EXHIBITS

A - G

SETTLEMENT AGREEMENT

This agreement, entered into this 9th day of February 2009 is between and among American Warehousing of New York, Inc., a New York corporation having a place of business at Pier 7, Brooklyn, New York ("American") and American Stevedoring, Inc. ("ASI") a New York corporation having a place of business at 70 Hamilton Avenue, Brooklyn, New York and the Port Authority of New York and New Jersey, an agency formed by compact between the States of New York and New Jersey ("Port Authority") (collectively, the "Parties").

Whereas the Port Authority is, and at all relevant times has been, the owner in fee of the premises known as Pier 7, located at the corner of Atlantic Avenue and Columbia Street in Brooklyn ("Pier 7"); and whereas American has since on or about 1999 occupied certain areas of Pier 7 and whereas the Port Authority has commenced four landlord tenant proceedings ("L and T Proceedings") against American to obtain its eviction from Pier 7 and that such L and T Proceedings are styled Port Authority of New York and New Jersey v. American Warehousing of New York, Inc., Index Nos. 021541-02, 02153-04, 014787-6, and 18968-06, the first two of which were dismissed and the latter two of which have been stayed pending the FMC Proceedings (hereafter defined); and

Whereas American has commenced two proceedings against the Port Authority before the Federal Maritime Commission ("FMC Proceedings") entitled American Warehousing of New York, Inc. v. The Port Authority of New York and New Jersey, Index Nos. 04-09 and 05-03 seeking among its relief damages alleged at $15 million and attorney's fees under the United States Shipping Act and the Port Authority has denied the claims made in the FMC Proceedings and the FMC per Judge Krantz issued an Initial Decision in favor of the Port Authority and American has filed exceptions to the full FMC; and

Whereas the Parties have decided to amicably resolve the disputes by dismissing the L and T Proceedings, and the FMC Proceedings, between American and the Port Authority. With respect to the former, Stipulations reflecting this dismissal and discontinuance with prejudice and without costs are attached hereto as Exhibit A. With respect to the latter FMC Proceedings, attached hereto as Exhibit B is a draft motion and supporting documents whereby American will submit a joint motion with the Port Authority to dismiss the FMC Proceedings with prejudice and without costs as to either party. American further agrees to fully cooperate in having the FMC Proceedings dismissed with prejudice and without costs. Attached, as Exhibit C, is a new lease which has been executed by ASI and will be executed by the Port Authority upon the execution of this Settlement Agreement by both parties, of the for certain areas of Pier 7, the terms of which are set forth in the lease agreement. Exhibits A, B and C are incorporated by reference herein and form a part of this Settlement Agreement; and

Whereas the Parties desire to release each other for any and all claims they have against each other with respect to the matters covered by the FMC Proceedings and the Land T Proceedings, these releases having no effect on cross claims and third-party actions where the Port Authority and either ASI and/or American are being sued by other persons or entities, and now in consideration of the premises of covenants as set forth herein the Parties agree as follows:

559002

1. The L and T Proceedings and the FMC Proceedings shall be dismissed forthwith with prejudice without fees or costs as against either party. To effectuate the dismissal of the FMC Proceedings, American and ASI shall fully cooperate with the Port Authority in any motion and/or joint motion necessary or appropriate to dismiss the FMC Proceedings including, without limitation, the execution of any and all documents and filings necessary to accomplish same.

2. With regard to Lease BP 302 between the Port Authority and American solely, the Port Authority, its agents, successors, and assigns (collectively Port Authority releasors) hereby release and discharge American and ASI, their agents, employees, officers, directors, successors, affiliates and assigns (collectively American releasees) from any and all actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, summary judgments, whatsoever in law, admiralty or equity against the American releasees which the Port Authority releasors have, have ever had, or will in the future have upon reason of any matter or thing with respect to the American releasees, from the beginning of the world to the date of this Agreement. Nothing herein releases ASI from rent owed or other claims arising out of BP 309, effective May 1, 2008. Further, ASI will move with dispatch and in good faith to remove the pallets being stored upland of Pier 7. This release shall have no effect upon defenses and causes of actions in the defense of unrelated third party claims.

3. American and ASI, their agents, successors, and assigns (collectively American releasors) hereby release and discharge the Port Authority, its agents, employees, officers, commissioners, successors, and assigns (collectively Port Authority releasees) from any and all actions, causes of actions, suits, debts, dues, sums of money, account, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, summary judgments, executions, claims and demands whatsoever in law or equity against the Port Authority releasees which the American releasors have, or have ever had, or will in the future have upon reason of any matter or thing with respect to the Port Authority releasees, from the beginning of the world to the date of this Settlement Agreement. This release shall have no effect upon defenses and causes of actions in the defense of unrelated third party claims.

4. This Settlement Agreement sets forth the entire understanding between American and the Port Authority concerning the subject matter of this agreement.

5. The Parties acknowledge that this Agreement is a compromise resolution of all released claims and that neither the disagreement nor the releases executed pursuant to this Agreement constitute an acknowledgment or admission of wrongdoing or liability in any way on the part of any party hereto all of whom expressly deny wrongdoing and liability for any and all claims of damages whatsoever in nature.

6. In the event that either party breaches this Settlement Agreement, the prevailing party shall have the right to obtain any judicial relief that it deems relevant based upon the actions of the other.

7. It is understood that this stipulation shall permit discussions by and among ASI, the Port Authority and Phoenix Beverage with respect to possible future leases between the Port Authority and Phoenix Beverage during the term of BP 309 for lease of Pier 7. Notwithstanding the foregoing, nothing in this paragraph shall be construed to modify the parties' proposed lease agreement annexed hereto as Exhibit C or obligate any party to engage in such discussions.

