

A Public Records Access request has been submitted.

Request By: Michael Gross

Signature: michael gross

Request date: 10/13/2016

Address: 143 Harding Avenue Bellmawr NJ 08031

Email: michael.gross@emrgroup.com

Phone number: 848-220-2638

Personal
Information Request: YES

Records seeking: Please provide copies of the following: (1) Lease Agreement between the Port Authority of New York and New Jersey and Red Hook Terminals; and/or (2) Lease No. BP-307 for Piers 9A, 9B and 10 and surrounding premises known as the Red Hook Container Terminal in Brooklyn, NY.

Thank you for your cooperation in this regard.

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

PRA #17455

Action by (print / type name):

William Shalewitz

, Freedom of Information Administrator

Signature:



Date:

10/24/2016

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/17455-LPA/>. Paper copies of the available records are available upon request.
Exemptions applied for 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.

OPERATING AGREEMENT

Between

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

and

RED HOOK CONTAINER TERMINAL, LLC

Dated as of October 1, 2013

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- Exhibit A- Description of RHCT Property
- Exhibit B- Description of Port Newark Property

FINAL

Exhibit C- Equipment

Exhibit D- Red Hook Container Terminal, LLC Operating Agreement

Schedule E- Affirmative Action/MBE/DBE

THIS OPERATING AGREEMENT (this “**Agreement**”), made as of October 1, 2013, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called “**Port Authority**”), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at 225 Park Avenue South, New York, New York 10003; and RED HOOK CONTAINER TERMINAL, LLC (hereinafter called “**Operator**”), a New York limited liability company with an office and place of business at 28 Laight Street, 6D, New York, New York 10013.

WITNESSETH, THAT:

WHEREAS, Port Authority is the current owner of the Terminal Space (hereinafter defined);

WHEREAS, the Port Authority and Operator heretofore entered into an operating agreement, dated as of September 26, 2011 (as supplemented and extended, the “**Prior Operating Agreement**”), for the operation, management and maintenance of certain area and equipment at Red Hook Container Terminal (“**RHCT**”), in the City of New York, in the County of Kings and the State of New York and in Port Newark, in the City of Newark, County of Essex and State of New Jersey (RHCT and Port Newark each being sometimes referred to herein as a “**Facility**”), and Operator has maintained continuous, uninterrupted occupancy and control of same during the term of the Prior Operating Agreement, which expired as of the day preceding the commencement of this Agreement, i.e., September 30, 2013;

WHEREAS, the Port Authority desires that Operator operate, manage and maintain the Terminal Space, and Operator agrees to operate, manage and maintain the Terminal Space, in accordance with the terms and conditions of this Agreement;

WHEREAS, contemporaneously with entering into this Agreement, the Operator and the Port Authority are entering into a Bareboat Charter Party Agreement, effective as of October 1, 2013 (the “**Bareboat Charter Agreement**”), pursuant to which the “New York” and “New Jersey” deck barges, which are the subject of said agreement, are let to the Operator for use within the Port of New York and New Jersey, specifically for the Red Hook Barge service, which transfers containers between the RHCT and its satellite terminal in Port Newark, New Jersey;

WHEREAS, neither this Agreement nor the Bareboat Charter Agreement shall be or become effective unless and until the other such agreement is duly entered into by the parties thereto;

WHEREAS, the Port Authority and the Operator, for and in consideration of the covenants and agreements hereinafter contained, hereby agree as follows:

Section 1. Terminal Space.

Subject to and in accordance with the terms and conditions of this Agreement, the Operator agrees to operate, manage and maintain the following: (a) approximately Sixty Five and 6/10ths (65.6) acres located on Piers 9A, 9B, inclusive of a shed consisting of approximately 176,800 square feet, and Pier 10 of the RHCT, marked in cross-hatching on "Exhibit A", and approximately thirty and four-tenths (30.4) acres located on Berths 4 and 6, inclusive of a warehouse consisting of approximately 132,858 square feet, located at Port Newark, in the City of Newark, County of Essex and the State of New Jersey marked in cross-hatching on "Exhibit B", together with the buildings, structures, fixtures, improvements and terminal area (collectively, the "**Terminal**"); (b) the equipment identified in the list of Equipment attached hereto as "Exhibit C" (the "Equipment"); and (c) to the extent agreed in writing by the Port Authority and Operator from time to time, other property, if any, of the Port Authority located or to be located or constructed therein or thereon. The property described in the foregoing clauses (a), (b) and (c) is hereinafter collectively called the "**Terminal Space**". The parties agree that the Terminal Space constitutes non-residential property.

Section 2. Term; Commencement Date

The term of this Agreement shall commence at 12:01 o'clock A.M. on October 1, 2013 (the "**Commencement Date**") and shall expire if not sooner terminated in accordance with this Agreement, at 11:59 o'clock P.M. on September 30, 2018 (the "**Term**").

Section 3. Scope of Work; Operation of the Terminal Space.

(a) The Port Authority authorizes the Operator to manage, maintain, secure and operate the Terminal Space during the Term of this Agreement. The Operator shall operate, maintain, secure and manage the Terminal Space for the Port Authority: (i) in a commercially reasonable, prudent and professional manner; (ii) in accordance with industry and regulatory standards for terminal operators, at a level of quality generally considered to be a first class operation for marine container terminals; (iii) in accordance with the terms and conditions of this Agreement; and (iv) to the extent consistent with the standards described in clauses (i)-(iii) above, in a manner reasonably calculated to (y) preserve the assets and Equipment that comprise the Terminal Space, and (z) optimize over the Term of this Agreement the financial performance of the Terminal Space (the "**Operating Standards**").

(b) Subject to and consistent with this Agreement including, without limitation, subsection 3(a) above, the Operator's responsibilities under this Agreement shall include the responsibility and authority to be exercised in accordance with and subject to the Operating Standards to do the following:

(i) In connection with the operation of the Terminal Space, the Operator shall be responsible for the hiring of labor and to stevedore ships destined to/from the Terminal Space and if applicable, promptly inventory the containers and cargo located on the

Terminal Space to determine their respective owner(s) and content(s) to establish priority of delivery;

(ii) Operator shall be responsible for handling existing customers at the Terminal Space, including but not limited to steamship lines, salt, and other cargoes, and for honoring existing agreements and/or negotiating new terms in good faith;

(iii) Operator shall perform routine maintenance on the Terminal Space including, but not limited to, repairs to the container cranes, buildings, barges and Equipment;

(iv) Operator will furnish all fixtures, equipment, personnel (including, without limitation, licensed personnel as necessary and including crane and power shop materials), supplies, materials and other facilities necessary and proper for the operation and management of the Terminal Space, and shall furnish all services hereunder to third parties on a fair, equal and non-discriminatory basis;

(v) Operator shall negotiate and enter into all contracts necessary to operate, manage and maintain the Terminal Space; provided, however, that the Operator shall not enter into any such contract without the prior written consent of the Port Authority; and

(vi) (1) Rent. Operator shall be solely responsible for invoicing all third party users of the Terminal Space for rent and other fees, and shall mail monthly invoices, as applicable, to such third party users on behalf of the Port Authority. Operator shall collect all payments for rent and other fees generated from the operations contemplated by this Agreement and shall be responsible for the payment of all expenses incurred in connection with the operations contemplated hereunder.

(2) Cargo Facility Charges. The Operator further agrees to invoice any cargo facility charge ("CFC") imposed by the Port Authority on third party users pursuant to the FMC Schedule No. PA10, naming Rules and Regulations Applying At Port Authority Marine Terminals And Rates and Charges Applicable For the Use of Public Areas At Port Authority Marine Terminals, a copy of which has been provided to the Operator and is also available the Port Authority website. Such amounts shall belong to the Port Authority and shall be paid over by the Operator to the Port Authority promptly after receipt thereof.

(c) In connection with its obligations under this Agreement, Operator shall prepare, maintain and comply with the provisions of a facility security plan (as defined in 33 CFR Part 101.105), which must be submitted to the United States Coast Guard ("USCG") for approval no later than thirty (30) days after the date this Agreement is actually executed and delivered by both parties (such date being referred to herein as the "**Execution Date**") regardless of the earlier occurrence of the Commencement Date. Upon such approval by the USCG the same shall replace any Port Authority facility security plan applicable to the Terminal Space in effect prior to the Commencement Date. Without limiting the generality of any provision of this Agreement, the Operator shall also be responsible for managing all security services for the protection and safeguarding of the Terminal Space and persons and property at or on the Terminal Space consistent with the Operating Standards. The Port Authority shall be responsible

for the management and administration of the contract associated with security services for the Terminal Space.

(d) In connection with its obligations under this Agreement, Operator shall comply with all USCG requirements for a designated waterfront facility (as defined in 33 CFR 126.05) including, but not limited to, attainment and maintenance of a certificate of adequacy.

(e) Except as otherwise provided herein, the Operator shall have the sole and exclusive responsibility for the recruiting, hiring, training, promotion, licensing, discharge and supervision of labor (including, without limitation, stevedoring laborers) in connection with the Operator's operation of the Terminal Space in accordance with this Agreement, and shall determine and pay the compensation, fringe benefits, pension and/or retirement plans and other policies and terms of employment of all personnel which the Operator may deem necessary or desirable for the proper management, maintenance and operation of the Terminal Space. The Port Authority shall have the right, in the Port Authority's sole and absolute discretion, to approve the Operator's hiring, or modification of the material terms of employment, of the core management team associated with operation and management of the Terminal Space (the "**Management Team**"), defined as follows: Michael Stamatis, Eric Seal, and Frank Jordan. All labor at the Terminal Space utilized in the Operator's management of the Terminal Space shall be employees or independent contractors of the Operator. Operator shall not enter into any collective bargaining agreements with respect to labor at the Terminal Space without the Port Authority's prior written approval. Operator shall comply with all filing and reporting requirements and cause to be timely paid all worker's compensation premiums, payroll taxes and any labor-related taxes. Operator shall comply with all laws, rules, regulations and orders regarding minimum wages, hiring and employment practices, and immigration.

(f) Operator shall not be charged an operating fee or any other amounts, other than as expressly set forth in this Agreement, in connection with its use, occupancy, management, maintenance and operation of the Terminal Space under the terms of this Agreement. Nothing in this paragraph (f) or elsewhere in this Agreement shall relieve or discharge the Operator or the Port Authority of or from liabilities which the Operator or the Port Authority, respectively, accrued pursuant to and during the stated term of the Prior Operating Agreement, all of which shall survive the expiration of the Prior Operating Agreement. For the avoidance of doubt, any liability accrued by the Operator during the stated term of the Prior Operating Agreement and which did not constitute a Permitted Expense (as therein defined and set forth in Exhibit D attached to the Prior Operating Agreement), including, without limitation, any environmental or environmental-remediation liability, shall remain a liability of the Operator for which the Port Authority has no liability or responsibility to the Operator or otherwise.

Section 4. Management and Clean Air Incentive Fees

(a) Management Fee. During the Term, the Port Authority shall pay to the Operator an annual management fee in the amount of Two Million Seven Hundred Fifty Thousand Dollars and No Cents (\$2,750,000.00), payable in advance in equal, consecutive quarterly installments of Six Hundred Eighty Seven Thousand Five Hundred Dollars and No Cents (\$687,500.00) each, commencing October 1, 2013 and on each January 1, April 1, July 1

and October 1 thereafter occurring during the Term of this Agreement, except that the October 1, 2013 payment shall not be paid by the Port Authority until the Execution Date.

(b) Clean Air Incentive Fee. In addition to the Management Fee described in paragraph (a), above, in order to encourage the utilization of container barges to reduce truck traffic at the RHCT and other Port Authority facilities in Port Newark, the Port Authority has elected to provide an amount of annual operating funding to the Operator not otherwise due hereunder and the same shall be referred to herein as the "Clean Air Incentive Fee". The Clean Air Incentive Fee shall be paid to the Operator in advance in equal, consecutive quarterly installments, commencing October 1, 2013 (with payment to be delayed until the Execution Date) and on each January 1, April 1, July 1 and October 1 thereafter occurring during the Term of this Agreement. The amount of each such quarterly installment shall be equal to one-fourth of the aggregate amount due for the annual period in which the date such instalment is due, determined as set forth below:

- (i) Execution Date-September 30, 2014 - \$3,750,000.00
- (ii) October 1, 2014-September 30, 2015 - \$2,750,000.00
- (iii) October 1, 2015-September 30, 2016 - \$1,750,000.00
- (iv) October 1, 2016-September 30, 2017 and for each October through September annual period thereafter occurring during the effective Term of this Agreement - \$1,000,000.00

(c) Notwithstanding anything in this Agreement to the contrary, if the aggregate expenses actually incurred by the Operator in connection with the management, maintenance, securing and operation of the Terminal Space during the Term are less than the aggregate amount of the installments of the Management Fee and the Clean Air Incentive Fee paid by the Port Authority to the Operator during the Term, then promptly after the expiration or termination of this Agreement (whichever is earlier), the Operator shall pay to the Port Authority the excess of the aggregate amount of such installments paid to the Operator over such aggregate expenses actually incurred by the Operator.

Section 5. Superstorm Sandy Expenses; Pending Litigation Expense

In addition to the amounts payable under Section 4(a) and Section 4(b):

(a) At Operator's request and subject to the procedure set forth in this Section 5(a), the Port Authority shall from time to time advance amounts, not to exceed in the aggregate Five Million Four Hundred Thousand Dollars and No Cents (\$5,400,000.00), to Operator to be applied directly and solely to make reasonably necessary repairs and/or replacements in connection with damage to the Terminal Space caused by Superstorm Sandy. Such sum may also be applied by Operator to settle, with the prior written approval of the Port Authority (not to be withheld, delayed or conditioned in an arbitrary and capricious manner), Superstorm Sandy-based Equipment damage claims made against Operator by Equipment leasing providers as listed in "Exhibit C", attached hereto. Operator shall first provide the Port Authority with a written report identifying the repairs and/or replacements to be made, including adequate substantiating documentation as to the cost thereof, for prior Port Authority approval (not to be unreasonably

withheld, delayed or conditioned in an arbitrary and capricious manner). Upon approving the identified repair and/or replacement, the Port Authority shall make such advance payments to Operator in accordance with such approval. Without limiting the generality of the foregoing, Operator does hereby unconditionally and irrevocably assign to the Port Authority its right to receive all proceeds from all Superstorm Sandy-related insurance claims (including without limitation, all Federal disaster recovery proceeds) and any such insurance proceeds that are received by Operator shall promptly, upon receipt, be delivered to the Port Authority.

(b) The Port Authority shall retain responsibility for all costs, expenses, amounts due or liability including, without limitation, reasonable fees and disbursements of legal counsel (collectively “Costs”), relating to or arising out of the litigation known as *American Stevedoring, Inc. v. Red Hook Container Terminal LLC et al.*, Index No. 651472-2012 (Supreme Court N.Y. County) including, without limitation any appeals and related proceedings (the “**ASI Litigation**”), any amounts paid in settlement or to satisfy any judgments and any amounts in connection with the relocation of the equipment that is the subject of such litigation (collectively “Costs”) (“**ASI Litigation**”); provided, however, that with respect to amounts in connection with the relocation of the equipment as aforesaid, if the court order does not specifically specify an amount to cover the cost of such removal then the Port Authority’s obligation shall be only to use good faith efforts to obtain authorization to incur the cost of such removal. None of such Costs that are paid by the Port Authority shall be considered in any manner in determining, any amount which may be payable to the Port Authority under Section 4(c) hereof. The Port Authority shall promptly pay or reimburse the Operator for any such Costs upon receipt of reasonable documentation satisfactory to the Port Authority substantiating such Costs. For the avoidance of doubt, the Port Authority shall continue to retain responsibility and pay for any such Costs while the Prior Operating Agreement was in effect and such Costs that are incurred during the Term or after the termination or expiration of this Agreement, regardless of when the Costs are billed or paid including, without limitation, the reasonable fees and disbursements of counsel relating to services rendered while the Prior Operating Agreement was in effect and such Costs constituting Permitted Expenses under same, during the Term or after the termination or expiration of this Agreement. Notwithstanding the foregoing, the Port Authority shall not be required to reimburse Operator for its payment or obligation to pay any Costs which arise out of, are based upon or are in any way related to the gross negligence or willful misconduct of Operator, its members, managers, agents, employees or representatives. Each party represents and warrants that it shall fully cooperate with the other party on the conduct of the ASI Litigation and shall instruct its legal counsel to cooperate accordingly. Further, upon the Port Authority’s request, Operator shall enter into a common interest agreement with the Port Authority on all aspects of the ASI Litigation within thirty (30) days from and including the Execution Date which is reasonably acceptable to both parties.

(c) In the event Operator desires to settle any of the claims asserted against, or brought by, it in the ASI Litigation, cases or proceedings, it shall consult with the Port Authority beforehand and shall not enter into any settlement discussions, negotiations or any binding agreement with any party unless previously authorized by the Port Authority. In the event that the Port Authority desires that Operator settle any of the claims asserted against, or brought by, it in the ASI Litigation or otherwise terminate the ASI Litigation, it will consult with Operator. In such event, Operator represents and warrants that it shall cooperate in fulfilling the Port

Authority's objective provided the material terms of the settlement or termination, as applicable, are mutually acceptable to the Port Authority and Operator, and in this connection the consent of Operator shall not be unreasonably withheld, delayed or conditioned. In the event that any settlement or termination of the ASI Litigation results in a settlement payment to Operator or an award of damages in favor of Operator, the proceeds of such award are hereby unconditionally assigned to the Port Authority and shall not be considered revenue to RHCT for purposes of Section 6 of this Agreement and, further, such proceeds shall be promptly remitted to Port Authority upon receipt.

Section 6. Monthly Reports by Operator-Profit-and-Loss Reports; Revenues Reports; Marketing Plan.

(a) On or before the thirtieth (30th) day of each month, beginning November 2013, Operator shall submit a profit-and-loss statement for the preceding month (the "**Profit-and-Loss Report**"), itemized in a manner acceptable to the Port Authority, and certified by a responsible officer of the Operator with personal knowledge of or supervision over the matters set forth therein, under generally accepted accounting principles ("**GAAP**") or such other standards of accounting as approved by the Port Authority, indicating that the Port Authority may rely on such Profit-and-Loss Report and indicating, with reasonable detail, (x) all revenues from the management, maintenance and operation of the Terminal Space, including the Management Fee and the Clean Air Initiative Fee, received by Operator during the preceding month, including a breakdown of the source and type of such revenues and (y) the scope and amount of all expenses incurred by the Operator during the preceding month. The reasonable detail to be provided shall include, among other things, (x) with respect to expenses, supporting payroll reports for individual employees and copies of paid invoices for items or services delivered to or furnished by any third party contractors, and (y) with respect to revenues, all billings and receipts by the Operator.

(b) The Operator shall also be obligated to submit monthly summary reports to the Port Authority of all vessels using the berthing areas, including a breakdown by rate paid by all such vessels.

(c) The Operator shall use commercially reasonable best efforts to promote and market the Terminal Space to new users and customers throughout the Term, all in accordance with the Operating Standards. In connection therewith, the Operator shall submit to the Port Authority for its approval a written marketing plan ("**Marketing Plan**") within thirty (30) days after the Execution Date setting forth the specific actions it shall take in order to so promote and market the Terminal Space for the annual period beginning on the Commencement Date.

