BMW
AMT-1

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Exhibits and Schedules

Exhibits A, B, R, X, and Y, Schedules A, B, C and D, and Standard Endorsement L23.1

Lease No. AMT-1

THIS AGREEMENT OF LEASE, made as of the 22nd day of December 1987, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") a body corporate and politic created by Compact between the States of New 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 One World Trade Center, New York, New York 10048; and BMW OF NORTH AMERICA, INC. (hereinafter called "the Lessee"), a corporation organized and existing under the laws of the State of Delaware having an office and place of business at BMW Plaza, Montvale, New Jersey 07645 whose representative is: William F. Caver.

WITNESSETH, THAT:

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

Section 1. Letting

The Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority at the property of the Port Authority more fully described in Section 30(j) hereof (sometimes hereinafter called "the Facility" or "the marine terminal"), in the City of Jersey City, in the County of Hudson and State of New Jersey, the following: the open area shown in stipple on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said land and buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the premises". The Port Authority and the Lessee hereby acknowledge that the premises constitute non-residential property.

Section 2. Term

The term of the letting under this Agreement shall commence upon the execution of this Agreement by the Port Authority and the Lessee and the delivery to the Lessee of a fully executed copy thereof (which date is sometimes hereinafter called "the Commencement Date") and, unless sooner terminated, the term of the letting shall expire at 11:59 o'clock P.M. on the last day of the calendar month preceding the calendar month in which the thirtieth (30th) anniversary of the Rental Payment Start Date, as hereinafter defined (and as the same may be postponed pursuant to the provisions of this Agreement), shall occur.

Section 3. Rental

(a) For purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

(1) "Annual period" shall mean as the context requires the twelve-month period commencing with the Rental Payment Start Date, as hereinafter defined, and each of the twelve-month periods thereafter occurring during the term of the letting under this Agreement commencing on each anniversary of the Rental Payment Start Date occurring during the term of the letting hereunder.

(2) "Rental Payment Start Date" shall mean the earlier of

(i) October 1, 1988, or

(ii) The Completion Date, as hereinafter defined in paragraph (c) of Section 5 hereof; or

(iii) such earlier date on which the Lessee commences in the premises any of the operations authorized therein by Section 4 of this Agreement.

(3) "The Port Authority's Cost of Lessee's Work" shall mean 103% of all payments made by the Port Authority to the Lessee on account of the cost of that portion of the Lessee's construction work, as defined in paragraph (a) of Section 5 hereof, constituting Class A Work, as defined in said paragraph (a).

(b) Basic Rental

(1) The Lessee shall pay an annual rental (hereinafter called "the basic rental") at the rate of Three Hundred Ninety-Five Thousand Dollars and No Cents ($395,000.00) per annum, payable in advance in monthly installments of Thirty-two Thousand Nine Hundred Sixteen Dollars and Sixty-seven Cents ($32,916.67) on the Rental Payment Start Date and on the first day of each calendar month thereafter during each such annual period except that if the Rental Payment Start Date shall be a day other than the first day of a calendar month the installment of basic rental payable on the Rental Payment Start Date shall be an amount equal to the amount of the installment described in this subparagraph multiplied by a fraction the numerator of which shall be the number of days from the Rental Payment Start Date to the last day of the calendar month in which the Rental Payment Start Date shall fall and the denominator of which shall be the number of days in that calendar month. The basic rental set forth in this subparagraph shall be adjusted during the term of the letting in accordance with the provisions of subparagraph (2) of this paragraph.

(2) As used in this subparagraph:

(i) "Index" shall mean the Consumer Price Index for All Urban Consumers - New York, N.Y.-Northeastern, New Jersey (All Items, unadjusted 1967=100) published by the Bureau of Labor Statistics of the United States Department of Labor.

(ii) "Base Period" shall mean the calendar month immediately preceding the calendar month in which the Rental Payment Start Date shall occur.

(iii) "Adjustment Period" shall mean as the context requires the calendar month immediately preceding the calendar month in which the fifth anniversary of the Rental Payment Start Date shall occur under this Agreement and the calendar month immediately preceding the calendar month in which each fifth anniversary of such date shall thereafter occur during the term of the letting hereunder.

(iv) "Anniversary Date" shall mean the fifth anniversary of the Rental Payment Start Date under this Agreement and each fifth anniversary of such date which thereafter occurs during the term of the letting hereunder.

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

Commencing on each Anniversary Date occurring during the term of the letting under this Agreement and for the five year period commencing with such Anniversary Date and continuing through to the day preceding the following Anniversary Date, both dates inclusive, in lieu of the basic rental set forth in subparagraph (1) of this paragraph the Lessee shall pay a basic rental at a rate per annum equal to the greater of:

(i) the sum obtained by adding to the basic rental payable immediately prior to such Anniversary Date (but excluding therefrom any amount included therein as a result of prior adjustments thereof pursuant to the provisions of this subparagraph) the product obtained by multiplying the basic rental payable immediately prior to such Anniversary Date (but excluding therefrom any amount included therein as a result of prior adjustments thereof pursuant to the provisions of this subparagraph) by one hundred percent (100%) of the Percentage Increase for such Anniversary Date, or

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

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

Notwithstanding any other provision of this subparagraph, the basic annual rental that shall be payable pursuant to subparagraphs (1) and (2) hereof commencing with each Anniversary Date and continuing through to the day preceding the following Anniversary Date, both dates inclusive, shall in no event exceed the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule B" opposite the respective Anniversary Date. For example, if the increase in the Consumer Price Index for the first Adjustment Period to occur hereunder is shown to be twenty percent (20%) then the basic annual rental for the five (5) year period from the first Anniversary Date hereunder through the day preceding the following Anniversary Date, both dates inclusive, shall be $395,000.00 plus twenty percent (20%) thereof or $474,000.00, but if (i) said increase is shown to be thirty percent (30%) then the basic annual rental for that five (5) year period shall be $504,131.23, and if (ii) said increase is shown to be fifteen percent (15%) then the basic annual rental for that five (5) year period shall be $457,913.23.

In the event the Index to be used in computing any adjustment referred to in subparagraph (2) of this paragraph is not available on the effective date of such adjustment, the Lessee shall continue to pay the basic rental at the annual rate then in effect subject to retroactive adjustment at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index. In the event the United States Consumer Price Index for all Urban Consumers - New York, N. Y. Northeastern N.J. (All Items, unadjusted 1967=100) shall hereafter be converted to a different standard reference base or otherwise revised or The United States Department of Labor shall cease to publish the United States Consumer Price Index for all Urban Consumers - New York, N.Y. - Northeastern, N.J. (All Items, unadjusted 1967=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine.

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

If any adjustment of rental referred to in subparagraph (2) of this paragraph is effective on a day other than the first day of a calendar month, there shall be payable in advance on the effective date of rental adjustment an installment of rental equal to 1/12th of the increment of annual rental as adjusted multiplied by a fraction, the numerator of which shall be the number of days from the effective date of the rental adjustment to the end of the calendar month in which the rental adjustment was effective and the denominator of which shall be the number of days in that calendar month.

(3) Upon certification by the Port Authority pursuant to paragraph (c) of Section 5 of this Agreement of the substantial completion of the Lessee's construction work, as hereinafter defined in Section 5 (a), the Lessee shall be entitled to a credit against the basic rental payable by the Lessee pursuant to subparagraphs (1) and (2) of this paragraph in an amount equal to the lesser of (i) the cost incurred by the Lessee in connection with that portion of the Lessee's construction work, as hereinafter defined in Section 5(a), which is hereinafter designated as "the Site Clearing Work" or (ii) One Hundred Thousand Dollars and No Cents ($100,000.00). Such credit shall be applied against monthly installments of basic rental payable by the Lessee as they become due until exhausted. As used herein "the Site Clearing Work" shall mean: (i) clearance of debris and vegetation from the premises and (ii) grubbing.

(c) <u>Facility Rental</u>

(1) In addition to all other rentals set forth herein, the Lessee shall pay to the Port Authority a rental (hereinafter called "the Facility Rental") at a monthly rate which shall be determined by multiplying 0.0095232 by the Port Authority's Cost of Lessee's Work as hereinbefore defined, which rental shall be payable in advance on the Rental Payment Start Date and on the first day of each calendar month thereafter during the term of the letting. If the Rental Payment Start Date shall be a day other than the first day of a calendar month the Facility Rental payable on the Rental Payment Start Date shall be a sum equal to the amount of the full monthly payment prorated on

a daily basis for the period from the Rental Payment Start Date to the end of the calendar month in which the Rental Payment Start Date falls and the last payment shall be a sum equal to the full monthly payment prorated on a daily basis for a period from the first day of the calendar month in which the term of the letting hereunder shall expire to the expiration date.

(2) If the Rental Payment Start Date shall occur before accurate and final determination of the Port Authority's Cost of Lessee's Work then interim Facility Rental shall be payable by the Lessee during the period prior to such determination at the monthly rate of One Hundred Forty-seven Thousand One Hundred Thirty-three Dollars and Forty-four Cents ($147,133.44) payable in advance on the Rental Payment Start Date (or in an appropriate prorated amount if such date is other than the first day of a calendar month) and on the first day of each calendar month thereafter until such determination has been made. If the monthly amount of Facility Rental, as finally determined, is greater than the monthly rate of interim Facility Rental, the sum of the excess over the total amount of interim Facility Rental theretofore paid of the correct amount of Facility Rental as finally computed for the period prior to final determination of the Port Authority's Cost of Lessee's Work together with the then current monthly payment of Facility Rental shall be payable on the first day of the calendar month next ensuing after final computation and determination of the Port Authority's Cost of Lessee's Work. If such final computation and determination shall result in an amount of Facility Rental payable for the period prior to final determination which is less than the total amount of interim Facility Rental theretofore paid, the Lessee shall be entitled to a credit equal to such excess against the next succeeding Facility Rental payments due hereunder.

(3) Notwithstanding any other provisions of this Agreement, the Facility Rental shall not be subject to abatement or suspension or reduction for any reason whatsoever.

(d) <u>Additional Basic Rental</u>

(1) In addition to all other rentals set forth herein, and subject to the provisions of this paragraph, the Lessee shall pay to the Port Authority an additional basic rental under this Agreement as follows: If during any annual period, the Port Authority shall not receive dockage and wharfage charges pursuant to the Port Authority's tariff, as incorporated in Federal Maritime Commission Schedule PA-9 (hereinafter called "dockage and wharfage charges") on at least thirty thousand (30,000) automobiles discharged to the Facility by the Lessee, then the Lessee shall pay to the Port Authority an amount equal to the product obtained by multiplying (i) thirty thousand (30,000) less the number of automobiles discharged to the Facility by the Lessee during the annual period as to which the Port Authority shall have received dockage and wharfage charges

by (ii) the Unit Rate, as hereinafter defined. As used herein "Unit Rate" shall mean Seven Dollars and Twenty-five Cents ($7.25). The Unit Rate shall be subject to adjustment as set forth in subparagraph (3) of this paragraph. If the sworn statement required to be supplied to the Port Authority by the Lessee pursuant to Section 37 hereof shall show any additional basic rental due hereunder the Lessee shall remit the amount of such additional basic rental together with the statement.

(2) For purposes of determining the number of automobiles discharged to the Facility by the Lessee under the provisions of subparagraph (1) of this paragraph, the following categories of automobiles (and no others whatsoever) shall be counted: (i) automobiles manufactured by the Lessee or an affiliated company thereof (hereinafter in this Agreement sometimes called "BMWs") and which are discharged to other Port Authority marine terminal facilities; (ii) automobiles which, with the prior approval of the Port Authority, are discharged to a marine terminal facility that is not operated by the Port Authority and which are processed by the Lessee at the Facility; and (iii) automobiles discharged to the Facility and processed by the Lessee at the Facility.

(3) The Unit Rate set forth in subparagraph (1) of this paragraph shall be adjusted during the term of the letting hereunder proportionately to the adjustment in basic rental in accordance with the provisions of subparagraph (2) of Section 3(b) hereof. For example, if the basic annual rental for the period from the first Anniversary Date hereunder through the day preceding the following Anniversary Date shall be increased from $395,000.00 to $474,000.00 (reflecting a twenty percent (20%) increase in the Consumer Price Index), then the Unit Rate for said period shall be increased to $8.70 (reflecting a proportionate increase of twenty percent (20%)).

(4) In the event that any law, rule or regulation of any United States governmental body or agency having jurisdiction over the matter shall be passed or promulgated reducing the number of cars manufactured in Germany which may be imported into the United States (which law, rule or regulation is hereinafter called "the Import Control Legislation") then for the purpose of calculating the amount of additional basic rental payable by the Lessee during the period when the Import Control Legislation shall remain in effect the number thirty thousand (30,000) set forth in subparagraph (1) of this paragraph (which number is hereinafter sometimes called "the Guarantee Number") shall be reduced for the annual period in which the Import Control Legislation shall become effective and for each annual period which shall occur thereafter during which the Import Control Legislation shall remain in effect by multiplying the Guarantee Number by a fraction, the numerator of which shall be the number of all automobiles manufactured in Germany and imported into the United States during the respective annual period and the denominator of which shall be the number of all

automobiles manufactured in Germany and imported into the United States during the twelve (12) month period preceding the effective date of the Import Control Legislation. In the event that any law, rule or regulation of any United States governmental body or agency having jurisdiction over the matter, other than Import Control Legislation, shall be passed or promulgated for the purpose, stated or unstated, of reducing the number of all automobiles imported into the United States (which law, rule or regulation is hereinafter called "Other Trade Legislation") and the number of all automobiles imported into the United States in any annual period following the effective date of the Other Trade Legislation is diminished by ten percent (10%) or more as compared to the number of all automobiles imported into the United States during the twelve (12) month period preceding the effective date of the Other Trade Legislation, then for the purpose of calculating the amount of additional basic rental payable by the Lessee during the period when the Other Trade Legislation shall remain in effect the Guarantee Number shall be reduced for the annual period in which the Other Trade Legislation shall become effective and for each annual period which shall occur thereafter during which the Other Trade Legislation shall remain in effect by multiplying the Guarantee Number by a fraction the numerator of which shall be the number of all automobiles imported into the United States during the respective annual period and the denominator of which shall be the number of all automobiles imported into the United States during the twelve (12) month period preceding the effective date of the Other Trade Legislation.

(5) For the purposes of subparagraph (4) of this paragraph, the determination of the number of automobiles imported into the United States during any given year or annual period shall be made by the Port Authority based on reports of commodities imported into the United States issued by the Foreign Trade Division of the Bureau of the Census of the United States Department of Commerce. In the event that any number required for the computation set forth in subparagraph (4) of this paragraph is not available by the date that additional basic rental is payable pursuant to the provisions of subparagraph (1) of this paragraph, the Lessee shall pay the additional basic rental computed pursuant to the provisions of said subparagraph (1) subject to retroactive adjustment at such time as the required number becomes available. In the event the Foreign Trade Division of the Bureau of the Census of the United States Department of Commerce shall cease to issue reports of commodities imported into the United States then for the purposes hereof there shall be substituted for such reports of commodities imported into the United States such other governmental statistical reports of a similiar nature as the Port Authority, acting in a non-arbitrary and non-capricious manner, may determine to be appropriate.

Section 4. Rights of User

The Lessee shall use and occupy the premises primarily for the receipt and storage incidental to distribution of imported motor vehicles and parts therefor which are substantially waterborne to the Facility, but also for the receipt and storage incidental to distribution of non-imported motor vehicles to be waterborne from the Facility, and parts therefor; for the preparation of said motor vehicles for distribution and for the distribution thereof; and for purposes necessarily incidental to the other uses enumerated in this Section. The Lessee shall not use the premises for any other purpose whatsoever.

Section 5. Lessee's Construction Work

(a) The Lessee understands that construction and installation work is required in order to prepare the premises for its occupancy and operations, and the Lessee agrees to and shall perform the following categories of work to prepare the premises for the Lessee's operations therein (which categories of work are hereinafter collectively referred to as "the Lessee's construction work"): (1) the construction of a motor vehicle preparation facility and an integrated multi-level garage not to exceed fifty-five (55) feet in height for the storage of motor vehicles, and containing such miscellaneous realty improvements related to the work previously described in this subparagraph (1) as are listed on the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule C" (work described in this subparagraph (1) being hereinafter called "Class A Work"); and (2) building interior work involving the installation of trade fixtures and equipment (work described in this subparagraph (2) being hereinafter called "Class B Work"). The Class A Work shall be paid for by the Port Authority as provided for in paragraphs (p) and (q) of this Section.

(b) With respect to the Lessee's construction work the Lessee shall be the insurer of the Port Authority, and its Commissioners, officers, agents and employees against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, any contractors of the Lessee, the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, excepting only risks which result solely from affirmative wilful acts done by the Port Authority subsequent to commencement of the work:

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

(ii) The risk of death, injury or damage, direct or consequential, to the Port Authority, and its

Commissioners, officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, for all such injuries and damages, and for all loss suffered by reason thereof;

(iii) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the Port Authority, 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.

(c) (1) Prior to the commencement of any of the Lessee's construction work, the Lessee shall prepare and submit to the Port Authority for its review a conceptual plan for the development of the premises containing (i) preliminary renderings and layouts, (ii) estimated commencement and completion dates, (iii) preliminary functional plans for the buildings to be constructed on the premises showing the proposed location of on premises utility systems, all connections between the premises and the Facility's off-premises utility supply lines, all necessary roadways, ramps, and pedestrian circulation areas, and appropriate landscaping, if any, (iv) preliminary information relating to estimated scheduling requirements during construction, and (v) estimated time and manner of delivery of equipment and materials. Not later than twenty-one (21) days following the Port Authority's receipt of the Lessee's construction application and complete plans and specifications, the Port Authority, acting in a non-arbitrary and non-capricious manner, shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority, acting in a non-arbitrary and non-capricious manner, may find necessary based upon the standards hereinafter enumerated in this subparagraph. Following approval by the Port Authority of the Lessee's conceptual plan for the development of the premises, the Lessee shall submit to the Port Authority for its approval a Construction Application, in the form attached to this Agreement as Exhibit B, which Exhibit is hereby made a part of this Agreement, setting forth in detail by appropriate plans and specifications the work the Lessee 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. The data to be supplied by the Lessee shall identify separately each

of the items constituting Class A Work and Class B Work and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. Subject to the provisions of paragraphs (p) and (q), the Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority, acting in a non-arbitrary and non-capricious manner, and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this paragraph, the Port Authority shall not request any revisions or modifications to the plans and specifications covering the Lessee's construction work (i) unless the Port Authority, acting in a non-arbitrary and non-capricious manner, determines that the work shown thereon is inconsistent with the Lessee's approved conceptual plan, or (ii) except for reasons of safety, health, operational utility, impact on or compatability of the proposed work on utility systems or on other parts of the Facility, or (iii) unless the Port Authority, acting in a non-arbitrary and non-capricious manner, determines that the proposed work fails to comply with all governmental laws, ordinances, enactments, resolutions, rules and orders including, without limitation, the enactments, ordinances, resolutions, and regulations of the City of Jersey City and its various departments, boards, and bureaus, that are applicable or would be applicable if the Port Authority were a private corporation, or fails to comply with all applicable requirements of the National Fire Protection Association or the Insurance Services Office of New Jersey. All plans and specifications submitted by the Lessee in accordance with this paragraph shall be in such detail as may permit the Port Authority, acting in a non-arbitrary and non-capricious manner, to make a determination as to whether the standards set forth in this subparagraph are met. The Port Authority shall not apply the standards enumerated in this subparagraph in an arbitrary or capricious manner, and the Port Authority shall apply such standards without discrimination against the Lessee. In connection with review by the Port Authority of the Lessee's submissions under this Section, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority, acting in a non-arbitrary and non-capricious manner, may require for such review. Not later than twenty-one (21) days following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, the Port Authority, acting in a non-arbitrary and non-capricious manner, shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority, acting in a non-arbitrary and non-capricious manner, may find necessary based

upon the standards enumerated in this subparagraph. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor, and the contract such contractor or subcontractor is operating under, have been approved by the Port Authority. In considering the Lessee's requests for approval of contractors and the contracts such contractors are operating under, the Port Authority shall not act in an arbitrary or capricious manner, and the Port Authority agrees to act with reasonable promptitude in granting or witholding its approval thereof after written request therefor by the Lessee. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Construction Application annexed hereto as Exhibit B. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (j) and (k) of this Section and such performance bonds as the Port Authority, acting in a non-arbitrary and non-capricious manner, may specify. All of the Lessee's construction work shall be performed by the Lessee in accordance with the Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. When the Lessee's construction work has been substantially completed and the premises is ready for use by the Lessee, the Lessee shall deliver to the Port Authority a certificate to such effect signed by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this subparagraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement. Within thirty (30) days' thereafter the Port Authority shall inspect the work and, unless such certification is not correct, or the Port Authority, acting in a non-arbitrary and non-capricious manner, determines that the premises is unsuitable for occupancy and use by the Lessee, a certificate of substantial completion shall be delivered to the Lessee by the Port Authority. The date specified in such certificate or the date of delivery of such certificate to the Lessee, whichever is later, shall constitute the "Completion Date" under this Agreement. Except as set forth in subparagraph (3) of this paragraph, the Lessee shall not use or permit the use of the premises for the purposes set forth in Section 4 of this Agreement prior to the Completion Date. Upon final completion of all of the Lessee's construction work the Lessee shall supply the Port Authority with a final certificate signed by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and the Lessee shall supply the Port Authority with two (2) sets of as-built drawings of the Lessee's construction work. The Lessee shall keep said drawings current during the term of the letting

under this Agreement. No changes or modifications to such work shall be made without prior Port Authority consent.

(2) If the Port Authority shall fail to respond to the Lessee within the applicable time periods set forth in subparagraph (1) of this paragraph the Lessee's plans and specifications which are the subject of the Port Authority's review, or the work which is the subject of the Port Authority's inspection, as the case may be, shall be deemed disapproved, unless the Port Authority and the Lessee agree to extend the applicable time period.

