONTAINER TERMINAL, LLC

July 24, 2013

subject to such authorization, nothing in the Amended Lease will impact or override the provisions of this side letter or the process and responsibilities herein; and, subject to such authorization, the provisions of this side letter concerning repair of the Patio Area will supplement the Amended Lease and, to the extent inconsistent with the provisions of the Amended Lease, will control.

Please indicate your agreement with the foregoing by signing where indicated below and returning to the undersigned a signed counterpart of this letter. Thank you.

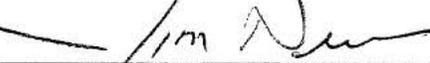
Very truly yours,



R.M. Larrabee
Director
Port Commerce Department

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

Accepted and Agreed :
NEW YORK CONTAINER TERMINAL, LLC

By 
James Devine
President and CEO

ASSIGNMENT OF LEASE
WITH ASSUMPTION AND CONSENT (Lease No. HHT-4)

THIS AGREEMENT, made as of December 31, 2004, by 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, having an office for the transaction of business at 225 Park Avenue South, in the Borough of Manhattan, in the City, County and State of New York 10003, and HOWLAND HOOK CONTAINER TERMINAL, INC. (hereinafter called "the Assignor"), a corporation organized and existing under the laws of the State of New York, with an office for the transaction of business at 300 Western Avenue, Staten Island, New York 10303, and New York Container Terminal, Inc. (hereinafter called "the Assignee"), a corporation organized and existing under the laws of the State of New York, with an office for the transaction of business at 300 Western Avenue, Staten Island, New York 10303, the representative of which Assignee is James J. Divine.

WITNESSETH, THAT:

WHEREAS, the Assignor desires to assign to the Assignee that certain Agreement of Lease dated as of June 30, 1995, made by and between the Port Authority and the Assignor, and hereinafter, as the same has been heretofore amended and extended, called "the Lease", covering the Howland Hook Marine Terminal, in the Borough of Staten Island, in the County of Richmond and State of New York; and

WHEREAS, the Port Authority is willing to consent to such assignment on certain terms, provisions, covenants and conditions:

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, the Port Authority, the Assignor and the Assignee hereby agree as follows:

1. The Assignor does hereby assign, transfer and set over to the Assignee, and its successors, to its and their own proper use, benefit and behoof forever, the Lease, to have and to hold the same unto the Assignee and its successors from the 31st day of December, 2004, for and during all the rest, residue, and remainder of the term of the letting under the Lease, subject



nevertheless to all the terms, provisions, covenants and conditions therein contained; and the Assignor does hereby assign, transfer and set over unto the Assignee and its successors, all right, title and interest of the Assignor in and to a certain deposit (whether of cash or bonds or letter of credit) in the amount of Four Hundred Thousand Dollars and No Cents (\$400,000.00) made by the Assignor with the Port Authority, as security for the performance of the terms, provisions, covenants and conditions of the Lease, but subject to the provisions of the Lease and to any claim or right to the said deposit or any part thereof heretofore or hereafter made or to be made on the part of the Port Authority.

2. The Port Authority hereby consents to the foregoing assignment. Notwithstanding anything herein to the contrary, the granting of such consent by the Port Authority shall not be, or be deemed to operate as, a waiver of the requirement for consent (or consents) to each and every subsequent assignment by the Assignee or by any subsequent assignee, nor shall the Assignor be relieved of liability under the terms, provisions, covenants and conditions of the Lease by reason of this consent of the Port Authority or of one or more other consents to one or more other assignments thereof.

3. The Assignor agrees that this assignment of the Lease and this consent of the Port Authority thereto shall not in any way whatsoever affect or impair the liability of the Assignor to perform all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, of the Lease on the part of the lessee or tenant thereunder to be performed, and that the Assignor shall continue fully liable for the performance of all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, on the part of the lessee or tenant thereunder to be performed. The liability of the Assignor as set forth in this paragraph shall remain and continue in full force and effect as to any and every renewal, modification, or extension of the Lease whether in accordance with the terms of the Lease or by a separate or additional document, and notwithstanding any such renewal, modification, or extension, whether or not the Assignor has specifically consented to such renewal, modification, or extension. The liability of the Assignor hereunder shall in no way be affected by the failure of the Port Authority to obtain the Assignor's consent to any such renewal, modification or extension notwithstanding that the Port Authority had previously obtained such consent with respect to a prior renewal, modification, or extension.

4. The Assignee does hereby assume the performance of and does hereby agree to perform all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, contained in the Lease, to be performed on the part of the lessee or tenant thereunder, as though the Assignee were the original signatory to the Lease. The execution of this instrument by the Port Authority does not constitute a representation by it that the Assignor has performed or fulfilled every obligation required by the Lease; as to such matters the Assignee agrees to rely solely upon the representation of the Assignor.

5. The liability of the Assignor hereunder shall in no way be affected by:

(a) The release or discharge of the Assignee in any creditors', receivership, bankruptcy or other similar proceeding; or

(b) The impairment, limitation or modification of the liability of the Assignee or its estate in bankruptcy, or of any remedy for the enforcement of the Assignee's said liability under the Lease, resulting from the operation of any present or future provision of the Bankruptcy Code or any other statute or from the decision of any court having jurisdiction over the Assignee or its estate; or

(c) The rejection or disaffirmance of the Lease in any creditors', receivership, bankruptcy, or other similar proceeding; or

(d) Any disability or any defense of the Assignee.

6. This Agreement may be executed in counterparts.

7. Neither the Commissioners of the Port Authority nor any of them, nor any officers, agent or employee thereof, shall be charged personally by the Assignor or by the Assignee

with any liability or held liable to either of them under any term or provision of this Agreement, or because of its execution, or because of any breach or attempted or alleged breach thereof.

IN WITNESS WHEREOF, the Port Authority, the Assignor and the Assignee have executed these presents as of the date first hereinabove set forth.

ATTEST:

[Signature]
ASSISTANT SECRETARY

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By [Signature]
RICHARD M. LARRABEE
(Title) DIRECTOR, PORT COMMERCE DEPT.
(Seal)

ASSIGNOR:

ATTEST:

[Signature]
Secretary

HOWLAND HOOK CONTAINER TERMINAL, INC.

By [Signature]
(Title) President
(Corporate Seal)

ASSIGNEE:

ATTEST:

[Signature]
Secretary

NEW YORK CONTAINER TERMINAL, INC.

By [Signature]
(Title) President
(Corporate Seal)

APPROVED:	
<u>FORM</u>	<u>TERMS</u>
<u>[Signature]</u>	<u>[Signature]</u>

JB

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

On the 28th day of December in the year 2004, 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.

[Signature]
(notarial seal and stamp)

LUCY AMESBINO
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01AM6101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV 3, 2007

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

On the 20th day of December in the year 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared James J. Deane, 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.

Notary Public, State of New York
Registration #0112762
Commission Expires 12/14/07

[Signature]
(notarial seal and stamp)

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

On the 26th day of December in the year 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared James J. Deane, 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.

Notary Public, State of New York
Commission Expires 12/14/07

[Signature]
(notarial seal and stamp)

Leasing Files