The Operator shall update the Marketing Plan annually and submit such update to the Port Authority on or before October 1 of each year of the Term. Said updated plan, and any changes therein shall be subject to the prior approval of the Port Authority (not to be withheld, delayed or conditioned in an arbitrary and capricious manner). The Operator agrees to meet and consult with the Port Authority when requested to do so in order to discuss the Operator's performance in meeting the standards required by paragraph (a) of this Section and its implementation of the Port Authority guidelines.

(d) All disbursements for the expenses incurred by the Operator, shall be a direct pass-through with no fees, or other up-charges of any kind charged by Operator, applied.

(e) Except if expressly set forth in this Agreement, the Port Authority shall not reimburse the Operator for any expenses contained within the Profit-and-Loss Report.

(f) Operator shall maintain books and records in accordance with Section 42 hereof, entitled "*Record-keeping Obligations; Public Release of Information; Confidentiality*", as to the operations of Operator and third parties at the Terminal Space, and the Port Authority shall have the right to audit such Profit-and-Loss Reports and other books and records as set forth in Section 38 hereof, entitled "*Audit Fee*".

Section 7. Rights of User

(a) The Operator shall use the Terminal Space for the following purposes only in full compliance with all applicable laws, rules and regulations: (i) the loading and unloading predominately of cargo housed in containers, and also of non-containerized cargo, such bulk cargo (e.g., automobiles) as shall have the prior consent of the Port Authority and which consent shall not have been revoked, and ships' stores, supplies, equipment and gear on or from seagoing vessels and other craft permitted to be berthed in the berthing area; (ii) the receipt, handling, 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, equipment and gear for such vessels; (iii) the parking of motor vehicles, container chassis, and of trailers and semitrailers owned or operated by the Operator or by the employees of the Operator or by persons doing business with it at the Facility for the purposes set forth in this Section; (iv) the storage and repair of cargo containers, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of the Operator under this Agreement; and (v) the conduct of productions (i.e., music, video, television, film) in accordance with Port Authority policies for same, (vi) the maintenance of office space and other activities or operations solely for purposes incidental to the operations of the Operator set forth in this Section.

(b) The Operator shall have the right to berth in the berthing area seagoing vessels for which the Operator acts as stevedore or terminal operator, and operated by Persons (as hereinafter defined) which shall have the prior consent of the Port Authority (which shall not have been revoked by 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, equipment 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. The Operator shall have the exclusive right to charge dockage and wharf usage charges from seagoing vessels and all other craft, subject to all the terms and provisions of this Agreement. The Operator shall not use or permit the use of the berthing area except as hereinabove provided.

(c) Notwithstanding any provision of this Section 7, the Operator shall not, without the express, prior written consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority, use the Terminal Space for the

transportation, storage, distribution or other handling of any municipal or commercial solid waste whether or not housed in cargo containers; provided, however, for the purposes of this Agreement, municipal or commercial solid waste shall not include containerized scrap paper, metal, paperboard and plastic.

Section 8. Ingress and Egress

The Operator shall have the right of ingress and egress between the Terminal Space and the city streets outside the Terminal Space. Such right shall be exercised by means of such pedestrian or vehicular ways, to be used in common with others having rights of passage within the Terminal Space, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the Rules and Regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Terminal Space (see Section 10 hereof entitled "*Rules and Regulations*"). The Port Authority may at any time temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Terminal Space presently or hereafter used as such, so long as a reasonably equivalent means of ingress and egress as provided above remains available to the Operator. The Operator 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 the Operator 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 Terminal Space; provided, that, a reasonably equivalent means of ingress and egress as provided above remains available to the Operator. The Operator 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 Terminal Space or in, along, across or through any streets, ways and walks near the Terminal Space.

Section 9. Governmental and Other Requirements

(a) (i) Prior to or contemporaneously with the commencement of its operations under this Agreement, the Operator shall procure from all governmental authorities having jurisdiction over the operations of the Operator hereunder, all licenses, certificates, permits and other authorizations which may be necessary for the conduct of such operations and, upon the request of the Port Authority, shall provide copies of all such items to the Port Authority. Operator covenants that it shall ensure that all such licenses, certificates, permits and other authorizations shall remain in full force and effect through the Term to the extent necessary to perform its obligations under this Agreement. Operator represents that all such licenses, certificates, permits and other authorizations that Operator was required to have during the term of the Prior Operating Agreement were obtained during the term thereof. Operator agrees that all costs to acquire, renew, and/or maintain in effect all licenses, certificates permit and other authorizations necessary to perform Operator's obligations under this Agreement in order to comply with this Section 9(a), or otherwise, shall be the sole responsibility of the Operator.

(ii) Pursuant to a Memorandum of Understanding between the Port Authority and the United States Customs and Border Protection ("**CBP**"), dated March 27, 2012, the CBP is obligated to conduct examinations pursuant to Title 19, Code of Federal Regulations, Section 151.6 and 151.7 in the Terminal Space through January 8, 2017. The Operator shall be

obligated to obtain appropriate bonds pursuant to 19 CFR Section 113.1 and meet all other CBP requirements. In order to retain CBP examinations in the Terminal Space beyond January 8, 2017, the Operator acknowledges that will need to apply to CBP to accomplish the same.

(b) Except as otherwise provided in this Agreement, the Operator shall promptly observe, comply with and execute its obligations under all laws and ordinances and governmental rules, regulations, requirements, orders and similar items now or at any time during the occupancy of the Terminal Space by the Operator which as a matter of law are applicable to or which affect (i) the Terminal Space, (ii) the operations of the Operator at the Terminal Space, (iii) the use and occupancy of the Terminal Space and/or (iv) any Hazardous Substance on, at or migrating from the Terminal Space, in accordance with Section 41 hereof entitled "*Environmental Responsibilities*".

Without limiting the generality of the foregoing paragraph, the Operator shall make any and all repairs or alterations of the Terminal Space and perform all remediation work and clean up of Hazardous Substances required in order to fully satisfy the Operator's obligations set forth in this Agreement, subject to the provisions of Section 19(c) and Section 41 hereof. The Operator's costs of complying with this Section 9(b) shall be the sole responsibility of the Operator. For the avoidance of doubt, any environmental or environmental-remediation liability (i) incurred during the effectiveness of the Prior Operating Agreement which did not constitute a Permitted Expense shall be the sole liability and responsibility of the Operator in accordance with the Prior Operating Agreement and (ii) incurred during the Term of this Agreement shall be the liability and responsibility of the party described in Section 41 hereof, entitled "*Environmental Responsibilities*".

(c) The Operator shall, for the Port Authority's information, deliver to the Port Authority promptly after receipt any notice, warning, summons or other legal process for the enforcement of any enactment, ordinance, resolution or regulation of a governmental authority of competent jurisdiction that may reasonably have, or be expected to have, an adverse effect on the Terminal Space, the Port Authority or the Operator (collectively, a "**Notice**").

(d) The obligation of the Operator 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 Terminal Space, and proper operation of the Terminal Space by the Operator. Notwithstanding the foregoing in this Section 9, the Operator shall not be deemed in breach or violation of its obligations hereunder and to the Port Authority for not complying with any law, ordinance, rule, regulation, requirement, order, resolution, enactment, similar item, license, certificate, permit, or other authorization, so long as all of the following are satisfied: (i) the Operator is pursuing a good faith challenge or amendment to such law, ordinance, rule, regulation, requirement, order, resolution, enactment, similar item, license, certificate, permit, or other authorization; (ii) such non-compliance does not result in criminal liability; (iii) such non-compliance does not cause a lien to be incurred on the Terminal Space or a Port Authority facility; (iv) such non-compliance will not adversely affect any other tenant at the Terminal Space; (v) such non-compliance will not cause the Port Authority to breach any agreement; and (vi) such non-compliance does not pose a potential or actual danger to person or property in the discretion of the Port Authority. The Port Authority shall have no liability or obligation with regard to such matters. Notwithstanding the foregoing, this Section 9(d) shall in no way be construed to permit the Operator to avoid compliance with any ordinance, rule, regulation,

requirement, order, resolution, enactment, similar item, license, certificate, permit or other authorization of the Port Authority (“**Port Authority Standard**”), and in the event Operator fails to comply with any Port Authority Standard, such conduct shall be deemed a breach or violation of its obligations under this Agreement. Further, the Port Authority will not exercise its right to terminate this Agreement for a breach or violation by Operator of a governmental requirement if the consequence of the same is only the incurrence by Operator of a monetary penalty or fine which is then timely paid by Operator and if, in addition, such breach or violation does not either constitute or cause there to be a breach or violation by the Port Authority of a governmental requirement, or a breach or default by the Port Authority pursuant to a lease or other agreement to which it is a party, or cause the Port Authority to be liable or contingently liable for anything in any way.

Section 10. Rules and Regulations

(a) The Operator covenants and agrees to observe and obey (and to compel its employees, managers, members, guests, invitees, agents, representatives, and others on the Terminal Space with its consent to observe and obey) the Rules and Regulations of the Port Authority now in effect (a copy of which was attached to the Prior Operating Agreement and, accordingly, Operator hereby acknowledges it has notice of same) and such further reasonable rules and regulations of which the Operator has notice (including amendments and supplements thereto) for the governance of the conduct and operations of the Operator as may from time to time, during the Term, be promulgated by the Port Authority for reasons of safety, security, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Terminal Space, or for the safe and efficient operation of the Terminal Space. The Port Authority agrees that to the extent practicable, except in cases of emergency, it will give notice to the Operator of every such further rule or regulation, and every proposed change or amendment as provided for by Section IX of the Port Authority’s By-Laws, at least ten (10) days before the Operator shall be required to comply therewith. Notwithstanding any of the foregoing, in the event a Person is a third party that is not under the Operator’s supervision or is a member of the International Longshoreman Association (“**ILA**”), Operator shall only be required to use its commercially reasonable efforts to compel such third party or ILA member to act in accordance with the terms of this provision.

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

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

Section 11. Operational Obligations of the Operator

(a) In the performance of its obligations hereunder and in the use of the Terminal Space, the Operator shall conduct its operations in an orderly, lawful and proper

manner, so as not to generally annoy, disturb or be offensive to other Persons that are near or at the Terminal Space.

(b) The Operator shall control the conduct, demeanor and appearance of its employees, members, managers, agents, representatives, contractors, customers, guests, invitees and those doing business with it while they are present on the Terminal Space. As soon as reasonably possible the Operator shall remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Operator or of any such others on the Terminal Space with the consent of the Operator. Notwithstanding any of the foregoing, in the event a Person is a third party is not under the Operator's supervision or is a member of the ILA, Operator shall only be required to use its commercially reasonable efforts to compel such third party or ILA member to act in accordance with the terms of this provision.

(c) The Operator shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Terminal Space and the Operator shall remove from the Terminal Space all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles in a proper location, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Operator therein. Said receptacles shall be provided and maintained by the Operator and shall be kept covered except when being filled or emptied. The Operator shall use reasonable care when effecting removal of all such material, shall effect such removal at such times and by such means as are first approved by the Port Authority, 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 in its sole discretion.

(d) The Operator shall take all reasonable measures to eliminate vibrations tending to damage the Terminal Space or any part thereof.

(e) The Operator shall permit the use of and provide reasonable access to the Terminal Space from time to time for the installation, maintenance and operation of such navigation lights, as the same may be required by the USCG or other governmental authority having jurisdiction.

(f) From time to time and as often as reasonably required by the Port Authority and upon prior notice to the Port Authority, the Operator shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment on the Terminal Space, to the extent such equipment exists on the Terminal Space, whether furnished by the Port Authority or by the Operator. To the extent such equipment exists on the Terminal Space, the Operator shall keep all firefighting 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 all which such equipment is designed, and shall train the appropriate number of its employees in the use of such equipment (with such employees to participate in periodic training drills).

(g) The Operator 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 the Operator, or by a corporation, company or other organization or person associated, affiliated or connected with the Operator or for which the Operator acts as agent, stevedore or terminal operator (or of others going to or from the Terminal Space on business with the Operator), which shall have sunk, settled or become partially or wholly submerged at the Terminal Space. In addition, within thirty (30) days after the Operator has knowledge or should have knowledge of such sinking, settlement or submerging, the Operator shall 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), which shall have sunk, settled or become partially or wholly submerged in the berthing area. The provisions of the immediately preceding sentence shall be applicable whether or not the aforesaid object is owned by the Operator or is connected in any way with the Operator or its occupancy of or operations at the Terminal Space, and the Port Authority shall have no obligation to raise or remove any such object unless its presence in the berthing area is the result of the sole negligence or willful act of the Port Authority.

(h) The Operator's costs of complying with this Section 11 shall be the sole responsibility of the Operator.

Section 12. Prohibited Acts

(a) The Operator shall not do and shall use its commercially reasonable efforts not to permit to be done anything which may interfere with the effectiveness or accessibility of the drainage and sewerage system, water system, communications system, electrical system, fire-protection system, sprinkler system, alarm system, fire hydrants and hoses and other systems, if any, installed or located on, under, or in the Terminal Space. Notwithstanding the foregoing, such services may be temporarily interrupted for the purposes of repairing or upgrading same, if approved by the Port Authority and undertaken by the Operator in accordance with Section 19(c) hereof.

(b) The Operator shall not do or permit to be done anything which may adversely interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Terminal Space, if any, including without limitation, systems for the supply of heat, hot and cold water, gas, electricity and fuel, and for the furnishing of air-conditioning, telephone, telegraph, teleregister, internet, fiber optic cable, and intercommunications services including any lines, pipes, mains, wire, conduits and equipment connected with or appurtenant to all such systems. Notwithstanding the foregoing, such services may be temporarily interrupted for the purposes of repairing or upgrading same, if approved by the Port Authority and undertaken by the Operator in accordance with Section 19(c) hereof.

(c) The Operator shall not commit any nuisance or permit its employees or others on the Terminal Space with its consent to commit or create or continue any nuisance in or near the Terminal Space. Notwithstanding the foregoing, in the event a Person is a third party that is not under the Operator's supervision or is a member of the ILA, Operator shall only be required to use its commercially reasonable efforts to cause such third party or ILA member, as applicable, to act in accordance with the terms of this provision.

(d) The Operator shall not cause, create or produce, and shall use its commercially reasonable efforts not to permit to be caused, created or produced, upon the

Terminal Space, and shall use its commercially reasonable efforts not to permit to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors or odors; provided, however, that the Operator shall have no obligation hereunder to prevent any smokes, gases, vapors or odors permeating from any property outside the Terminal Space not within Operator's control.

(e) The Operator shall not dispose nor permit anyone to dispose of any industrial/hazardous waste material by means of the toilets, manholes, sanitary sewers or storm sewers in the Terminal Space except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority, and in compliance with all applicable statutes, ordinances, laws, rules, and regulations. Notwithstanding the foregoing, in the event a Person is a third party that is not under the Operator's supervision or is a member of the ILA, Operator shall only be required to use its commercially reasonable efforts to cause such third party or ILA member, as applicable, to act in accordance with the terms of this provision.

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

(g) Except as set forth in paragraphs (g)(1)-(2) of this Section or elsewhere in this Agreement, the Operator shall not install, maintain or operate, or permit the installation, maintenance or operation on the Terminal Space of any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the dispensing or sale of food, beverages, tobacco, tobacco products, or merchandise of any kind whether or not included in the above categories, or of any equipment or devices for the furnishing to the public of service of any kind including therein and not incidental to the operations, management and maintenance of the Terminal Space as contemplated by this Agreement, including without limitation thereto, telephone pay stations.

(1) Subject to the provisions of paragraph (g)(2) of this Section, the Port Authority, by itself or by contractors, designees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the Terminal Space for the sale of merchandise of all types or for the rendering of services. The Operator shall have the right to receive and retain the revenues from all coin-operated or other vending machines or devices which it may install on the Terminal Space pursuant to the provisions of paragraph (g)(2) of this Section.

(2) Subject to all of the terms and provisions of this Agreement, the Operator may install vending machines or devices designed to dispense or sell food, beverages, tobacco or tobacco products, subject to the Port Authority's approval of the type and method of installation thereof. The Operator may use an independent contractor, operator or supplier for such machines selected by the Operator unless the Port Authority determines, in its discretion, that said contractor, operator or supplier will adversely affect or interfere with operations of the Terminal Space or will cause or contribute to the causing of labor problems or disturbances

thereat. Such machines shall be installed and operated solely for use by the Operator's employees, members, managers, contractors, customers, guests and invitees. The Operator's agreement with any contractor, operator or supplier of vending machines shall permit cancellation by the Operator on short term notice in the event that the Port Authority notifies the Operator that such contractor, operator or supplier fails to meet the standards set forth in this paragraph (g)(2). The Operator 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 or omissions of the Operator, and the Operator and the contractor, operator or supplier shall be jointly and severally responsible therefor to the Port Authority only.

(h) The Operator shall not place a load upon any floor or paved area of the Terminal Space that exceeds one hundred (100) pounds per square foot in any office area, if any, located on the Terminal Space, or five hundred (500) pounds per square foot for any other portion of the Terminal Space, and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this paragraph (h) or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight that any floor will bear. The Operator shall also not overload any roof, land surface, bulkhead, pavement, landing, pier or wharf at the Terminal Space and shall repair, replace or rebuild any such roof, land surface, bulkhead, pavement, landing, pier or wharf, including but not limited to supporting members, damaged by overloading. Any repair, replacement or rebuilding required under this Section shall be conducted in accordance with the provisions of Section 19(c) hereof. The Operator's costs of complying with Section 12(g) and/or this Section 12(h) and/or obtaining insurance coverage with respect to the requirements set forth within Section 12(g) or this Section 12(h) shall be the sole responsibility of the Operator.

(i) The Operator shall not fuel or defuel its vehicles or equipment in the enclosed portions of the Terminal Space, if any, without the prior approval of the manager of the Facility.

(j) The Operator shall not keep or store in the Terminal Space explosives, inflammable liquids or solids or oxidized materials or use any cleaning materials having a harmful corrosive effect on any part of the Terminal Space, except for those materials normally used in the operations permitted at the Terminal Space pursuant to Section 7 of this Agreement and stored in a structure normally used for the storage of such materials and made reasonably safe for the storage thereof.

(k) The Operator shall not use and shall use its commercially reasonable efforts not to permit the use of any truss or structural supporting member of a building or roof or any part thereof at the Terminal Space 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) The Operator shall not throw, discharge or deposit and shall use its commercially reasonable efforts not to permit to be thrown, discharged or deposited any cargo, refuse, ashes or any material whatsoever, into or upon the waters of or about the Terminal Space.