(3) In the event that from time to time during the performance of the Lessee's construction work integral and material portions of the buildings to be constructed on the premises are substantially completed or properly usable, the Lessee may deliver to the Port Authority a certificate signed by a responsible officer of the Lessee certifying that such portion of the Lessee's construction work has been performed in accordance with the Construction Application and the plans and specifications applicable thereto which have been approved by the Port Authority and in compliance with all applicable governmental laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders and the provisions of this Agreement and certifying that such portion of the Lessee's construction work can be properly and safely be used even though the balance of the Lessee's construction work to be performed on the premises has not been completed, and that the Lessee desires such use. In addition the architect or engineer who sealed the Lessee's plans in accordance with the provisions of this paragraph shall certify that such portion of the Lessee's construction work has been performed in accordance with the Construction Application and the plans and specifications applicable thereto which have been approved by the Port Authority and in compliance with all applicable governmental laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders and the provisions of this Agreement and certifying that such portion of the Lessee's construction work can be properly and safely be used even though the balance of the Lessee's construction work to be performed on the premises has not been completed. The Port Authority will inspect such portion of the Lessee's construction work and, excercising its discretion in a non-arbitrary and non-capricious manner, may deliver a certificate to the Lessee with respect to such portion of the Lessee's construction work permitting the Lessee to use such portion of the building for the purposes set forth in Section 4 hereof. In such event the Lessee may use such portion of the building for the purposes set forth in Section 4 hereof subject to the condition that all risk thereafter with respect to the construction and installation of the same and any liability therefor for negligence or other reason shall be borne by the Lessee and subject to such further limitations, restrictions and requirements as the Port Authority, acting in a

non-arbitrary and non-capricious manner, may at that time impose. Use of any portion of the premises for the purposes set forth in Section 4 hereof prior to the Completion Date in accordance with the provisions of this subparagraph shall be subject to and in accordance with all of the terms, provisions and conditions of this Agreement except as amended by the terms of the above mentioned Port Authority consent. At any time prior to the issuance of the certificate of substantial completion pursuant to this paragraph the Lessee shall promptly upon receipt of a written notice from the Port Authority cease its use of such portion of the Lessee's construction work which it had been using pursuant to permission granted in this paragraph.

(d) Except as set forth in paragraph (e) of this Section, the Lessee shall not commence any portion of the Lessee's construction work until the Construction Application and plans and specifications covering such work, referred to in paragraph (c) of this Section, have been finally approved by the Port Authority.

(e) The Lessee has submitted a written request to the Port Authority to commence construction of portions of the Lessee's construction work prior to the approval by the Port Authority of the complete Construction Application and plans and specifications covering all of such work pursuant to paragraph (c) of this Section. If the Lessee shall submit to the Port Authority a separate Construction Application in the form annexed hereto as Exhibit B for any or all of the portions of the Lessee's construction work hereinafter designated as "Partial Approval Work" which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to each such portion of the Lessee's construction work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's construction work are hereinafter referred to as "the Partial Approval Work Plans" with respect to such portion of the Lessee's construction work) setting forth in detail the work to be performed in connection with each such portion of the Lessee's construction work, the Port Authority, acting in a non-arbitrary and non-capricious manner, shall give its written approval or rejection of the Partial Approval Work Plans with respect to each such portion of the Lessee's construction work, or shall request such revisions or modifications thereto as the Port Authority, acting in a non-arbitrary and non-capricious manner, may find necessary based upon the standards set forth in paragraph (c) of this Section not later than twenty-one (21) days following the Port Authority's receipt of the Construction Application and the Partial Approval Work Plans covering each such such portion of the Lessee's construction work. As used in this paragraph "Partial Approval Work shall mean:

(i) Site Work

(ii) Vehicle Preparation Center Foundation/Structural Work

(iii) Vehicle Preparation Center Mechanical/Plumbing/Electrical Work Under Slab.

(iv) Vehicle Preparation Center Architectural Work (Building)

(v) Vehicle Preparation Center Structural Work (Building)

(vi) Vehicle Preparation Center Mechanical/Plumbing/Electrical Work (Building)

(vii) Vehicle Preparation Center and Parking Structure Fire Sprinkler Work

(viii) Parking Structure Building Foundation Work (Structural)

(ix) Parking Structure Building Structural Work

(x) Parking Structure Building Architectural Work

(xi) Parking Structure Mechanical/Plumbing/Electrical Work (Building)

Upon the Port Authority's approval of the Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

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

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that the Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations,

statutes, requirements, codes, directions, and executive orders, including but not limited to those of the City of Jersey City, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

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

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

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

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

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

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

(f) Without limiting the generality of any of the provisions of this Agreement, the Lessee's construction work (including any Partial Approval Work performed by the Lessee)

shall be performed in such a manner that there will be at all times during construction a minimum of air pollution, water pollution or any other type of pollution, and a minimum of noise emanating from, arising out of, or resulting from construction. Subject to the provisions of this Agreement, the Lessee shall construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth in this paragraph, and, without limiting the generality of the foregoing, such construction shall be subject to the Port Authority's review and approval in accordance with the provisions of this Section.

(g) Without limiting the generality of paragraph (c) of this Section the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the Incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's construction work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee recognizes that its obligation to pay all rentals provided for in this Agreement shall commence on the Rental Payment Start Date established pursuant to the provisions of Section 3 of this Agreement whether or not the Lessee's construction work is then completed and regardless of whether the Lessee is then conducting any public operations in the premises. The Lessee shall conduct no public operations in the premises with respect to any improvements, fixtures or equipment constituting the Lessee's construction work until the Port Authority shall have notified the Lessee in writing that the Lessee's construction work has been completed or substantially completed to its satisfaction. In the event of any inconsistency between the provisions of this Agreement and those of the Construction Application referred to in paragraph (c) of this Section the provisions of this Agreement shall control.

(h) Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the premises by the Lessee and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Lessee in the premises and shall do all preventive maintenance and make all repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural

work) in the condition they were in when made or installed except for reasonable wear and tear which does not (i) adversely affect the watertight condition or structural integrity of the building, (ii) adversely affect the efficient or proper utilization of any part of the premises, or (iii) materially adversely affect the appearance of any part of the premises.

(i) The Lessee 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 work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the premises or any part thereof, nor to prevent the Lessee from contesting claims in good faith.

(j) In addition to all policies of insurance otherwise required by this Agreement, the Lessee shall procure and maintain or cause to be procured and maintained in effect during the performance of the Lessee's construction work:

(i) Comprehensive General Liability Insurance including but not limited to Independent Contractor coverage and coverage for Products Liability-Completed Operations and for Broad Form Property Damage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section which coverage shall not exclude claims arising out of or in connection with work performed within fifty feet of railroad property, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $5 million. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards.

(ii) Comprehensive Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage of $2 million.

(iii) Workers' Compensation Insurance in accordance with the requirements of law. The Workers' Compensation Insurance Policy required pursuant to the provisions of this paragraph shall be specifically endorsed to include coverage afforded by the U.S. Longshoremen's and Harbor Workers' Compensation Act.

(k) (1) In addition to the insurance required pursuant to the provisions of paragraph (j) of this Section, the Lessee shall procure or cause to be procured prior to the commencement of any work Builder's Risk Insurance (All Risk) covering loss or damage (including any loss or damage resulting from flood or

earthquake) to any structures, improvements, fixtures and equipment and furnishing and materials on the premises during said construction, whether or not attached to the land, in an amount equal to the full replacement cost. Such insurance shall name the Port Authority as an insured and such policy shall provide that the loss shall be adjusted with the Port Authority, and that the proceeds thereof shall be paid to the Port Authority and except under the circumstances described in subparagraph (2) of this paragraph shall be made available to the Lessee for and applied strictly and solely to the payment of the cost of the repair, replacement, rebuilding or other performance of the Lessee's construction work.

(2) In the event that for any single occurrence the insurance proceeds exceed in the aggregate One Million Dollars and No Cents ($1,000,000.00) such proceeds shall be deposited in an interest bearing account with a bank or trust company selected by the Lessee and approved by the Port Authority (which bank or trust company is hereinafter in this Agreement called "the Insurance Trustee") having its principal office in New York County and having a capital and surplus of at least $50,000,000 to be disbursed by the Insurance Trustee from time to time as work progresses, upon the written request of the Lessee, to be accompanied by the following:

(i) A certificate signed by a responsible officer of the Lessee, dated not more than thirty (30) days prior to such request, setting forth the following:

(aa) That the sum then requested either has been paid by the Lessee, or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the rebuilding or restoration therein specified, the names and addresses of such person, a brief description of such services and materials, the several amounts so paid or due to each of said persons in respect thereof, that no part of such expenditures has been made the basis, in any previous or then pending request, for the withdrawal of insurance money or has been paid out of the proceeds of insurance received by the Lessee, and that the sum then requested does not exceed the value of the services and materials described in the certificate.

(bb) That except for the amount, if any, stated in such certificate to be due for services or materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due for labor, wages, materials, supplies or services in connection with such rebuilding or restoration which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or similar lien or alleged lien upon such

rebuilding or restoration or upon the premises or any part thereof or upon the Lessee's leasehold interest therein.

(cc) That the cost, as estimated by the persons signing such certificate, of the rebuilding or restoration required to be done subsequent to the date of such certificate in order to complete the same, does not exceed the insurance proceeds, plus any amount deposited by the Lessee to defray such cost remaining in the hands of the Insurance Trustee after payment of the sum requested in such certificate.

(ii) An opinion to the best of Lessee's counsel's knowledge or other evidence, satisfactory to the Port Authority, to the effect that there has not been filed with respect to the premises or any part thereof or upon the Lessee's leasehold interest therein any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged of record, except such as will be discharged by payment of the amount then requested.

(3) Upon compliance with the provisions of subparagraph (2) of this paragraph the Insurance Trustee shall, out of such insurance money, pay or cause to be paid to the Lessee or the persons named (pursuant to subdivision (i) (aa) of subparagraph (2) of this paragraph) in such certificate the respective amounts stated therein to have been paid by the Lessee or to be due to them, as the case may be.

(4) Nothing contained herein shall be or be deemed or construed as a submission by the Port Authority to the application to itself of any vendor's, mechanics, laborer's or materialman's statutory or similar lien.

(l) With the exception of the Workers' Compensation Insurance policy each policy of insurance described in paragraph (j) of this Section shall include the Port Authority as an additional insured, and no such policy shall contain any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee 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 (i) of paragraph (j) of this Section. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured. Such insurance shall contain a provision that the insurer shall not, without obtaining express

advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(m) Unless otherwise set forth herein, each policy of insurance described in paragraphs (j) and (k) of this Section shall be subject to the applicable provisions of Section 13 of this Agreement.

(n) Title to and property in all improvements and fixtures placed, constructed or installed in or on the premises shall vest in the Port Authority upon placement, construction or installation thereof and title to and property in any and all equipment and trade fixtures removable without substantial injury to the premises placed in or installed upon the premises shall vest in the Lessee upon the installation thereof. Title to all of the Class B Work shall remain in the Lessee and upon the expiration or earlier termination of this Agreement the Lessee shall remove the Class B Work from the premises and repair all damage to the premises caused by such removal. Without limiting any other term of this Agreement, upon notice given by the Port Authority either prior to or within sixty (60) days after expiration or earlier termination of the letting of the premises under this Agreement the Lessee shall remove from the premises any improvements, fixtures, trade fixtures, or equipment as the Port Authority may specify in its notice, and shall repair any damage to the premises caused by such removal.

(o) In the performance of the Lessee's construction work the Lessee shall not permit any situation or condition to continue that causes any labor troubles at the Facility which interferes with the progress of other construction work at the Facility. The determinations of the Port Authority which are not arbitrary or capricious shall be conclusive on the Lessee and, upon notice from the Port Authority, the Lessee shall or shall cause its contractor to rectify any condition specified in the notice as soon as is reasonably possible, unless failure to rectify any condition specified in the notice immediately will result in an emergency situation, in which event the Lessee shall or shall cause its contractor to rectify such condition immediately. In the event of failure by the Lessee or any of its contractors to comply with the requirements of this paragraph (whether or not such failure is due to the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with any portion of the Lessee's construction work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. Unless failure to immediately suspend construction will result in an emergency condition, the Port Authorority will give the Lessee reasonable advance notice before directing a

cessation of construction. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee, shall reinstate the permission to the Lessee to perform the work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(p) Upon performance by the Lessee of the Lessee's construction work in accordance with the provisions of this Section the Port Authority will pay to the Lessee a sum (hereinafter sometimes referred to as "the Class A Work Qualifying Cost") equal to the lesser of: (i) the cost, as hereinafter defined, of that portion of the Lessee's construction work constituting Class A Work, or (ii) Fifteen Million Dollars and No Cents ($15,000,000.00). To the extent permitted by sound accounting practice, the sum of the following items of cost incurred by the Lessee in performing the Class A Work shall constitute the cost thereof for the purposes of this Agreement.

(1) The Lessee's payments to contractors;

(2) The Lessee's payments for equipment, supplies and materials;

(3) The Lessee's payments to persons, firms or corporations other than construction contractors or suppliers of equipment and material for services rendered or rights granted in connection with construction, not including services of the types mentioned in items (4), (5) and (6) of this paragraph;

(4) The Lessee's payments of premiums for such insurance coverage as the Lessee is required to maintain in effect during the period of construction only in accordance with the provisions of paragraphs (j) and (k) of this Section and such performance bonds as the Port Authority may specify in accordance with the provisions of paragraph (c) of this Section;

(5) The Lessee's payments for engineering services for the period of the construction only;

(6) The Lessee's payments for architectural, planning and design services in connection with the Class A Work;

(7) The Lessee's payments for permits and approvals required in connection with the Class A Work;

(8) The sum of the costs approved under items (4), (5), (6) and (7) shall not exceed 20% of the sum of the

costs approved under items (1), (2) and (3) of this paragraph; if in fact there is any such excess, such excess shall not be a part of the cost incurred by the Lessee in the performance of Class A Work for the purposes of this paragraph.

No payment or payments on account of administrative or other overhead costs and no payment to employees of the Lessee shall be included in the cost of the Class A Work whether or not allocated to the cost of the work by the Lessee's own accounting practices. No payment to a firm or corporation wholly or partially owned by or in common ownership with the Lessee shall be included in the cost of the Class A Work.

(q) Upon substantial completion of the Lessee's construction work, the Lessee shall submit to the Port Authority a certification to that effect signed by a responsible officer thereof which certificate shall certify the cost of all of the Class A Work performed by the Lessee to the date of the certificate, the cumulative payments made by the Lessee on account of such cost to the date of the certificate, and shall also certify (i) that except for the amount, if any, stated in such certificate to be due for services, equipment, supplies and materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due on account of the purchase of any equipment or fixtures described in the certificate or for labor, wages, materials, supplies or services in connection with any work described therein which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen statutory or similar lien or alleged lien upon said work or upon the premises or any part thereof, or upon the Lessee's leasehold interest therein, nor are any of the equipment, or fixtures described in such certificate secured by any liens, mortgages, security interests or other encumbrances. Nothing contained herein shall be deemed or construed as a submission by the Port Authority to the application to itself of any such lien; and (ii) that the work for which the amount set forth in the certificate is due has been performed in accordance with the Lessee's approved plans and specifications and the provisions of this Agreement. In addition, the architect or engineer who sealed the Lessee's plans and specifications pursuant to paragraph (c) of this Section shall certify that the portion of the Lessee's construction work described in the certificate has been performed in accordance with the Lessee's approved plans and specifications. Within thirty days' after it has received such certificate, the Port Authority shall inspect the premises and the work and after such inspection the Port Authority shall notify the Lessee if the Lessee's construction work has been substantially completed in accordance with the approved plans and specifications and the provisions of this Agreement. If such work has been substantially completed in accordance with the approved plans and specifications, and the provisions of this Agreement, the Port Authority will pay to the Lessee on account of the cost of the Class A Work an amount

(which amount is hereinafter called "the First Payment Amount") equal to the lesser of (i) the cost, as defined in paragraph (p) of this Section, of such portion of the Class A Work as has been substantially completed, or (ii) Thirteen Million Five Hundred Thousand Dollars and No Cents ($13,500,000.00). Upon final completion of all of the Lessee's construction work to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof that all of the Lessee's construction work has been completed, which certificate shall certify the final cost of all of the Class A Work performed by the Lessee, the cumulative payments made by the Lessee on account of the cost of the Class A Work, and shall also contain the statements set forth in subdivisions (i) and (ii) of this paragraph with respect to all of the Lessee's construction work. In addition, the architect or engineer who sealed the Lessee's plans and specifications pursuant to paragraph (c) of this Section shall certify that all of the Lessee's construction work has been performed in accordance with the Lessee's approved plans and specifications. The Lessee shall maintain in accordance with accepted accounting practice records and books of account of the type and character set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule D" to substantiate the certificates. Within ninety (90) days of its receipt of the Lessee's final certificates, the Port Authority shall examine such certificates and such records and books of accounts as the Lessee is required to maintain to substantiate the certificates, and, if the Port Authority, acting in a non-arbitrary and non-capricious manner, shall determine that such records and books of account do not substantiate the certificates the Port Authority shall have the right to examine such other supporting documents and records as are necessary, based upon a reasonable standard, to verify the information set forth in the records and books of account listed on Schedule D. Within such ninety (90) day period the Port Authority shall also finally inspect the premises and the work and after such inspection the Port Authority shall notify the Lessee if all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement. If all of the work has been completed in accordance with the approved plans and specifications, and the provisions of this Agreement, and if the Port Authority, acting in a non-arbitrary and non-capricious manner, has verified the Lessee's certificate of cost, the Port Authority will pay to the Lessee on account of the cost of the Class A Work the difference between the First Payment Amount and the lesser of (i) the cost, as defined in paragraph (p) of this Section, of the Class A Work, or (ii) Fifteen Million Dollars and No Cents ($15,000,000.00). No payment made to the Lessee pursuant to the provisions of this paragraph shall be deemed a determination by the Port Authority of the final cost of the Class A Work until the Port Authority has examined and approved the Lessee's final certificate of cost, such records and books of account as the Lessee is required to maintain to substantiate the

certificate, and, if the Port Authority, acting in a non-arbitrary and non-capricious manner, shall determine that such records and books of account do not substantiate the certificates such other supporting documents and records as are necessary, based upon a reasonable standard, to verify the information set forth in the records and books of account listed on Schedule D. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Class A Work to examine and audit the records and other documentation of the Lessee which pertain to and will substantiate such cost. In no event whatsoever shall the cost of any portion of the Class A Work as finally determined and computed in accordance with the provisions of paragraph (p) of this paragraph and in accordance with the provisions of this paragraph include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any improvements, equipment or fixtures or the performance of any work unless such are actually and completely installed in and or made to the premises nor shall cost include the costs of any equipment, fixture or improvements which are secured by liens, mortgages, other encumbrances or conditional bills of sale.

(r) The Lessee agrees that it will complete the Lessee's construction work prior to the Rental Start Date, as such date may be postponed pursuant to the provisions of this Agreement, subject to the Section of this Agreement entitled "Force Majeure." The Port Authority shall not be obligated to pay for any item constituting a portion of the Class A Work which has been constructed or installed subsequent to the day preceding the Rental Start Date, as the same may be postponed pursuant to the provisions of this Agreement. The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Class A Work shall be limited in amount to the lesser of (i) the cost, as defined in paragraph (p) of this Section, of the Class A Work, or (ii) Fifteen Million Dollars and No Cents ($15,000,000.00). No contractor or third party shall or shall be deemed to have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

(s) As a matter of policy the Port Authority requires the Lessee and the Lessee shall require its contractor to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBE's) and Women Business Enterprises (WBE's) in the Lessee's construction work. "Meaningful participation" shall mean at least ten percent (10%) of the firms performing the work are MBE's, and at least one percent (1%) of the firms performing the work are WBE's. A Minority Business Enterprise shall mean a company or firm at least 51% of which is owned and controlled by a minority or

minorities. A Women Business Enterprise shall mean a company or firm at least 51% of which is owned and controlled by a woman or women. For purposes of this paragraph minority is a member of one of the following groups:

(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, 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).

Good faith efforts to include meaningful participation by MBE's and WBE's shall include at least the following:

(1) Making plans and specifications for prospective construction work available to MBE's and WBE's in sufficient time for review.

(2) Utilizing the list of eligible MBE's and WBE's maintained by the Port Authority or seeking minorities or women from other sources for the purpose of soliciting bids for contractors.

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

(4) Insuring that provision is made to provide progress payments to MBE's and WBE's on a timely basis.

(5) Not requiring bonds from and/or providing bonds and insurance for MBE's and WBE's, where appropriate.

Section 6. Infrastructure

(a) Subject to all the provisions of this Agreement (including but not limited to the Section of this Agreement entitled "Force Majeure"), the Port Authority, through its employees, agents, representatives, contractors and subcontractors shall cause to be constructed or installed at the Facility, off the premises, (i) a berth for the loading and unloading of seagoing car carrying vessels (hereinafter sometimes

called "the Berth"), (ii) a paved access route connecting the Berth to the premises (iii) an open area in the vicinity of either the Berth or any future berth constructed at the Facility, of such size as the Port Authority, acting in a non-arbitrary and non-capricious manner, shall determine is sufficient for the receipt of approximately one thousand five hundred (1,500) vehicles discharged to the Facility by the Lessee and which shall be lighted and fenced in such a manner as the Port Authority, acting in a non-arbitrary and non-capricious manner, shall determine is suitable for the use of such area for such purpose, the configuration of which area shall be designated by the Facility Manager from time to time (which area is hereinafter sometimes called "the First Rest Area"), and (iv) storm and sanitary drains and water mains which will be brought by the Port Authority to a point on the perimiter of the premises as determined by the Port Authority (the facilities described in items (i), (ii), (iii), and (iv) are hereinafter collectively referred to as "the Infrastructure"). Subject to such non-arbitrary rules and regulations as the Port Authority may have or may hereafter promulgate for the safe and efficient operation of the Facility in accordance with the provisions of Section 10 of this Agreement, the Port Authority hereby grants to the Lessee the right to use the Infrastructure in common with other users thereof. The Lessee shall not do anything or permit anything to be done which will interfere with the rights of others to use the Infrastructure and the Port Authority agrees to require its other lessees at the Facility not to interfere with the Lessee's right to use the Infrastructure, as set forth herein. Nothing in this paragraph shall be deemed or construed to be a grant or letting to the Lessee of any berth, roadway, utility lines or structures, or common area, or of any facility forming a part of the Infrastructure. The effective period of the permission granted under this Agreement with respect to the use of the facilities forming a part of the Infrastructure shall commence on the Rental Payment Start Date and shall expire simultaneously with the expiration (or earlier termination) of the letting of the premises hereunder. If on the Rental Payment Start Date any portion of the Infrastructure is unavailable for use by the Lessee by reason of the fact that the Infrastructure, or any portion thereof, or any portion of the Facility, are in the course of construction, repair, alteration or improvement, or by reason of any cause or condition beyond the control of the Port Authority, the permission hereby granted with respect to the use of the Infrastructure shall be postponed with respect to such portion. In the event that the permission granted to the Lessee to use the Infrastructure or a portion thereof shall be postponed pursuant to the provisions of this paragraph then in lieu of all other damages to which the Lessee may be entitled, the Rental Payment Start Date shall be postponed until the Infrastructure or such portion thereof is completed to such an extent as to permit the Lessee's use of the premises. No such postponement shall affect the validity of this Agreement or the obligations of the Lessee hereunder (except as to postponement of payment of rentals), and the Port Authority shall not be subject to any

liability for any failure to complete the Infrastructure or any portion thereof. Except as specifically set forth in this Agreement, the Port Authority shall provide no improvements or perform any work to prepare the premises for the Lessee' use. The Port Authority makes no representations or warranties with respect to the condition or suitability of any portion of the premises or the Infrastructure for the design and construction by the Lessee of any building to be constructed by the Lessee pursuant to the provisions of this Agreement. The Port Authority shall be responsible for the repair, replacement, and maintenance of the Infrastructure unless such repairs, replacements, or maintenance are required as a result of the acts or omissions of the Lessee, its officers, employees, agents, representatives, or contractors.

(b) In the event that pursuant to the Costal Zones Management Act the Lessee is required to obtain a permit from the Division of Coastal Resources (or any successor thereof) of the New Jersey Department of Enviornmental Protection in order to use the premises for the purposes set forth in Section 4 hereof, and the premises are unavailable for use by the Lessee on the Rental Payment Start Date as a result of delays caused by the requirement to obtain such permit, the Rental Payment Start Date shall be postponed one day for each day the Lessee's use of the premises has been delayed as a result of the requirement to obtain such permit. No such postponement shall affect the validity of this Agreement or the obligations of the Lessee hereunder (except as to postponement of payment of rentals), and the Port Authority shall not be subject to any liability for any delays caused by the requirement to obtain such permit, provided, however, that if such permit is required and the Lessee is not able to obtain the permit within ninety (90) days of the Rental Payment Start Date the Lessee shall have the option exercisable by five (5) days' written notice to the Port Authority given at any time within ten (10) days immediately following said ninety (90) day period to terminate the letting hereunder. Termination under the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the letting. Termination under the provisions of this paragraph shall release the Lessee and the Port Authority from any and all obligations and liabilities which each may have had to the other under this Agreement with respect to the premises.

Section 7. Quiet Enjoyment

So long as the Lessee shall pay all rentals provided for in this Agreement and shall observe and perform all the terms, covenants and conditions on the Lessee's part to be observed and performed under this Agreement, the Lessee may peaceably and quietly enjoy the premises, during the initial term of the letting and any extension thereof entered into pursuant to the provisions of this Agreement, without hindrance or molestation by anyone claiming by, through or under the Port

Authority, subject, nevertheless, to the terms, covenants and conditions of this Agreement, it being understood that the Port Authority's liability hereunder shall obtain only so long as it remains the owner of the premises.

Section 8. Ingress and Egress

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

Section 9. Governmental and Other Requirements

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

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

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and

property in or near the Facility, and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

Section 10. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority (a copy of which is attached hereto, hereby made a part hereof and marked "Exhibit R") and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) business days before the Lessee shall be required to comply therewith. The Lessee will not be deemed in default of its obligations under this paragraph to compel other than its officers and employees to comply with the Rules and Regulations of the Port Authority if it has used its best efforts to compel such compliance.

(b) The Port Authority hereby agrees to apply the Rules and Regulations set forth in Exhibit R and any further rule or regulation hereafter promulgated by the Port Authority equitably and without discrimination against the Lessee and all other tenants at the Facility except to the extent that any such Rule or Regulation may be inapplicable by agreement or otherwise to the Lessee or any such tenant.

(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 letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

(d) In the event that any present or future Rule or Regulation, or any part thereof, is inconsistent with the rights granted to the Lessee under this Agreement or prevents the use of the premises for the purposes stated under this Agreement, then, only to the extent of such inconsistency, it shall not apply to the Lessee, its agents, employees or invitees; but nothing herein contained shall limit the effectiveness of any rule or regulation now or hereafter promulgated by the Port Authority for reasons of safety, health or preservation of property, or for the safe or efficient operation of the Facility.

Section 11. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the premises, the Lessee shall use reasonable efforts to conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the premises or at the Facility, and within twenty-four (24) hours the Lessee shall remove the cause of any objection made by the Port Authority, acting in a non-arbitrary and non-capricious manner, relative to the improper conduct of any of the employees of the Lessee or of any others on the premises with the consent of the Lessee. Except in case of emergency the Port Authority will give the Lessee written notice of any objection it may have relative to the improper conduct of any of the employees of the Lessee or of any others on the premises with the consent of the Lessee.

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

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

(d) The Lessee shall not commit any nuisance or permit its employees or others on the premises with its consent to commit or create or continue or tend to create any nuisance on the premises or in or near the Facility. The Port Authority hereby agrees to apply the provisions of this paragraph equitably and without discrimination against the Lessee and all other tenants at the Facility.

(e) The Lessee shall take all reasonable measures to eliminate vibrations tending to damage the premises or the Facility or any part thereof.

(f) The Lessee shall not allow to emanate from the premises any noxious or objectionable smokes, gases, or vapors.

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

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

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

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

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

Section 12. Signs

(a) Except with the prior consent of the Port Authority, the Lessee shall not erect, maintain or display any advertising, signs, posters or similar devices at or on the exterior of the premises or elsewhere at the Facility, provided, however, that the Lessee may erect, maintain, and display one (1) identification sign on the exterior of the premises and may erect, maintain, and display a reasonable number of identification, directional and informational signs necessary for its operations within the premises and in the hallways of the building in which the premises are located. The type of signs erected by the Lessee pursuant to this provision, and the location and method of installation thereof shall be subject to the Port Authority's approval which approval shall not be witheld except on account of the standards set forth in paragraph (c) of Section 5 of this Agreement. The Lessee shall keep all signs installed in any portion of the premises regularly open to the public and any signs installed on the exterior of any portion of the premises at all times in a clean, first-class condition and appearance. All maintenance, repair and replacement obligations of the Lessee pursuant to this Agreement shall be applicable to all signs installed by the Lessee, and on or before the expiration or earlier termination of this Agreement the Lessee shall remove the same and repair and restore the area affected thereby to the same condition and appearance as the adjacent surface.

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters, and similar devices placed by the Lessee on the premises or elsewhere on the Facility at the expiration or earlier termination of the letting, and shall restore the premises and the Facility 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 Lessee so to remove, obliterate or paint out each and every such piece of advertising, sign, poster or device and so to restore the premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the reasonable costs thereof to the Port Authority on demand.

Section 13. Indemnity

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons

including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the premises by the Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others on the premises with the consent of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees on the premises or elsewhere at the Facility, or out of the acts or omissions of others on the premises with the consent of the Lessee, excepting only claims and demands which result solely from the negligent or wilful acts of the Port Authority.

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

(c) The Lessee, in its own name as assured, shall maintain and pay the premiums on the following described policies of comprehensive general liability insurance (which insurance shall include without limitation garage keeper's legal liability coverage) and comprehensive automobile liability insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder which policies shall cover its operations hereunder and shall be effective throughout the letting, in limits not lower than the following:

(1) Bodily-injury liability: for injury to or wrongful death of one person, $2,000,000; for injury to or wrongful death of more than one person from any one occurrence, $2,000,000; and

(2) Property-damage liability: for all damages arising out of injury to or destruction of property in any one occurrence, $2,000,000.

In addition, the Lessee shall also take out and maintain Worker's Compensation Insurance in accordance with the requirements of law, and the Lessee's Worker's Compensation Policy shall be specially endorsed to include coverage afforded by the U.S. Longshoremens' and Harbor Workers' Compensation Act.

(d) With the exception of the Workers' Compensation Insurance Policy, each policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured 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. Such policies shall not exclude or except from their coverage damages arising out of injury to or destruction of property occupied or used by or rented to the Lessee, and shall not exclude claims arising out of or in connection with work performed within fifty feet of railroad property. Each such policy shall contain a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (a) of this Section and such policies shall not contain any any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee 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 additional insured or the coverage under the contractual liability endorsement described in this paragraph. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

(e) As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority within fifteen (15) days after the commencement date of the letting. In the event any binder is delivered it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) 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 letting hereunder, as the letting may be from time to time extended, and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain one or more new and satisfactory policies in replacement.

Section 14. Maintenance and Repair

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

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the premises or of the Facility which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees, or of other persons on or at the premises with the consent of the Lessee, other than employees of the Port Authority, its agents, and contractors. The provisions of this paragraph shall not require the Lessee to repair, replace, rebuild, or paint any portion of the Facility, other than the premises, damaged or destroyed by the acts or omissions of persons other than the Lessee, its officers, members, employees, agents, or contractors.

(c) Throughout the term of the letting under this Agreement, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforseen, structural or otherwise; and without limiting the generality of the foregoing the Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said premises or the Lessee's operations being constructed thereon. The Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear and tear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the premises or adversely affect the efficient or the proper utilization of any part of the premises. The Lessee shall make frequent periodic inspections of the premises and subject to Sections 5, 13, and 16 of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements and whether or not caused by fire or other casualty, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(d) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the premises, excepting only loss, theft or damage which result solely from the affirmative negligent or wilful acts of the Port Authority, its Commissioners, officers, employees and representatives, and shall promptly replace or repair the same within twenty (20) days after such loss, theft or damage; and the Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at the commencement of the letting, reasonable wear and tear not materially affecting the efficient use and functioning of the same excepted.

(e) Upon sixty (60) days' notice from the Lessee that any part of the water area adjacent to the Berth (or any subsequent berth at the Facility employed by the Lessee) has shallowed to a depth of twenty-eight (28) feet below mean low water, the Port Authority shall proceed (to the extent permitted by governmental authorities having jurisdiction) to dredge that part of the water area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of thirty (30) feet below mean low water, at no cost or expense to the Lessee. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, the dredging required shall be only such as shall produce (or leave in place) such depths and slopes as the Port Authority, acting in a non-arbitrary and non-capricious manner, shall determine may be required for underwater support of structures, which determination shall be controlling as long as the Port Authority is acting in a non-arbitrary and non-capricious manner. The term "governmental authorities having jurisdiction" as used in this paragraph shall not include the Port Authority.

(f) Except under circumstances as to which paragraph (b) of this Section applies, the Port Authority will repair, replace, and maintain the Infrastructure. Notwithstanding the foregoing, in the event that as a result of a casualty insured against in favor of the Port Authority under the New Jersey Standard Form of Fire Insurance Policy and the New Jersey Form of Extended Coverage Endorsement carried by it on any wharf, roadway, structure, or other facility which is part of the Infrastructure or in the event of a casualty which at the time of the occurrence of the damage would have been covered by the New Jersey Standard Form of Fire Insurance Policy and the New Jersey Standard Form of Extended Coverage Endorsement, whether or not said policy or endorsement was actually carried by the Port

Authority at the time of such damage, the Infrastructure is damaged (without the fault of the Lessee, its officers, employees, agents, or contractors) so as to render it unusable in whole or in part, then

(1) if, the Port Authority, acting in a non-arbitrary and non-capricious manner, determines that the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence.

(2) if the Port Authority, acting in a non-arbitrary and non-capricious manner, determines that the necessary repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage, then the Port Authority shall have the option excercisable by notice given to the Lessee within sixty (60) days' of the occurrence of the damage: (i) to repair or rebuild with due diligence, provided, that in the event the Port Authority shall notify the Lessee that the Port Authority elects this option, the Lessee shall have the right on thirty (30) days' notice to the Port Authority given within ten (10) days' of its receipt of the Port Authority's notice to terminate the letting under this Agreement with the same effect as expiration provided, that, a responsible officer or partner of the Lessee shall certify to the Port Authority that on an economic or operational basis the premises are unusable by the Lessee for the operations described in Section 4 of this Agreement prior to the substantial completion of the repairs or rebuilding and the Lessee shall give the Port Authority notice of such termination in writing within twenty (20) days after the Lessee's receipt of notification from the Port Authority respecting the duration of the repairs or rebuilding and provided, further, that the Lessee is not then in default under this Agreement after the giving of a notice thereof, and the expiration of any applicable period to cure, or under notice of termination from the Port Authority either on the date of the giving of its notice to the Port Authority or on the effective date thereof; or (ii) to terminate the Lessee's right to the use of the damaged wharf, roadway, structure, or other facility only, provided, that in the event the Port Authority shall notify the Lessee that the Port Authority elects this option, the Lessee shall have the right on thirty (30) days' notice to the Port Authority given within ten (10) days' of its receipt of the Port Authority's notice to terminate the letting under this Agreement with the same effect as expiration provided, that a responsible officer of the Lessee certifies to the Port Authority that on an economic or operational basis the premises is unusable for the continued operations of the Lessee as provided in Section 4 hereof without the use of the damaged wharf, roadway, structure, or other facility which has been damaged or destroyed and the Lessee shall give the Port Authority notice of such termination in writing within twenty (20) days after the Lessee's receipt of notification from the Port Authority terminating the Lessee's right to the use thereof, and provided, further, that the Lessee

is not then in default under this Agreement after the giving of a notice thereof, and the expiration of any applicable period to cure, or under notice of termination from the Port Authority either on the date of the giving of the notice or on the effective date thereof; or (iii) to terminate the letting as to the entire premises, provided, that in the event the Port Authority elects this option the Port Authority shall certify to the Lessee that at least 50% of the other leases at the Facility have been similarly terminated. In the event the letting under this Agreement is terminated pursuant to the provisions of this paragraph, this Agreement and the letting hereunder shall cease and expire on the effective date of termination stated in the notice as if such date were the date originally stated herein for the expiration of this Agreement. Such termination shall not relieve the Lessee of any obligations or liabilities which shall have accrued on or before the effective date of termination stated in the notice, or which shall mature on such date.

(3) If, in the case of any event described in this paragraph, the Port Authority elects to repair or rebuild, the Lessee shall not be entitled to any abatement of the Basic Rental payable under this Agreement except if, and only to the extent that, the Port Authority actually receives the proceeds of rental insurance, if any, in effect in connection with such damage. Nothing herein shall be construed to imply as an obligation on the Port Authority to carry any such insurance. In no event shall the Lessee be entitled to an abatement of the Facility Rental or Additional Basic Rental payable pursuant to the provisions of this Agreement.

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

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

aircraft, vehicles and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination and boiler and machinery hazards and risks (if said coverage regarding nuclear property losses and contamination is or becomes available).

(2) Unless otherwise directed by the Port Authority, the property damage insurance policy required by this paragraph shall name the Port Authority and the Lessee (with insurance clauses consistent with the provisions of this Lease) as the insureds, as their respective interests may appear, and shall provide that loss, if any, shall be adjusted with and payable to the Port Authority and, except under the circumstances described in paragraph (1) of Section 5 of this Agreement, shall be made available to the Lessee to be applied by the Lessee strictly and solely to the repair, replacement, or rebuilding of the premises as elsewhere provided in this Agreement. As to any insurance required by this paragraph, a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority simultaneously with the delivery of an executed copy of this Agreement by the Lessee. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective period hereof. If at any time the policy required by this paragraph shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

Section 15. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the premises are damaged the Lessee shall rebuild the same with due diligence. Except under the circumstances described in paragraph (1) of Section 5 of this Agreement, the proceeds of insurance from coverages secured in accordance with Section 14 shall be made available to the Lessee against the cost of such rebuilding. Under the circumstances described in paragraph (1) of Section 5 of this Agreement the proceeds of such insurance shall be deposited directly in the Insurance Trustee's account described in paragraph (1) of said

Section 5. The procedures for such rebuilding and for making proceeds available to the Lessee shall be the same as for the initial construction as set forth in Section 5, except that the Port Authority shall have no obligation to make any payment pursuant to Section 5(p) or 5(q) hereof.

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

(c) In the event of damage to or a partial or total destruction of the premises, the Lessee shall within thirty (30) days after the occurrence commence to remove from the premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to the Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority within ten (10) business days following written demand. Without limiting any term or provision of this Agreement, the Lessee shall indemnify and save harmless the Port Authority, its officers, agents, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise, excepting only claims which result solely from the negligent or wilful acts of the Port Authority, its Commissioners, officers, employees and representatives.

Section 16. <u>Construction by the Lessee</u>

After completion of the construction work described in Section 5 hereof, the Lessee shall not erect any structures, make any improvements or do any other construction work on the premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures without the prior consent of the Port Authority. If after completion of the construction work described in Section 5 hereof the Lessee desires to make any improvements or do any other construction work on the premises or alter, modify or make

additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures, the Port Authority shall act with reasonable promptitude in connection with review by the Port Authority of any request by the Lessee for any consent required under this Section and the Port Authority shall not arbitrarily or capriciously withold its consent to the installation of any fixtures in the existing buildings constructed on the premises. Nothing contained herein is intended to relieve the Lessee of its repair, replacement, and rebuilding obligations as elesewhere set forth in this Agreement. In the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, shall give notice to the Lessee to remove the same, or, with respect to any thing done without the Port Authority's consent, to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand. In the event the Port Authority consents to the performance of any construction, improvement, alteration, modification, addition, repair, replacement or installation work pursuant to the provisions of this Section, or the Lessee is required to perform such work, the Lessee shall submit to the Port Authority a duly executed Construction Application in the form attached to this Agreement as Exhibit B, together with complete plans and specifications covering the work, which shall bear the seal of a qualified architect or professional engineer and shall be in sufficient detail for a contractor to perform the work. The Port Authority shall not request any revision to the Lessee's proposed plans and specifications covering such work except for reasons of safety, health, operational utility, impact on or compatability of the proposed work on utility systems or on other parts of the Facility, or unless the Port Authority, acting in a non-arbitrary and non-capricious manner shall determine that the proposed work shall fail to comply with all governmental laws, ordinances, enactments, resolutions, rules and orders including, without limitation, the enactments, ordinances, resolutions, and regulations of the City of Jersey City and its various departments, boards, and bureaus, that are applicable or would be applicable if the Port Authority were a private corporation, or fails to comply with all applicable requirements of the Insurance Services Office of New Jersey. All plans and specifications submitted by the Lessee in accordance with this Section shall be in such detail as may reasonably permit the Port Authority to

make a determination as to whether the requirements set forth herein are met and in connection with review by the Port Authority of such submissions, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority, acting in a non-arbitrary and non-capricious manner, shall determine is necessary for such review. The Port Authority will apply the standards enumerated in this Section consistently and without discrimination against the Lessee.

Section 17. Additional Rent and Charges

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the basic rental as set forth in Section 3 of this Agreement. Prior to the exercise by the Port Authority of the right described in this paragraph the Port Authority, except in case of emergency, will give the Lessee not less than thirty (30) days prior notice specifying the obligation which the Lessee has failed or refused to perform, and except in an emergency the Port Authority will not proceed to perform any such obligation if during the thirty (30) day period following the Port Authority's notice that it will perform the said obligation the Lessee shall perform such obligation (or, if fulfillment of such obligation requires activity over a period of time, shall commence to perform whatever may be required for fulfillment and shall continue such performance without interruption except for causes beyond its control). If the curing of such default requires activity over a period of time and the Lessee shall have commenced the curing of such default within the said thirty day period, and shall diligently continue such performance, the said thirty day period shall be extended for such further period of time as such performance requires.

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

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

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

Section 18. Rights of Entry Reserved

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

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

(c) Prior to exercising any right of entry reserved to it under this Section, the Port Authority agrees, other than in the case of an emergency, to give the Lessee reasonable prior oral notice of its intention to enter the premises.

(d) In the event that any property of the Lessee shall obstruct the access of the Port Authority, its employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere

with the inspection, maintenance or repair of any such system, the Lessee shall move such property, as directed by the Port Authority, acting in a non-arbitrary and non-capricious manner, in order that the access may be had to the system or part thereof for its inspection, maintenance or repair, and, if the Lessee shall fail so to move such property after written direction from the Port Authority, acting in a non-arbitrary and non-capricious manner, to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(e) 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. The Lessee is and shall be in exclusive control and possession of the premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises or for any injury or damage to the premises or to any property of the Lessee or of any other person located therein or thereon (other than those occasioned by the acts of the Port Authority).

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

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

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

Section 19. Limitation of Rights and Privileges Granted

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

are located; (iii) permits, licenses, regulations and restrictions, if any, of the United States the municipality or State in which the premises are located, or other governmental authority.

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

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a building or buildings, if any are included in the premises, (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the premises. If any construction or installation is contemplated in this Agreement, the height thereof above ground shall be as determined solely by the Port Authority.

Section 20. Prohibited Acts

(a) Subject to all the terms and provisions of this Agreement, the Lessee may install a cafeteria or other eating facility in the premises pursuant to an approved construction application as provided in Section 5 and Section 16 hereof and may operate such facility with its own employees, or arrange for the operation thereof by an independent contractor or operator selected by the Lessee unless the Port Authority, acting in a non-arbitrary and non-capricious manner, determines that said contractor or operator will adversely affect or interfere with operations at the Facility or will cause or contribute to the causing of labor problems or disturbances thereat and the Lessee may install vending machines or devices designed to dispense or sell food, beverages, tobacco or tobacco products, or arrange for the installation and operation of such machines, subject to the Port Authority's approval of the type and method of installation thereof provided, further, that the Port Authority shall not withhold its consent to the method and location of such installation except on account of the standards set forth in Section 16 of this Agreement. The Lessee may use an independent contractor, operator or supplier for such machines selected by the Lessee unless the Port Authority, acting in a non-arbitrary and non-capricious manner, determines that said contractor, operator or supplier will adversely affect or interfere with operations at the Facility or will cause or contribute to the causing of labor problems or disturbances thereat. Such cafeteria and vending machines shall be installed and operated solely for use by the Lessee's officers, members, employees, contractors, customers, guests, and invitees. The Lessee's agreement with any contractor, operator or supplier of eating facilities or vending machines shall permit cancellation by the

Lessee on short term notice in the event the Port Authority, acting in a non-arbitrary and non-capricious manner, notifies the Lessee that such contractor, operator or supplier fails to meet the standards described in this paragraph. The Lessee shall be fully responsible for insuring that its contractor, operator or supplier shall comply with all of the applicable provisions of this Agreement and all acts and omissions of such contractor, operator or supplier shall be deemed acts and omissions of the Lessee and the Lessee and the contractor, operator or supplier shall be jointly and severally respsonsible therefor to the Port Authority only.