(m) The Operator shall not do and shall use its commercially reasonable efforts not to permit to be done any act or thing on or at the Terminal Space which (i) will invalidate or conflict with any fire insurance policies covering the Terminal Space 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, unless (in the case of clause (ii) or this clause (iii)) such increase is the result of Operator's conduct which is either in compliance with the terms of this Agreement or pursuant to the prior written consent of the Port Authority, extended coverage or rental insurance on the Terminal Space or any part thereof or upon the contents of any building thereon. The Operator 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 New York Board of Fire Underwriters, the New York Fire Insurance Exchange, the Fire Rating Organization of New York, Insurance Services Office of New Jersey, the National Fire Protection Association, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Operator on the Terminal Space, and the Operator shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Operator, make all improvements, alterations and repairs of the Terminal Space 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 the Operator to comply with the provisions of this paragraph or by reason of any act by Operator, any rate for fire insurance, extended coverage or other insurance on the Terminal Space or any part thereof, shall at any time be higher than it otherwise would be, then the Operator shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such act, violation or failure by the Operator.

(n) The Operator shall not do or permit to be done any act or thing at the Terminal Space which shall subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property unless such act or thing is the result of Operator's conduct which is either in compliance with the terms of this Agreement or pursuant to the prior written consent of the Port Authority. Notwithstanding any of the foregoing, in the event a Person is a third party that is not under the Operator's supervision or is a member of the ILA, Operator shall only be required to use its commercially reasonable efforts to cause such third party or ILA member, as applicable, to act in accordance with the terms of this provision.

(o) The Operator shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance (as defined in Section 41) on or from the Terminal Space, and shall not dispose of, release or discharge or permit anyone subject to its control or authority to dispose of, release or discharge any Hazardous Substance at the Terminal Space. Any Hazardous Substance disposed of, released or discharged by the Operator (or permitted by the Operator to be disposed of, released or discharged by a Person over whom the Operator has authority and control) on or from the Terminal Space, shall upon notice by the Port Authority to the Operator and subject to the provisions of Section 41 hereof, be completely removed, cleaned up and/or remediated by the Operator to the extent required by applicable law. The obligations of the Operator pursuant to this paragraph shall survive the expiration or termination of this Agreement.

(p) Operator may keep or store wooden pallets on the open areas of the Terminal Space in accordance with the requirements and restrictions of the Port Authority which are disclosed in writing to Operator. These requirements and restrictions include, but are not limited to: (i) pallets shall be stacked no greater than eight (8) feet in height; (ii) pallets shall be sheltered from public view; and (iii) pallets shall be removed from the Terminal Space not less than on a weekly basis.

Section 13. Signs

(a) Except with the prior consent of the Port Authority, the Operator shall not erect, maintain or display any advertising, signs, posters or similar devices at or on the Terminal Space.

(b) Upon demand by the Port Authority, the Operator shall remove or paint out any and all advertising, signs, posters, and similar devices placed by the Operator on the Terminal Space and in connection therewith at the expiration or earlier termination of the Term, and shall restore the Terminal Space 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 the Operator so to remove or paint out each and every such piece of advertising, sign, poster or device and so to restore the Terminal Space after receipt of written notice from the Port Authority, the Port Authority may perform the necessary work and the Operator shall pay the reasonable costs thereof to the Port Authority on demand.

Section 14. Indemnity and Liability Insurance

(a) The Operator shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents and representatives, from all claims and demands of third persons including, but not limited to, claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the Terminal Space by the Operator or by its members, managers, agents, employees, customers, vendors, or representatives, contractors, subcontractors or their employees, or out of any other acts or omissions of the Operator, its members, managers, agents and employees on the Terminal Space, excepting only claims and demands which result solely from the willful misconduct or gross negligence of the Port Authority, its officers, employees and agents. Nothing in this Agreement shall relieve or discharge the Operator from any of its indemnification obligations accrued during the effectiveness of the Prior Operating Agreement, all of which survived the expiration or termination thereof.

(b) If so directed by the Port Authority, the Operator shall at its own expense defend any suit based upon any such claim or demand arising out of the use, occupancy, management, maintenance and operation of the Terminal Space by the Operator or by its officers, agents, employees, customers, vendors, representatives, contractors or subcontractors or their employees (even if such suit, claim or demand is groundless, false or fraudulent) 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 the provisions of any

statutes respecting suits against the Port Authority; provided, however, in the event such claim or demand arose out of the Operator's conduct which is pursuant to the prior written direction or prior written consent of the Port Authority, such costs and expenses associated with defending any claim or demand shall be the responsibility of the Port Authority. Notwithstanding the foregoing, Operator's costs and expenses associated with defending a suit based on a claim or demand brought by the Port Authority against Operator shall not be the financial responsibility of the Port Authority

(c) The Operator, in its own name as insured, shall maintain on the following described policies of liability insurance:

(1) Commercial General Liability Insurance including but not limited to coverage for premises operations and Products Liability-Completed Operations, with a minimum combined single limit coverage for bodily injury and property damage of \$10,000,000 per occurrence, no general aggregate. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If the Operator's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Operator shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(2) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of \$3,000,000 per occurrence, no general aggregate.

(3) 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.

(d) Each policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured and/or loss payee, as applicable (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 the Operator under this Section and such policies shall not contain any care, custody or control exclusions. Such insurance shall also contain an endorsement providing that the protection afforded the Operator thereunder with respect to any claim or action against the Operator by a third party shall pertain and apply with like effect with respect to any claim or action against the Operator by the Port Authority and against the Port Authority by the Operator, but said

endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured and/or loss payee, as applicable.

(e) In addition to the above coverages, the Operator shall also take out and maintain All-Risk property damage insurance covering the full replacement cost of all structures, improvements, Boiler & Machinery, fixtures and equipment, including any cranes and physical property now and in the future located on or constituting a part of the Premises and which is in the care, custody and control of the Operator. Full replacement cost shall be determined at the request of the Port Authority by an appraiser selected by the Operator and acceptable to the Port Authority. 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 including, without limitation, hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, 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). The property damage insurance policy required in this paragraph shall name the Port Authority as loss payee, as its interests may appear. The policy shall be endorsed to include losses adjusted with and payable to the Port Authority and shall also be endorsed to include Business Interruption insurance.

(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 on or before the Execution Date, and on each anniversary date thereafter. In the event any binder is delivered it shall be promptly replaced 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 date of expiration of the Term hereunder, and a certificate or a certified copy of each such renewal policy shall be promptly delivered to the Port Authority. 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, the Operator shall promptly obtain one or more new and satisfactory policies in replacement. A policy shall be deemed satisfactory to the Port Authority if it (i) meets all the terms and conditions of this Agreement, and (ii) has an AM Best (or its successors' and/or assigns' or its industry equivalent's) rating of A-VII or better. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

Section 15. Maintenance and Repair

(a) The Operator shall at all times keep the Terminal Space clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Operator located in or on the Terminal Space, and shall comply with all applicable governmental statutes, rules and regulations as required by Section 9 hereof. Without limiting the generality of the immediately preceding sentence or any obligations of the Operator with respect to the Terminal Space set forth in this Agreement, the Operator agrees that upon the

commencement of the Term and during the Term it shall keep the Terminal Space in good operating condition. Notwithstanding anything appearing to the contrary in this Section 15, except as needed to attain and maintain compliance with applicable law, the Operator shall be under no obligation to upgrade any systems or items at the Terminal Space, but shall be obligated only to maintain, repair and replace the systems or other items as applicable at the Terminal Space as of the Commencement Date. The Operator expressly agrees, promptly after the Execution Date, to upgrade the software and operating systems at the Terminal Space in a manner reasonably satisfactory to the Port Authority to , among other things, improve productivity, improve customer visibility of container activity and allow for the generation of daily container activity reporting.

(b) The Operator shall repair, replace, rebuild and paint all or any part of the Terminal Space which may be damaged or destroyed by the acts or omissions of the Operator or by those of its members, managers or employees, or of other persons on or at the Terminal Space. Any repair, replacement or rebuilding required under this Section shall be conducted pursuant to the terms and conditions set forth in Section 19(c).

(c) The Operator shall operate and maintain radio frequency identification (RFID) equipment (installed in the Terminal Space by the Port Authority at the Port Authority's expense), as well as the software which interfaces with the Terminal Space's software and operating system, which as of the Execution Date is Terminal Operating System (TOS) software also known as "Tideworks". The Operator shall be responsible for paying a pro-rata share of the on-going operating costs of the RFID system payable to Sustainable Terminal Services , LLC commencing on or about October 1, 2016; provided, however, if the Operator elects to use the RFID system for purposes other than the identification of trucks at the Terminal Space truck gates, then the Operator shall be responsible for paying a pro-rata share of the on-going operating costs of the RFID System as of the date it begins such other uses.

(d) Subject to the provisions of Section 19(a) of this Agreement, throughout the Term, the Operator shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance and repair whatsoever in the Terminal Space, whether such care, maintenance or repair be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen. Without limiting the generality of the foregoing, the Operator shall maintain and make repairs and replacements to all improvements located on the Terminal Space, all utilities related to the Terminal Space (except as provided below), and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Terminal Space or the Operator's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items, as applicable: (1) sprinkler systems, if any; (2) gas and electric from the meter (utility companies are responsible up to the meter); (3) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (4) the plumbing system, fixtures and equipment, and all finished plumbing; (5) buildings, if any, and all parts thereof; (6) signs; (7) fire extinguishers; (8) RFID equipment (i.e., readers, exciters), (9) all painting; (10) any security measures implemented on the Terminal Space; (11) catch basins and storm sewer system drains, which are to be kept fully functional, clear of obstruction and free of damage at all times; and (12) any paving required on the Terminal Space. The Operator, at its own cost

and expense, shall maintain all improvements, utilities, fixtures, machinery and equipment set forth above at all times in good condition and shall perform all necessary preventive maintenance during the Term.

The Operator shall make periodic inspections of the Terminal Space and, subject to Section 19(c) of this Agreement, shall make all repairs and replacements, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, regardless of the cause of the condition requiring such repairs or replacement. All repairs by the Operator shall be in quality and class equal to or better than that of the original in materials and workmanship.

(e) Without limiting the obligations of the Operator stated elsewhere in this Agreement, the Operator shall be solely responsible to the Port Authority for any damage caused by Operator, its employees, agents, members, managers or representatives to any and all personal property, equipment and fixtures belonging to the Port Authority located or to be located in or on the Terminal Space and shall promptly replace or repair the same within twenty (20) days after such damage (except that if any such repair requires activity over a period of time, then the Operator shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith to completion without interruption). The Operator shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the Term under this Agreement in the same condition as (i) at the commencement date of the Prior Operating Agreement or, (ii) if the condition as of the Commencement Date is better than that as of the commencement date of the Prior Operating Agreement, then as of the Commencement Date, reasonable wear and tear excepted.

(f) 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 16 of this Agreement. The Operator shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands including, but not limited to, claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, the Operator's members, managers, employees, agents, and representatives which may arise from the condition of the Terminal Space or any part thereof, or from the failure of the Operator to make timely corrections of dangerous or potentially dangerous conditions in or on the Terminal Space; provided, however, that the Operator's obligation hereunder to indemnify and hold the Port Authority, its officers, employees, agents and representatives harmless shall not apply to any claims or demands resulting from the willful misconduct or gross negligence of the Port Authority, its officers, employees, agents and representatives.

Section 16. Casualty

(a) In the event that as a result of a casualty, the Terminal Space is substantially damaged or destroyed, within thirty (30) days after the casualty, either party has the right to give written notice to the other party terminating this Agreement. For purposes of this Section 16, the Terminal Space shall be deemed to have been substantially damaged or destroyed if fifty percent (50%) or more of the Terminal Space shall be rendered unusable, or if the Terminal Space can no longer be used for marine terminal operations.

(b) In the event that a casualty has occurred but the Terminal Space is not substantially damaged or destroyed, or the Terminal Space is substantially damaged or destroyed but neither party terminates this Agreement in accordance with subsection (a) above, the Operator shall within forty-five (45) days after the occurrence of the casualty commence to remove from the Terminal Space or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to the Operator or to any third person whatsoever, and shall commence to repair, replace and/or rebuild the Terminal Space in accordance with Section 19(c) hereof.

Section 17. Assignment and Sublease

(a) The following terms shall have the respective meanings set forth below:

“Assignment” shall mean any sale, conveyance, transfer, exchange, assignment or other disposition of all or any portion of the Operator’s interest in this Agreement, directly or indirectly, whether by operation of law or otherwise, and shall include, without limitation, any arrangement whereby all or substantially all of the Operator’s operations hereunder are managed or performed by another Person.

“Control” (including the terms “controlling,” “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or membership interests, by contract or otherwise.

“Person” shall mean a natural person, corporation, limited liability company, or other legal entity, and also two or more natural persons, corporations or other legal entities acting jointly as a firm, general or limited partnership, unincorporated association, consortium, joint venture or otherwise.

“Transfer” shall mean the transfer, sale, assignment, pledge, hypothecation or other disposition of any interest in the Operator or in any direct or indirect constituent entity of the Operator, where such disposition (whether by itself or cumulatively with other transactions) produces any change in the Control of the Operator, and shall include, without limitation, to the extent any of the following results in a change of Control, (1) the sale, assignment, redemption or transfer of outstanding stock of or membership interests in, respectively, in any corporation or limited liability company that is the Operator; (2) the issuance of additional stock or membership interests in, respectively, any corporation or limited liability company that is the Operator or that is the general partner of any partnership that is the Operator, and (3) the sale, assignment, redemption or transfer of any general or limited partner’s interest in, or the admission of a new partner to, a partnership that is the Operator, or that a general or limited partner of any partnership that is the Operator.

(b) The Operator shall not effect or permit any Assignment of its interest in this Agreement or any Transfer that results in a change of Control of Operator without the prior written consent of the Port Authority, which consent may be given or withheld by the Port Authority in its sole and absolute discretion. The Operator may Assign its interest under this Agreement to a joint venture with the prior written consent of the Port Authority in its sole and

absolute discretion which consent shall require, among other things that the following conditions precedent are first satisfied:

(i) the Operator, as assignor and the joint venture entity, as assignee (“**Joint Venture Assignee**”) would first be obligated to enter into an assignment and assumption with consent agreement (“**Assignment of Operator Agreement**”) with the Port Authority in form and substance satisfactory to the Port Authority in its sole discretion. Such consent agreement would provide, among other things, that the Joint Venture Assignee agrees to assume the performance of all the terms, provisions, covenants and conditions of this Agreement on the part of the Operator as though the Joint Venture Assignee was the original signatory to this Agreement and the Assignor would continue to be fully liable for the performance of all such terms, provisions, covenants and conditions. The proposed Joint Venture Assignee shall have the same obligation as the Operator has as to the use of the Terminal Space strictly in accordance with the purposes set forth in this Agreement and shall agree not to use the Terminal Space for any other purposes whatsoever. The Joint Venture Assignee shall be required to irrevocably elect not to claim for purposes of federal, state or local taxation of income any depreciation or investment credits, for which it may be eligible with respect to property, as required by Section 29 of this Agreement; and

(ii) a substantially identical assignment and assumption with consent agreement (“**Assignment of Bareboat Charter Agreement**”) would be entered into among the Operator (as Charterer under the Bareboat Charter Agreement), the same Joint Venture Assignee, and the Port Authority, contemporaneously with the entering into of the Assignment of Operator Agreement, it being understood that neither the Assignment of Operator Agreement nor the Assignment of Bareboat Charter Agreement would be effective unless and until the other assignment agreement(s) is duly entered into.

(c) Except as provided herein, the Operator shall not enter into any management agreement, services agreement or similar type of agreement delegating its operation or management duties with regard to the Terminal Space without the prior written consent of the Port Authority, which consent can be withheld by the Port Authority in its sole and absolute discretion.

(d) Any Assignment of the Operator’s interest in this Agreement or any sale, assignment, transfer, mortgage, pledge, hypothecation, encumbrance or disposition of the Operator’s interest in Terminal Space or of the rents, revenues or any other income from the Terminal Space, or this Agreement or any part hereof, or any license or other interest of the Operator herein that is in not made in strict accordance with the provisions of this Agreement shall be null and void *ab initio* and of no force or effect.

(e) Any consent granted by the Port Authority to any Assignment of the Operator’s interest hereof or change in control of operations pursuant to the provisions hereof shall not be construed or deemed to release, relieve or discharge the Operator or any other Person claiming any right, title or interest in this Agreement from the requirement of obtaining the prior written consent of the Port Authority with respect to any other Assignment or Transfer.

(f) The Operator further covenants and agrees that it will not use or during the Term permit any Person whatsoever to use the Terminal Space or any portion thereof for any purpose other than in accordance with Section 7 of this Agreement.

(g) Notwithstanding that the disposition of any interest in the Operator not producing any change in Control of the Operator does not constitute a Transfer hereunder and accordingly does not require the consent of the Port Authority, the Operator covenants to provide the Port Authority with notice of any such disposition not later than fourteen (14) days thereafter.

Section 18. Condemnation

(a) In any action or other proceeding by any governmental agency or agencies superior to the Port Authority for the taking for a public use of any interest in all or part of the Terminal Space, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as “taking or conveyance”), the Operator 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 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, free of any claim or right of the Operator; provided, however, that this paragraph shall not be construed to prevent the Operator from making a possible claim against the condemning party for an award for moving or relocation expense or for trade fixtures, if such claims are then permitted by law and if such award is made separately from the award to which the Port Authority will be entitled in the condemnation proceeding, and will not reduce the amount thereof, but this provision shall not be deemed a recognition by the Port Authority of the validity of any such claims.

(b) Subject to the provisions of paragraph (a), above, in the event that the taking or conveyance covers the entire Terminal Space, 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 terminate in the same manner and with the same effect as if the said date were the original date of expiration of the Term hereof.

(c) Subject to the provisions of paragraph (a) above, in the event that the taking or conveyance covers less than fifty percent (50%) of the total useable area of the Terminal Space, then this Agreement as to such part shall, as of the date possession thereof is taken by such agency or agencies, cease and terminate in the same manner and with the same effect as if the Term had on that date expired with respect to such part.

(d) Subject to the provisions of paragraph (a) or (b) above, as applicable, in the event that the taking or conveyance covers fifty percent (50%) or more of the total usable area of the Terminal Space, then the Operator and the Port Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate this Agreement, 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 of the Term hereof.

Section 19. Repairs, Replacements, Improvements or Alterations by the Operator

(a) Any repairs, replacements, improvements or alterations conducted under this Agreement, including without limitation all costs and expenses of complying with this Section 19, except as expressly set forth herein to the contrary (collectively, the “Alterations”),

shall be at the sole cost and expense of the Operator and shall be in quality and class equal to or better than that of the original in materials and workmanship

(b) With respect to any Alterations undertaken by Operator, the Operator shall procure insurance in favor of the Port Authority, and its Commissioners, officers, agents and employees, as an additional insured or loss payee, as applicable, against the following risks, whether they arise from acts or omissions of the Operator, any contractors of the Operator, the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, excepting only risks which result solely from willful misconduct or grossly negligent acts done by the Port Authority subsequent to commencement of the work.

(1) The risk of loss or damage to all such Alterations prior to the completion thereof;

(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 the Alterations. The Operator shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, for all such injuries and damages (including without limitation, direct or consequential damages), and for all loss suffered by reason thereof except to the extent any of the foregoing resulted from the willful misconduct or gross negligent acts of any thereof;

(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 the Alterations. The Operator 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, except to the extent any of the foregoing resulted from the willful misconduct or gross negligent acts of any thereof.