(b) Subject to all the terms and provisions of this Agreement, the Lessee may permit the installation in the premises of telephone pay-stations provided that the number thereof, the method of installation and the location thereof shall have been consented to in advance by the Port Authority, provided, further, that the Port Authority shall not withhold its consent to the method and location of such installation except on account of the standards set forth in Section 16 of this Agreement.

(c) Except as expressly permitted by the provisions of paragraphs (a) and (b) of this Section, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the premises of any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation, dispensing or sale of food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any equipment or device for the furnishing to the public of any retail service.

(d) Subject to the provisions of paragraphs (a) and (b) of this Section, the Port Authority, by itself, or by contractors, lessees, or permittees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the premises. The Lessee shall have the right to receive and retain the revenues from all coin-operated or other machines or devices which it may install on the premises pursuant to the provisions of paragraphs (a) and (b) of this Section, or from the operation of such facilities as may be operated on the premises pursuant to said paragraphs (a) and (b).

Section 21. Termination

(a) If any one or more of the following events shall occur, that is to say:

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future

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

(2) By order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if the Lessee is a corporation, by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within thirty (30) days after the filing thereof; or

(4) Except as expressly permitted in subparagraph (a)(5) of this Section and in Section 42 hereof or in Section 43 hereof, the letting or the interest of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(5) The Lessee shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; provided, however, that a merger or consolidation shall not be a ground for termination if the resulting corporation meets all the requirements of a permitted assignee under Section 42 hereof; or

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

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

(8) The Lessee shall voluntarily abandon, desert or vacate the premises or discontinue its operations at the premises or at the Facility for a period in excess of sixty (60) days or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of forty-five (45) days by action of any governmental agency from conducting its operations on the premises, regardless of the fault of the Lessee; or

(9) Any lien shall be filed against the premises because of any act or omission of the Lessee and shall not be discharged or bonded within twenty (20) days; or

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required under this Agreement when due to the Port Authority within five (5) days after receipt of notice of default from the Port Authority referring to this Section and specifying the rental, fee, charge or other sum which has not been paid; or

(11) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within thirty (30) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice, and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by ten (10) days' written notice terminate the letting and the rights of the Lessee under this Agreement, such termination to be effective upon the date specified in such notice. Such right of

termination and the exercise thereof shall be and operate as a conditional limitation.

(b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the commencement of the letting, the Lessee shall not be entitled to enter into possession of the premises, and the Port Authority, upon the occurrence of any such event, or at any time thereafter during the continuance thereof may, by twenty-four (24) hours' notice, cancel the interest of the Lessee under this Agreement, such cancellation to be effective upon the date specified in such notice.

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

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

Section 22. Right of Re-entry

The Port Authority shall, as additional remedies upon the giving of a notice of termination as provided in Section 21 of this Agreement, have the right to re-enter the premises and every part thereof upon the effective date of termination without further notice of any kind, and shall also have the right to dispossess the Lessee and regain and resume possession by the institution of summary or other legal proceedings. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 23. Waiver of Redemption

The Lessee hereby waives any and all rights to recover or regain possession of the premises and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the

event the Port Authority obtains possession of the premises in any lawful manner.

Section 24. Survival of the Obligations of the Lessee

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 21 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 22 of this Agreement, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Section 2 hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due, or at its option and at any time may sue to recover the full deficiency (less the proper discount) for the entire unexpired term. Notwithstanding any provisions of this Agreement to the contrary, it is understood that in no event shall the Lessee have the right, nor will the Lessee be required to enter the premises to perform any of its obligations under this Agreement subsequent to termination or cancellation (or to re-entry, regaining or resumption of possession). Nothing contained herein shall or shall be deemed to relieve the Lessee from its obligations hereunder to reimburse the Port Authority for any damages suffered by the Port Authority as a result of the Lessee's failure to perform under the terms of this Agreement or shall or shall be deemed to alter or limit any other remedies available to the Port Authority against the Lessee under this Agreement, or otherwise, in the event the Lessee defaults in the performance of any of its obligations under this Agreement.

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

(1) The amount of the total of all annual rentals (including without limitation the Facility Rental), less the installments thereof paid prior to the effective date of termination, except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect, on a daily basis; and

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

Section 25. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 21 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 22 of this Agreement, may occupy the premises or may relet the premises and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. Such reletting may be of part only of the premises or of the premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 21 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 22 of this Agreement, have the right to repair and to make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the premises (or portion thereof) during the balance of the term of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance of a surrender.

Section 26. Remedies to Be Nonexclusive

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

Section 27. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Section 14(c) hereof regarding the condition of the premises at the expiration or termination of the letting hereunder.

(b) Unless required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the premises, all its equipment, removable fixtures and other personal property, and all property of third persons for which the Lessee is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the premises, repairing all damage caused by any removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, the Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise.

Section 28. Acceptance of Surrender of Lease

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

Section 29. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port

Authority or the Lessee, except as otherwise expressly provided herein, shall be in writing (which shall include a telegram when delivered to the telegraph company), and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an office of such party, officer or representative during regular business hours; or (iii) delivered to the residence of such party, officer or representative at any time; or (iv) if directed to the Lessee, delivered to the premises at any time; or (v) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similiar courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office, the address of which is set forth in Page 1 of this Agreement, as their respective offices where notices and requests may be served. In the event the Port Authority gives any written notice in accordance with this Section pursuant to any provisions of this Agreement, the Port Authority, solely as an accommodation to the Lessee, and for information purposes only, will endeavor to forward a duplicate copy of such notice to Stanley Tannenbaum, Esq., Sills, Beck, Cummis, Zuckerman, Radin, Tischman & Epstein, 33 Washington Street, Newark, New Jersey 07102, but it is expressly understood and agreed that the giving of such duplicate notice shall not be or be deemed to be a condition precedent to the effectiveness of such notice, nor shall the failure to give such duplicate notice impose any liability on the Port Authority or prevent or be deemed to prevent the taking of any action or the doing of any thing which the Port Authority has the right to take or do upon the giving of notice in accordance with this Section. The Port Authority shall forward such duplicate notice in the same manner as the original notice is served on the Lessee, but the Port Authority shall not be required to offer proof of service or proof of receipt of such duplicate notice.

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

Section 30. General

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

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

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

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

except that the Lessee may use contractors in the performance of its obligations to maintain and repair the premises, provided, that if separate contractors are engaged to perform any of the foregoing services nevertheless the active management, direction, administration, executive action and overhead functions involved in the operations of the Lessee shall all be performed at all times during the letting solely by the Lessee, its officers and employees, and provided, further, that the Lessee shall be fully responsible to the Port Authority for the acts and omissions of such contractors and their officers, agents, representatives, employees and persons on the premises with their consent to the same extent as if the same were the employees of the Lessee. None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, busines visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the premises with its consent.

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

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

(d) The Lessee's representative, hereinbefore specified in this Agreement, (or such substitute as the Lessee may hereafter designate in writing) shall have full authority to

act for the Lessee in connection with this Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

(e) The Section headings in 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 Lessee by this Agreement shall be made by mail to the Port Authority at P. O. Box 17309, Newark, New Jersey, 07194, or to such other address as may be substituted therefor.

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

(h) As used in Sections 11 and 18, the phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

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

(j) As used in this Agreement, "Facility" or "marine terminal" shall mean the real property, buildings, structures, fixtures, improvements, and other property transferred to the Port Authority under the provisions of three deeds from the Penn Central Corporation, a Pennsylvania corporation, and The United New Jersey Railroad and Canal Company, a New Jersey corporation, each of which deeds was dated December 30, 1981, and it shall also mean such additional property adjacent thereto as the Port Authority may hereafter acquire and any additional structures, fixtures, improvements and other property which may have been heretofore or may hereafter be installed or constructed on any property or properties heretofore mentioned.

(k) As used in this Agreement, "letting" shall include any extension of the letting under this Agreement, whether made

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

(l) 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.

Section 31. Premises

(a) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the premises or the suitability thereof for the operations permitted on the premises by this Agreement upon performance by the Lessee of its obligations under Section 5 hereof. The Lessee, prior to the execution of this Agreement, has thoroughly examined the premises as existing and has found the same to be suitable and satisfactory for the operations of the Lessee contemplated and permitted under this Agreement. Without limiting any obligation of the Lessee to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the operations of the Lessee, so that there is possibility of injury or damage to life or property, and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition. Nothing contained in this Section is intended to relieve the Port Authority from any obligations expressely assumed by the Port Authority as elsewhere set forth in this Agreement.

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

Section 32. Force Majeure

(a) Neither the Port Authority nor the Lessee shall be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, or the Lessee, or its or their contractors, or subcontractors). Further, neither the Port Authority nor the Lessee shall be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority or the Lessee, as the case may be, to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption. This provision shall not apply to or affect failures by the Lessee to pay the rentals or other charges specified in this Agreement.

(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. The Port Authority shall not discriminate against the Lessee or arbitrarily single out the Lessee or its premises in connection with the Port Authority's voluntary compliance with any law, rule, regulation, requirement, order or direction described in this paragraph, and if it is permitted to do so under such law, rule, regulation, requirement, order or direction, and to the extent practicable, the Port Authority will allocate such service or services to the Lessee and other lessees at the Facility.

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

Section 33. Brokerage

Each party represents and warrants that in connection with the negotiation of this Agreement and the letting hereunder

it has not had any contacts, dealings, or conversations with any broker. Each party shall indemnify and save harmless the other of and from any and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Agreement based on its acts or omissions.

Section 34. Non-Liability of Individuals

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

Section 35. Services

(a) The Port Authority shall be under no obligation to supply the Lessee with any utilities, including but not limited to water, gas, electricity, sewer service, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service. Nothing contained herein shall be construed to relieve the Port Authority of its obligation to construct the Infrastructure pursuant to the provisions of Section 6 of this Agreement.

(b) The Lessee shall promptly pay all water-bills covering consumption on the premises. In the event that any such water-bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute an item of additional rental, payable to the Port Authority on demand.

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

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings, which, or a portion or portions of which, are included in the premises (such charge, fee, rent or assessment or such

increase thereof being hereinafter referred to as an "Imposition"), the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, pay, in accordance with any such notice, such Imposition (or the portion thereof allocated by the Port Authority to the premises or to the operations of the Lessee under this Agreement) either directly to the governmental body, authority or agency, or to the public utility or other entity, or directly to the Port Authority, as such notice may direct. All such payments shall constitute items of additional rental. The Port Authority shall not discriminate against the Lessee or arbitrarily single out the Lessee or its premises in connection with the requirement to pay any Imposition pursuant to the provisions of this paragraph, and in making the allocation referred to in this paragraph, the Port Authority shall not act in an arbitrary or capricious manner and upon request by the Lessee will supply the Lessee with a statement showing how such allocation was made.

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

(f) Without in any wise affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of Section 16 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), ship-filling lines and other water-using equipment and facilities.

Section 36. Credit

During the term of the letting under this Agreement the Lessee shall be entitled to a credit against the basic rental payable by the Lessee pursuant to subparagraphs (1) and (2) of Section 3(b) hereof as follows:

(a) If during an annual period the Port Authority shall receive dockage and wharfage charges on a number of automobiles discharged to the Facility by the Lessee that is in excess of forty thousand (40,000) but not in excess of forty-five thousand (45,000) automobiles, then the Lessee shall be entitled to a credit against basic rental in an amount equal to the product obtained by multiplying (i) the number of automobiles so discharged by the Lessee that is in excess of forty thousand (40,000) by (ii) twenty-five percent (25%) of the Unit Rate (as adjusted pursuant to the provisions of subparagraph (3) of Section 3(d) hereof).

(b) If during any annual period the Port Authority shall receive dockage and wharfage charges on a number of automobiles discharged to the Facility by the Lessee that is in excess of forty-five thousand (45,000) automobiles, then the Lessee shall be entitled to a credit against basic rental in an amount equal to the product obtained by multiplying (i) the number of automobiles so discharged by the Lessee that is in excess of forty-five thousand (45,000) by (ii) fifty percent (50%) of the Unit Rate (as adjusted pursuant to the provisions of subparagraph (3) of Section 3(d) hereof). Notwithstanding anything to the contrary in this paragraph, the Lessee shall not be entitled to a credit against basic rental pursuant to this Section for any automobile discharged to the Facility by the Lessee during any annual period that is in excess of seventy-five thousand (75,000) automobiles discharged to the Facility by the Lessee during such annual period.

(c) For purposes of determining the number of automobiles discharged to the Facility by the Lessee under the provisions of paragraphs (a) and (b) of this Section, the following categories of automobile (and no others whatsoever) shall be counted: (i) automobiles discharged to the Facility and processed by the Lessee at the Facility and (ii) fifty percent (50%) of the automobiles other than BMWs discharged to the Facility from a seagoing vessel carrying at least one hundred (100) BMWs; provided, that, the manufacturer of an automobile so discharged shall not have discharged any automobile to any marine terminal facility within the Port of New York District during the three (3) year period preceding the first discharge to the Facility of said automobile following said three (3) year period. The Lessee shall give notice to the Port Authority of said first discharge to the Facility of any said automobile within ten (10) days thereafter. If the Lessee shall notify the Port Authority that a seagoing vessel carrying at least one hundred (100) BMWs has discharged such vehicles to the Faciltiy the Port Authority shall inform the Lessee what other vehicles, if any, were discharged to the Facility from such vessel.

(d) Any credit to which the Lessee shall be entitled pursuant to this Section shall be applied in equal installments against monthly installments of basic rental payable by the Lessee during the next succeeding annual period until exhausted. Any such credit arising during the thirtieth (30th) annual period under the letting hereunder shall be paid to the Lessee within thirty (30) days after receipt by the Port Authority of the sworn statement required by Section 37 hereof.

Section 37. Records

(a) The Lessee shall maintain in accordance with accepted accounting practice during the letting under this Agreement and for one year thereafter bills of lading and manifests recording all transactions in any way connected with or reflecting upon the payment of additional basic rental by the

Lessee pursuant to Section 3(d) hereof or the granting of any credit against basic rental pursuant to the provisions of Section 36 hereof, which bills of lading and manifests shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session, and permit, in ordinary business hours during such time, the examination and audit by the officers, employees and representatives of the Port Authority of such bills of lading and manifests and also any of such records and books of account of any company which is owned or controlled by the Lessee, if said company performs services, similar to those performed hereunder by the Lessee, anywhere in the Port of New York District. If the Lessee does not make available bills of lading and manifests, the Port Authority shall be entitled to examine and audit such other records and books of account as the Port Authority, acting in a non-arbitrary and non-discriminatory manner, shall deem necessary to calculate the payment of additional basic rental which the Lessee is obligated to make pursuant to Section 3(d) hereof or to substantiate any credit against basic rental which the Lessee has taken pursuant to the provisions of Section 36 hereof.

(b) On or before the fifteenth day following the end of any annual period the Lessee shall supply the Port Authority with a statement sworn to by the Lessee's chief financial officer or person performing similar functions setting forth separately the number of BMWs and automobiles other than BMWs processed by the Lessee at the premises during the annual period and the marine terminal to which such BMWs and automobiles other than BMWs were discharged. The certificate required hereunder shall set forth sufficient information to enable the Port Authority to determine the current amount of additional basic rental to be paid by the Lessee pursuant to subparagraph (1) of Section 3(d) hereof and of any credit against basic rental due the Lessee pursuant to Section 36 hereof.

(c) Nothing contained in this Agreement shall be deemed to render any records, or any sworn statement, of the Lessee required to be maintained or supplied hereunder conclusive as to any of the matters set forth therein. The Port Authority may at its sole discretion, in lieu of any records or books of account or statements of the Lessee, employ its own records and books of account for the calculation of any amounts to be paid or credited under this Agreement.

Section 38. Extension of Term

(a) The Lessee shall have the right to extend this Agreement and the term of the letting hereunder, as to the entire premises only, for an additional fifteen (15) year period effective upon the expiration date set forth in Section 2 hereof (such additional period being hereinafter in this Agreement sometimes called "the extension period"), provided, however, that

the Lessee shall give unconditional written notice to the Port Authority of its election so to do subscribed by an executive officer of the Lessee not later than twelve (12) months prior to the expiration date of the term of the letting as stated in said Section 2, and not earlier than fifteen (15) months prior to such date, and provided, further, however, that the Lessee shall not then be in default in the performance or observance of any of the terms of this Agreement after the giving of a notice thereof, and the expiration of any applicable period to cure, or under notice of termination from the Port Authority as a result of such default, either on the date of the giving of the said notice or on the intended effective date thereof and that on both such dates the letting under this Agreement shall be in full force and effect. All of the terms, covenants, conditions and provisions of this Agreement shall apply during the extension period, except that the rental payable by the Lessee during the extension period shall be determined in accordance with paragraph (b) of this Section and the Lessee shall have no further right to extend the letting under this Agreement.

(b) In the event the Lessee shall excercise its right to extend the term of the letting as set forth in paragraph (a) of this Section, the Lessee shall pay to the Port Authority a basic annual rental for the premises during the extension period determined as follows: Not later than ninety (90) days following the twenty-ninth (29th) anniversary of the Rental Payment Start Date the Port Authority shall by written notice to the Lessee advise the Lessee of the basic annual rental to be payable by the Lessee during the extension period and in such notice shall state whether and how such rental shall be adjusted, and the during the extension period the Lessee shall pay to the Port Authority the basic rental set forth in the Port Authority's notice, in advance, in equal monthly installments, on the first day of each calendar month during the extension period, which basic rental shall be subject to adjustment in accordance with the provisions of the Port Authority's notice unless the Lessee concludes that the basic rental for the premises, together with the adjustments thereto, as stated in the Port Authority's notice, exceeds the then current fair rental value of the premises and so advises the Port Authority, in writing, within thirty (30) days after receipt of the Port Authority's notice by the Lessee. In such event, within thirty (30) days after the Port Authority has received the Lessee's notice the Port Authority and the Lessee shall each appoint an arbitrator and a third arbitrator shall be appointed by the arbitrators so appointed. Pursuant to the then rules of the American Arbitration Association, or any successor organization, an arbitration shall be held and the question to be answered by the arbitrators shall be:

> "Is the basic rental for the extension period for the premises, together with the adjustments thereto, as established by the Port Authority in its notice to the Lessee, in excess of the then current fair rental value of such premises, unencumbered by the Lease"?

In determining the fair rental value of the premises the arbitrators shall not give any consideration to the fact that the premises are owned by a public authority.

FAIR

If the arbitrator's decision is in the negative then the Lessee shall pay to the Port Authority during the extension period the basic rental for the premises established by the Port Authority in its notice to the Lessee, in advance, in equal monthly installments, on the first day of each calendar month during the said period, and such rental shall be subject to adjustment in accordance with the provisions of the Port Authority's notice.

UNFAIR

If the decision of the arbitrators is that the basic rental for the premises, together with the adjustments thereto, as stated in the Port Authority's notice, exceeds the then current fair rental value thereof the arbitrators shall thereupon determine the then current fair rental value thereof and in such event the Lessee shall pay to the Port Authority during the extension period a basic rental for the premises in an amount equivalent to the greater of (1) the then current fair rental value thereof as determined by the arbitrators; or (2) the basic rental payable by the Lessee for such premises on the expiration date of the initial term of the letting under the Lease as adjusted to such date pursuant to the provisions of the Lease, and subject to further adjustment in accordance with the provisions of the Port Authority's notice, in advance, in equal monthly installments as provided above in this paragraph. In the event the rental described in this paragraph has not been determined as herein provided prior to the commencement of the extension period the Lessee shall continue to pay the monthly installments of such rental at the rate theretofore in effect and upon determination of the applicable rental for the extension period pursuant to the provisions of this paragraph, the Lessee shall within thirty (30) days thereafter pay any amounts due to the Port Authority arising out of the excess (if any) of the monthly installments of the rental as so determined over the monthly installments thereof actually paid by the Lessee for such period. The basic rental determined by the arbitrators shall, during the extension period, be subject to adjustment in accordance with the provisions of the Port Authority's notice. The Port Authority and the Lessee shall each bear the cost of the arbitrator appointed by them. All other costs of such arbitration including, but not limited to, the cost of the third arbitrator shall be borne equally by the Port Authority and the Lessee. Nothing contained in this Agreement shall in any way affect the obligation of the Lessee to pay the basic rental for the premises during the initial term of the letting under this Agreement, which basic rental shall be payable in accordance with all of the terms, provisions, covenants and conditions of this Agreement.

Section 39. Security

The Lessee shall deposit and maintain with the Port Authority a security deposit in accordance with the provisions of

Standard Endorsement No. L23.1 attached to this Agreement and hereby made a part hereof. In connection with the provisions of Standard Endorsement No. L23.1, the Lessee hereby certifies that its Employer Identification Number is (Ex. 1)

Section 40. Additional Provision Governing Pollution

(a) In addition to compliance by the Lessee with all governmental laws, ordinances, rules, regulations and orders now or at any time in effect during the term of the letting hereunder which as a matter of law are applicable to the operation, use or maintenance by the Lessee of the premises or the operations of the Lessee under this Agreement (the foregoing not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them provided, however, that no immunity or exemption from any of the foregoing requirements shall excuse compliance or be grounds for noncompliance on the part of the Lessee), the Lessee shall conduct its operations on the premises so that there will be at all times a minimum of air pollution, water pollution or any other type of pollution, and a minimum of noise emanating from, arising out of or resulting from such operations. The Lessee agrees that in the conduct of its operations under this Agreement and in the operation, use and maintenance of the premises it will comply with the non-arbitrary and non-capricious requirements of the Port Authority regarding air pollution, water pollution, noise, or any other type of pollution arising out of or resulting from the operation, use or maintenance of the premises by the Lessee. The Port Authority hereby reserves the right from time to time and at any time during the term of the letting hereunder to require the Lessee, and the Lessee agrees, to design and construct at its sole cost and expense such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth this paragraph. The location, manner, type and method of construction and the size of any of the foregoing shall be determined by the Port Authority, acting in a non-arbitrary and non-capricious manner. The Lessee shall submit for Port Authority approval its plans and specifications covering the required work and upon receiving such approval shall proceed diligently to construct the same.

(b) The obligations assumed by the Lessee under paragraph (a) of this Section shall continue throughout the term of the letting under this Agreement and shall not be limited, affected, impaired or in any manner modified by the fact that the Port Authority shall have approved any construction application and supporting plans, specifications and contracts covering construction work and notwithstanding the incorporation therein of the Port Authority's recommendations or requirements and notwithstanding that the Port Authority may have at any time during the term of this Agreement consented to or approved any particular procedure or method of operation which the Lessee may have proposed or the Port Authority may have itself prescribed

the use of any procedure or method. The agreement of the Lessee to assume the obligations under paragraph (a) of this Section is a special inducement and consideration to the Port Authority in entering into this Agreement with the Lessee.

(c) In the event that the Port Authority, acting in a non-arbitrary and non-capricious manner, shall determine that the Lessee shall fail at any time during the term of the letting under this Agreement to comply with the provisions of paragraph (a) of this Section within thirty (30) days' after receipt of a notice of such default from the Port Authority, the Port Authority shall have the right to cause the Lessee to cease such of its operations on the premises as are being performed in violation of the provisions of this Section. Upon written direction from the General Manager of the Facility specifying the reasons therefor, the Lessee shall promptly cease the operations specified and shall submit to the Port Authority for its written approval the Lessee's proposal for making modifications, corrections or changes in or to its operations so that the same will comply with the provisions of this Section. The Lessee shall not resume any of its operations which have been halted until such written approval has been obtained.

Section 41. Condemnation

(a) In any action or other proceeding by any governmental agency or agencies for the taking for a public use of any interest in all or part of the premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Lessee shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee, provided, however, that this paragraph shall not be construed to prevent the Lessee from making a possible claim against the condemning party for an award for moving or relocation expenses, for trade fixtures and for other fixtures and improvements owned by the Lessee to the extent that such fixtures and improvements are owned by the Lessee and have been paid for by the Lessee, if such claims are then permitted by law and if such award is made separately from the award which the Port Authority will be entitled to 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) In the event that all or any portion of the premises is required by the Port Authority to comply with any

present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the premises so required. Such termination shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the premises so required upon the effective date of such termination in the same condition as that required for the delivery of the premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. The provisions of paragraph (a) of this Section shall apply to any delivery by the Lessee or taking by the Port Authority under this paragraph (b). No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by the Lessee nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be an eviction of the Lessee or a breach of this Agreement or be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise.

(c) The terms "governmental agencies" and "governmental authority" as used in this Section shall not include the Port Authority unless the Port Authority is acting pursuant to specific legislative authority and not acting solely as landlord of the premises.

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

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

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

(g) In addition to the right of termination provided for in paragraph (e) of this Section, if, in the event of a taking or conveyance or a delivery by the Lessee or taking by the Port Authority pursuant to paragraph (b) of this Section the total usable area of the premises is reduced by more than ten percent (10%) and the Lessee certifies to the Port Authority that the remaining portion of the premises is on an economic or operational basis unusable for the continued operations of the Lessee as provided in Section 4 hereof, giving consideration to the nature and size of the Lessee's operations at that time, the Lessee shall have the right on thirty (30) days written notice to the Port Authority given within thirty (30) days after such taking or delivery to terminate this Agreement and the letting hereunder with respect to the balance of the premises, provided, however, that the Lessee shall not be under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of notice to the Port Authority on the effective date thereof. In the event the letting under this Agreement is terminated pursuant to the provisions of this paragraph, this Agreement and the letting hereunder shall cease and expire on the effective date of termination stated in the notice as if such date were the date originally stated herein for the expiration of this Agreement. Such termination shall not relieve the Lessee of any obligations or liabilities which shall have accrued on or before the effective date of termination stated in the notice, or which shall mature on such date.

Section 42. Assignment

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

(b) Notwithstanding the provisions of paragraph (a) of this Section 9, and without otherwise limiting the generality thereof, the Lessee and any subsequent person who shall become the Lessee pursuant to the provisions of this Agreement shall have the right from time to time to assign the this Agreement and the term of the letting hereunder in its entirety to a corporation which is and continues to be wholly owned and controlled by the Lessee, or which wholly owns and controls the Lessee, or which is under common control with the Lessee, or which is wholly owned and controlled by a corporation which wholly owns and controls the Lessee or which the Lessee wholly owns and controls, provided, however, that any such assignee shall use the premises solely for the purposes set forth in Section 4 of this Agreement and for no other purpose or purposes whatsoever and provided, further, however, that no such assignment shall be effective until an agreement in the form annexed hereto as "Exhibit X" and hereby made a part of the

Lease as herein amended and extended has been executed by the Lessee, the proposed assignee, and the Port Authority, and the Port Authority's consent as herein stated shall be effective only as long as the proposed assignee maintains one of the relationships described in this paragraph to the Lessee.

(c) Without otherwise limiting the provisions of paragraph (a) of this Section the Lessee and any subsequent person who shall become the Lessee pursuant to the provisions of this Agreement shall have the right from time to time to assign this Agreement and the letting hereunder in its entirety to a person, firm or corporation not described in paragraph (b) of this Section provided, that, an assignment pursuant to this paragraph shall not be effective unless (1) the proposed assignee shall have a financial standing as of the date of the assignment which in the opinion of the Port Authority is sufficient to assure the ability of the proposed assignee to meet all of its obligations under this Agreement throughout the balance of the term of the letting hereunder and such party shall furnish to the Port Authority such additional security or guaranty as the Port Authority may deem necessary; (2) the proposed assignee shall have the same obligation as the Lessee has as to the use of the premises which shall be in accordance with the purposes set forth in Section 4 of this Agreement, and the proposed assignee shall use the premises for no other purpose whatsoever; (3) the proposed assignee and its Chief Executive Officer, Chairman of the Board, President, Chief Operating Officer, Chief Financial Officer, and any member of its Office of the President or Presidium, if any, or any director or partner thereof and any person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed assignee if the proposed assignee is a corporation or partnership, by loans thereto, stock ownership therein, or any other form of financial interest has as of the date of the proposed assignment a good reputation for integrity and financial responsibility and has not, within the prior five years, been convicted of or is not under current indictment for any crime involving corruption, bribery of a public official or body, or misuse of public funds; (4) neither the proposed assignee nor its Chief Executive Officer, Chairman of the Board, President, Chief Operating Officer, Chief Financial Officer, or any member of its Office of the President or Presidium, if any, nor any director or partner thereof nor any person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed assignee, if the proposed assignee is a corportion or partnership, by loans thereto, stock ownership therein or any other form of financial interest has filed a voluntary petition in bankruptcy or has been adjudicated a bankrupt within five years prior to the date of the proposed assignment; (5) the proposed assignee or its Chief Executive Officer, Chairman of the Board, President, Chief Operating Officer, Chief Financial Officer, or any member of its Office of the President or Presidium, if any, or any director or partner thereof or any

person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed assignee, if the proposed assignee is a corporation or partnership, by loans thereto, stock ownership therein, or any other form of financial interest shall not be in conflict of interest, as defined under the laws of the State of New Jersey, with any Commissioner of the Port Authority as of the date of the proposed assignment; and (6) an Agreement of Assignment and Assumption in the form annexed hereto as Exhibit X shall have been duly executed by the Lessee and the proposed assignee and delivered to the Port Authority. The Port Authority will execute the same and deliver executed counterparts to the Lessee and the proposed assignee provided all of the conditions set forth in this paragraph have been satisfied.

(d) No assignment of this Agreement or the letting hereunder shall be effective if on the effective date of such proposed assignment (i) the Lessee shall be under notice of default under this Agreement as to which the applicable period to cure, if any is provided for in this Agreement, has passed, (ii) this Agreement shall not be in full force and effect, or (iii) the Port Authority shall have served a notice of termination of this Agreement.

(e) In the event of an assignment consented to by the Port Authority pursuant to the provisions of paragraph (c) of this Section and upon execution by the Port Authority, the Lessee and the proposed assignee of the Agreement of Assignment and Assumption referred to in paragraph (c) of this Section, the Lessee shall be relieved of all liabilities and obligations thereafter accruing under this Agreement. Nothing contained herein shall be construed to release the Lessee under such assignment from any liabilities or obligations which shall have accrued prior to the effective date of such assignment or which shall mature on such date.

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

(g) With respect to a corporation, "control" as used in paragraph (b) of this Section shall mean legal and beneficial ownership by one person, firm or corporation, or a group acting

in concert, of a majority of the issued and outstanding shares of the capital stock and voting rights of another corporation. With respect to a person or firm other than a corporation "control" as used in paragarph (b) of this Section shall mean the power to direct the management and policies of such person or firm, whether by legal or beneficial ownership, or otherwise.

(h) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the premises or any portion thereof for any purpose other than as provided in Section 4 of this Agreement.

Section 43. Subletting

(a) The Lessee covenants and agrees that except as hereinafter expressly authorized it will not sublet the premises or any part thereof.

(b) Without otherwise limiting the provisions of paragraph (a) of this Section, the Lessee may, after the commencement of the letting, sublet the premises in its entirety provided that all of the following conditions precedent and requirements have been met or satisfied: (1) the proposed subtenant shall have the same obligation as the Lessee has as to the use of the premises which shall be in accordance with the purposes set forth in Section 4 of this Agreement, and the proposed subtenant shall use the premises for no other purpose whatsoever; (2) the proposed subtenant is not a current occupant of a Port Authority marine terminal facility and has not been in active discussion with the Port Authority towards its current or future occupancy of space in a Port Authority marine terminal facility during the two year period immediately preceding the effective date of the proposed subletting; (3) the rental payable by the proposed subtenant to the Lessee for or in connection with the proposed subtenant's use or occupancy of the subleased space shall not be less than the rental charged by the Port Authority for comparable space on the effective date of such subletting; (4) if the rental and any other consideration payable by the proposed subtenant to the Lessee for or in connection with the proposed subtenant's use or occupancy of the subleased space, shall be in excess of the rental rate provided for in this Agreement, the Lessee shall so notify the Port Authority and the Lessee will pay the excess to the Port Authority as received; and (5) the Lessee, the proposed subtenant and the Port Authority shall each have executed a Consent to Sublease Agreement in the form attached hereto and marked "Exhibit Y".

(c) The Lessee and the proposed subtenant shall present in advance all documents, information and other data which the Port Authority may require relating to the matters covered in subparagraphs (1), (2), (3) and (4) above and each of them shall supply during the continuance of any approved subletting such additional or current documents, information or other data as the Port Authority may from time to time require.

If after the subletting becomes effective any of the foregoing conditions shall be violated as to any subtenant in the premises, the Port Authority shall have the right in addition to all other rights and remedies available under this Agreement, to cancel the consent to said subletting by notice to the Lessee, in which event the Sublease between the Lessee and the said subtenant shall immediately terminate and expire and the Lessee shall immediately cause the said subtenant to vacate the premises. Use or occupancy of the premises by a subtenant pursuant to the consent granted in this Section shall not entitle such subtenant to any rights or privileges which the Port Authority has or may hereafter accord to lessees of space in the Facility, but nothing herein shall be deemed to prohibit the Lessee from sharing with its permitted subtenants any such rights or privileges which the Port Authority has accorded to the Lessee. The Lessee shall at all times be solely responsible for complying with any requirements regarding the permissible number of persons to occupy the premises.

(d) If the Lessee sublets in violation of paragraph (a) of this Section, except as authorized by the provisions of paragraph (b) hereof, or if the premises are occupied by any person, firm or corporation other than the Lessee, the Port Authority may collect rent from any sublessee or anyone who claims a right to this Agreement or to the letting or who occupies the premises, and shall apply the net amount collected to the rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraph (a) of this Section, nor an acceptance by the Port Authority of any such sublessee, claimant or occupant as tenant, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained in this Agreement.

(e) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the premises or any portion thereof for any purpose other than as provided in Section 4 of this Agreement.

Section 44. Environmental Compliance

(a) Without limiting the Lessee's obligations elsewhere in this Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which or at any time are in effect during the term of the letting under this Agreement, the Lessee understands and agrees that it shall be obligated at its cost and expense to comply with the requirements of all environmental laws, rules, regulations, requirements, orders and directives, including but not limited to the provisions of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. and the regulations promulgated thereunder (hereinafter in this Agreement called "ECRA"). Nothing in the foregoing shall be construed as a submission by

the Port Authority to the application to itself of such requirements or any of them; provided, however, that no immunity or exemption of the Port Authority from any of the foregoing requirements shall excuse compliance or be grounds for noncompliance on the part of the Lessee. Without limiting the generality of any provision contained herein, the Lessee shall be responsible at its cost and expense, and subject to the direction of the Port Authority, for (i) the preparation of and submission to the New Jersey Department of Environmental Protection (hereinafter in this Agreement called the "NJDEP") of any notice, negative declaration, cleanup plan, non-applicability affidavit or communication, or any other documentation or information, (ii) the obtaining of any surety bond or the giving of any other financial assurances, and (iii) the obtaining from the NJDEP of any approval of a negative declaration or non-applicability letter or other form of release or mitigation, all as may be required or permitted under ECRA. If so directed by the Port Authority at any time during or subsequent to the letting hereunder, the Lessee at its cost and expense shall promptly provide all information requested by the Port Authority as may be necessary for the preparation of any notice, non-applicability affidavit or communication, negative declaration, or cleanup plan, all as may be required or permitted under ECRA, and shall promptly swear to, sign or otherwise fully execute such notice, non-applicability affidavit or communication, negative declaration or cleanup plan when and as directed by the Port Authority, and the Lessee agrees that any such document may be filed by the Port Authority with the NJDEP on behalf of the Lessee and at the Lessee's cost and expense. In the event that the NJDEP, or any other environmental agency or regulating authority having jurisdiction, requires that a cleanup plan be prepared and that a cleanup be undertaken because of any spill or discharge of hazardous waste or substances at any portion of the premises then it shall be the Lessee's responsibility at its cost and expense to prepare and submit the required plans, to submit the required financial assurance, and to carry out the cleanup and take all other actions required by the approved plans and the regulating authorities. The Lessee understands and agrees that should the provisions of any environmental laws, or regulatory requirements or directives, become effective on termination or expiration of the letting under this Agreement, or on the closure or transfer of the Lessee's operations as defined by the NJDEP, the Lessee shall be required to comply therewith at its cost and expense including those laws, requirements and directives relating to the cleanup of hazardous waste or substances discharged or spilled at any portion of the premises during the term of the letting under this Agreement. The Port Authority shall also have the right to direct the Lessee at its cost and expense to clean up any spills or discharges of hazardous waste or substances at the premises at any time during the term of the letting under this Agreement regardless of whether any applicable environmental law, regulation or directive would require cleanup at that time or during the term of such letting. 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 and after the term of the letting under this Agreement to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Lessee with its environmental obligations under this Section. In the event the Lessee fails to comply with or perform any of its obligations hereunder, the Port Authority at any time during or subsequent to termination or expiration of the letting may elect (but shall not be required) to perform such obligations and the Lessee shall pay to the Port Authority upon demand its costs thereof, including all overhead costs as determined by the Port Authority.

(b) Without limiting the generality of the provisions of paragraph (a) of this Section the Lessee agrees, unless directed otherwise by the Port Authority, to provide the Port Authority with copies of all documentation, records, correspondence, notices and submissions provided by the Lessee to the NJDEP, the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration or any other Federal, State, or local authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to Federal, State or local law, rule, regulation or ordinance, including but not limited to the Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq.) and the Hazardous Substance Discharge - Reports and Notices Act (N.J.S.A. 13:1K-15 et seq.) and the regulations promulgated thereunder, and the Lessee shall also provide the Port Authority with all documentation, records, correspondence, notices and submissions received by the Lessee regarding hazardous wastes and substances from any environmental regulatory authority.

(c) Notwithstanding the provisions of paragraph (a) of this Section, and without otherwise limiting the generality thereof, the Lessee shall not be obligated to cleanup and remove hazardous wastes and substances discharged or spilled on the premises if the presence of such hazardous wastes and substances did not arise out of any default of the Lessee in performing or observing any term or provision of this Agreement, or out of the use or occupancy of the premises by the Lessee or by others with its consent, or out of any acts or omissions of the Lessee, its officers, employees, agents, representatives, contractors, customers, guests, invitees, and other persons who are doing business with the Lessee or are on the premises with the Lessee's consent if with regard to such hazardous wastes and substances:

(i) Neither the Lessee nor any of its officers, employees, agents, representatives, contractors, customers, guests, invitees, and other persons who are doing business with the Lessee or who are on the premises with the Lessee's consent committed any negligent acts or omissions with respect to such hazardous wastes and substances; and

(ii) Neither the Lessee nor any of its officers, employees, agents, representatives, contractors, customers, guests, invitees, and other persons who are doing business with the Lessee or who are on the premises with the Lessee's consent failed to observe and comply with governmental laws, rules, regulations, requirements, orders and directives with respect to such hazardous wastes and substances, or failed to observe and comply with Port Authority requirements, directives and procedures regarding any hazardous wastes and substances at the premises, including but not limited to those set forth in any design guidelines or construction guidelines which may be established by the Port Authority for the Facility and submitted to the Lessee.

(d) Without limiting the generality of any other provision contained in this Agreement, the Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives from (and shall reimburse the Port Authority for its costs or expenses including legal expenses incurred in connection with the defense of) all claims and demands of third persons including but not limited to those for death, for personal injuries, or for property damages, and from (and shall reimburse the Port Authority for its costs or expenses including legal expenses, fines, penalties, and costs of compliance incurred in connection with) all claims and demands of any governmental agency, arising out of or in any way resulting from (i) any spill or discharge of hazardous waste or substances at the premises or any portion thereof during the term of this Agreement or (ii) the failure of the Lessee to observe or perform its obligations under the provisions of this Section, including without limitation the failure of the Lessee to provide all information, make all submissions and take all other actions required or permitted under ECRA; provided, however, that the Lessee shall not be obligated to indemnify and hold harmless the Port Authority as to any claim or demand arising out of or resulting from the presence of hazardous wastes and substances discharged or spilled on the premises if the presence of such hazardous wastes and substances did not arise out of any default of the Lessee in performing or observing any term or provision of this Agreement, or out of the use or occupancy of the premises by the Lessee or by others with its consent, or out of any acts or omissions of the Lessee, its officers, employees, agents, representatives, contractors, customers, guests, invitees, and other persons who are doing business with the Lessee or are on the premises with the Lessee's consent if with regard to such hazardous wastes and substances:

(i) Neither the Lessee nor any of its officers, employees, agents, representatives, contractors, customers, guests, invitees, and other persons who are doing business with the Lessee or who are on the premises with the Lessee's consent committed any negligent acts or omissions with respect to such hazardous wastes and substances; and

(ii) Neither the Lessee nor any of its officers, employees, agents, representatives, contractors, customers, guests, invitees, and other persons who are doing business with the Lessee or who are on the premises with the Lessee's consent failed to observe and comply with governmental laws, rules, regulations, requirements, orders and directives with respect to such hazardous wastes and substances, or failed to observe and comply with Port Authority requirements, directives and procedures regarding any hazardous wastes and substances at the premises, including but not limited to those set forth in any design guidelines or construction guidelines which may be established by the Port Authority for the Facility and submitted to the Lessee;

(e) The failure of the Lessee to observe or perform any of its obligations under the provisions of this Section shall entitle the Port Authority to terminate the letting under this Agreement at any time, with any such termination to be and to operate as a conditional limitation. The Lessee's obligations under this Section shall survive the expiration or earlier termination of this Agreement and shall continue so long as the Port Authority remains responsible for any spill or discharge of hazardous wastes or substances at the premises.

Section 45. Additional Environmental Provision

If the environmental testing and sampling performed by the Lessee pursuant to the permission granted by the Port Authority to the Lessee by a certain letter agreement between the Port Authority and the Lessee dated October 1, 1987 shall disclose the presence on the premises of any environmentally hazardous wastes or substances (hereinafter sometimes called "the Wastes"), and the Lessee shall so notify the Port Authority of such on or before December 31, 1987 (which notice shall specify in detail the nature, elements and locations of the Wastes and shall include, without limitation, a copy of any environmental test or sample performed by the Lessee in regard to the premises), the Port Authority shall proceed to clean up or otherwise mitigate the Wastes. Notwithstanding any other provision contained in this Section, if the cost of said cleanup or mitigation of the Wastes would in the reasonable opinion of the Port Authority exceed Seven Hundred Fifty Thousand Dollars ($750,000), the Port Authority shall have the right, in lieu of undertaking said cleanup or mitigation, to terminate this Agreement upon fifteen (15) days' notice given to the Lessee within sixty (60) days of receipt by the Port Authority of the Lessee's notice. Termination under the provisions of this Section shall have the same effect as if the effective date of termination determined hereunder were the date of expiration of the letting.