(c) Prior to the commencement of any of the Alterations to be performed by the Operator during the Term of this Agreement, Operator shall submit to the Port Authority for its approval an Alteration Application in the form supplied by the Port Authority pursuant to TCAP requirements, and containing such terms and conditions as the Port Authority may include (an "**Alteration Application**"), setting forth in reasonable detail by appropriate plans and specifications the work the Operator proposes to perform and the manner of and 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, in accordance with subsection (o) of this Section 19. "TCAP" shall mean the Port Authority's Tenant Construction and Alteration Process, as the same may change or be amended from time to time. Compliance with the TCAP shall include, without limitation, compliance with the Port Authority Tenant Construction Review Manual.

(d) Without limiting the generality of any of the provisions of this Agreement, the Alterations shall be performed in such a manner that there will be at all times during construction reasonable efforts made to minimize the effects of any air pollution, water pollution or any other type of pollution, and to minimize the noise emanating from, arising out of, or resulting from construction. Subject to the provisions of this Agreement, the Operator shall

construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth in this paragraph, and, without limiting the generality of the foregoing, such construction shall be subject to the Port Authority's review and approval in accordance with the provisions of this Agreement.

(e) Without limiting the generality of paragraph (b) of this Section, the Operator shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans and specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority, except to the extent such plans and specifications have been incorporated into Port Authority requirements with which the Operator is contractually obligated to comply. Subject to the immediately preceding sentence, the Port Authority shall have no obligation or liability in connection with the performance of any of the Alterations or for the contracts for the performance thereof entered into by the Operator. Any warranties extended or available to the Operator in connection with the aforesaid Alterations shall be for the benefit of the Port Authority as well as the Operator.

(f) Without limiting or affecting any other term or provision of this Agreement, subject to Section 19(e), above, the Operator shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Terminal Space by the Operator and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Operator in the Terminal Space and shall do preventive maintenance and make such repairs or replacements (ordinary or extraordinary) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment in the condition they were in when made or installed except for reasonable wear and tear which does not adversely affect the proper utilization of any part of the Terminal Space.

(g) The Operator shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Alterations, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Terminal Space or any part thereof, nor to prevent the Operator from contesting claims in good faith.

(h) In addition to all policies of insurance otherwise required by this Agreement, the Operator shall procure and maintain or cause to be procured and maintained in effect during the performance of the Alterations:

(1) Commercial General Liability Insurance including but not limited to Independent Contractor coverage and coverage for Premises Operations and Completed-Operations and for Broad Form Property Damage, with a contractual liability endorsement covering the obligations assumed by the Operator under paragraph (b) of this Section, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of \$10,000,000 per occurrence, no general aggregate. The policy will also include x,c,u coverage.

(2) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for bodily injury and property damage of \$3,000,000 per occurrence, no general aggregate. The policy will also include x,c,u coverage.

(i) Each policy of insurance described in paragraph (h) of this Section shall include the Port Authority as an additional insured in its coverages including, without limitation, coverage for premises-operations and completed operations, 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 the Operator or of any of its contractors which would conflict with or in any way impair the coverages resulting from the Port Authority's status as an additional insured, or the coverage under the contractual liability endorsement described in subdivision (1) of paragraph (h) of this Section. The certificates of such insurance shall also contain an endorsement providing that the protection afforded the Operator thereunder with respect to any claim or action against the Operator by a third party shall pertain and apply with like effect with respect to any claim or action against the Operator by the Port Authority and against the Port Authority by the Operator, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured, as applicable. Such insurance shall contain a provision that the insurer shall not, without obtaining express written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. The requirements of the certificate of insurance evidencing these coverages shall be the same as specified in Section 14(e), except that, instead of the certificate being delivered to the Port Authority on or before the Execution Date, the certificate must be delivered to the Port Authority before the related Alterations are to take place.

(j) Title to all improvements and fixtures placed, constructed or installed in or on the Terminal Space as the Operator's Alterations shall vest immediately in the Port Authority upon placement, construction or installation thereof and title to any and all equipment and trade fixtures removable without substantial injury to the Terminal Space placed in or installed upon the Terminal Space as part of the Operator's Alterations shall remain with the Operator. No such equipment or trade fixtures shall be removed by the Operator prior to the termination of this Agreement unless replaced with substantially similar property of equal or greater value.

(k) In the performance of the Operator's Alterations and otherwise during the Term of this Agreement, to the extent within its reasonable control, the Operator will not permit any situation or condition to arise or continue that causes any labor troubles at, or emanating from, the Terminal Space which interferes in any material respect with the operations at the Terminal Space. 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), the Operator 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 the Operator (or any of its contractors, as applicable) to timely comply with the requirements of this paragraph, the Port Authority, after consultation with, and approval by, the New York Shipping Association, will

have the right, by notice from the Port Authority to the Operator, to require the Operator to: (a) suspend the Port Authority's permission to the Operator to proceed with the applicable portion of each specific project of the Alterations being performed by or on behalf of the Operator (i.e., the portion to which the underlying labor trouble relates), or suspend the Port Authority's permission to the Operator to continue such other specific operations as reasonably necessary to terminate such labor troubles promptly, and the Operator will thereupon promptly cease the same, and/or (b) 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 the Operator will (i) reinstate the permission to the Operator to perform the subject specific Alterations on all the same terms and conditions as before the suspension and/or (ii) permit the Operator to resume such other suspended activities at the Terminal Space. "Labor troubles" will 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 within the Terminal Space.

(l) Except as expressly set forth in this Agreement, no contractor or third party shall acquire, or shall be deemed to have acquired, any rights against Operator or 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 Operator, the Port Authority and their respective Commissioners, officers, agents and employees.

(m) Without limiting any of the terms and conditions hereof, the Operator understands and agrees that it shall put into effect prior to the commencement of any Operator's Alterations an affirmative action program and Minority Business Enterprise ("MBE") program and Women-owned Business Enterprise ("WBE") program in accordance with the provisions of "Schedule E," attached hereto and hereby made a part hereof. The provisions of Schedule E shall be applicable to the Operator's contractors and subcontractors, as well as to the Operator, with respect to the Operator's Alterations, and the Operator agrees to include the provisions of Schedule E in all of its contracts for Alterations so as to make the provisions and undertakings set forth in Schedule E the direct obligation of such contractors and subcontractors. The Operator agrees to and shall require such 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 the Operator and its contractors and subcontractors called for under the provisions of this paragraph and Schedule E annexed hereto as the Port Authority may request at any time and from time to time and the Operator agrees to and shall also require an agreement with such contractors and subcontractors that they make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions of this paragraph and Schedule E to effectuate the goals of affirmative action, MBE, and WBE programs. The obligations imposed on the Operator under this paragraph and Schedule E shall not be construed to impose any greater requirements on the Operator than those which may be imposed on the Operator under applicable law.

(n) In addition to and without limiting any terms and provisions hereof, the Operator shall provide in all of its contracts and subcontracts covering the Alterations, 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 the Operator, 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 the Operator 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;

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

(5) "Contractor" as used in paragraph (m) and in this paragraph shall include each contractor and subcontractor with respect to the Operator's Alterations.

(o) The data to be supplied by the Operator in the Alteration Application shall identify each anticipated repair or alteration, and shall describe in detail any systems, improvements, fixtures and equipment to be installed by the Operator. The Operator shall be responsible for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Operator 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 the Operator's submissions under this paragraph, the Operator 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 the Operator's complete Alteration Application and complete plans and specifications, no later than ten (10) business days following submittal of all required information, 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 necessary. The Operator 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 reasonably approved by the Port Authority. The Operator shall include in any such contract

or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Alteration Application approved by the Port Authority. The Operator shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (h) and (i) of this Section 19 and such performance bonds as the Port Authority may specify. All of the Operator's Alterations shall be performed by the Operator in accordance with the Alteration Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and, unless otherwise provided for within Section 5 of this Agreement, the Operator shall redo or replace any work not done in accordance therewith.

(p) Notwithstanding anything to the contrary in this Section 19 or this Agreement, the Port Authority shall give its written approval or rejection, or shall request such revisions or modifications as the Port Authority deems necessary, no later than ten (10) calendar days following the Operator's submittal of any Alteration Application relating to security on the Terminal Space. In the event the Port Authority requests revisions or modifications to any Alteration Application relating to security, the Port Authority shall give its written approval or rejection thereof in accordance with the TAA manual.

(q) The Operator agrees that in the performance of any work that is subject to this Section 19, 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.

Section 20. Rights of Entry Reserved

(a) In the event that any property of the Operator shall obstruct the access of the Port Authority, its employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, the Operator shall move such property, as directed by the Port Authority, in order that the access may be had to the system or part thereof for its inspection, maintenance or repair, and, if the Operator shall fail promptly so to move such property after written direction from the Port Authority to do so, the Port Authority may move it and the Operator hereby agrees to pay the cost of such moving upon demand. The Operator's costs of complying with this Section 20(a) shall be the responsibility of the Operator.

(b) Except as described in Section 15 hereof, nothing in this Section 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. Subject to the rights of others to use the Terminal Space as set forth in this Agreement, the Operator is and shall be in exclusive control and possession of the Terminal Space 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 Terminal Space or for any injury or damage to the Terminal Space or to any property of the Operator or of any other person located therein or thereon (other than those occasioned by the willful misconduct or gross negligence of the Port Authority, its officers, employees, agents and representatives).

Section 21. Limitation on Occupancy of Terminal Space

(a) The Operator agrees to operate, manage and maintain the Terminal Space subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Terminal Space may be subject, and 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 Terminal Space is located; and (iii) permits, licenses, regulations and restrictions, if any, of the United States the municipality or State in which the Terminal Space is located, or other governmental authority with appropriate jurisdiction.

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

Section 22. Termination

(a) (1) Notwithstanding any other provision of this Agreement, the Port Authority shall have the one-time right to terminate this Agreement without cause, effective October 1, 2015, upon not less than one hundred eighty (180) days' prior written notice.

(2) Notwithstanding any other provision of this Agreement, the Operator shall have the one-time right to terminate this Agreement without cause, effective October 1, 2015, upon not less than one hundred eighty (180) days' prior written notice.

(b) Operator shall make a good faith effort to consolidate operations at Piers 9A, 9B and 10 of RHCT and those certain 30.4 acres located on Berths 4 and 6 of Port Newark, which are collectively referred to herein as the Terminal Space. The Port Authority and Operator may, by way of a mutual written agreement, terminate this Agreement as to portions of the Terminal Space.

(c) In addition to the foregoing rights to terminate the Agreement, the Port Authority shall have the right to terminate this Agreement upon the occurrence of any of the following events, each of which shall be an "Event of Default" or a "default" hereunder:

(1) The Operator shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Operator shall be adjudged bankrupt or an order shall be made approving a petition filed (i) by any of its creditors, or (ii) if the Operator is a corporation, by any of its stockholders, or (iii) if the Operator is a limited liability company, by any of its members, or (iv) if the Operator is a general or limited

partnership, by any of its general partners, seeking (in any of clauses (i)-(iv)) its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Operator and shall not be dismissed within ninety (90) days after the filing thereof; or

(4) Except as permitted by and in compliance with Section 17 hereof, the interest of the Operator under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm, partnership, corporation, or other business entity; or

(5) The Operator, without the prior approval of the Port Authority, merges, consolidates, dissolves or experiences a change in Control as defined herein; or

(6) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Operator, and such possession or control shall continue in effect for a period of ninety (90) days; or

(7) The Operator shall voluntarily discontinue its operations at the Terminal Space for over sixty (60) days (except in connection with a casualty, in accordance with Section 16 hereof) or, after exhausting or abandoning any right of further appeal, the Operator shall be prevented for a period of sixty (60) days by action of any governmental agency from conducting its operations on the Terminal Space, regardless of the fault of the Operator; or

(8) Any lien shall be filed against the Terminal Space because of any act or omission of the Operator and shall not be discharged or bonded within thirty (30) days; or

(9) The Operator shall fail duly and punctually to make any payment required under this Agreement, unless there is a bona fide dispute, or to punctually remit the payment received from any third party to the Lockbox to the extent required by Section 3(b)(vi)(2) hereof, in any case within seven (7) days when due or required to be remitted, as applicable; or

(10) The Operator shall fail to (i) obtain any insurance policy required under this Agreement, and such failure is not cured within seven (7) days after receipt of notice thereof from the Port Authority, or, (ii) following the lapse, termination or expiration of any such insurance policy, fail to replace the same with a policy complying with the terms and conditions set forth in this Agreement, and Operator fails to correct this lapse within seven (7) days after receipt of notice thereof from the Port Authority; or

(11) The Operator shall fail to perform its repair and maintenance obligations under this Agreement with regard to any of the Terminal Space and fails to commence such repairs within thirty (30) days after receipt of notice thereof from the Port Authority, or, if such repairs cannot be completed within thirty (30) days, to commence such repairs during the thirty (30) day period and continue to perform such repairs in a diligent and timely manner until completed; or

(12) The Operator shall fail to keep, perform and observe any other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within five (5) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Operator shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice, and diligently continues and such performance without interruption to completion); provided, however, that a breach or violation by Operator of its obligations hereunder to comply with any law shall be subject to Section 9(d) of this Agreement.

Upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Port Authority may by written notice to the Operator terminate this Agreement, such termination to be effective upon the date specified in such notice, which date shall not be less than (i) thirty (30) days after the giving of such notice, or (ii) if any such Event of Default would cause the Port Authority to be in breach or default under any contractual or other obligation if thirty (30) days is allowed to expire after the giving of such notice, then on such earlier date which shall be five (5) business days earlier than the date by which the Port Authority must have the occurrence of the Event of Default remedied or cured in order for the Port Authority not to be in such breach or default.

(d) If any of the events enumerated in paragraph (c) of this Section shall occur prior to the Commencement Date, the Port Authority, upon the occurrence of any such event, or at any time thereafter during the continuance thereof may, by forty eight (48) hours' notice, cancel this Agreement, such cancellation to be effective upon the date specified in such notice.

(e) No waiver by either party of any default on the part of the other party in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the other party shall be or be construed to be a waiver by such party of any other or subsequent default in performance of any of the said terms, covenants and conditions.

(f) 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 either party would have at law or in equity as a consequence of any breach of this Agreement by the other party, and the exercise by the other party of any right of termination shall be without prejudice to any other such rights and remedies.

Section 23. Survival of the Obligations of the Operator Upon Termination

(a) In the event that this Agreement shall be terminated in accordance with its terms, all of the obligations and liabilities accrued by either party prior the effective date of termination shall survive such termination. Upon such termination, the amount or amounts of damages or deficiency shall become due and payable to the party owed such amount(s) to the same extent and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place, and, notwithstanding anything to the contrary stated herein, neither party waives any rights it may have against the other party by contract, under law or equity, or otherwise.

(b) The parties acknowledge that under the Prior Operating Agreement, the Operator was obligated upon expiration or earlier termination of the term thereof to transfer,

convey and transfer any and all ownership rights and interests of the Operator to the Port Authority (i) that the Operator may have in the tools and parts purchased pursuant to the Equipment Purchase Agreement (as defined in the Prior Operating Agreement) and (ii) with respect to the Software (as defined in the Prior Operating Agreement). The Operator acknowledges that this is a continuing obligation under this Agreement and, accordingly, the Operator shall be obligated to effect such transfer, convey and transfer upon the expiration or earlier termination of the Term.

Section 24. Remedies Under Bankruptcy and Insolvency Codes

If an order for relief is entered or if any stay of proceeding or other act becomes effective in favor of Operator, the Port Authority's interest in this Agreement in any proceeding commenced by or against Operator under the present or any future United States Bankruptcy Code or in a proceeding which is commenced by or against Operator seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, the Port Authority shall be entitled to invoke any and all rights and remedies available under such bankruptcy or insolvency code, statute or law or under this Agreement including such rights and remedies as may be necessary to adequately protect the Port Authority's right, title and interest in and to the Terminal Space or any part thereof and adequately assure the complete and continuous future performance of Operator's obligations under this Agreement. Adequate protection of the Port Authority's right, title and interest in and to the Terminal Space, and adequate assurance of the complete and continuous future performance of Operator's obligations under this Agreement, shall include all of the following requirements:

- (a) Operator shall comply with all of its obligations under this Agreement;
- (b) Operator shall continue to use the Terminal Space only in the manner permitted by this Agreement; and
- (c) if Operator's trustee, Operator or operator as debtor-in-possession assumes this Agreement and proposes to assign it (pursuant to Title 11 U.S.C. Section 365, as it may be amended) to any Person who has made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided the Port Authority to assure such Person's future performance under this Agreement, including the assurances referred to or intended by Title 11 U.S.C. Section 365, as it may be amended, and such other assurances as the Port Authority may reasonably require, shall be given to the Port Authority by the trustee, Operator or Operator as debtor-in-possession of such offer, not later than twenty (20) days before the date that the trustee, Operator or Operator as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Port Authority shall thereupon have the prior right and option, to be exercised by notice to the trustee, Operator and Operator as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Agreement upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person (including any higher or better offers made that may be made in such proceedings), less any brokerage fees, finders' fees, procuring fees, or commissions, or any similar fees or commissions which may be payable out of the consideration to be paid by such person for the assignment of

this Agreement (“**Brokerage Commissions**”). The Port Authority shall have no obligation to pay any such Brokerage Commissions. If Operator attempts to arrange such an assignment of this Agreement, then as an element of the required adequate assurance to the Port Authority, and as a further condition to Operator’s right to make such an assignment, Operator’s agreement(s) with brokers shall, to the Port Authority’s reasonable satisfaction, provide that the Port Authority shall have no obligation to pay such Brokerage Commissions if the Port Authority exercises the Port Authority’s rights under this Section 24.

Section 25. 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 either party 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 26. Expiration of Agreement

(a) The Operator covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Terminal Space on the date of the cessation of the Term, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by this Agreement including, without limitation, the provisions of subsection (d) of Section 15 hereof, entitled “*Maintenance and Repair*”, regarding the condition of the Terminal Space at the expiration or termination of this Agreement.

(b) The Operator shall have the right at any time during the Term to remove from the Terminal Space all its personal property and all property of third persons for which the Operator is responsible, and on or before the expiration or earlier termination of the Term it shall remove all of the same from the Terminal Space, repairing all damage caused by any removal. If the Operator shall fail to remove such property on or before the termination or expiration of the Agreement, 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, however, that the Port Authority shall have given the Operator twenty (20) days’ written 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 the Operator to the Port Authority, with any balance remaining to be paid to the Operator; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Operator shall promptly pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, the Operator 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. Notwithstanding the foregoing, Operator shall not indemnify nor hold harmless the Port Authority, its Commissioners, officers, agents, employees or contractors or subcontractors for their respective willful misconduct or gross negligence.