Section 46. First Offer

(a) In the event that the Port Authority shall elect to sell the entire premises separtely from the balance of the Facility, the Port Authority shall notify the Lessee of said election, which notice shall set forth the terms of the sale, including without limitation the sale price, which shall not exceed the "appraised value of the premises" as determined by an independant appraiser selected by the Port Authority, and such other terms and conditions as the Port Authority shall in its sole discretion deem appropriate. "Appraised value of the premises" shall mean that amount of money a third party purchaser in an arms length transaction would pay for title to the premises allowing for the greatest possible use and development thereof, considered as vacant, unimproved and unencumbered. The Lessee shall have the right to purchase the premises on the terms and conditions set forth in the Port Authority's notice, provided that the Lessee shall give the Port Authority firm, unconditional notice of the Lessee's election to purchase the premises within fifteen (15) days after the date of the Port Authority's notice, and provided, further, that the Lessee is not in default in the performance or observance of any term, provision or condition of this Agreement on the date of said notice from the Port Authority and that this Agreement is in full force and effect. In the event that the Lessee concludes that the price set forth in the Port Authority's notice exceeds the appraised value of the premises but desires to purchase the premises, the Lessee give the Port Authority firm, unconditional notice of the Lessee's election to purchase the premises at the apprraised value of the premises within fifteen (15) days after the date of the Port Authority's notice and shall in such notice advise the Port Authority that it desires to select its own independant appraiser, including the name and address of the person designated to act as appraiser on its behalf. Within thirty (30) days' thereafter the appointed appraiser shall deliver his valuation to the Port Authority. If the appraisers appointed by the Port Authority and the Lessee, respectively, fail to agree on the appraised value of the premises within fifteen (15) days' of the delivery to the Port Authority of the valuation determined by the Lessee's appraiser, the apraisers selected by the Lessee and the Port Authority, respectively, shall be required to appoint a third independant appraiser. Within thirty (30) days' after the appointment of a third independant appraiser the three appraisers shall determine the appraised value of the premises. In the event that the appraisers appointed by the Lessee and the Port Authority, respectively, can not agree on the appointment of a third independant appraiser, then such third independant appraiser shall be selected in accordance with the then existing rules of the American Arbitration Association, or any successor association. Each party shall bear the costs of its own appraiser and shall share the costs of the third appraiser, equally. Each appraiser selected pursuant to the provisions of this paragrph shall be a competent and impartial person, and a member of the American Institute of Real Estate Appraisers, or

its successsor organization, and shall have had at least fifteen (15) years' experience in appraising property similiar to the premises in the Port of New York District prior to the date of his appointment. After the appraised value of the premises has been determined in accordance with the applicable provisions of this paragraph, the Port Authority shall prepare an appropriate agreement providing for the purchase of the premises by the Lessee, which document shall contain such terms and conditions as the Port Authority, acting in a non-arbitrary and non-capricious manner, shall deem appropriate for the safe and efficient operation of the Facility subsequent to the transfer of title and for the protection, maintainance, safeguarding, and enhancement of its rights and interests as owner and operator of the Facility and the rights and interests of users and occupants at the Facility, including but not limited to provisions regarding use of the premises, use of common facilities and roadways, permissible operations, security, maintenance, repair, appearance, indemnity, insurance, financial obligations (including payment of common operating and maintenance costs), law compliance, environmental compliance and health and safety matters and in addition thereto and without limiting the foregoing such purchase agreement shall include and incorporate such provisions of this Agreement as the Port Authority deems appropriate to accomplish the aforesaid objectives. The provisions of the purchase agreement shall be deemed covenants running with the land and shall survive the deed referred to below. The Lessee shall have thirty (30) days after receipt to duly execute and deliver the purchase agreement to the Port Authority accompanied by an amount equivalent to ten percent (10%) of the appraised value of the premises as set forth in the purchase agreement. If the Port Authority does not receive a duly executed and delivered purchase agreement accompanied by the required deposit from the Lessee within the thirty (30) day period provided for herein, then the Lessee's option to purchase the premises shall be null and void and without further force and effect and this Agreement and the letting hereunder shall continue in full force and effect and notwithstanding the provisions of this paragraph, and the Lessee shall have no further rights to purchase the premises at any time thereafter. In such event, the Port Authority shall have the right to sell the premises, or any portion thereof, to others on terms and conditions (including but not limited to sale price) different from those which would have governed the sale to the Lessee of the premises and on more or less favorable terms and conditions all as the Port Authority may at its discretion determine. It is understood and agreed that this Agreement and the letting hereunder and all the rights and obligations of the parties hereunder shall continue in full force until the closing date and the actual transfer of title to the premises by the Port Authority to the Lessee.

(b) In the event that at any time subsequent to the Rental Start Date established pursuant to Section 3 of this Agreement the Port Authority shall determine that any leased

space at the Facility of up to fifteen (15) acres in area that is contiguous to the premises shall become available for leasing, and provided the Lessee is not in default in the performance or observance of any term, provision or condition of this Agreement after notice thereof from the Port Authority and that this Agreement is in full force and effect, the Port Authority will notify the Lessee of the date that it expects such space to become available or ready for occupancy and the amount and configuration of such space, which notice shall set forth the terms of letting, including without limitation the amount and nature of all rentals to be charged for the space and such other terms and conditions as the Port Authority shall in its sole discretion deem appropriate. If the Lessee desires to lease such space on the terms and conditions set forth in the Port Authority's notice, the Lessee shall deliver to the Port Authority, within fifteen (15) days after the date of the Port Authority's notice, firm, unconditional notice of the Lessee's election to accept such space in its entirety, "as is" and in the condition such space is in when vacated by the prior occupants thereof for the balance of the term of the letting under this Agreement. The Port Authority shall thereupon prepare an appropriate document supplementing this Agreement to confirm the inclusion of such space in the premises in accordance with the provisions of this Section, which document shall contain such terms and conditions in addition to those set forth in the Port Authority's notice as the Port Authority shall in its sole discretion elect to include. The Lessee shall execute such document and return it to the Port Authority within thirty (30) days after the Lessee's receipt thereof. In the event the Lessee fails to indicate its unconditional acceptance of such space within the time prescribed in this Section or refuses to execute such document within the time set forth in the preceding sentence, the Lessee shall thereupon have no rights or interest in or to such space and the provisions of this Section with respect thereto shall be of no further force or effect throughout the balance of the term of the letting under this Agreement, and the Port Authority shall have the right to lease such space, or any portion thereof, to others on terms and conditions (including but not limited to rental, term, construction and use provisions) different from those which would have governed the letting to the Lessee of such space and on more or less favorable terms and conditions all as the Port Authority may at its discretion determine. The Lessee expressly understands and agrees that the provisions of this Section are subject to the availability for leasing of space as described above in this paragraph at the Facility and that nothing contained in this paragraph shall obligate or be construed to obligate the Port Authority to furnish or make available such space to the Lessee, nor shall anything contained in this paragraph be deemed to prohibit or be construed to prohibit the Port Authority from extending any lease covering such space or otherwise continuing in occupancy a tenant of such space, or from consenting to an assignment of any such lease or consenting to a sublease covering such space nor shall such space be deemed available for rental for purposes of this

paragraph if it is then rented to or under negotiation with another tenant, or if a tenant thereof relets or extends or otherwise modifies or amends the term of the letting as to such space. The Lessee further understands and agrees that the provisions of this paragraph shall not be deemed to prohibit the Port Authority from entering into a lease for all of the remaining space in the Greenville portion of the Facility, even if such lease includes the fifteen acres contiguous to the premises, or shall be deemed to require the Port Authority to notify the Lessee of any negotiations regarding such a lease.

Section 47. Entire Agreement

The within Agreement consists of pages number 1 through 81, together with Exhibits A, B, R, X and Y, Schedules A, B, C and D and Standard Endorsement L23.1. It constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

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

ATTEST:

SECRETARY

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By

(Title) JAMES J. KIRK
DIRECTOR, PORT DEPARTMENT

ATTEST:

Kathleen Wall
ASST. SECRETARY

BMW OF NORTH AMERICA, INC.

By

Senior Vice President Finance

(Title) Senior Vice President

APPROVED:

FORM

VERIFIED

SCHEDULE A

For the five year period commencing on each of the following anniversary dates of the Rental Payment Start Date:

Fifth Anniversary Date	$457,913.23
Tenth Anniversary Date	$530,846.97
Fifteenth Anniversary Date	$615,397.20
Twentieth Anniversary Date	$$713,413.92
Twenty-Fifth Anniversary Date	$827,042.31

3% min sch.

SCHEDULE B

For the five year period commencing on each of the following anniversary dates of the Rental Payment Start Date:

Fifth Anniversary Date	$ 504,131.23
Tenth Anniversary Date	$ 643,413.44
Fifteenth Anniversary Date	$ 821,176.56
Twentieth Anniversary Date	$1,048,052.50
Twenty-Fifth Anniversary Date	$1,337,610.10

max 5%
sch.

SCHEDULE C

1. Dewax Building
2. Car wash Building
3. Polish building
4. Underground utilities
5. Building sub-structure
    a) Roof
    b) Walls
    c) HVAC
    d) Mechanical, Electrical, and Plumbing
6. Roof
7. Walls
8. Site Improvements
9. Exterior lighting
10. Parking garage
11. Gates
12. Guard house
13. Mechanical, Electrical, and Plumbing
14. HVAC
15. Paving
16. Fencing
17. Conveyors permanently affixed to the realty
18. Access control systems permanently affixed to the realty
19. In ground water separator systems
20. Fueling operation facility
21. Elevators
22. Security systems permanently affixed to the realty

SCHEDULE D

1. Certification of cost signed by Lessee

2. Lessee's contracts with construction contractors

3. Invoices from contractors

4. Evidence of payments made to contractors such as cancelled checks, bank statements, etc.

5. Check disbursements book

Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deposit with the Port Authority (and shall keep deposited throughout the letting under this Agreement) the sum of Two Hundred Thousand Dollars and No Cents ($200,000.00)

either in cash, or bonds of the United States of America, or of the State of New Jersey, or of the State of New York, or of The Port Authority of New York and New Jersey, having a market value of that amount, as security for the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of this Agreement on its part to be fulfilled, kept, performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Lessee may deposit such bonds or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Lessee) in a manner satisfactory to the Port Authority. The Lessee may request the Port Authority to accept a registered bond in the Lessee's name and if acceptable to the Port Authority the Lessee shall deposit such bond together with an irrevocable bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Lessee any expenses incurred by the Port Authority in re-registering a bond to the name of the Lessee shall be borne by the Lessee. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of the Lessee. With respect to any bonds deposited by the Lessee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Lessee, to sell the same in whole or in part, at any time, and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of

all claims, equities or rights of redemption of the Lessee. The Lessee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Lessee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Lessee. Any balance remaining shall be retained in cash toward bringing the deposit to the sum specified above. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the above-mentioned amount, the Lessee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times to the full amount above stated, and such additional deposits shall be subject to all the conditions of this Standard Endorsement. After the expiration or earlier termination of the letting under this Agreement, as the said letting may have been extended, and upon condition that the Lessee shall then be in no wise in default under any part of this Agreement, as this Agreement may have been amended or extended (or both), and upon written request therefor by the Lessee, the Port Authority will return the deposit to the Lessee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Lessee of this Agreement or any part thereof. The Lessee agrees that it will not assign or encumber the deposit. The Lessee may collect or receive any interest or income earned on bonds and interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise; provided, however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest bearing bank accounts.

FORM EWT-OL - A ignment, all Facilities
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ASSIGNMENT OF LEASE
WITH ASSUMPTION AND CONSENT (Lease No.)

THIS AGREEMENT, made as of by THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States of America, having an office for the transaction of business at One World Trade Center, in the Borough of Manhattan, in the City, County and State of New York, and

(hereinafter called "the Assignor"),
a corporation organized and existing under the laws of the State of
with an office for the transaction of business at

an individual, residing at

a partnership, consisting of

and
(hereinafter called "the Assignee"),
a corporation organized and existing under the laws of the State of
with an office for the transaction of business at

an individual, residing at

a partnership, consisting of

the representative of which is

WITNESSETH, THAT:

WHEREAS, the Assignor desires to assign to the Assignee that certain Agreement of Lease dated as of , 19 , made by and between The Port Authority and the Assignor, and hereinafter, as the same has been heretofore amended and extended, called "the Lease";

covering premises at

; and

WHEREAS, the Port Authority is willing to consent to such assignment on certain terms, provisions, covenants and conditions:

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

1. The Assignor does hereby assign, transfer and set over to the Assignee, heirs, executors, administrators and successors, to and their own proper use, benefit and behoof forever, the Lease, to have and to hold the same unto the Assignee heirs, executors, administrators and successors from the day of , 19 , for and during all the rest, residue, and remainder of the term of the letting under the Lease, subject nevertheless to all the terms, provisions, covenants and conditions therein contained; and the Assignor does hereby assign, transfer and set over unto the Assignee heirs, executors, administrators and successors, all right, title and interest of the Assignor in and to a certain deposit (whether of cash or bonds) in the amount of

made by the Assignor with the Port Authority, as security for the performance of the terms, provisions, covenants and conditions of the Lease, but subject to the provisions of the Lease and to any claim or right to the said deposit or any part thereof heretofore or hereafter made or to be made on the part of the Port Authority

2. The Port Authority hereby consents to the foregoing assignment. Notwithstanding anything herein to the contrary, the granting of such consent by the Port Authority shall not be, or be deemed to operate as, a waiver of the requirement for consent (or consents) to each and every subsequent assignment by the Assignee or by any subsequent assignee, nor shall the Assignor be relieved of liability under the terms, provisions, covenants and conditions of the Lease by reason of this consent of the Port Authority or of one or more other consents to one or more other assignments thereof.

3. The Assignor agrees that this assignment of the Lease and this consent of the Port Authority thereto shall not in any way whatsoever affect or impair the liability of the Assignor to perform all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, of the Lease on the part of the Lessee or tenant thereunder to be performed, and that the Assignor shall continue fully liable for the performance of all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, on the part of the Lessee or tenant thereunder to be performed. The liability of the Assignor as set forth in this paragraph shall remain and continue in full force and effect as to any and every renewal, modification, or extension of the Lease whether in accordance with the terms of the Lease or by a separate or additional document, and notwithstanding any such renewal, modification, or extension, whether or not the Assignor has specifically consented to such renewal, modification, or extension. The liability of the Assignor hereunder shall in no way be affected by the failure of the Port Authority to obtain the Assignor's consent to any such renewal, modification or extension notwithstanding that the Port Authority had previously obtained such consent with respect to a prior renewal, modification, or extension.

4. The Assignee does hereby assume the performance of and does hereby agree to perform all the terms, provisions, covenants and conditions, including without limitation thereto the obligation to pay rent, contained in the Lease, to be performed on the part of the lessee or tenant thereunder, as though the Assignee were the original signatory to the Lease. The execution of this instrument by the Port Authority does not constitute a representation by it that the Assignor has performed or fulfilled every obligation required by the Lease; as to such matters the Assignee agrees to rely solely upon the representation of the Assignor.

5. The liability of the Assignor hereunder shall in no way be affected by:

(a) The release or discharge of the Assignee in any creditors' receivership, bankruptcy or other similar proceeding; or

(b) The impairment, limitation or modification of the liability of the Assignee or its estate in bankruptcy, or of any remedy for the enforcement of the Assignee's said liability under the Lease, resulting from the operation of

any present or future provision of the Bankruptcy Code or any other statute or from the decision of any court having jurisdiction over the Assignee or its estate; or

(c) The rejection or disaffirmance of the Lease in any creditors;, receivership, bankruptcy, or other similar proceeding; or

(d) Any disability or any defense of the Assignee.

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

IN WITNESS WHEREOF, the Port Authority, the Assignor and the Assignee have executed these presents as of the date first hereinabove set forth.

ASSIGNOR:

_____

ATTEST: By_____

_____ (Title) President
Secretary (Seal)

ASSIGNEE:

_____

ATTEST: By_____

_____ (Title) President
Secretary (Seal)

ATTEST:

_____

By_____

_____ (Title) President
Secretary (Seal)

CSL-I0672

CONSENT TO SUBLEASE

Port Authority Lease No.

Port Authority Facility -

THIS AGREEMENT, made as of
by and among THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), and

(hereinafter called "the Lessee"), and

(hereinafter called "the Sublessee"),

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee have entered into a lease identified above by Port Authority Lease Number and by date and covering premises at the abovementioned Port Authority Facility (which lease, as the same may have been supplemented, amended and extended is hereinafter called "the Lease"); and

WHEREAS, the Lessee has requested the consent of the Port Authority to a proposed sublease, a copy of which is attached hereto and made a part hereof (hereinafter called "the Sublease");

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

1. On the terms and conditions hereinafter set forth, the Port Authority consents to the Sublease.

2. The Sublease shall terminate, without notice to the Sublessee, on the day preceding the date of expiration or earlier termination of the Lease, or on such earlier date as the Lessee and Sublessee may agree upon. The Sublessee shall quit the subleased premises and remove its property and property for which it is responsible therefrom on or before the termination of the Sublease.

3. If the Lessee shall at any time be in default under the Lease, the Sublessee shall on demand of the Port Authority pay directly to the Port Authority any rental, fee or other amount due to the Lessee. No such payment shall relieve the Lessee from any

Exhibit Y

obligations under the Lease or under this Consent, but all such payments shall be credited against the obligations of the Lessee or of the Sublessee, as the Port Authority may determine for each payment or part thereof.

4. In any case of difference between the provisions of the Lease and those of the Sublease, the Lease shall be controlling, it being the intention of the Port Authority merely to permit the exercise of the Lessee's rights (to the extent permitted by the Sublease) by the Sublessee, and not to enlarge or otherwise change the rights granted by the Lease. All of the terms, provisions, covenants and conditions of the Lease shall be and remain in full force and effect.

5. The Sublessee, in its operations under or in connection with the Sublease and in its occupancy of the premises, agrees to assume, observe, be bound by and comply with all the terms, provisions, covenants and conditions of the Lease.

6. Without in any wise affecting the obligations of the Lessee under the Lease and under this Consent, the Sublessee agrees with respect to its acts and omissions to indemnify the Port Authority and to make repairs and replacements as if it were the Lessee under the Lease. However, all acts and omissions of the Sublessee shall be deemed to be acts and omissions of the Lessee under the Lease and the Lessee shall also be severally responsible therefor, including but not limited to the obligations of indemnification and repair.

7. In addition to all other remedies available to the Por Authority under the Lease or otherwise, this Consent may be revoked by the Port Authority by notice to the Lessee and the Sublessee in event of any breach by the Sublessee of any term or provision of th Lease or of this Consent and no such revocation shall be deemed to affect the Lease or the continuance thereof. Any notice given to Sublessee shall be sufficient if given in accordance with the Sect of the Lease entitled "Notices", for the purpose of which the Sub hereby designates the person named as representative on the first hereof as its officer or representative upon whom notices may be served and the Sublessee designates its office at the address st on the first page hereof as the office where such notices may be served.

8. The Lessee and Sublessee represent and warrant t the attached Sublease sets forth the full and entire rental or consideration payable to the Lessee by the Sublessee for or in connection with the subletting hereunder or use or occupancy subleased space and they further represent and warrant that t no rental or consideration other than as stipulated in the a Sublease.

Exhibit Y

9. The granting of this Consent by the Port Authority shall not be or be deemed to operate as a waiver of the rights of the Port Authority, or as a consent to any subsequent subleasing (by the Lessee or by the Sublessee) or to any assignment of the Lease or the Sublease or of any rights under either of them, whether in whole or in part.

10. Reference herein to the Sublessee shall mean and include the Sublessee, its officers, agents, employees and also others on the premises or the Facility with the consent of the Sublessee.

11. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof shall be held personally liable to the Lessee or to the Sublessee under any term or provision of this Consent or because of its execution or because of any breach or alleged breach thereof.

IN WITNESS WHEREOF, the Port Authority, the Lessee and the Sublessee have executed these presents.

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

_____

By_____

(Title)_____

(Seal)

ATTEST:

_____

Lessee

_____

By_____

(Title)_____

(Corporate Seal)

ATTEST:

_____

Sublessee

_____

By_____

(Title)_____

(Corporate Seal)

Exhibit Y

MLPF,10672,Ack., N.J.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 22nd day of December, 1987, before me, the subscriber, a notary public of New York, personally appeared James J. Kirk the Director, Port Resale of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

Catherine Durda
(notarial seal and stamp)

CATHERINE DURDA
Notary Public, State of New Yok
No. 03-1051050 Bronx County
Term Expires ~~March 30, 19~~
12/31/89

STATE OF New York }
COUNTY OF New York } ss.

On this 22nd day of December, 1987, before me, the subscriber, a notary public of New York, personally appeared Peter Moll, Sr. Vice Pres. Friedrich Hanau, Sr. Vice Pres the ~~President~~ of BMW of North America, Inc., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Catherine Durda
(notarial seal and stamp)

CATHERINE DURDA
Notary Public, State of New Yok
No. 03-1051050 Bronx County
Term Expires ~~March 30, 19~~
12/31/89

~~STATE OF }~~
~~COUNTY OF } ss.~~

~~Be it remembered that on this day of , 197 , before me, the subscriber, a notary public of , personally appeared who I am satisfied is the person named in and who executed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.~~

~~(notarial seal and stamp)~~

Agreement, the Port Authority will pay to the Lessee on account of the cost of the Port Authority construction work the difference between the sum obtained by adding together all prior payments made by the Port Authority to the Lessee on account of the cost of Port Authority construction work and the Qualifying Cost of the Port Authority construction work, and on account of the Port Authority construction management work the difference between the sum obtained by adding together all prior payments made by the Port Authority to the Lessee on account of the Port Authority construction management work and the sum of One Hundred Thousand Dollars and No Cents ($100,000.00). In addition, the Port Authority shall remit to the Lessee the sum of Forty Thousand Dollars and No Cents ($40,000.00) as final payment on account of the Port Authority design work. If the sum of all of the previous payments made by the Port Authority to the Lessee on account of the cost of the Port Authority design work, the Port Authority construction work or the Port Authority construction management work, respectively, exceeds Forty Thousand Dollars and No Cents ($40,000.00), the Qualifying Cost of the Port Authority construction work, or One Hundred Thousand Dollars and No Cents ($100,000.00), as the case may be, the Lessee shall pay to the Port Authority the amount of such excess on demand. The Lessee's acceptance of final payment shall be and operate to release the Port Authority from all claims and liability to the Lessee for all matters arising out of or in connection with the performance of the Port Authority design work, the Port Authority construction work, and the Port Authority construction management work pursuant to the provisions of the Lease as herein amended, including, without limitation, claims in the ~~nature~~ of breach of contract and claims based on the claims of third persons. The Lessee's acceptance of final payment shall be and operate to release the Lessee from any liability to the Port Authority for any claim based upon breach of contract or failure to perform the Port Authority design work, the Port Authority construction work, and the Port Authority construction management work in accordance with the provisions of the Lease as herein amended, unless the Lessee had notice of such claim prior to the date of its receipt of final payment from the Port Authority, it being understood that no such payment shall operate to release any of the Lessee's contractors or subcontractors, or any surety, from any obligation arising out of or in connection with the performance of the Port Authority design work, the Port Authority construction work, and the Port Authority construction management work pursuant to the provisions of the Lease as herein amended, or arising out of or under any performance bond, and that no such payment shall operate to release the Lessee from any obligations or liabilities assumed by the Lessee pursuant to the provisions of paragraph 2 of this Agreement. In the event the Lessee is notified of a claim based upon breach of contract or failure to perform the Port Authority design work, the Port Authority construction work, and the Port Authority construction management work in accordance with the provisions of the Lease as herein amended subsequent to the Lessee's receipt of final payment, the Lessee shall have the right and the obligation to enforce all remedies against its

contractors and subcontractors available under the contracts and subcontracts the Lessee entered into with such contractors and subcontractors, or otherwise available under the law, or in equity, provided, however, that all monies collected by the Lessee from such contractors and subcontractors, for such breach or failure, less unrecovered customary and ordinary costs, expenses and fees shall be remitted by the Lessee to the Port Authority as and when collected. The Port Authority shall not be required to incur any expense or to commence any legal action or proceeding against the Lessee's contractors or subcontractors, but nothing herein contained shall be or be deemed to be a waiver by the Port Authority of rights or remedies it may wish in its discretion to enforce against such contractors or subcontractors by legal action, proceeding, or otherwise. To the extent necessary for the purpose of commencing any legal action or proceeding against such contractors and subcontractors, the Lessee shall and does hereby assign to the Port Authority any and all rights and remedies of the Lessee under its contracts with such contractors and subcontractors. The Lessee's agreement as expressed in the preceding sentence of this paragraph shall be deemed based upon the consideration forming a part of this Agreement and not to be gratuitous; but in any event if the Lessee's agreement as expressed in the preceding sentence of this paragraph shall be deemed gratuitous and without consideration it shall nevertheless be effective. The Lessee's release of the Port Authority pursuant to the provisions of this paragraph shall extend to all claims, whether or not in litigation and whether or not under consideration by the Engineer. Such release shall be effective notwithstanding any purported reservation of right by the Lessee to preserve such claim. The Lessee hereby waives its right to, and further agrees that it shall not seek and shall not be entitled to any judgement, whether pursuant to the Lease as herein amended, or otherwise, for final payment pursuant to the provisions of this paragraph, or for an amount equivalent thereto, or based thereon, or for any part thereof, if such judgement would have the effect of varying, setting aside, disregarding, or making inapplicable the provisions of this paragraph, or have the effect in any way of entitling the Lessee to accept final payment pursuant to the provisions of this paragraph other than as a voluntary acceptance of such final payment and subject to all of the provisions of this paragraph, unless and until the Lessee shall obtain a judgement on any claim arising out of or in connection with the performance of the Port Authority design work, the Port Authority construction work, or the Port Authority construction management work (including a claim based on breach of contract) for an amount not included in the final payment. The Lessee shall keep and maintain in accordance with accepted accounting practice, and shall cause its contractors and subcontractors to so keep and maintain accurate records and books of account relating to the cost of the Port Authority construction work. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to the Lessee's receipt of final payment on account of the cost of the Port Authority construction work

and for a period of one year thereafter to examine and audit the records and other documentation of the Lessee which pertain to and will substantiate such cost. Whenever the compensation payable by the Lessee to any contractor, materialman, or consultant engaged with respect to any aspect of the Port Authority construction work is determined on any basis other than by payment of a lump sum or unit price amount the Lessee shall obtain for the Port Authority the right to inspect and audit the books and records of such contractor, materialman, or consultant relating to such aspect of the work. If prior to a final determination of the cost of the Port Authority construction work the Port Authority shall notify the Lessee of a pending claim against the Lessee or any of its contractors, materialmen, or consultants under the Lease as herein amended in connection with any aspect of the Port Authority construction work, the Port Authority design work, or the Port Authority construction management work to which the Lessee's records or the records of any of its contractors, materialmen, or consultants relate either directly or indirectly, the Lessee agrees to and shall keep and maintain such records and shall cause its contractors, materialmen, or consultants to keep and maintain such records for a period of six years from the date of final payment. No provision of this Agreement relating to the Port Authority's right of audit and inspection shall or shall be deemed to limit or affect any right of audit or inspection which the Port Authority would have in the absence such provision. No payment made by the Port Authority to the Lessee pursuant to the provisions of this paragraph shall be deemed a final determination by the Port Authority of the ~~final cost~~ of the Port Authority construction work. Such final determination shall occur only after the Port Authority has examined and approved such records and books of account as the Lessee is required to maintain pursuant to the provisions of this paragraph. In no event whatsoever shall the cost of any portion of the Port Authority construction work as finally determined and computed in accordance with the provisions of this paragraph include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any improvements, equipment or fixtures or the performance of any work unless such are actually and completely installed in and or made to the Facility nor shall cost include the costs of any equipment, fixture or improvements which are secured by liens, mortgages, other encumbrances or conditional bills of sale.

(d) The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Port Authority construction work shall be limited in amount to the Qualifying Cost of the Port Authority construction work and the Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the Port Authority design work and the Port Authority construction management work, respectively, shall be limited in amount to the sum of Two Hundred Thousand Dollars and No Cents ($200,000.00) and One Hundred Thousand Dollars and No Cents ($100,000.00),

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

11. Neither the Lessee nor any consultant engaged by the Lessee shall communicate with any department, board, agency, commission, or other governmental organization in connection with the Port Authority construction work or the Port Authority construction management work without the express written permission of the Port Authority. Nothing contained herein shall be or be deemed to prohibit the Lessee or any consultant engaged by the Lessee from communicating with any contractor, materialman, or manufacturer unless the Port Authority has specifically instructed the Lessee to the contrary.

12. All of the applicable provisions of the Lease, including without limitation the applicable provisions of Section 5 shall apply to the performance of the Port Authority construction work, the Port Authority design work, and the Port Authority construction management work as though all of such work were a part of the Lessee's construction work which the Lessee is required to perform pursuant to Section 5 of the Lease.

13. Nothing contained in this Agreement, including, without limitation, any rights reserved to the Port Authority with respect to the performance of the Port Authority construction work pursuant to the provisions of paragraph 1 of this Agreement, shall be or be construed to modify the Port Authority's obligations described in Section 6 of the Lease.

14. Paragraph (j) of Section 30 of the Lease is hereby deleted, and the following paragraph shall be deemed inserted in lieu thereof:

> "(j) As used in this Agreement, "Facility" or "marine terminal" shall mean both "the Greenville Site", as hereinafter defined, and "the Port Jersey Site", as hereinafter defined. As used in this paragraph, the term "the Greenville Site" shall mean the real property,buildings, structures, fixtures, improvements, and other property transferred to the Port Authority under the provisions of two deeds from the Penn Central Corporation, a Pennsylvania corporation, and one deed from The United New Jersey Railroad and Canal Company, a New Jersey corporation, each of which was dated December 30, 1981, and the term "the Port Jersey Site" shall mean the real property, buildings, structures, fixtures, improvements, and other property transferred to the Port Authority under the provisions of a deed from Teachers Insurance and Annuity Association of America, a New York corporation, dated January 15, 1982, and a deed from the Harborland Corporation, a New Jersey corporation, dated July

13, 1982. As used in this Agreement, "Facility" or "marine terminal" shall also mean such additional property adjacent to either the Greenville Site or the Port Jersey Site as the Port Authority may hereafter acquire and any additional structures, fixtures, improvements and other property which may have been heretofore or may hereafter be installed or constructed on any property or properties heretofore mentioned".

15. As hereby amended all the terms, provisions, covenants, agreements and conditions of the Lease shall be and remain in full force and effect.

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

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

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

ATTEST:

Doris E. [illegible]
SECRETARY

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By Robert N. Steiner

(Title) ROBERT N. STEINER
~~DEPUTY DIRECTOR~~
PORT DEPARTMENT

ATTEST:

Kathleen Wall
ASST. Secretary

BMW OF NORTH AMERICA, INC.

By: [illegible]

Title: [illegible]

APPROVED:
FORM
TERMS

SCHEDULE E

The Port Authority shall prepare a preliminary set of plans covering the Port Authority construction work showing the proposed location of utilities and roadways which the Lessee is required to construct as part of the Port Authority construction work, and containing such other information as is reasonably required by the Lessee to prepare appropriate plans and specifications covering the Port Authority construction work. Based upon the information submitted by the Port Authority, the Lessee shall plan and design the Port Authority construction work. The Lessee shall retain all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and shall develop complete and detailed plans and specifications for the work. The Lessee shall submit seven (7) copies of such plans and specifications to the Port Authority for its approval together with a Construction Application in the form annexed to the Lease as Exhibit B. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer registered in the State of New Jersey who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. The data to be supplied by the Lessee shall identify separately each of the items constituting the Port Authority construction work, shall describe in detail the systems, improvements and equipment to be installed by the Lessee, and shall show the proposed method of tying in the utility lines and connections constituting part of the Port Authority construction to existing systems and utilities located off the Facility. In connection with review by the Port Authority of the Lessee's submissions under this paragraph, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may require for such review, and shall promptly prepare revisions and modifications to such submissions if required by the Port Authority. The Lessee shall keep the final plans and specifications covering the Port Authorty construction work current during the period of the performance of the Port Authority construction work, incorporating all addendums and change orders. Upon completion of the Port Authority construction work the Lessee shall supply the Port Authority with one (1) reproduceable set of as-built drawings of the Port Authority construction work on Mylar, and one (1) black and white print thereof.

SCHEDULE F

The Lessee shall provide the following expert professional services relating to construction management in connection with the Port Authority construction work:

1. Consultation during the preliminary design phase to advise on construction site use and improvements, selection of materials, building systems and equipment.

2. Provide recommendations on construction feasibility, alternate design concepts, availability of materials and labor, time requirements for installation and construction, and factors related to costs, including costs of alternate designs or materials, preliminary budgets, and possible economies.

3. Coordination and integration of design efforts with construction schedules. Update monthly the project time schedule including realistic activity sequences and durations, and delivery of products requiring long lead-time procurement. Include Port Authority occupancy requirements showing portions of the Facility having occupancy priority. Analyze project planning requirements which may have an impact on the cost of the Port Authority construction work, and adapt time schedules for the work so as to minimize the overall effect of these requirements.

4. Submit a budget for the Port Authority construction work as soon as major requirements for the work have been identified, but in any event within thirty days from the execution of this Agreement by both parties and the delivery of a fully executed copy thereof to the Lessee. Update the budget monthly as the development of the contract drawings and specifications proceeds and advise the Port Authority if it appears that the budget will not be met. Make recommendations for corrective action.

5. Review the contract drawings and specifications with the Port Authority as they are being prepared to eliminate areas of conflict and overlapping in the areas of the work to be performed by the various trade contractors. Recommend alternate solutions whenever design details affect construction feasibility schedules.

6. Develop bid packages and solicit bids. The Lessee shall perform the Port Authority construction work only through the use of independant contractors. Unless the Port Authority consents in writing, the Lessee shall not enter into any contracts for any portion of the Port Authority construction work unless such contracts were competitively bid among at least three qualified contractors approved by the Port Authority. Any contracts awarded by the Lessee for any portion of the Port

Authority construction work shall be awarded only to the lowest qualified bidder from among those submitting bids thereon. The Lessee shall not engage any contractor or subcontractor unless and until each such contractor and subcontractor have been approved by the Port Authority. Further, the Lessee shall not engage any contractor unless and until the contract such contractor is operating under has been approved by the Port Authority The Lessee shall include in any such contract such provisions as the Port Authority may approve or require, including, without limitation thereto, provisions regarding labor harmony. The Lessee shall cause each such contractor to obtain and maintain in force such insurance coverage as is described in the Agreement to which this Schedule is annexed and such performance bonds as the Port Authority may specify. No changes or modifications to such work shall be made without prior Port Authority consent. The Lessee shall:

(a) prepare and submit to the Port Authority, for approval, the recommended bidders list for each item of the work and for each purchase required in connection therewith;

(b) respond to questions during the bid period, and arrange for and conduct pre-bid conferences, where required.

(c) evaluate base bids, alternate proposals, unit prices, and such other data as may be pertinent;

(d) review all cost proposals in relation to known local and current market conditions for similiar work. The Lessee's in-house cost data and recent buy-out information shall be utilized.

(e) hold meetings with bidders to discuss and analyze their bids and quotations, and their proposed approach to insure that they fit within the coordinated construction schedule. Where applicable these meetings shall deal with project logistics, manpower, and sequence of operation.

(f) make a complete evaluation for the Port Authority of the bids and quotations and of all post bid discussions, and recommend award to the Port Authority, including alternates to be accepted, unit prices, total compensation (including overhead and profits), and such other determinations as may be appropriate;

(g) upon receipt of written approval from the Port Authority the Lessee shall enter into contracts and purchase agreements. No changes shall be made to an awarded contracts without the prior written approval of the Port Authority.

7. Prior to the award of any contract for any portion of the Port Authority construction work the price of which is such that the cost of the Port Authority construction work, as defined in subparagraph (b) of paragraph 10 of the Agreement to which this Schedule is attached will exceed Five Million Dollars and No Cents ($5,000,000.00) the Lessee will notify the Port Authority and forward to it a copy of the contractor's proposal and advise the Port Authority of the amount of the excess. The Port Authority shall then have the option of either (i) giving the Lessee approval to proceed with the award of the contract without revision, which approval shall constitute the Port Authority's agreement to pay the Lessee the amount of such excess in accordance with the provisions of paragraph 10 of the Agreement to which this Schedule is attached, or (ii) to direct the Lessee to revise the final plans and specifications covering the Port Authority construction work for the purpose of effecting a reduction in the cost of the Port Authority construction work. If within sixty (60) days' after the Lessee has notified the Port Authority that the cost of the Port Authority construction work will exceed Five Million Dollars and No Cents ($5,000,000.00) the Lessee shall not have received the Port Authority's notice electing either option (i) or (ii) in accordance with the provisions of this Schedule the Lessee shall not be obligated to perform any portion of the Port Authority construction work then remaining unfinished. If the Port Authority shall elect option (ii) the Port Authority shall provide the Lessee with sufficient information as is reasonably required to enable the Lessee to prepare revised plans and specifications for the Port Authority construction work and the Lessee shall thereafter prepare such revised plans and specifications and submit them to the Port Authority for review and approval in accordance with the provisions of Schedule E annexed to this Agreement. Upon the Port Authority's approval of the revised plans and specifications the Lessee, by rebidding or, with the Port Authority's prior approval, by negotiations with one or more bidders, shall seek to obtain for the revised work a price which will result in a cost for the Port Authority construction work which does not exceed Five Million Dollars and No Cents ($5,000,00.00). If the Lessee is successful in obtaining such a price the Lessee shall proceed to perform the Port Authority construction work in accordance with the provisions of the Agreement to which this Schedule is attached. If the Lessee is unable to obtain such reduced price it shall so notify the Port Authority and forward to it a copy of the contractor's proposal based on the revised plans and specifications and advise the Port Authority of the amount the excess over Five Million Dollars and No Cents ($5,000,00.00) required to perform the Port Authority construction work in accordance with the revised plans and specifications. If within sixty (60) days' after the Lessee has notified the Port Authority of the cost of the Port Authority construction work in excess of Five Million Dollars and No Cents ($5,000,000.00) based on the revised plans and specifications, the Lessee shall not have received from the Port Authority a notice giving the Lessee

approval to proceed with the award of the contract based upon the revised plans and specifications, which approval shall constitute the Port Authority's agreement to pay the Lessee the amount of such excess in accordance with the provisions of paragraph 10 of the Agreement to which this Schedule is annexed, the Lessee shall not be obligated to perform any portion of the Port Authority construction work remaining unfinished.

8. The Lessee shall not engage any consultants for any element of the work without the express advance written permission of the Port Authority as to the particular consultant, the services to be performed, the form of the agreement, and the compensation to be paid thereunder or the factors entering into the determination of the compensation. The use of consultants shall not relieve the Lessee of any of its obligations under the Lease as herein amended with respect to the performance of the Port Authority construction work. If the consultant does not perform in accordance with the approved plans and specifications covering the work, the Port Authority may rescind its approval for the use of such consultant and require performance by the Lessee through approved contractors, or through other approved consultants. In the event the Lessee receives approval for the use of consultants, the Lessee shall:

(a) prepare and submit to the Port Authority, for approval, the recommended list of consultants for each item of the work requiring a consultant. Prepare the request for proposals and sample consultant agreement, and incorporate therein all provisions required by the Port Authority;

(b) respond to questions during the proposal period, and arrange for and conduct pre-proposal conferences, where required.

(c) evaluate base proposals, alternate proposals, prices, scope of services, and such other data as may be pertinent;

(d) hold meetings with consultants to discuss and analyze their proposals and proposed approach to insure that they fit within the coordinated construction schedule.

(e) make a complete evaluation for the Port Authority of the proposals and all post proposal discussions, and recommend award to the Port Authority, including alternates to be accepted, total compensation (including overhead and profits), and such other determinations as may be appropriate;

(f) upon receipt of written approval from the Port Authority the Lessee shall enter into consultant agreements.

9. During the performance of the Port Authority construction work, the Lessee shall furnish a full time professional manager at the Facility to coordinate the construction. The Lessee shall monitor daily construction activities to insure quality standards, compliance with contract drawings and specifications, scheduling, labor harmony, and compliance with MBE/WBE requirements.

10. The Lessee shall process payment applications and recommend approval or disapproval based on contract terms. The Lessee shall prepare monthly reports to the Port Authority containing updated progress Schedules, cost analysis, daily reports, MBE/WBE reports, and other pertinent data. The Lessee shall hold job meetings with the Port Authority and/or contractors as required.

11. All estimates, reports, records, data, charts, documents, models, designs, renderings, drawings, specifications, computations, and other papers of any type whatsoever, whether written, or in the form of figures or delineations, prepared or compiled in connection with any aspect of the Port Authority design work, the Port Authority construction work, or the Port Authority construction management work shall become the property of the Port Authority and the Port Authority shall have the right to use or to permit the use thereof or of any ideas or methods represented thereby for any purpose and at any time without additional compensation. The Lessee represents and warrants that the Port Authority shall have such ownership and rights at all times free and clear of all claims of third persons, whether presently existing or arising in the future, and whether or not presently known to either the Port Authority or the Lessee. Nothing contained herein shall be or be deemed to impose upon the Lessee the obligation to obtain the right to use any idea, design, method, material, equipment, or other matter which is the subject of a valid patent unless such patent is owned by the Lessee or one of its employees, or by one of its consultants, or its employees. It is further agreed that all information of whatsoever nature which is in any way connected with the performance of the Port Authority construction management work by the Lessee, regardless of the form of the communication, which has or may be given to the Port Authority, or any of its Commissioners, officers, agents, employees, contractors, or consultants by the Lessee or on its behalf, whether prior or subsequent to the execution of this Agreement, is not given in confidence and may be used or disclosed by or on behalf of the Port Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

12. If research or development is furnished in connection with the performance of the Port Authority design work, the Port Authority construction work, or the Port Authority construction management work, and if in the course of such research and development patentable subject matter is produced by the Lessee or any of its officers, agents, employees, or

consultants the Port Authority shall have an irrevocable, non-exclusive, royalty-free license to make, have, and use, such subject matter, without cost or expense, either itself or on its behalf, in connection with any activity now or in the future engaged in by the Port Authority or any of its subsidiaries. Upon request, the Lessee shall furnish or obtain a form of license satisfactory to the Port Authority from the appropriate person, but it is expressely understood that as between the Port Authority and the Lessee the license provided for herein shall arise for the benefit of the Port Authority immediately upon the production of the subject matter and shall not await formal exemplification in a written license agreement.

13. The Lessee shall promptly furnish the Port Authority with all information concerning any patent or patent dispute, whether existing or potential, of which the Lessee may have knowledge, or which may come to its attention, relating to any idea, design, method, material, equipment, or other matter concerning the performance of the Port Authority design work, the Port Authority construction work, or the Port Authority construction management work.

FORM XLD—Ack., N.J. 51380

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this _____ day of _____, 19 88, before me, the subscriber, a notary public of New York, personally appeared _____ the _____ _____ of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

_____
(notarial seal and stamp)

STATE OF New Jersey }
COUNTY OF Bergen } ss.

On this 9th day of May, 19 88, before me, the subscriber, a ~~Justice~~ ~~Justice~~ notary, personally appeared Friedrich Harau as Senior Vice President of BMW OF NORTH AMERICA, INC., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Ursula Staudigl

URSULA STAUDIGL
(notarial seal and stamp) NOTARY PUBLIC, NEW JERSEY
MY COMMISSION EXPIRES JULY 19, 1988

~~STATE OF~~ _____ }
COUNTY OF } ss.

Be it remembered that on this _____ day of _____, 19____, before me, the subscriber, a _____, personally appeared _____ who I am satisfied is the person named in and who executed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

_____
(notarial seal and stamp)

Lease No. AMT-1
Supplement No. 1

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SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of May 18, 1988 by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and BMW OF NORTH AMERICA, INC. (hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee have heretofore entered into an agreement of lease made as of December 22, 1987, (which agreement of lease as the same has been heretofore amended, is hereinafter called "the Lease") covering the design, construction, and operation of a motor vehicle preparation center and an integrated multi-level garage for the storage incidental to distribution of motor vehicles on certain premises located at the Port Authority Auto Marine Terminal in the City of Jersey City, County of Hudson, and State of New Jersey (which facility is more particularly described in Section 30 (j) of the Lease as herein amended, and is sometimes hereinafter referred to as "the Facility"), all as more particularly described in the Lease; and

WHEREAS, pursuant to the provisions ~~of the Lease~~ the Port Authority is required to construct or cause ~~to be~~ constructed or installed at the Facility, off the premises, certain improvements as more particularly described in Section 6 of the Lease; and

WHEREAS, in order to facilitate the performance of this work, the Port Authority and the Lessee desire to amend the Lease to provide for the Lessee, through its employees, representatives, agents, contractors and subcontractors, to perform or cause to be performed certain items of the work, subject to certain terms and conditions;

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

1. (a) Prior to or concurrent with the performance of the Lessee's construction work, as defined in Section 5 of the Lease, and subject to all of the terms, provisions, and conditions of the Lease as herein amended, the Lessee, through its employees, representatives, agents, contractors and subcontractors shall perform or cause to be performed the following categories of work for the Port Authority in certain areas of the Facility not leased to the Lessee under the Lease as herein amended: (i) site preparation of the area shown in stipple

on the sketch annexed to this Agreement, hereby made a part hereof, and marked "Exhibit A-1" (which area is sometimes hereinafter referred to as "the Greenville Site"), including clearance of vegetation and disposal of debris; (ii) paving of the Greenville Site, (iii) the construction of a perimeter roadway connecting the Greenville Site to an existing roadway identified as Colony Road on Exhibit A-1; (iv) the construction of an extension of the existing roadway identified as Colony Road on Exhibit A-1 north along the perimeter of the premises leased to the Lessee under the Lease to the existing trackage of the Consolidated Rail Corporation as shown on Exhibit A-1; (v) the construction of an access roadway connecting the Greenville Site to the portion of the Port Authority Auto Marine Terminal located on the Port Jersey Peninsula as shown on Exhibit A-1; (vi) the installation of fencing and guard rails on the Greenville Site; (vii) the installation of lighting on the Greenville Site; (viii) striping of pavement on the Greenville Site; (ix) the installation of utilities on the Greenville Site, including water, sewer, and storm drainage systems; (x) the installation of utilities including water, sewer, and storm drainage connections to the perimeter of the premises leased to the Lessee under the Lease; and (xi) the construction of railroad crossings for utilities and vehicular traffic, as required (all of the work described in this paragraph being hereinafter collectively referred to as the "Port Authority construction work").