Section 27. Bareboat Charter Agreement - Co-terminous Agreements

Simultaneously with the execution of this Agreement, the Port Authority and the Operator are entering into the Bareboat Charter Agreement, it being the intention of the parties that such agreements are to be concurrent and co-terminous. This Agreement shall not be effective unless and until the Operator and the Port Authority have duly executed and delivered the Bareboat Charter Agreement, the satisfaction of which requirement, accordingly, shall be a condition precedent to the effectiveness of this Agreement. Similarly, the Bareboat Charter Agreement shall provide that it shall not be effective unless and until the Port Authority and the Operator have duly executed and delivered this Agreement, the satisfaction of which requirement shall be a condition precedent to the effectiveness of the Bareboat Charter Agreement. Notwithstanding anything in this Agreement or the Bareboat Charter Agreement to the contrary, the termination or expiration of this Agreement shall operate to constitute an expiration or termination of the Bareboat Charter Agreement and the expiration or termination of the Bareboat Charter Agreement shall operate to constitute an expiration or termination of this Agreement.

Section 28. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port Authority or the Operator, 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 officer or representative at its office during regular business hours; or (iii) if directed to the Operator, delivered at any time to the attention of Gregory J. Brayman, Manager; or (iv) forwarded to such party, officer or representative at the office by registered or certified mail, return receipt requested, first-class postage prepaid, or delivered to such party at such address by "Federal Express" or similar reputable overnight courier service.

Until further notice, (i) the Port Authority hereby designates its Executive Director as its officer or representative upon whom notices and requests may be served, and the Port Authority designates its offices at 225 Park Avenue South, New York, New York 10003 as the office where notices and requests may be served, and (ii) Operator hereby designates Gregory J. Brayman, its manager, as its officer or representative upon whom notices and requests may be served, and designates its office, the address of which is set forth in the first page of this Agreement, as its offices where notices and requests may be served. The Port Authority agrees for informational purposes to send a copy by regular first class mail of all such notices and requests to the Operator's counsel at the following address: Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Attention: Merrill B. Stone, Esq. but failure on the part of the Port Authority to send the informational copy shall not however be or be deemed to be a breach of this Agreement, or impair or affect the validity of the notice or request actually given to the Operator.

(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 29. General

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

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

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

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

(4) If the Operator is a limited liability company, its obligations shall be performed and its rights shall be exercised only by its managers, officers and employees;

(5) None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Operator 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 Terminal Space with its consent.

(b) If more than one individual or other legal entity is the Operator 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 Terminal Space the Operator 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) The Operator's representative, hereinbefore specified in this Agreement (or such substitute as the Operator may hereafter designate in writing), shall have full authority to act for the Operator in connection with this Agreement and any things done or to be done hereunder, and to execute on the Operator'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) All payments required of the Operator by this Agreement shall be made by mail to the Lockbox, or to such other address as may be substituted therefor. All payments required of the Port Authority by this Agreement shall be made, at Operator's option, by mail to the Operator's address for notices or by wire transfer to a bank account designated by Operator from time to time.

(g) This Agreement does not render either party the agent or representative of the other party for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.

(h) As used in this Agreement, 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, catch basins, storm grates, storm drains, 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. The phrase "utility, mechanical, electrical and other systems" shall specifically exclude any underground utilities, including storm water underground utilities.

(i) All designations of time herein contained shall refer to the time-system then officially in effect in the municipalities wherein the Terminal Space is located.

(j) As used in this Agreement, "Term" shall include any extension of the Term under this Agreement made by written agreement, and "Manager of the Terminal Space" or "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager or in the Superintendent of the Terminal Space by this Agreement; but until further notice from the Port Authority to the Operator, it shall mean the General Manager (or the Acting General Manager) of the New Jersey Marine Terminals with respect to the portion of the Terminal Space located in New Jersey and General Manager (or the Acting General Manager) of the New York Marine Terminals for the time being, or his or her duly designated representative or representatives with respect to the portion of the Terminal Space located in New York.

(k) 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.

(l) This Agreement shall be subject and subordinate to all mortgages which may now or hereafter affect the Terminal Space, and to all renewals, modifications, consolidations, replacements and extensions thereof, and although the provisions of this Section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Operator, the Operator shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this paragraph (l) as the Port Authority may request.

(m) The Operator is not acquiring an ownership interest in the Terminal Space under this Agreement. Capital expenditures in connection with the Terminal Space have been, or are expected to be made, in whole or in part by the Port Authority from "exempt Terminal Space bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986, as amended) issued by the Port Authority from time to time (such capital expenditures are hereinafter in this paragraph called the "**Property**"). The Operator hereby irrevocably elects not

to claim for purposes of federal, state or local taxation of income any depreciation or investment credits, for which it may be eligible with respect to the Property. The Operator further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under this Agreement, and as a condition of any permitted sale or assignment of the interest of the Operator under this Agreement, every successor in interest shall furnish an executed irrevocable election in the form of the immediately preceding sentence to the Port Authority. The foregoing shall not grant or be deemed to grant to the Operator the right to sell or assign, in any manner, its interest under this Agreement.

(n) This Agreement may not be recorded.

(o) It is understood that the election set forth in paragraph (m) of this Section 29 shall not apply to any personal property owned by the Operator removable without material damage to the Terminal Space pursuant to this Agreement which is installed by the Operator in or on the Terminal Space and which shall be deemed to be and remain the sole property of the Operator.

(p) Unless otherwise specified, whenever in this Agreement the consent of the Port Authority is required to be obtained, the determination as to the giving of the consent shall not be made in an arbitrary and capricious manner.

(q) This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York applicable to contracts made, and to be performed solely within, such state, without regard to choice of law principles that would require the application of the laws of any other jurisdiction. The Operator irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts in the State of New York (in the Southern District of New York).

(r) Neither the Port Authority nor the Operator shall be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by the party to be charged therewith, and then only to the extent specifically set forth therein. A waiver in one specific event shall not be deemed to apply either as a waiver or bar to any right or remedy stemming from a subsequent event.

Section 30. Terminal Space

(a) The Port Authority shall provide the Terminal Space to the Operator in its presently existing "as is," "where is" condition, without any representations or warranties of any kind whatsoever, and the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the Terminal Space for the Operator's use.

(b) The Operator 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 Terminal Space or the suitability thereof for the operations permitted on the Terminal Space by this Agreement. The Operator, prior to the execution of this Agreement, occupied the Terminal Space pursuant to the Prior Operating Agreement and upon entering into the Prior Operating Agreement confirmed that it found the same to be suitable and satisfactory for the operations of the Operator contemplated and permitted under the Prior Operating

Agreement and, upon entering into this Agreement re-confirms that the Terminal Space is suitable and satisfactory for its operations under this Agreement. Without limiting any obligation of the Operator to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Operator agrees that no portion of the Terminal Space 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 the Operator, so that there is a likelihood of injury or damage to life or property, and the Operator further agrees that before any use it will promptly correct any such unsafe or improper condition.

(c) The Port Authority shall not be liable to the Operator for injury or death to any person or persons whomsoever, or for damage to any property whatsoever at any time in the Terminal Space, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, ice, gas, steam, or electricity, whether the same may leak into, or flow from any part of the Terminal Space or from any other place or quarter. Notwithstanding the foregoing, each of the Port Authority and its officers, agents, employees and contractors shall at all times remain liable for its willful misconduct and/or gross negligence.

Section 31. Force Majeure

(a) Neither the Port Authority nor the Operator shall be liable for any failure, delay or interruption in performing its respective obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, subject to the provisions of paragraph (k) of Section 19, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, the Operator or their respective contractors or subcontractors), embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior or applicable 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. Further, neither party shall be liable unless the failure, delay or interruption shall result from failure on the part of such party to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption. Notwithstanding the foregoing, in no event shall the inadequacy of financial resources required in any circumstances constitute force majeure or causes or conditions beyond the control of either party hereunder.

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

(c) No abatement, diminution or reduction of any charges payable by the Operator or the Port Authority shall be claimed by or allowed to the Operator or the Port Authority 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 condition beyond the control of the other party, nor shall this Agreement be affected by any such cause or condition.

Section 32. Brokerage

The Operator and the Port Authority each represents and warrants that no broker has been engaged, hired or contracted by it in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission by it in connection therewith. The Operator and the Port Authority each shall indemnify and save the other harmless of and from any and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever who allege to have acted for the Operator or the Port Authority, as the case may be, for services in connection with the negotiation and execution of this Agreement.

Section 33. Non-Liability of Individuals

No Commissioner, affiliate, director, manager, member, officer, agent or employee of either party to this Agreement shall be held personally liable to the other party under any term or provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach thereof.

Section 34. Services

(a) The Port Authority shall be under no obligation to supply the Operator 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. The Operator shall be responsible, at its sole cost and expense, for the obtaining and providing of all utilities and other services necessary for the operation of the Terminal Space.

(b) The Operator shall promptly pay all utility bills with regard to the Terminal Space; provided, however, Operator may withhold payment if there is a bona fide dispute; and provided, further, Operator may not withhold payment in the event such nonpayment prevents Operator from complying with the terms of this Agreement.

(c) The Operator agrees to maintain the enclosed portions of the Terminal Space, if any are present on the Terminal Space, at a sufficient temperature, or to bleed pipes, so that the plumbing, fire-protection and sprinkler systems will not be damaged by reason of low temperatures.

(d) Subject to Section 31, no failure, delay or interruption in any water or gas service, whether supplied by the Port Authority or by others, shall relieve or be construed to relieve the Operator of any of its obligations hereunder, or grounds for any claim by the Operator for damages, consequential or otherwise.

(e) Without in any way affecting the obligations of the Operator elsewhere stated in this Agreement, the Operator shall, subject to the provisions of Section 15 hereof entitled "*Maintenance and Repair*", 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), whether master meters or not, are located at or on the Terminal Space.

Section 35. Right of Termination - Ownership and Control

(a) The Operator hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that it is a limited liability company existing under the laws of the State of New York, that a true and accurate copy of its operating agreement is attached hereto as "Exhibit D" and that the requisite limited liability company consents to enter into this Agreement have been obtained.

(b) The Operator recognizes the fact that a change in Control (as defined in Section 17 hereof), entry into any management, services agreement or similar type of agreement for operations on the Terminal Space, or any other act or transaction involving or resulting in a change with respect to the identity of the parties in Control of the Operator or the Terminal Space, or the degree thereof (except as provided in Section 17), is for practical purposes a Transfer or disposition of the rights obtained by the Operator through this Agreement. The Operator further recognizes that because of the nature of the obligations of the Operator hereunder, the qualifications and identity of the Operator and its security holders are of particular concern to the Port Authority. The Operator 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 the Operator for the faithful performance of all obligations and covenants hereunder. Therefore, the Operator represents and agrees for itself, its present owners and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority (except if expressly permitted by Section 17), there shall be no Transfer of any securities in the Operator by its present owners to any other Person; nor shall the present owners suffer any transfer of such securities to be made; nor shall there be or be suffered to be made by the Operator or by any owner of securities therein, any other change in the ownership of such securities or in the relative distribution thereof, or with respect to the identity of the parties in Control of the Operator or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional new securities or classification of securities or otherwise. The Operator further represents and agrees for itself and its present owners, and any successor in interest thereof, respectively, that, subject to compliance with Section 17 hereof, the direct ownership and Control of the Operator shall be and remain as represented in paragraph (a) of this Section.

(c) The Operator acknowledges the Operator's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Operator with the provisions contained in this Section shall be and be deemed an Event of Default under Section 22 of this Agreement, and the Port Authority shall have the right to terminate this Agreement and the Term hereunder pursuant to and in accordance with the provisions of said Section 22.

(d) 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.

(e) The phrase “direct or indirect beneficial ownership” shall include without limiting the generality thereof the direct or indirect power through contract, arrangement, understanding, relationship or otherwise to dispose of or to direct the disposal of, or to vote or to direct the voting of, any voting security of an entity.

(f) The term “security” shall include any stock, any limited liability company interest, any bond which carries voting rights, or rights or options to subscribe to, purchase, convert or transfer into or otherwise acquire equity securities, or any other obligation of an entity the holder of which has any voting rights including but not limited to the right to vote for the election of members of the board of directors or board of managers of said entity and shall include any security convertible into a voting security and any right, option or warrant to purchase a voting security.

(g) The Operator shall promptly advise the Port Authority of any change in the representations made in this Section 35 not later than fourteen (14) days thereafter.

Section 36. Prior Operating Agreement.

(a) The parties hereby acknowledge that (i) the Terminal Space was occupied by the Operator pursuant to the Prior Operating Agreement which, as extended, expired by its terms on September 30, 2013, (ii) the Operator remained in possession of the Terminal Space continuously and uninterrupted during the term of the Prior Operating Agreement through to the Execution Date, and (iii) at no time from the commencement of the term of the Prior Operating Agreement to the Execution Date did the Operator surrender the Terminal Space to the Port Authority.

(b) The terms, provisions and conditions of the Prior Operating Agreement shall apply to the use and occupancy of the Terminal Space and the rights and obligations of the parties thereto prior to the Commencement Date. From and after the Commencement Date, the terms, provisions and conditions of this Agreement shall apply to the use and occupancy of the Terminal Space and the rights and obligations of the parties hereto.

(c) Neither party shall, by virtue of this Agreement, be or be deemed to be released or discharged from any obligations or liabilities whatsoever accruing or arising under the Prior Operator Agreement to the extent set forth in the Prior Operating Agreement.

(d) All references in this Agreement to the condition of the Terminal Space at the Commencement Date shall mean and be deemed to mean the condition of the Terminal Space as it existed at the beginning of the term under the Prior Operating Agreement. Further, the obligation of the Operator to remove any alterations or improvements, etc. made during the Term hereunder shall apply and pertain to any alterations and improvements, etc. made during the term of the Prior Operating Agreement, as well as to alterations and improvements made by the Operator during the term of this Agreement.

Section 37. Port Authority Costs Following Termination

Notwithstanding anything appearing to the contrary in this Agreement, in the event the Port Authority exercises its right of termination pursuant to Section 22(c) of this Agreement, in addition to any rights of the Port Authority stated in Section 22, the Operator shall

be obligated to pay to the Port Authority an amount equal to damages reasonably incurred by the Port Authority in connection with such termination including, without limitation, to the extent applicable, the collection of all amounts due to the Port Authority, and repairing and altering of the Terminal Space and putting the Terminal Space in working order in the event that the Operator has failed to maintain the Terminal Space in accordance with Section 15 hereof entitled "*Maintenance and Repair*" or any other provision of this Agreement.

Section 38. Audit Fee

In the event that upon conducting an examination and audit under the provisions of the Agreement (and as it may be hereinafter amended), the Port Authority determines that unpaid amounts are due to the Port Authority by the Operator or that the Profit-and Loss Reports or other reports misstated the amount of revenues, costs or expenses (the "**Audit Findings**"), the Operator shall to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Operator under this Agreement or otherwise. 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 the Operator under the Agreement. This provision shall not apply to CFC's described in Section 3(b)(vi)(2).

Section 39. Waiver of Jury Trial

Each party hereby waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the other party against it in respect of the Agreement and/or in any action that may be brought by the other party to recover damages or other sums due and owing under this Agreement.

Section 40. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute the agreement of the parties.

Section 41. Environmental Responsibilities

(a) As used in this Agreement, the following terms shall have the meanings set forth below:

(1) "**Environmental Damage**" and "**Environmental Damages**" shall mean any one or more of the following: (i) the presence on, about, under or migrating from the Terminal Space of any Hazardous Substance (a) whose presence occurred during the Term which definition of "Term" shall for purposes of this Section include periods prior to the Operator's use of the Terminal Space under this Agreement or the Prior Operating Agreement during which the Operator was in occupancy of the Terminal Space or (b) resulting from any act or omission of the Operator or Operator's Representative (as defined herein) during the Term,

and/or (ii) the disposal, release or threatened release of any Hazardous Substance on, about, under or migrating from the Terminal Space during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space during the Term, and/or (iii) the presence of any Hazardous Substance on, about or under other property at the Terminal Space or elsewhere as a result of the Operator's use and occupancy of the Terminal Space or a migration of a Hazardous Substance from the Terminal Space during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space during the Term, and/or (iv) any personal injury, including wrongful death, property damage and/or natural resource damage arising out of or related to any such Hazardous Substance, and/or (v) the violation of any Environmental Requirements pertaining to any such Hazardous Substance, the Terminal Space and/or the activities thereon.

(2) **"Environmental Requirement"** and **"Environmental Requirements"** shall mean all applicable present and future laws, statutes, enactments, resolutions, regulations, rules, treaties, ordinances, codes, licenses, appropriate and applicable guidance documents, permits, orders, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all Governmental Authorities and all applicable judicial, administrative and regulatory decrees (consensual or otherwise, copies of which have been provided to Operator prior to the date hereof in the case of any such decrees already in existence and which are otherwise provided to Operator during the Term of this Agreement in the case of such decrees that come into existence after the Commencement Date), common law standards, judgments and orders relating to the protection of human health or the environment, the foregoing to include, without limitation, provided that for purposes of the Initial Environmental Survey (as defined herein), all references in this definition to "during the Term" shall be deemed to mean "as of the date of the Initial Environmental Survey"):

(i) All requirements pertaining to reporting, licensing, permitting, investigation, remediation and mitigation of the emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land surface or subsurface strata, the sewer or septic system, or relating to the manufacture, processing, distribution, generation, use, treatment, storage, disposal, transport or handling of Hazardous Substances, including all requirements relating to the preparation and management of Spill Prevention Control and Countermeasure Plan;

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

(iii) All requirements pertaining to the protection of natural resources, species or ecological amenities; and.

(iv) Requirements pertaining to storm water management for the Terminal Space to the extent applicable to the use and occupancy of the Terminal Space under this Agreement by the Operator or Operator's Representative after the Commencement Date, including any such requirements arising under (A) the NYSDEC Multi-Sector General Permit GP12-001 effective October 1, 2012 as amended, as respects the portions of the Terminal Space situated in New York, and (B) the New Jersey Department of Environment Protection Basic Industrial Stormwater General Permit ("5G2"), as respects the portions of the Terminal Space situated in New Jersey, (collectively, the "Stormwater Permits"), including preparation and

management of requisite “storm water pollution prevention plans” and any “best management practices” as such terms are defined therein.

(3) **"Hazardous Substance"** and **"Hazardous Substances"** shall mean and include, without limitation, any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, special nuclear byproduct material, asbestos in any form, asbestos containing material, any chemicals, materials, waste or other substance that are listed, designated, classified, determined to be or defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “pollutants,” “contaminants,” “toxic substances,” “toxic pollutants,” “hazardous constituents,” or words of similar import, under or pursuant to any Environmental Requirement and inclusive of any mixture or solution thereof, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), chemicals known to cause cancer or reproductive toxicity, petroleum, petroleum products and petroleum based derivatives, and other substances which have been or in the future shall be declared to be hazardous or toxic, or the regulation or removal of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have been or in the future shall be restricted, prohibited, regulated or penalized by any Environmental Requirement. When an Environmental Requirement defines any of the foregoing terms more broadly than another, the broader definition shall apply.

(4) **"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.

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

(6) **"Licensed Site Remediation Professional"** or **"LSRP"** shall mean a person acting in his or her capacity as an LSRP pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. (**"SRRA"**).

(b) (1) Without limiting the generality of any of the other terms and provisions of this Agreement, but subject to the exceptions provided in this Section 41, including Subsection (b)(2), below, the Operator hereby expressly agrees to assume all responsibility for, any and all risks of any kind whatsoever caused by, arising out of or in connection with, the use and occupancy of the Terminal Space by the Operator or Operator's Representative from and after the Commencement Date including, without limitation, all Environmental Requirements and all Environmental Damages. Except for Environmental Damages arising from the sole gross negligence or willful misconduct of the Port Authority, or any matters for which the Port Authority is expressly responsible under this Section 41, the Operator shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, agents and employees from and against all such risks and responsibilities and all Environmental Damages and Environmental Requirements (including, without limitation, all losses, damages, judgments, fines, penalties, payments in lieu of penalties, settlements, LSRP

expenses, and legal expenses incurred by the Port Authority in connection therewith). If so directed, the Operator shall at its own expense defend any suit based upon the foregoing, and in handling such suit 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. Subject to Section 36 hereof, entitled "*Prior Operating Agreement*", and subsection (b) of Section 9 hereof, entitled "*Governmental and Other Requirements*", Operator shall not be liable for the condition of (including, without limitation, the presence of Hazardous Substances at, on, under or emanating from) the Terminal Space under this Section existing or created prior to the Commencement Date, except as expressly provided otherwise in this Agreement, e.g., if the Operator exacerbates such condition. Nothing in this Agreement constitutes an amendment to or modification of the Prior Operating Agreement or a discharge or release of Operator's responsibilities and/or liabilities incurred thereunder.

(2) It is hereby agreed and understood that, except as set forth in Subsections (i), (ii) and (iii) and of this Section 41(b)(1), and 41(b)(2) above, the Operator shall not be responsible for an "Existing Condition", which shall be defined as Analyzed Items in the soil and ground water for all portions of the Terminal Space identified in the Initial Environmental Survey; provided, however, that notwithstanding any other term or provision of this Agreement, an "Existing Condition" shall in no event include any Hazardous Substance whose presence in, on or under the Terminal Space was caused by or resulted from (a) the use and occupancy of the Terminal Space by the Operator or Operator's Representative from and after the Commencement Date; (b) the performance of any work by any of the above persons, or (c) the acts or omissions of the Operator or Operator's Representative.

The methodology to be used for the purpose of this Section to determine whether an Existing Condition is present in locations not actually sampled for Analyzed Items in, on or under the Terminal Space shall be, for ground water, straight line interpolation methodology utilizing principles of hydrogeologic interpretation, and for soil, the EPA geostatistical software system applicable at any particular time and, notwithstanding any other evidence to the contrary, including without limitation anything contained in the reports constituting a part of the Initial Environmental Survey.

(i) The Operator shall be responsible for the remediation and removal of an Existing Condition, and for associated fines and penalties, to the extent that any Existing Condition is exacerbated by, and the cost of its remediation and removal is increased as a direct result of, Operator's unreasonable failure to provide access to the Terminal Space at any time to any prior occupant of the Terminal Space or the Port Authority or its designees or others for remediation, removal or cleanup of the same.

(ii) Notwithstanding any other term or condition of this Agreement, it is hereby understood and agreed that the Operator's obligations under this Agreement for the remediation and removal of Hazardous Substances shall not be nor be deemed to be affected in any way whatsoever in the event that the Existing Condition, or any portion thereof, is or will be remediated or removed by the Operator in whole or in part in the fulfillment of any of the Operator's obligations under this Agreement, whether due to the fact that the

Operator cannot remediate or remove one or more Hazardous Substances for which it is responsible to remediate or remove without also remediating or removing one or more Analyzed Items for which it is not responsible, or due to cost or expedience or for any other reason; and in no event shall the Port Authority have any responsibility hereunder to participate in, or share in the cost of, any such remediation or removal, provided that nothing in this Agreement shall prevent Operator from application to the applying to the regulatory authority having jurisdiction over such remediation for a determination that such remediation of Hazardous Substances for which Operator is responsible hereunder is technically infeasible or not cost effective and, if the regulatory authority decides that such application is meritorious, then the Operator shall be understood to have complied with its remedial obligation.

(iii) Operator shall be responsible for the remediation and removal of any Existing Condition (including any such remediation or removal in connection with NYSDEC Open Spill 06-12595 reported October 4, 2007) to the extent that Operator has exacerbated or interfered with any Existing Condition that Operator had actual or constructive knowledge of and such exacerbation or interference has increased the cost of such remediation or removal. Operator shall be deemed to have knowledge of any condition that is identified in the Initial Environmental Survey (defined herein).

(3) On or after the Commencement Date, the Port Authority shall cause to be performed at its sole cost and expense by an environmental professional selected by the Port Authority that is reasonably acceptable to the Operator, a baseline environmental assessment of Environmental Damages (if any) on or from such Terminal Space and deliver to Operator a report of such environmental professional describing in reasonable detail the results of such assessment and identifying any Environmental Damages present on such Terminal Space (such report is hereinafter referred to as the “**Terminal Space Baseline Environmental Assessment Report**”), subject to the following condition: The Terminal Space Baseline Environmental Assessment Report shall be performed in accordance with an agreed upon methodology and scope reasonably acceptable to the Operator. Upon Operator’s receipt thereof, if the Terminal Baseline Environmental Assessment Report is acceptable the Operator, then it shall be referred to as the “**Initial Environmental Survey**” for purposes of this Section 41. In the event the Terminal Space Baseline Assessment Report is unacceptable to Operator in its reasonable opinion, Operator shall have the right, at its sole cost and expense, to cause to be performed by an environmental professional selected by Operator such additional assessment or investigation work as to the Terminal Space as it deems necessary and to produce and deliver to the Port Authority a written report of the findings of such additional assessment or investigation (such report is hereinafter referred to as the “**Operator’s Supplemental Terminal Space Baseline Assessment Report**”). Provided that such Operator’s Supplemental Terminal Space Baseline Assessment Report is not unacceptable to the Port Authority in its reasonable judgment, then the Terminal Space Baseline Assessment Report, as supplemented by Operator’s Supplemental Terminal Space Baseline Assessment Report, if any, will be collectively referred to herein as the “**Initial Environmental Survey**”.

(c) In addition to and without limiting the generality of the obligations of the Operator set forth above and elsewhere in this Agreement, the Operator shall at its sole cost and expense, upon notice from the Port Authority, promptly take all actions to completely remove and remediate: (1) any Hazardous Substance present on, about, under or migrating from the Terminal Space whose presence occurred during the Term or resulted from any act or omission

of the Operator or Operator's Representative (as defined herein) during the Term, (2) any Hazardous Substance disposed of or released on the Terminal Space during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space during the Term, and (3) any Hazardous Substance present on, about or under other property at the Terminal Space or elsewhere whose presence resulted from the Operator's use and occupancy of the Terminal Space or which migrated from the Terminal Space to such other property during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Terminal Space during the Term, which any Governmental Authority or any Environmental Requirements or any violation thereof require to be removed and/or remediated, or which in the sole opinion of the Governmental Authority and Port Authority are necessary to mitigate Environmental Damages (which determination in the case of the Port Authority shall not be made in an arbitrary or capricious manner). Such removal and remediation 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 cleanup, remediation, mitigation, containment, operation, maintenance, monitoring or restoration work. Any soil remediation may be to applicable limited restricted and/or restricted (nonresidential-industrial) soil standards set forth in the applicable Environmental Requirements and may utilize institutional and engineering controls approved in advance under the Port Authority's TCAP process; provided, however, that none of the foregoing controls may either (x) prohibit or limit the use of the Terminal Space for the purposes set forth in Section 7 hereof during the Term or prospectively or (y) impair the Port Authority's ability to enter into an agreement with a successor occupant to the Terminal Space upon the expiration of the Term.

To the extent the Port Authority authorizes the use of institutional controls as part of any remedial action, the Operator further agrees to execute any declaration of environmental restrictions, deed notice, remedial action, permit application, or other document necessary to effectuate the implementation or recordation of institutional or engineering controls, as applicable, and, in the event institutional or engineering controls are placed on the Terminal Space, Operator shall be fully responsible for and shall (i) maintain such controls, (ii) conduct any compliance monitoring as required under all applicable Environmental Requirements, (iii) obtain any permits in connection with such controls required by applicable Environmental Requirements, (iv) establish all required funding sources in connection with the maintenance of such institutional or engineering controls, and any permits associated therewith, and (v) file with applicable Governmental Agencies all applicable certifications and reports. The Operator agrees that with respect to any of its obligations set forth above in this paragraph it will not make any claim against the Port Authority and/or the City of Newark and/or the State of New Jersey for contribution under any Environmental Requirement. Notwithstanding the foregoing, the Operator shall not be responsible for, or be precluded from a making claim against a third party for contribution with respect to, any Hazardous Substance that migrates onto, about, or under the Terminal Space from off the Terminal Space, except as provided in paragraph (e) of this Section. Any actions required under this paragraph shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the Terminal Space. The Operator shall promptly provide to the Port Authority all copies of test results and reports generated in connection with such actions. Promptly upon completion of such investigation and remediation, the Operator shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property. Upon the completion of any such remediation, the Operator shall provide to the Port Authority a copy of either a No Further Action letter,

Response Action Outcome issued by an LSRP, or such similar or equivalent final remediation document.

(d) Without limiting any other of the Operator's obligations under this Agreement, the Operator shall provide the Manager of the Terminal Space at the cost and expense of the Operator with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, and as may be necessary for the preparation of any application, registration, statement, certification, notice, non-applicability affidavit, communication, negative declaration, clean-up plan or other information, documentation or communication required by the Environmental Requirements, and the Operator shall promptly swear to, sign or otherwise fully execute the same. Prior to retaining or dismissing any consultant or LSRP in connection with remediation of the Terminal Space, the Operator shall give notice of such retention or dismissal to the Port Authority. The Operator shall comply with any and all timeframes set forth in any Environmental Requirements in connection with the filing of remediation documents and/or completion of remediation. The Operator agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Operator and at the Operator's cost and expense in the event Operator fails to sign and file same, after reasonable notice to Operator and Operator's failure to cure. Further, the Operator agrees unless directed otherwise by the Port Authority, to provide the Port Authority Manager of the relevant facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Operator to a Governmental Authority at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Operator promptly after the same are provided to the Operator with respect to any Environmental Requirements.

(e) For purposes of this Section 41, "**Operator's Representative**" shall mean its members, managers, officers, employees, agents, representatives, contractors, customers, guests, invitees, or other persons who are doing business with the Operator or are on the Terminal Space with the Operator's consent, or are on the Terminal Space without Operator's consent but due to Operator's failure to undertake adequate security measures.

(f) Without limiting the Port Authority's remedies that it may have under this Agreement or at law or in equity, the Port Authority shall have the right during the Term and subsequent to the termination or expiration thereof to such equitable relief, including restraining injunctions and declaratory judgments, as may be required to enforce compliance by the Operator with its environmental obligations under this Section 41. In the event the Operator fails to comply with or perform any of its obligations hereunder, the Port Authority at any time during the Term of this Agreement and subsequent to the termination or expiration thereof may elect (but shall not be required) to perform such obligations and the Operator shall pay to the Port Authority upon demand all of its costs thereof.

(g) Notwithstanding any other provision of this Section, but without in any way modifying or amending the terms and provisions of the Prior Operating Agreement, the Operator's obligations, undertakings and responsibilities under this Section 41 shall not apply to any Environmental Damage involving any Hazardous Substance which migrated or shall migrate onto the Terminal Space prior to or during the Term (hereinafter called the "**Migrated**

Hazardous Substance"), except that Operator shall be responsible for such Migrated Hazardous Substance if any clean-up, remediation or other response action, or indemnification or other action under this Section 41 is required with respect to such Environmental Damage as a result of (1) any violation by the Operator or the Operator's Representative of any Environmental Requirements pertaining to such Migrated Hazardous Substance, the Terminal Space and/or the activities thereon; (2) the failure by the Operator or the Operator's Representative to observe and comply with any Port Authority requirements, directives and procedures (which shall not be arbitrary or capricious) regarding any Hazardous Substance on, about or under the Terminal Space, including specifically those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities (which agreements have been provided by the Port Authority to the Operator or are subsequently provided to Operator in the future), or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Terminal Space and submitted to the Operator; and/or (3) any act or omission of the Operator or the Operator's Representative with respect to such Migrated Hazardous Substance.

(h) The Operator agrees that in any legal action or proceeding in which the Port Authority and the Operator are opposing parties the Operator shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (1) whether the presence of any Hazardous Substance on, about, under or migrating from the Terminal Space occurred prior or subsequent to the commencement of the Term; (2) whether any Hazardous Substance disposed of or released from the Terminal Space or which migrated from the Terminal Space came to be present on, about or under the Terminal Space prior or subsequent to the commencement of the Term; and (3) whether the Operator exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated during the Term. For purposes of this Section, "burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(i) Upon expiration or earlier termination of this Agreement, Operator shall remediate, in accordance with its obligations hereunder, any Analyzed Item meeting the definition of a "New Analyzed Item" pursuant to Section 41(1) below if and to the extent that such Analyzed Item is present in levels exceeding an applicable regulatory standard requiring remediation under Environmental Laws.

(j) (1) Without limiting any other term or provision hereof, all the obligations of the Operator under this Section 41 that by their nature cannot be performed or completed during the Term shall survive the expiration or termination of the use/occupancy of the Terminal Space or any portion thereof;

(2) Following expiration of the Term as provided in Section 2 of this Agreement or, in the case of an earlier termination of this Agreement, within two (2) months after the effective date of such expiration or termination, as the case may be, the Operator shall at its sole cost and expense cause a Phase I Environmental Site Assessment Report be completed and, with respect to any Recognized Environmental Condition (as defined pursuant to ASTM 1527-05) identified therein, if recommended by the consultant performing such assessment, shall sample and test the soil and ground water in, on and under the Terminal Space in such locations as are: (i) recommended by such consultant in order to address such

Recognized Environmental Conditions in accordance with generally accepted and customary standards, methods, protocol and procedures; or (ii) selected by the Port Authority in its sole discretion from among the same sampling locations and depths as were sampled in the Initial Environmental Survey.(such sampling and testing of the soil and groundwater (the “**Exit Baseline**”). All such sampling, testing and the preparation of any associated report shall be performed by a consultant that is reasonably acceptable to the Port Authority and a New Jersey State certified laboratory under the supervision of a New Jersey LSRP, and said sampling and testing shall be in compliance with all Environmental Requirements.

(3) The Exit Baseline and the test results therefrom may be used by the Operator to evidence that a Hazardous Substance in, on or under the Terminal Space occurred either before the Commencement Date or after the date that the Operator shall have surrendered the Terminal Space to the Port Authority.

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

(k) The results of sampling from the Exit Baseline, as applicable, shall be compared against the Initial Environmental Survey to determine if (i) there are any Analyzed Items (other than breakdown products or daughter compounds of Analyzed Items from Existing Conditions) present at the Terminal Space that either were not present at the Terminal Space prior to the Commencement Date or (ii) are present in levels significantly higher than were reported in the Initial Environmental Survey (collectively, “**New Analyzed Items**”). For purposes of the foregoing sentence, the level of an Analyzed Item shall be deemed “significantly higher” than that reported in the Initial Environmental Survey if and only if the concentrations of such Analyzed Item are sufficiently high as to be reasonably indicative of a release of Hazardous Substances after the Commencement Date and reasonably could not have the resulted instead from natural processes of chemical degradation, the migration of Analyzed Items through soil or groundwater media, or other circumstances involving the fate and transport of Existing Conditions since before the Commencement Date. For purposes of this Section 41, Operator shall be deemed to have introduced to the Terminal Space (and shall therefore have responsibility for the same under applicable provisions of this Section 41) any Analyzed Item meeting the foregoing definition of a New Analyzed Item; provided, however, that an Analyzed Item shall not constitute a “New Analyzed Item” if Operator proves by a preponderance of the evidence that such Analyzed Item is an Existing Condition. Operator shall be responsible for, at its sole cost and expense, to the reasonable satisfaction of the Port Authority and in compliance with all Environmental Requirements, the remediation of all New Analyzed Items.

(l) With respect to petroleum bulk storage tanks at, on or under the Terminal Space, the following shall apply:

(1) Operator Responsibility for Tanks and Tank Systems. The Operator shall be responsible for all above-ground storage tanks, if any, that Operator installs or causes to be installed in or on the Terminal Space, as well as any other above-ground storage tank existing in or on the Terminal Space as of the Commencement Date (each, a “**Tank**”), and

their appurtenances, pipes, lines, fixtures and other related equipment (collectively with the Tanks, the “**Tank Systems**”). The Operator hereby agrees that title and ownership of any Tanks and Tank Systems installed after October 1, 2013 shall be and remain in the Operator, that all such Tanks and Tanks Systems required to be registered or authorized by Governmental Authorities shall be registered or permitted by the Operator in the name of the Operator as operator and owner. The Operator hereby agrees that if it chooses to continue to utilize the Port Authority registered Tanks after October 1, 2013, it shall accept the transfer of ownership of and thereafter maintain registration of such Port Authority registered above-ground storage tanks existing at the Terminal Space prior to October 1, 2013. Operator shall have no responsibility for any underground storage tanks unless Operator installs (or causes to be installed) the same at the Terminal Space, in which case all of the provisions herein applicable to Operator’s above-ground storage tanks shall be deemed to apply to any such underground storage tanks installed (or caused to be installed) by Operator. Operator shall not use in its operations any oil/water separator at the Terminal Space, including any oil/water separator in existence at the Terminal Space prior to the Commencement Date and Operator shall have no responsibility of any kind for the same under this Agreement. Operator shall not interfere with or impede the removal or closure of any Port Authority Tank or oil/water separator system or appurtenant fixtures and hereby acknowledges that the Port Authority has the right to remove or close, or cause to be removed or closed, any of the foregoing during the Term. Operator shall have no responsibility of any kind for any matters addressed in the Notice of Violation issued by the New York State Department of Environmental Conservation, dated as of October 4, 2013 (“**NOV**”), and the Port Authority be shall solely responsible for the defense of such NOV and any payment in lieu of any fine associated therewith. Operator shall have no obligation or responsibility under this Agreement for any regulatory action, remedial obligation, or costs for compliance or non-compliance of any Tanks or Tank Systems with Environmental Requirements prior to the Commencement Date.

(2) Maintenance of Tanks. The Operator agrees that it shall be solely responsible for maintaining, testing, and repairing the Tanks and Tank Systems, and reporting and recordkeeping in connection with the Tanks and Tank Systems. The Operator shall not perform any servicing, repair or non-routine maintenance to the Tanks and Tank Systems without the prior written approval of the Port Authority. In addition, the Operator, at its sole cost and expense, shall make all modifications to the Tanks and Tank Systems and take all other actions needed so that the Tanks and Tank Systems shall at all times during the term of this Agreement comply with all applicable Environmental Requirements pertaining to the same, as well as take any actions recommended by Triton Environmental, Inc. in its communications to the Operator dated March 19, 2012. In the Operator’s use and operation of the Tanks, the Operator shall not permit any Hazardous Substance releases from the Tanks and Tank Systems and, accordingly, shall take appropriate preventive measures, including installing appropriate spill and overflow devices and placing an impervious material, such as asphalt or concrete, over the ground area above or under and in the vicinity of the Tanks.