(b) In connection with the Port Authority construction work, and in addition thereto, the Lessee through its employees, representatives, agents, contractors and subcontractors shall perform or cause to be performed the planning and design services described on the Schedule annexed to this Agreement, hereby made a part of the Lease as herein amended, and marked "Schedule E" (such work being hereinafter referred to as the "Port Authority design work") and the construction management services described on the Schedule annexed to this Agreement, hereby made a part of the Lease as herein amended, and marked "Schedule F" (such work being hereinafter referred to as the "Port Authority construction management work"). The Port Authority design work and the Port Authority construction management work shall be performed subject to and in accordance with all of the terms and conditions of the Lease as herein amended, including, without limitation, the terms and conditions set forth in Schedules E and F, respectively.

(c) All of the Port Authority construction work shall be performed in accordance with the Construction Application and final plans and specifications covering such work prepared as part of the Port Authority design work and approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace, or shall cause to be redone or replaced, at its own expense any work not done in accordance therewith. In the performance of the Port Authority design work, the Port Authority construction management work, and the Port

Authority construction work, the Lessee shall conform to all orders, directions and requirements of the person or persons hereinafter defined as "the Engineer". The Lessee shall perform, or cause to be performed, the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work to the satisfaction of the Engineer, at such times and at such places, by such methods, and in such manner and sequence as the Engineer may require. The Engineer shall determine the amount, quality, acceptability, and fitness of all parts of the Port Authority construction work, and shall interpret all contract drawings, specifications, and orders for extra work. The Lessee shall not employ or permit to be employed any equipment, materials, methods, or personel to which the Engineer shall object, and shall not remove or permit the removal of any equipment, materials, or other facilities from the work site without permission from the Engineer. Upon request, the Engineer shall confirm in writing any oral order, direction, requirement, or determination. The enumeration in this paragraph of particular instances in which the opinion, judgement, discretion, or determination of the Engineer shall control or in which the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work shall be performed to the satisfaction of or subject to the inspection of the Engineer shall not imply that only matters of a similiar nature shall be so governed and performed, but without exception all aspects of the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work shall be so governed and so performed. Upon completion of the Port Authority construction work, the Lessee shall deliver to the Port Authority a certificate signed by an authorized officer of the Lessee certifying that the Port Authority construction work has been performed in accordance with the Construction Application and final plans and specifications covering such work prepared as part of the Port Authority design work and approved by the Port Authority and in accordance with the provisions of the Lease as herein amended, including, without limitation, the provisions of Schedules E and F annexed to this Agreement. In the event of any inconsistency between the provisions of the Lease as herein amended and those of the Construction Application referred to in this paragraph the provisions of the Lease as herein amended shall control.

(d) The Lessee recognizes that the public interest requires that the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work shall be performed in a manner which the Port Authority deems satisfactory. Accordingly, the Lessee understands and agrees that the person or persons hereinafter defined as "the Director" shall have absolute authority to determine what is or is not necessary or proper for the performance of the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work and that the final plans and specifications covering the Port Authority construction work prepared as part of the Port Authority design work and

approved by the Port Authority in accordance with the provisions of the Lease as herein amended, including, without limitation, the provisions of Schedule E annexed to this Agreement, shall be deemed merely his present intention on this point. In the excercise of his authority, the Director shall have the right to alter the final plans and specifications covering the Port Authority construction work prepared as part of the Port Authority design work and approved by the Port Authority; to require the performance of work not required by the final plans and specifications covering the Port Authority construction work prepared as part of the Port Authority design work and approved by the Port Authority in their present form; and to vary, increase, diminish, or countermand the character, quantity, and quality of any portion of the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work based on necessity, convenience, or other factors which the Director shall deem appropriate. For purposes of this Agreement, it is understood and agreed that any design work in addition to the design work described in Schedule E, any construction management work in addition to the construction management work described in Schedule F, and any construction work in addition to the work shown on the final plans and specifications prepared as part of the Port Authority design work and approved by the Port Authority in accordance with the provisions of the Lease as herein amended, including, without limitation, the provisions of Schedule E annexed to this Agreement, which the Lessee is required to perform or cause to be performed shall be deemed extra work. The Lessee shall not perform or cause to be performed any extra work with respect to the Port Authority design work or the Port Authority construction work in the absence of an order signed by the Director which order shall constitute the Port Authority's agreement to pay the Lessee for such work an amount equal to the actual net cost in money of the labor and materials required for such work. The Lessee shall not perform or cause to be performed any extra work with respect to the Port Authority construction work, the cost of which, as defined in subparagraph (b) of paragraph 10 of this Agreement, is such as to cause the cost of all of the Port Authority construction work to exceed Five Million Dollars and No Cents ($5,000,000.00) in the absence of an order signed by the Director which order shall constitute the Port Authority's agreement to pay the Lessee the amount of such excess in accordance with the provisions of subparagraph (b) of paragraph 10 of this Agreement. If in the absence of an order from the Director, the Engineer shall direct, order, or require the Lessee to perform or cause to be performed any work which the Lessee deems to be extra work, the Lessee shall notify the Director as well as the Engineer stating the reasons why the Lessee deems such work to be extra work. The Director shall then either verify the Lessee's claim and authorize the performance of the work as extra work or shall have the right to cancel the direction, order, or requirement relating to the performance of such work.

If at any time during the peformance of the Port Authority design work, the Port Authority construction management work, or the Port Authority construction work the Director shall determine that it is impracticable or undesirable to proceed with or continue the performance of such work, for any reason whatsoever, the Director shall have the right to suspend the performance of such work until such time as he deems it practical or desirable to proceed, or to terminate the Lessee's obligation to perform or cause to be performed the balance of such work. Such cancellation shall be without prejudice to the rights of either the Port Authority or the Lessee with respect to those portions of the work already performed.

To resolve all disputes and to prevent litigation the Lessee and the Port Authority authorize the Assistant General Manager, Facilities Management Division of the Port Department of the Port Authority, for the time being, or his successor in duties for the purposes of this Agreement, acting personally (such persons being hereinafter collectively referred to as "the Assistant General Manager") to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to the performance of the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work pursuant to the Lease as herein amended, including claims in the nature of breach, fraud, or misrepresentation whether arising before or after the execution of this Agreement by the Lessee and the decision of the the Assistant General Manager shall be conclusive, final, and binding on the Port Authority and the Lessee. The decision of the Assistant General Manager shall not be affected by any termination of the letting under the Lease as herein amended, by cancellation of then Lessee's obligation to perform or cause to be performed any portion of the Port Authority design work, the Port Authority construction management work, or the Port Authority construction work, by negotiations or settlement offers made in connection with the question decided, whether or not the Assistant General Manager participated, or by any prior decision of the Engineer, which decisions shall be deemed subject to review by the Assistant General Manager. All questions which are subject to review by the Assistant General Manager shall be submitted by the Lessee to the Assistant General Manager in writing, together with all evidence and other pertinent information, in order that a fair and impartial decision may be made. Such submission shall be a condition precedent to any action against the Port Authority relating to any question which is subject to the review of the Assistant General Manager pursuant to the terms of the Lease as herein amended. In any such action, the Lessee must allege and prove such submission, and no evidence or information shall be introduced or relied on in any such action if such evidence or information has not been presented to the Assistant General Manager pursuant to the provisions of this paragraph. Neither the requirements of this paragraph, nor the time necessary to comply therewith, however, shall affect the time when the Lesse's cause of action shall be

deemed to have accrued for purposes of any statute controlling action against the Port Authority, and the time of such accrual shall be determined without reference to this paragraph.

(e) As used herein:

(i) the term "Engineer" shall mean the Assistant General Manager, Facilities Management Division of the Port Department of the Port Authority, for the time being, or his successor in duties for the purposes of this Agreement, acting either personally or through his duly designated representative for the purpose of this Agreement, who is at present the Resident Engineer at the Facility, acting within the scope of the particular authority vested in them, except that the Resident Engineer is not authorized to determine what constitutes Extra Work; and

(ii) the term "Director" shall mean the Director of the Port Department of the Port Authority for the time being, or his successor in duties for the purposes of this Agreement, acting either personally or through his duly designated representatives for the purpose of this Agreement, who are at present the Deputy Director of the Port Department of the nPort Authority and the Assistant Director (Facilities Management, Planning and Properties) of the Port Department of the Port Authority.

No persons other than those specifically referred to in this paragraph shall be deemed a representative of the Director or the Engineer except to the extent specifically authorized by writen notice to the Lessee signed by the Director or the Engineer, as he case may be. No person shall be considered a successor in duties to either the Director or the Engineer unless the Lessee is notified of that fact by the Executive Director, Deputy Executive Director, or an Assistant Executive Director of the Port Authority.

2. With respect to the Port Authority construction work, the Port Authority design work, and the Port Authority construction management work the Lessee shall be the insurer of the Port Authority, and its Commissioners, officers, agents and employees against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, any contractors of the Lessee, the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, excepting only risks which result solely from affirmative wilful acts done by the Port Authority subsequent to commencement of the work:

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

(ii) The risk of death, injury or damage, direct or consequential, to the Port Authority, and its Commissioners, officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees for all such injuries and damages, and for all loss suffered by reason thereof;

(iii) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the Port Authority, 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;

3. No portion of the Port Authority construction work or the Port Authority construction management work shall be commenced until the the Construction Application and plans and specifications covering such work, which the Lessee is required to prepare or cause to be prepared as part of the Port Authority design work, as more particularly described in Schedule E annexed to this Agreement, have been finally approved by the Port Authority.

4. Without limiting the generality of any of the provisions of the Lease as herein amended, the Port Authority construction work shall be performed in such a manner that there will be at all times during construction a minimum of air pollution, water pollution or any other type of pollution, and a minimum of noise emanating from, arising out of, or resulting from construction. Subject to the provisions of the Lease as herein amended, the Lessee shall construct or cause to be constructed 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 the Lease as herein amended.

5. Without limiting the generality of any of the provisions of this Agreement, or the provisions of Schedule E annexed hereto, the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by

the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Port Authority construction work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee understands and agrees that if any portion of the Infrastructure, as defined in Section 6 of the Lease, is to be designed as part of the Port Authority design work and constructed as part of the Port Authority construction work, and such portion of the Infrastructure is unavailable for use by the Lessee on the Rental Payment Start Date established pursuant to the provisions of the Lease because that portion of the Port Authority design work or the Port Authority construction work, as the case may be, which includes the design or construction of such portion of the Infrastructure has not been completed by the Rental Payment Start Date established pursuant to the provisions of the Lease, the Lessee's obligation to pay all rentals provided for under the Lease shall nevertheless commence, and the rental postponment provisions of the Lease shall not apply. Notwithstanding the foregoing, the rental posponment provisions of the Lease shall apply if the failure to complete the work by such date results from (i) the Port Authority's failure to obtain property rights from third parties which are required to enable the work to be completed, (ii) the Port Authority's failure to obtain any municipal or other governmental approvals which may be required to enable the work to be completed, or (iii) the Port Authority's failure to approve, reject, or request revisions to the Construction Application and final plans and specifications covering such work, prepared as part of the Port Authority design work, within twenty-one (21) days' of the Port Authority's receipt thereof. Nothing contained herein shall or shall be deemed to affect the rental postponment provisions of the Lease in the event any portion of the Infrastructure the design and construction of which is not part of the Port Authority design work and the Port Authority construction work, respectively, is unavailable for the Lessee's use on the Rental Payment Start Date established pursuant to the provisions of the Lease.

6. The Lessee 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 Port Authority construction work, the Port Authority design work, and the Port Authority construction management work and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Port Authority Auto Marine Terminal or any part thereof, nor to prevent the Lessee from contesting claims in good faith.

7. (a) In addition to all policies of insurance otherwise required by the Lease as herein amended, the Lessee shall procure and maintain or cause to be procured and maintained in effect during the performance of the Port Authority design work, the Port Authority construction management work, and the Port Authority construction work:

(i) Comprehensive General Liability Insurance including but not limited to Premises-Operations and Completed Operations coverage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph 2 of this Agreement and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $2 million.

(ii) Comprehensive Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage of $2 million.

(iii) Worker's Compensation Insurance in accordance with the requirements of law.

(b) With the exception of the Workers' Compensation Insurance policy each policy of insurance described in subparagraph (a) of this paragraph shall include the Port Authority as an additional insured, 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 Lessee 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 (i) of subparagraph (a) of this paragraph. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

(c) Unless otherwise set forth herein, each policy of insurance described in this paragraph shall be subject to the applicable provisions of the Lease as herein amended.

8. In the performance of the Port Authority construction work the Lessee shall not permit any situation or condition to continue that may cause or be conducive to any labor troubles at the Facility which interfere with the progress of other construction work at the Facility. The determinations of the Port Authority shall be conclusive on the Lessee and, upon

notice from the Port Authority, the Lessee shall or shall cause its contractor to immediately rectify any condition specified in the notice. In the event of failure by the Lessee or any of its contractors to immediately comply with the requirements of this paragraph (whether or not such failure is due to the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with any portion of the Lessee's construction work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee, shall reinstate the permission to the Lessee to perform the work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

9. As a matter of policy the Port Authority requires the Lessee and the Lessee shall require its contractor to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBE's) and Women Business Enterprises (WBE's) in the Port Authority construction work. "Meaningful participation" shall mean at least ten percent (10%) of the firms performing the Lessee's construction work are MBE's, and at least one percent (1%) of the firms performing the Lessee's Construction Work are WBE's. A Minority Business Enterprise shall mean a company or firm at least 51% of which is owned and controlled by a minority or minorities. A Women Business Enterprise shall mean a company or firm at least 51% of which is owned and controlled by a woman or women. For purposes of this paragraph minority is a member of one of the following groups:

(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, 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).

Good faith efforts to include meaningful participation by MBE's and WBE's shall include at least the following:

(1) Making plans and specifications for prospective construction work available to MBE's and WBE's in sufficient time for review.

(2) Utilizing the list of eligible MBE's and WBE's maintained by the Port Authority or seeking minorities or women from other sources for the purpose of soliciting bids for contractors.

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

(4) Insuring that provision is made to provide progress payments to MBE's and WBE's on a timely basis.

(5) Not requiring bonds from and/or providing bonds and insurance for MBE's and WBE's, where appropriate.

10. (a) As full compensation for the performance of the Port Authority design work, the Port Authority shall pay the Lessee the sum of Two Hundred Thousand Dollars and No Cents, as follows: within thirty (30) days of the date the Lessee submits to the Port Authority for its review and approval the Construction Application and complete plans and specifications referred to in Schedule E with respect to any individual contract for the performance of any item of the Port Authority construction work together with a statement ~~certified~~ by the Lessee estimating the amount of the Port Authority design work performed by the Lessee with respect to such contract and the proportion such amount of the Port Authority design work bears to the total amount of the Port Authority design work to be performed by the Lessee pursuant to the terms of the Lease as herein amended, as set forth in Schedule E, the Port Authority shall pay to the Lessee a sum bearing the same proportion to the sum of Fifty Thousand Dollars and No Cents ($50,000.00) as such amount of the Port Authority design work bears to the total amount of the Port Authority design work to be performed by the Lessee pursuant to the terms of the Lease as herein amended, as set forth in Schedule E, provided that in the opinion of the Engineer the value of the completed work to the Port Authority at least equals such sum; within thirty (30) days of the date the Port Authority finally approves the plans and specifications referred to in Schedule E with respect to any individual contract for the performance of any item of the Port Authority construction work, the Port Authority shall pay to the Lessee a sum bearing the same proportion to the sum of One Hundred Ten Thousand Dollars and No Cents ($110,000.00) as the amount of the Port Authority design work performed by the Lessee with respect to such contract, in accordance with the certified statement submitted by the Lessee with respect to such contract, bears to the total amount of the Port Authority design work to be performed by the Lessee pursuant to the terms of the Lease as

herein amended, as set forth in Schedule E, provided that in the opinion of the Engineer the value of the completed work to the Port Authority at least equals such sum; and at the time that the Port Authority remits to the Lessee the final payment on account of the Port Authority construction work pursuant to the provisions of subparagraph (b) of this paragraph, the Port Authority shall remit to the Lessee the sum of Forty Thousand Dollars and No Cents ($40,000.00).

(b) As full compensation for the performance of the the Port Authority construction management work, the Port Authority will pay to the Lessee a sum equal to One Hundred Thousand Dollars and No Cents ($100,000.00), and as full compensation for the performance of the Port Authority construction work the Port Authority will pay to the Lessee a sum (which sum is hereinafter referred to as "the Qualifying Cost of the Port Authority construction work") equal to the lesser of: (i) the cost, as hereinafter defined, of the Port Authority construction work or (ii) Five Million Dollars ($5,000,000.00). The Qualifying Cost of the Port Authority construction work and the amount payable to the Lessee for the performance of the the Port Authority construction management work pursuant to the provisions of this subparagraph shall be payable to the Lessee upon and during the performance by the Lessee of the Port Authority construction work and the Port Authority construction management work in accordance with the provisions of subparagraph (c) of this paragraph. To the extent permitted by sound accounting practice, the sum of the following items of cost incurred by the Lessee in performing the Port Authority construction work shall constitute the cost thereof for the purposes of this Agreement:

(1) The Lessee's payments to contractors;

(2) The Lessee's payments for supplies and materials;

(3) The Lessee's payments to persons, firms or corporations other than construction contractors or suppliers of materials, for services rendered or rights granted in connection with construction, not including services required in connection with the performance of the Port Authority Design Work, or services required in connection with the Port Authority construction management work, and not including services of the types mentioned in item (4) of this subparagraph;

(4) The Lessee's payments of premiums for such insurance coverage as the Lessee is required to maintain in effect during the period of the performance of the Port Authority construction work in accordance with the provisions of the Lease as herein amended, and such performance bonds as the Port Authority may specify in accordance with the provisions of the Lease as herein amended;

No payment or payments on account of administrative or other overhead costs and no payment to employees of the Lessee shall be included in the cost of the Port Authority construction work whether or not allocated to the cost of the work by the Lessee's own accounting practices. No payment to a firm or corporation wholly or partially owned by or in common ownership with the Lessee shall be included in the cost of the Port Authority construction work.

(c) On or about the tenth day of the first calendar month following the commencement of the Port Authority construction work the Lessee shall certify to the Port Authority by written certification subscribed by a responsible officer of the Lessee: (i) the amount of the Port Authority construction work performed by the Lessee in the preceding month showing separately the cost of each item of work described in the certificate, and the amount paid by the Lessee on account of such cost, if any; (ii) that except for the amount, if any, stated in such certificate to be due for services and materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due on account of the purchase of any equipment or fixtures described in the certificate or for labor, wages, materials, supplies or services in connection with any work described therein which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen statutory or similar lien or alleged lien upon said work or upon the Facility, or any part thereof, nor are any of the equipment, or fixtures described in such certificate secured by any liens, mortgages, security interests or other encumbrances. Nothing contained herein shall be deemed or construed as a submission by the Port Authority to the application to itself of any such lien; and (iii) that the work for which the amount set forth in the certificate is due has been performed in accordance with the Lessee's approved plans and specifications and the provisions of this Agreement. Within thirty (30) days of its receipt of the Lessee's certificate, the Port Authority shall remit to the Lessee on account of the cost of the Port Authority construction work an amount equal to the cost of performing the portion of the Port Authority construction work described in the certificate less ten percent (10%) thereof and also less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the work described in the certificate. In addition, the Port Authority shall remit to the Lessee on account of the performance of the Port Authority construction management work a sum bearing the same proportion to One Hundred Thousand Dollars and No Cents as the amount remitted to the Lessee on account of the cost of the Port Authority construction work bears to the sum of Five Million Dollars and No Cents, less ten percent (10%) thereof and also less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the Port Authority construction management work, provided that in the opinion of the Engineer the value of the completed work to the Port Authority at least equals

such sum. On the tenth day of each month thereafter during the period of the performance of the Port Authority construction work the Lessee shall deliver a similar certificate to the Port Authority signed by a responsible officer of the Lessee which certificate shall certify the amount of the Port Authority construction work performed by the Lessee in the preceding month showing separately the cost of each item of work described in the certificate performed by the Lessee in the preceding month, the amount of such cost incurred by the Lessee during such month, and the payments made on account of such cost, and such certificate shall also contain the statements set forth in subdivisions (ii) and (iii) of this paragraph (c) with respect to the work. Within thirty (30) days of its receipt of such certificate the Port Authority shall remit to the Lessee an amount equal to the cost of the portion of the Lessee's construction work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and less the amount of claims, if any, made against the Port Authority by subcontractors, materialmen or workmen on account of any of the work described in the certificate. In addition, the Port Authority shall remit to the Lessee on account of the performance of the Port Authority construction management work a sum bearing the same proportion to One Hundred Thousand Dollars and No Cents as the amount remitted to the Lessee on account of the cost of the Port Authority construction work bears to the sum of Five Million Dollars and No Cents, less ten percent (10%) thereof and also less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the Port Authority construction management work; provided that in the opinion of the Engineer the value of the completed work to the Port Authority at least equals such sum. Upon final completion of all of the Port Authority construction work to be performed by the Lessee as set forth in the approved plans and specifications referred to in Schedule E, the Lessee shall submit to the Port Authority a final certification signed by a responsible officer thereof that all work has been completed, which certificate shall certify separately the final cost of all of the Port Authority construction work performed by the Lessee showing separately the cost of each item of the work, the cumulative payments made by the Lessee on account of such costs, and shall also certify the items set forth in subdivisions (ii) and (iii) of this paragraph (c) with respect to all of the work. Within ninety (90) days of its receipt of the Lessee's final certificate, the Port Authority shall finally inspect the Facility and the work and after such inspection the Port Authority shall notify the Lessee if all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement. The receipt of such notice by the Lessee shall not operate to release the Lessee from any of its obligations under the Lease as herein amended with respect to the performance of the Port Authority design work, the Port Authority construction work, or the Port Authority construction management work. If all of the Port Authority construction work has been completed in accordance with the approved plans and specifications, and the provisions of this

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(EX. 4)