(3) Compliance with Environmental Requirements. Without limiting the generality of any other term or provision of this Agreement, the Operator shall at its cost and expense comply with all Environmental Requirements applicable to the Tanks, the Tank Systems and any Hazardous Substance releases from the Tanks and Tank Systems, including (i) any modifications or closures required thereby, (ii) testing the Tanks and registering the Tanks in the

name of the Operator as owner and operator, (iii) submitting all required clean-up plans, bonds and other financial assurances, (iv) performing all required clean-up and remediation of Hazardous Substance releases and (v) filing all reports, making all submissions to, providing all information required by, and complying with all requirements of, all Governmental Authorities pursuant to the Environmental Requirements.

(4) Leaking Tank Systems. The Operator shall remove or repair all Tanks and Tank Systems on or under the Terminal Space, to the extent required for the Operator to be in compliance with this Agreement, if such Tanks or Tank Systems are the source of a Hazardous Materials Release during the Term. Any removal of Tanks or Tank Systems shall be performed pursuant to an alteration application prepared by the Operator and submitted to the Port Authority for Port Authority Approval and in connection with such removal, the Operator shall (i) restore the Terminal Space to the same condition existing prior to the installation of the Tanks, (ii) perform such testing of the Tanks and of the soil, sub-soil and ground water in the vicinity of the Tanks as shall be required by the Port Authority and (iii) clean-up and remediate any Hazardous Materials contamination disclosed by said testing to the extent required pursuant to applicable Environmental Requirements.

(5) Remediation. Without limiting the generality of other provisions of this Agreement, the Port Authority and its designees shall have the right but not the obligation to enter upon the Terminal Space upon two (2) days' notice to Operator to conduct testing and related activities from any existing wells, to install additional wells and borings and to conduct testing and related activities therefrom and to perform such activities as shall be necessary to remediate the Existing Condition and to remove or close any Port Authority registered Tanks, registered under PBS Facility Number 2-603004, existing on the Terminal Space after October 1, 2013.

(6) Permitted Use. The use of the Port Authority registered Tanks are permitted subject to compliance with the terms of this Section, it being understood that the Port Authority may, at any time, close and or remove one or all of these Tanks at its own expense. Operator shall work with the Port Authority to transfer to Operator, and the Port Authority shall cooperate in all respects regarding such transfer, all registrations of any Tank or Tanks in existence at the Terminal Space that Operator uses for purposes of storing Hazardous Substances.

(7) Fueling Management Plan. The Operator shall be responsible for preparing and submitted a fueling management plan ("**Fueling Management Plan**") to the Port Authority, which shall relate to the transport, filling, transfer, storage and other management and use of fuel at the Terminal Space during the term of this Agreement. The Fueling Management Plan shall be approved in advance in writing by the Port Authority in accordance with the Port Authority's TCAP.

(8) Reports. After any person performs any remediation on or at the Terminal Space, the Port Authority may, but shall not be obligated to, sample and test the soil and/or aquifer of the Terminal Space or portions thereof and set forth the results of such samplings and tests in a written report, a true and accurate copy of which shall be provided to the Port Authority within fifteen (15) days after its preparation.

Section 42. Record-Keeping Obligations; Public Release of Information; Confidentiality

(a) The Operator will, for the Term of this Agreement and for three (3) years thereafter: (i) maintain books, records and accounts with respect to operations of and at the Terminal Space on a separate stand-alone basis from any other business operations of the principals of Operator and any other direct or indirect subsidiaries thereof, in accordance with generally accepted accounting principles consistently applied, 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 the Operator, at the office of the Operator or one of its agents or advisors solely for review by the Port Authority and its agents at such location, that portion of such books, records and accounts relating to operations at the Terminal Space or as may be reasonably required for the Port Authority to verify calculations relating in any way to the Operator's operation of the Terminal Space. In no event shall this provision be deemed to constitute a statute of limitations or a restriction on the Port Authority's right to commence suit against the Operator in connection with this Agreement, and the loss or destruction of documents by Operator or its agents or representatives shall not constitute a defense to any such suit.

(b) The Operator shall not, and shall cause (by way of contract and enforcement thereof) all Affiliates of the Operator not to, issue or permit to be issued any press release, advertisement, public statement or literature of any kind, or make any statements or comments through the media (including print, television or internet) which refers to the Port Authority, the Terminal Space or any of the services or obligations to be performed hereunder, without first obtaining the prior written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is any way undesirable. The term "Affiliate" means any Person that is controlled by, that controls, or that is under common control with the Operator. As used in this definition, the term "control" (including the terms controlling, controlled by and under common control with) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the person, whether through the ownership of voting securities, by contract or otherwise.

(c) Subject to Section 42(f), the Port Authority agrees that (i) all information delivered pursuant to this Agreement, including, without limitation, the documents delivered pursuant to clause (a) above, and (ii) all notes, reports and analyses prepared by the Port Authority, its representatives or its advisors in connection with their review of materials provided or made available pursuant to this Agreement, including, without limitation, the books and records and other materials provided or made available pursuant to paragraph (a) above, will, to the fullest extent permitted by applicable law, be treated confidentially and protected from disclosure by the Port Authority, including, without limitation, pursuant to any available exceptions or exemptions under the Port Authority's "Freedom of Information Policy and Procedure". If the Port Authority receives any request to disclose any of such information, documents, notes, reports, analyses, books, records or materials, it agrees to provide the Operator with prior notice of such requirement so that the Operator may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this provision.

(d) Subject to Section 42(f), the Operator shall, and shall cause all its Affiliates to, treat confidentially, and shall not, and shall cause all such Affiliates not to, disclose, all information relating to the Port Authority or the operation of the Terminal Space that has been, or in the future is, identified as confidential in writing by the Port Authority, its officers, agents, employees or representatives.

(e) Subject to Section 42(f), if a party receives any subpoena, discovery information request, legal process or judicial or governmental order under any applicable law or regulation, other than the Port Authority's Freedom of Information Policy ("**Legal Process**") compelling it to disclose any data or information which it may have acquired from the other party that is to be treated confidentially under this Section 42, it shall reasonably promptly provide the other party with written notice of such Legal Process so as to permit the other party to seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this provision.

(f) Notwithstanding anything in this Section 42 to the contrary, a party keeping or maintaining any data or information which it may acquire from the other party that is to be treated confidentially under this Section 42 shall not be required to prevent the disclosure of such data or information in response to Legal Process or otherwise, and shall not be liable for the disclosure of any such data or information which:

(i) was in the public domain at the time it was disclosed by the receiving party;

(ii) was known to the party receiving it at the time of disclosure unless its knowledge was derived from the other party, its agents or representatives;

(iii) was disclosed with the prior written approval of the other party;

(iv) the party's attorneys or accountants are required to disclose by rules of professional responsibility;

(v) the party is required to disclose pursuant to applicable law or court order; or

(vi) was developed independently by the receiving party (x) without the use of the information provided by the disclosing party and/or (y) without the use of information provided by a third Person which, to the knowledge of the receiving party, breached an obligation of confidentiality to the receiving party in providing such information.

The Port Authority shall not be required to prevent the disclosure, and shall not be liable for the disclosure, of any information which is determined in good faith by the Port Authority to be subject to disclosure and is disclosed by the Port Authority pursuant to and in accordance with the Port Authority's Freedom of Information Policy and Procedure in effect at the time of disclosure.

Section 43. Entire Agreement

This Agreement, together with all schedules and exhibits hereto, constitutes the entire agreement between the Port Authority and the Operator on the subject matter. This Agreement may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and the Operator. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in writing in this Agreement.

Section 44. OFAC Representations

(a) Operator hereby represents and warrants to the Port Authority that the Operator (i) is not, and shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Asset Control (“OFAC”) of the United States Department of the Treasury (including, but not limited to, those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order or other regulation relating to national security or foreign policy (including, but not limited to, the Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism), or other governmental action, such persons being referred to herein as “Blocked Persons” and such regulations, statutes, executive orders and governmental actions being referred to herein as “Blocked Persons Laws”, and (ii) is not engaging in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. Operator acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement.

(b) Operator covenants that during the Term of this Agreement it shall not become a Blocked Person, and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of the aforesaid covenant by Operator, the same shall constitute an event of default, and, accordingly, a basis for termination of this Agreement in accordance with Section 22 hereof entitled “*Termination*”, in addition to any and all other remedies provided under this Agreement or at law or in equity, which does not constitute an acknowledgement by the Port Authority that such breach is capable of being cured.

(c) The Operator shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including without limitation, attorney’s fees and disbursements) arising out of, relating to, or in connection with the Operator’s breach of any of its covenants, representations and warranties made under this Section 44. Upon the request of the Port Authority, the Operator shall at its own expense defend any suit based on any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its

Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respects suits against the Port Authority.

(d) The provisions of this Section 44 shall survive the expiration or earlier termination of the Term of this Agreement.

Section 45. No Presumption; Negotiated Agreement.

This Agreement (and any amendment, addendum, supplement, Exhibit or Schedule hereto) shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement or any part thereof to be drafted. Each party expressly acknowledges that it has been, or has had the opportunity to be, advised and represented by counsel in the negotiation, execution and delivery of this Agreement.

Section 46. Acknowledgement; Terms and Conditions.

The parties agree that the terms and conditions contained within this Agreement shall not be construed to set a precedent for any future agreement entered into with the Port Authority, the Operator and any other party, including an agreement between the Port Authority and Operator. In the event the Port Authority hereafter enters into a lease or other agreement with the Operator to operate the Terminal Space, neither party shall be entitled to any of the terms and conditions contained within this Agreement.

Section 47. Agreements Co-Terminous; Cross-Default

(a) The parties intend for this Agreement and the Bareboat Charter Agreement to be co-terminous such that if one of the agreements is not in force and effect the other agreement shall be deemed terminated.

(b) Notwithstanding anything to the contrary contained in this Agreement, a material default of the Operator's obligations under the provisions of the Bareboat Charter Agreement shall constitute a material default by the Operator under this Agreement, entitling the Port Authority to the rights and remedies provided to it under Section 22 of this Agreement.

Signatures appear on following page

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

ATTEST:

[Handwritten Signature]
Secretary

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

By *[Handwritten Signature]*

(Title) _____
(Seal)

ATTEST:

[Handwritten Signature]
Secretary

RED HOOK CONTAINER TERMINAL, LLC

By *[Handwritten Signature]*

Print Name *Gregory Bagner*

(Title) _____ (Manager)
(Seal)

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
<i>[Handwritten Signature]</i>	<i>[Handwritten Signature]</i>

MG/mmww

FINAL

EXHIBIT A
DESCRIPTION OF RHCT PROPERTY

EXHIBIT B

DESCRIPTION OF PORT NEWARK PROPERTY

EXHIBIT C
EQUIPMENT

RHCT

- Four (4) container cranes owned by the Port Authority
- Two (2) container cranes owned by the City of New York
- Two (2) container barges owned by the Port Authority known as the “New York” (identified with Official No. 900643) and the “New Jersey” (identified with Official No. 1033082)

PORT NEWARK

- Two (2) Liebherr Mobile Harbor Cranes

[PA TO PROVIDE - Terminal Equipment to be identified (i.e. reach stackers, top loaders, straddle carriers)]

EXHIBIT D

**Red Hook Container Terminal, LLC
Operating Agreement**

RED HOOK CONTAINER TERMINAL, LLC
AMENDED AND RESTATED OPERATING AGREEMENT

Dated as of July 28, 2011

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**AMENDED AND RESTATED OPERATING AGREEMENT
OF
RED HOOK CONTAINER TERMINAL, LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT is entered into as of July 28, 2011 by and among the Persons listed on Schedule A.

WITNESSETH:

WHEREAS, RED HOOK CONTAINER TERMINAL, LLC has been formed as a limited liability company pursuant to the New York Limited Liability Company Act, as amended, and this Agreement is being entered into to provide for the governance of the Company and the conduct of its business and to specify the relative rights and obligations of the Members;

NOW, THEREFORE, the parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. Capitalized terms used in this Agreement have the following meanings:

“Act” means the New York Limited Liability Company Act, as from time to time amended.

“Additional Member” means a Person admitted to the Company as a Member after the Effective Date, other than a Substituted Member.

“Adjusted Capital Account Balance” means the balance in a Member’s Capital Account as of any date (i) increased by any amount such Member is deemed obligated to contribute to the Company pursuant to Treasury Regulation sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and (2)(i)(5) and (ii) reduced by any allocations or distributions to such Member described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5) or (6).

“Affiliate” of any Person (the “Specified Person”) means any other Person (a) that directly or indirectly controls, is controlled by or is under common control with such Specified Person, (b) who is an officer, director, employee or agent of, partner in, or trustee of, or serves in a similar capacity with respect to, the Specified Person (or any of the Persons named in clause (a) above), (c) of which the Specified Person is an officer, director, employee, agent, partner or trustee, or serves in a similar capacity, or (d) who is a member of the Specified Person’s immediate family. For purposes of this definition, the term “control” means the direct or indirect possession of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of securities, by contract or otherwise.

(c) the Book Value of any asset or property of the Company distributed to a Member shall be the Fair Market Value of such asset or property on the date of distribution;

(d) the Book Values of all of the Company's assets and properties shall be increased or decreased to reflect any adjustments to the adjusted tax basis of such assets and properties pursuant to Code sections 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(m); and

(e) if the Book Value of an asset or property has been determined or adjusted pursuant to paragraph (b) of this definition, such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset or property for purposes of computing Net Income and Net Loss and other items allocated pursuant to Section 4.2.

The foregoing definition of Book Value is intended to comply with the provisions of Treasury Regulation section 1.704-1(b)(2)(iv) and shall be interpreted and applied consistently therewith.

"Capital Account" of a Member means the account maintained by the Company for such Member pursuant to Section 3.5.

"Capital Contributions" of a Member means the amount of cash and the net Fair Market Value of any asset or property, if any, contributed by such Member to the Company.

"Code" means the Internal Revenue Code of 1986, as from time to time amended.

"Company" means Red Hook Container Terminal, LLC.

"Company Minimum Gain" means the aggregate amount of gain (of whatever character), determined for each nonrecourse liability of the Company, that would be realized by the Company if it disposed of the asset or property subject to such liability in a taxable transaction for no consideration other than full satisfaction thereof, determined in accordance with Treasury Regulation sections 1.704-2(b)(2) and 1.704-2(d).

"Company Nonrecourse Deductions" means the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during a fiscal year over the aggregate amount of any distributions during that fiscal year of proceeds of a Nonrecourse Liability as defined in Treasury Regulation sections 1.704-2(b)(i) and 1.704-2(c).

"Depreciation" means for each fiscal year or part thereof, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset or property for such fiscal year or other period, except that if the Book Value of an asset or property differs from its adjusted basis for federal income tax purposes, Depreciation shall be an amount which bears the same ratio to such Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such fiscal year bears to such adjusted tax basis.

"Net Income" and **"Net Loss"** means for each fiscal year or part thereof, the Company's taxable income or loss for such year determined in accordance with Code section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code section 703(a)(1) shall be included in taxable income or loss) with the following adjustments:

(a) any income of the Company that is exempt from federal income tax shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code section 705(a)(2)(B) or treated as such pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(i) (to the extent such expenditures are not taken into account in computing the Members' shares of Company Nonrecourse Deductions or Member Nonrecourse Deductions) shall be subtracted from such taxable income or loss;

(c) Depreciation for such fiscal year shall be taken into account in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss;

(d) gain or loss resulting from any disposition of any assets or property of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Book Value of the assets or property disposed of, rather than the adjusted tax basis of such property;

(e) if any asset or property is distributed in kind to any Member, the difference between its Fair Market Value and its Book Value at the time of distribution shall be treated as Net Income or Net Loss, as the case may be, recognized by the Company as if from a sale of such property;

(f) if the Book Values of all of the assets and property of the Company are adjusted pursuant to clause (b) of the definition of Book Value, the difference between their Fair Market Value and their Book Value at the time shall be treated as Net Income or Net Loss, as the case may be, recognized by the Company as if from a sale of such assets; and

(g) items specifically allocated pursuant to Sections 4.2 through 4.6 shall not be taken into account in calculating Net Income and Net Loss.

"Nonrecourse Liability" means a liability of the Company described in Treasury Regulation section 1.704-2(b)(3).

"Percentage Interest" of any Member, including any Substituted Members and/or Additional Members at any time, means the percentage set forth in the column entitled "Percentage Interest" opposite such Member's name on Schedule A annexed hereto, as from time to time amended in accordance with this Agreement.

2.5 Term. The term of the Company commenced with the filing of the Articles with the office of the Secretary of New York of the State of New York and shall continue until the dissolution and termination of the Company pursuant to Section 10.1 hereof or the Act.

2.6 Ownership of Company Property. All property acquired by the Company, real, personal or mixed, tangible or intangible, shall be owned by the Company as an entity, and no Member, individually, shall have any ownership interest therein. Each Member hereby expressly waives the right to require partition of any Company property or any part thereof.

2.7 No State-Law Partnership. Except as provided in the next sentence of this Section 2.7, the Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be an agent, partner or joint venturer, of any other Member, for any purposes, and this Agreement shall not be construed to suggest otherwise. The parties hereto hereby acknowledge that the Company shall be treated as a partnership for income tax purposes, and no Member shall take any action that is inconsistent with this treatment.

ARTICLE 3

CAPITAL

3.1 Initial Capital Contributions. On or after the date of execution of this Agreement, each Member will make its Capital Contribution to the capital of the Company in the amount to be set forth in the column entitled "Capital Contribution" opposite its name on Schedule A annexed hereto, in exchange for such Member's Membership Interest.

3.2 Additional Capital Contributions. Except as set forth in Section 3.1, no Member shall be required to make any capital contribution to the Company, cure any deficit in its Capital Account, return all or any portion of any Capital Contribution that has been distributed to such Member or lend any funds to the Company. Notwithstanding the foregoing, each Member may with the consent of a Majority in Interest of the Members, from time to time make additional capital contributions to the Company.

3.3 Additional Members. Any Person admitted to the Company as an Additional Member after the Effective Date pursuant to Section 7.6 shall make such Capital Contributions, and at such time or times, as the Manager or Managers shall determine.

3.4 Capital Accounts. (a) A separate Capital Account shall be established for each Member and maintained in accordance with the provisions of Treasury Regulation section 1.704-1(b)(2)(iv). A Member's Capital Account shall be (i) increased by its Capital Contribution and by its allocable share of Net Income and items of Company income and gain, (ii) decreased by its allocable share of Net Loss and items of Company loss and deduction and by the amount of cash and the Book Value of property distributed by the Company to such Member, and (iii) otherwise adjusted in the manner provided in this Agreement.

(b) The following additional rules shall apply in maintaining Capital Accounts:

ARTICLE 4

ALLOCATIONS

4.1 Allocation of Net Income and Net Loss. (a) After all allocations have been made pursuant to Sections 4.2 through 4.6, Net Income and Net Loss for any fiscal year or portion thereof shall be allocated to the Members in proportion to their respective Percentage Interests.

(b) Notwithstanding paragraph (a) of this Section 4.1, Net Loss shall not be allocated to a Member to the extent such allocation would create or increase a deficit in such Member's Adjusted Capital Account Balance, but shall instead be allocated:

(i) to any other Member or Members with a positive Adjusted Capital Account Balance, to the extent of and in proportion to such positive balances, until the Adjusted Capital Account Balance of each Member has been reduced to zero; and

(ii) thereafter, to the Members in proportion to their respective Percentage Interests.

If Net Loss is allocated to any Members pursuant to clause (i) of this Section 4.1(b), then notwithstanding Section 4.1(a), subsequent allocations of Net Income shall first be made to such Members to the extent of and in proportion to such allocations of Net Loss until such allocations of Net Loss have been completely offset

4.2 Qualified Income Offset. Notwithstanding any other provision of this Article 4 except Section 4.3, in the event a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that creates or increases a deficit in such Member's Adjusted Capital Account Balance, items of Company income and gain (consisting of a *pro rata* portion of each item of Company income, including gross income and gain for such period) shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulation section 1.704-1(b)(2)(ii)(d), such deficit as quickly as possible, provided that an allocation pursuant to this Section 4.2 shall be made only if and to the extent that such Member has a deficit Adjusted Capital Account Balance after all other allocations provided for in this Agreement have been tentatively made as if this Section 4.2 were not in the Agreement. This Section 4.2 is intended to constitute a "qualified income offset" within the meaning of Treasury Regulation section 1.704-1(b)(2)(ii)(d).

4.3 Minimum Gain Chargeback Allocations. (a) Notwithstanding any other provision of this Article 4:

(i) If there is a net decrease in Company Minimum Gain during a fiscal year, each Member shall be specially allocated items of Company gross income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulation section 1.704-2(g). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member

4.7 Tax Allocations. (a) Except as provided in Section 4.7(b), Company income, gain, loss, deduction and credit, as calculated for tax purposes, shall be allocated among the Members, to the extent possible, in accordance with the allocations of the corresponding Net Income and Net Loss or items of income, gain, loss, deduction and credit among the Members pursuant to Sections 4.1 through 4.6.

(b) Income, gain, loss, deduction and credit, as calculated for tax purposes, with respect to any asset or property that has a Book Value different from its adjusted tax basis shall be allocated among the Members in accordance with Code section 704(c), using such method as shall be selected by the Manager, so as to take account of the variation between the adjusted tax basis of such asset or property and its Book Value as required under Code section 704(c) and Treasury Regulation sections 1.704-1(b)(4)(i) and 1.704-3.

Allocations pursuant to this Section 4.7 are solely for purposes of federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account balance.

4.8 Changes in Membership Interest. Upon the admission of an Additional Member or the Assignment of a Membership Interest in the Company, the Manager or Managers shall determine the proper allocation of Net Income, Net Loss and items of income, gain, loss, deduction and credit to the periods before and after such admission or Assignment using any method permitted under Code section 706 and the Treasury Regulations thereunder.

ARTICLE 5

DISTRIBUTIONS

5.1 Discretionary Distributions. The Company may (but shall not be required to) distribute cash or other Company assets or property at such time or times as the Manager or Managers deem advisable. Any such distribution shall be made to the Members in proportion to their respective Percentage Interests.

5.2 Distribution Policy. Unless otherwise determined by the Manager or Managers, distributions will be made only to Members with positive Adjusted Capital Account Balances (calculated following all allocations for the period ending immediately prior to the distribution) and then to each Member only to the extent of such Member's positive balance.

5.3 Amounts Withheld. The Company is authorized to withhold from distributions, or with respect to allocations, to any Member and to pay over any federal, state or local government any amounts required to be withheld pursuant to the Code or any provisions of any other federal, state or local law and shall treat the amount so withheld as if it had been distributed to such Member pursuant to Section 5.1. If the amount required to be withheld with respect to a Member exceeds the amount which otherwise would have been distributed to such Member pursuant to Section 5.1, such Member shall pay to the Company the amount of such excess within five (5) days after the giving of written demand therefor by the Manager or Managers.

(d) Any officer may resign at any time by giving notice to the Manger(s), but without prejudice to the rights, if any, of the Company under any contract to which such officer is a party. Any such resignation shall take effect at the date of the giving of such notice or any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(e) A vacancy in any office because of death, disability, resignation, removal, disqualification or any other cause shall be filled in the manner set forth in this Agreement for regular appointments to such office.

(f) The President of the Company shall, subject to the control of the Manager(s) in accordance with this Article 6, have general supervision, direction and control of the business and officers of the Company, and shall have such powers and duties of management usually vested in the office of president of a New York corporation and such other powers and duties as may be prescribed by this Agreement or from time to time by the Manager(s). All other officers shall report to and be subject to the control of the President or such other officer as he or she may designate.

(g) The Vice Presidents shall have the general powers and duties of management usually vested in the office of the vice president of a New York corporation for their respective designated areas of responsibility, and shall have such other powers and duties as may be prescribed by this Agreement or from time to time by the Manager(s) or the President.

(h) The Secretary shall record or cause to be recorded, and shall keep or cause to be kept, at the principal place of business of the Company and such other place or places as the Manager(s) may order, a book of minutes of actions taken at all meetings of the Members and the Manager(s), with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at Manager(s)' meetings, the Percentage Interests present or represented at Members' meetings, and the proceedings thereof. The Secretary shall give, or cause to be given, notice of all the meetings of the Members and the Manager(s) required by this Agreement or by the Act to be given, and shall have such other powers and perform such other duties as may be prescribed by the Act, by the Manager(s) or the President or by this Agreement.

(i) The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the property and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, income, losses, changes in financial position, Capital Accounts, and retained earnings. The Treasurer shall deposit all funds and other valuables in the name and to the credit of the Company with such depositories as may be designated by the Manager(s). The Treasurer shall disburse the funds of the Company as may be ordered by the Manager(s) or the President, shall render to the Treasurer and the Manager(s) whenever they request it an account of all of his or her transactions as Treasurer and of the financial condition of the Company, and shall have such other powers and perform such other duties as may be prescribed by this Agreement or from time to time by the Manager(s) or the President.

ARTICLE 7

MEMBERS

7.1 Members. Except as provided in Section 7.4, Additional Members or Substitute Members may be admitted to the Company only by the written consent or the affirmative vote of the Manager or Managers and all of the Members. If Additional Members or Substitute Members are admitted to the Company, Schedule A hereto shall be amended to include the name, Capital Contribution and Percentage Interest of each such additional Member.

7.2 Limited Liability; Indemnification. (a) The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and no Member shall be personally liable for any such debt, obligation or liability solely by reason of being a Member of the Company. Except as otherwise provided herein or under the Act or any other applicable law, the Members shall have no obligation to make contributions to the Company in excess of the amounts specified in Article 3.

(b) Except as otherwise specifically provided herein or under the Act, a Member shall not be liable, responsible, or accountable in damages or otherwise to the Company or its Members for: (i) any act or inaction except if a judgment or other final adjudication adverse to such Member establishes that (A) such Member's acts or omissions involved intentional misconduct, gross negligence or a knowing violation of law, (B) such Member personally gained in fact a financial profit or other advantage to which such Member was not legally entitled, or (C) with respect to a distribution to Members, such Member's acts were not performed in accordance with this Agreement or the Act; or (ii) any action or inaction arising from reliance on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (A) one or more agents or employees of the Company, or (B) legal counsel, public accountants or other Persons as to matters that such Member believes to be within such Person's professional or expert competence.

(c) Save for any misappropriation or fraud, no Member shall be personally liable for the return or payment of all or any portion of the Capital Contribution of or distributions to any Member (or any successor, assignee or transferee thereof), it being expressly agreed that any such return of Capital Contributions or distributions pursuant to this Agreement shall be made solely from the property or assets of the Company.

(d) The Company shall indemnify and hold harmless to the fullest extent permitted by law (subject to the limitations of this Section) each Member from and against any losses, claims, damages or liabilities (including, without limitation, legal or other expenses reasonably incurred in investigating or defending against any such loss, claim, damages or liability), joint or several, related to or arising out of such Member's activities or involvement with the Company and any actions taken in its capacity as a Member for or on behalf of the Company performed or taken in good faith and believed by such Member to be in the best interests of the Company; provided, however, that no indemnification may be made to or on behalf of any Member if a judgment or other final adjudication adverse to such Member establishes that (i) his or her acts or omissions involved intentional misconduct, gross negligence

other Members (including federal and state securities laws and regulations) or otherwise adversely affect the interests of the Company or such other Members, as such.

(c) The Assignor and Assignee will be jointly and severally obligated to reimburse the Company for all reasonable expenses (including legal fees) in connection with any Assignment of a Member's Membership Interest. As a condition to any Assignment of a Membership Interest in the Company, the Assignor and the Assignee shall provide such legal opinions and documentation as the Manager or Managers shall request.

(d) An Assignee of a Membership Interest or any portion thereof shall become a Substituted Member, entitled to all rights and subject to all obligations of the Assigning Member with respect to the Assigned Interest, only if:

(i) The Manager or Managers and all of the Members consent in writing to admission of such Assignee as a Substituted Member; and

(ii) The Assignee executes and delivers a counterpart of this Agreement, evidencing its agreement to be bound hereby, and any other instruments, in form and substance satisfactory to the Manager or Managers, that the Manager or Managers deem necessary or desirable to effect such substitution.

A Substituted Member shall be treated as having or having made or received, as applicable, the Capital Contribution, Capital Account balance, distributions and Percentage Interest relating to the Assigned Membership Interest.

7.5 No Resignation or Withdrawal. Except as otherwise expressly provided in this Agreement, no Member may (a) withdraw as a Member of the Company or (b) be required to withdraw as a Member.

7.6 Additional Members. At any time and from time to time after the Effective Date, the Manager or Managers and all of the Members may cause the Company to admit one or more Persons as Additional Members. The terms of any such Additional Member's admission, including such Person's Capital Contributions and Percentage Interest, shall be determined by the Manager or Managers and all of the Members. The Percentage Interests of the other existing Members shall be reduced pro rata, based on their relative Percentage Interests immediately prior to admission of the Additional Member, to reflect such Additional Member's acquisition of a Percentage Interest. Notwithstanding the foregoing, no Person shall be admitted as an Additional Member unless (i) each such Additional Member shall execute and deliver a counterpart of this Agreement evidencing its agreement to be bound hereby and (ii) the Manager or Managers and the Members are satisfied that such admission would not result in a violation of any applicable law, including federal or state securities laws, or any term or condition of this Agreement.

7.7 Further Assurances. The Members shall from time to time execute or cause to be executed all other documents or cause to be done all filing, recording, publishing, or other acts as may be reasonably requested by the Manager or Managers or otherwise necessary or desirable to comply with the requirements for the operation of a limited liability company under the laws of

Member. Each Member shall have the right to inspect the Company's books and records at any reasonable time upon advance written request to the Company.

8.2 Reports and Returns. The Company will furnish or will cause to be furnished to each Member:

(a) within 90 days after the end of each calendar year (or as soon as reasonably practicable thereafter), an Internal Revenue Service Schedule K-1 with respect to such Member; and

(b) within 120 days after the end of each fiscal year of the Company (or as soon as reasonably practicable thereafter), a consolidated balance sheet of the Company as at the end of such year and statements of income and cash flow of the Company for such year.

8.3 Fiscal Year. The fiscal year of the Company for both financial reporting and tax purposes shall be the calendar year.

8.4 Method of Accounting. The books and accounts of the Company shall be maintained using the cash method of accounting for both financial reporting and tax purposes or such other method of accounting as the Tax Matters Partner shall deem appropriate.

8.5 Tax Returns. The Tax Matters Partner shall cause to be prepared and filed on a timely basis all federal, state and local tax returns required of the Company.

8.6 Tax Matters Partner. Gregory Brayman or such other Member as is designated in writing by a Majority in Interest of the Members is the "Tax Matters Partner."

8.7 Bank Accounts. All funds of the Company will be deposited in its name in an account or accounts maintained with such bank or banks as are selected by the Manager or Managers. The funds of the Company will not be commingled with the funds of any other Person. Checks will be drawn upon the Company account or accounts only for the purposes of the Company and shall be signed by Persons authorized by the Manager or Managers.

8.8 Other Information. The Manager or Managers may release such information concerning the operations of the Company to such sources as is customary in the industry or required by law or regulation or by order of any regulatory body. For the term of the Company and for a period of six years thereafter, the Manager or Managers shall cause to be maintained and preserved all books of account and other relevant documents.

ARTICLE 9

VALUATION OF ASSETS

For purposes of this Agreement, the Fair Market Value of any asset of the Company or of the Company's business shall be determined by the Manager or Managers. The Manager or Managers may engage any Person to perform an appraisal to determine the Fair Market Value of any Company asset or of the Company's business.

employees, agents, representatives, contractors or consultants of any of the foregoing (in each case in the absence of conviction of fraud or willful misconduct and a judicial determination that such insufficiency was caused by such fraud or willful misconduct) by reason thereof. Each Member shall look solely to the assets and property of the Company for all distributions with respect to the Company and such Member's Capital Contribution thereto, and shall have no recourse therefor (upon dissolution or otherwise) against the Company, any Manager, any other Member or any such officers, employees, agents, representatives, contractors or consultants.

ARTICLE 11

AMENDMENTS

This Agreement may be amended with, but only with, the written consent of a Majority in Interest of the Members.

ARTICLE 12

NOTICES

All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed duly given or made (a) when personally delivered to the intended recipient (or an officer or duly authorized agent of the intended recipient) or when sent by facsimile followed by the mailing of a copy as set forth in clause (b) or (c) below; (b) on the business day after the date sent, when sent by nationally recognized overnight courier service; or (c) four business days after it is sent by registered or certified mail, return receipt requested, first class postage prepaid, if to the Company, to its address set forth in Section 2.4, if to a Manager, to its address as notified to the Company from time to time, and if to any Member, to the address set forth on Schedule A annexed hereto. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be sent by giving the other parties notice in the manner herein set forth.

ARTICLE 13

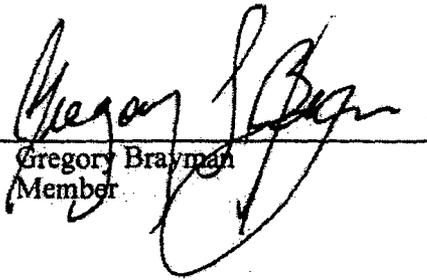
MISCELLANEOUS

13.1 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes any prior agreement or understanding among the parties hereto with respect to the subject matter hereof.

13.2 Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of New York, without regard to principles of conflicts of law.

13.3 Binding Effect. Except as otherwise provided herein, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns.

IN WITNESS WHEREOF, each of the undersigned has executed this Amended and Restated Operating Agreement as its act and deed to be effective as of the day and year first above written.



Gregory Brayman
Member

EXHIBIT E

Affirmative Action/MBE/DBE

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

PART I. Affirmative Action Guidelines - Equal Employment Opportunity

I. As a matter of policy the Port Authority hereby requires the Operator and the Contractor shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E of Port Authority Agreement No. BP-320OP (herein called the "Operating Agreement") with Red Hook Container Terminal, LLC (herein and in the Operating Agreement called the "Operator"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

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

II. The Operator and the Contractor shall each appoint an executive of its company to assume the responsibility for the implementation of the requirements, terms and conditions of the following Bid Conditions:

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

- | | | |
|-----|---------------------------|------|
| (1) | Minority participation | |
| | Minority, except laborers | 30% |
| | Minority, laborers | 40% |
| (2) | Female participation | |
| | Female, except laborers | 6.9% |
| | Female, laborers | 6.9% |

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

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

(b) The Contractor shall provide written notification to the Operator and the Operator shall provide written notification to the Port Authority's Office of Diversity and Civil Rights within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(c) As used in these specifications:

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

(2) "Minority" includes:

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

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

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

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

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

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

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

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

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

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

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each phase of the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the Terminal Space 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 Terminal Space.

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

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment

needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

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

(7) Review, at least every six months the Contractor's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decision including specific review of these items with on-terminal supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at the Terminal Space. 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 Terminal Space and in areas of a Contractor's workforce.

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

(12) Conduct, at least every six months, an inventory and evaluation 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 suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

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

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

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

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

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

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

(n) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative actions steps, at least as extensive as those standards prescribed in paragraph (h) hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Operator shall proceed accordingly.

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

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

(q) Without limiting any other obligation, term or provision under the Operating 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 AND WOMEN-OWNED BUSINESS ENTERPRISES

As a matter of policy the Port Authority requires the Operator and the Operator shall itself and shall require that any Contractor utilized by the Operator to perform contract work ("the work") on the premises including without limitation construction work to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the work pursuant to the provisions of this Schedule E. For purposes hereof, "Minority Business Enterprise" "(MBE)" shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, "Women-owned Business Enterprise" "(WBE)" shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by women and such ownership is real, substantial and continuing. A minority shall be as defined in paragraph II(c) of Part I of this Schedule E. "Meaningful participation" shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and Women-owned Business Enterprises, of which at least twelve percent (12%) are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

- (a) Dividing the work to be subcontracted into smaller portions where feasible.
- (b) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.
- (c) Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.
- (d) Utilizing the list of eligible MBEs and WBEs maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.
- (e) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to insure that the Operator 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, preferably bi-weekly, and that retainage is paid to MBEs and WBEs when they have completed their work.

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

(h) Requiring each contractor to submit to the Operator with each payment request evidence that all MBE and WBE Contractors have been paid in accordance with their contract.

Certification of MBEs and WBEs hereunder shall be made by the Office of Diversity and Civil Rights of the Port Authority. If the Contractor wishes to utilize a firm not already certified by the Port Authority, it shall submit to the Port Authority a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the Port Authority. All such requests shall be in writing addressed to the Office of Diversity and Civil Rights, the Port Authority of New York and New Jersey, 233 Park Avenue South, 4th Floor, New York, New York 10003 or such other address as the Port Authority may specify by notice to the Operator. Certification shall be effective only if made in writing by the Director in charge of the Office of Diversity and Civil Rights of the Port Authority. The determination of the Port Authority shall be final and binding.

The Port Authority has compiled a list of the firms that the Port Authority has determined satisfy the criteria for MBE and WBE certification. This list may be supplemented and revised from time to time by the Port Authority. Such list shall be made available to the Contractor upon request. The Port Authority makes no representation as the financial responsibility of such firms, their technical competence to perform, or any other performance-related qualifications.

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

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



For the Port Authority

Initialed:



For the Operator

FINAL

STATE OF NEW YORK)
: : SS. :
COUNTY OF NEW YORK)

On the 23rd day of December, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard M. Larrabee, Director, Port Commerce of the PORT AUTHORITY OF NEW YORK AND NEW JERSEY, 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 instruments, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

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

STATE OF NEW YORK)
: : SS. :
COUNTY OF KINGS)

On the 20 day of December, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Gregory Brayman, Manager of RED HOOK CONTAINER TERMINAL, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me the executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

RICHARD KAPP
Notary Public, State of New York
01KA6036212
Qualified in Westchester County
My Commission Expires January 18, 2014