8 This Agreement can be executed in counterparts and facsimile copies are to be deemed an original for all purposes.

IN WITNESS WHEREOF, the undersigned, who represent that they are fully authorized to enter into this agreement, have executed this Settlement Agreement as of the day and year first above written.

Sabato Catucci
American Warehousing of New York,
Inc. & American Stevedoring, Inc.
Pier 7
Brooklyn, NY 11201

R.M. Larrabee, Director of Port Commerce
The Port Authority of New York and
New Jersey
225 Park Avenue South
New York, New York 10003

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

----------X

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Petitioner (Landlord),

-against-

AMERICAN WAREHOUSING OF NEW YORK INC.,

Respondent (Tenant).

Pier 7
Columbia Street
Brooklyn, New York 11201

----------X

Index No. L&T 020153/04

NOTICE OF PETITION
Business Holdover

Petitioner's Business Address
225 Park Avenue South
New York, NY 10003

To the respondent(s) above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE, that a hearing at which you must appear will be held at the Civil Court of the City of New York, County of Kings, Landlord and Tenant Part 52, Room 506 at 141 Livingston Street, Brooklyn, County of Kings, City and State of New York, on July 20, 2004, at 11:00 A.M., on the annexed petition of the Port Authority verified July 6, 2004 which prays for a final judgment of eviction, awarding to the petitioner possession of premises described as follows: consisting of space shown in the diagonal hatching in the attached diagram annexed hereto as Exhibit "A" and located at Pier 7, Columbia Street, Brooklyn, New York, and further granting to the petitioner such other and further relief as is demanded in the petition, which you must answer.

TAKE NOTICE also that your answer may be made at the time of hearing specified above unless this Notice of Petition is served upon you on or before July 12, 2004 , in which event you must answer at least three (3) days before the petition is noticed to be heard, either orally before the clerk of the court at his or her office or in writing by serving a copy thereof upon the undersigned attorney for the petitioner, and by filing the original of such written answer with proof of service thereof in the office of the clerk at least three (3) days before the time the petition is noticed to be heard; in addition thereto, you must appear before the court at the time and place hereinabove set forth for the hearing.

TAKE NOTICE, that your answer may set forth any defense or counterclaim you may have against the petitioner if such defense or counterclaim is properly cognizable herein.

TAKE NOTICE also that if you shall fail at such time to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

TAKE NOTICE that your failure to appear and answer may result in final judgment by default for the petitioner in the amount demanded in the petition.

TAKE NOTICE that under section 745 of the Real Property Actions and Proceedings Law, you may be required by the court to make a deposit of use and occupancy, or a payment of use and occupancy to the petitioner, upon your second request for an adjournment or if the proceedings is not settled or a final determination has not been made by the Court within 30 days of the first court appearance. Failure to comply with an initial deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on the issues raised in your answer.

Dated: New York, New York
July 6, 2004

JUL - 6 2004

Clerk of the Civil Court
of the City of New York

MILTON H. PACHTER, ESQ.
Attorney for Petitioner The Port Authority of
New York & New Jersey

Jordan M. Newman

By : Jordan M. Newman, Esq.
Office of Milton H. Pachter, Esq.
225 Park Avenue South – 13th Floor
New York, New York 10003
Telephone: (212) 435-3447

MERICAN WAREHOUSING of NEW YORK, INC. | BP-302

Pier 6

ATLANTIC AVE.

Pier 7

STREET

Pier 8

CONGRESS STREET

COLUMBIA

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

A-1

THE PORT AUTHORITY OF NY & NJ

BROOKLYN - PORT AUTHORITY MARINE TERMINAL

Date : Dec. 1, 1999

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS
----------X

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Petitioner (Landlord),

-against-

AMERICAN WAREHOUSING OF NEW YORK INC.,

Respondent.

Pier 7
Columbia Street
Brooklyn, New York 11201
----------X

Index No. L&T

PETITION

Business Holdover

Petitioner's Business Address:
225 Park Avenue South
New York, NY 10003

The Petitioner, The Port Authority of New York and New Jersey (hereinafter referred to as "Port Authority"), respectfully alleges:

1. The Port Authority is 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, having its principal office at 225 Park Avenue South, County, City and State of New York.

2. The Petitioner is the owner in fee of the premises hereinafter described.

3. Upon information and belief, the respondent, AMERICAN WAREHOUSING OF NEW YORK INC. is a corporation incorporated under the laws of the State of New York with a principal place of business at Pier 5 Brooklyn - Port Authority Marine Terminal, Brooklyn, New York, New York 11201.

4. Petitioner seeks removal of respondent from the premises, described as follows: Certain space as shown in the diagonal hatching on Exhibit "A" and located at Pier 7, Columbia Street, Brooklyn, New York which is situated within the territorial jurisdiction of this court.

5. Respondent has intruded into and squatted upon the premises without petitioner's permission, and the occupancy has continued to the present time without such permission.

6. On June 11, 2004, petitioner caused a notice to quit to be served upon respondent in the manner prescribed by law. A copy of the notice to quit is annexed as Exhibit B, and the affidavit of service is annexed as Exhibit C.

7. Respondent holds over and continues in possession of the premises without petitioner's permission after the expiration of the time provided in the notice to quit for respondent to vacate the premises.

8. Upon information and belief the above-described premises, possession of which is sought in this proceeding, is not the respondent's principal place of business.

9. The premises involved in this proceeding are not in a multiple dwelling. The premises are not subject to Rent Control, Rent Stabilization or the Emergency Tenant Protection Act of 1974.

WHEREFORE, petitioner prays for a judgment awarding petitioner possession of said premises, and a warrant to remove respondent from possession of said premises together with costs and disbursements.

Dated: New York, New York
July , 2004

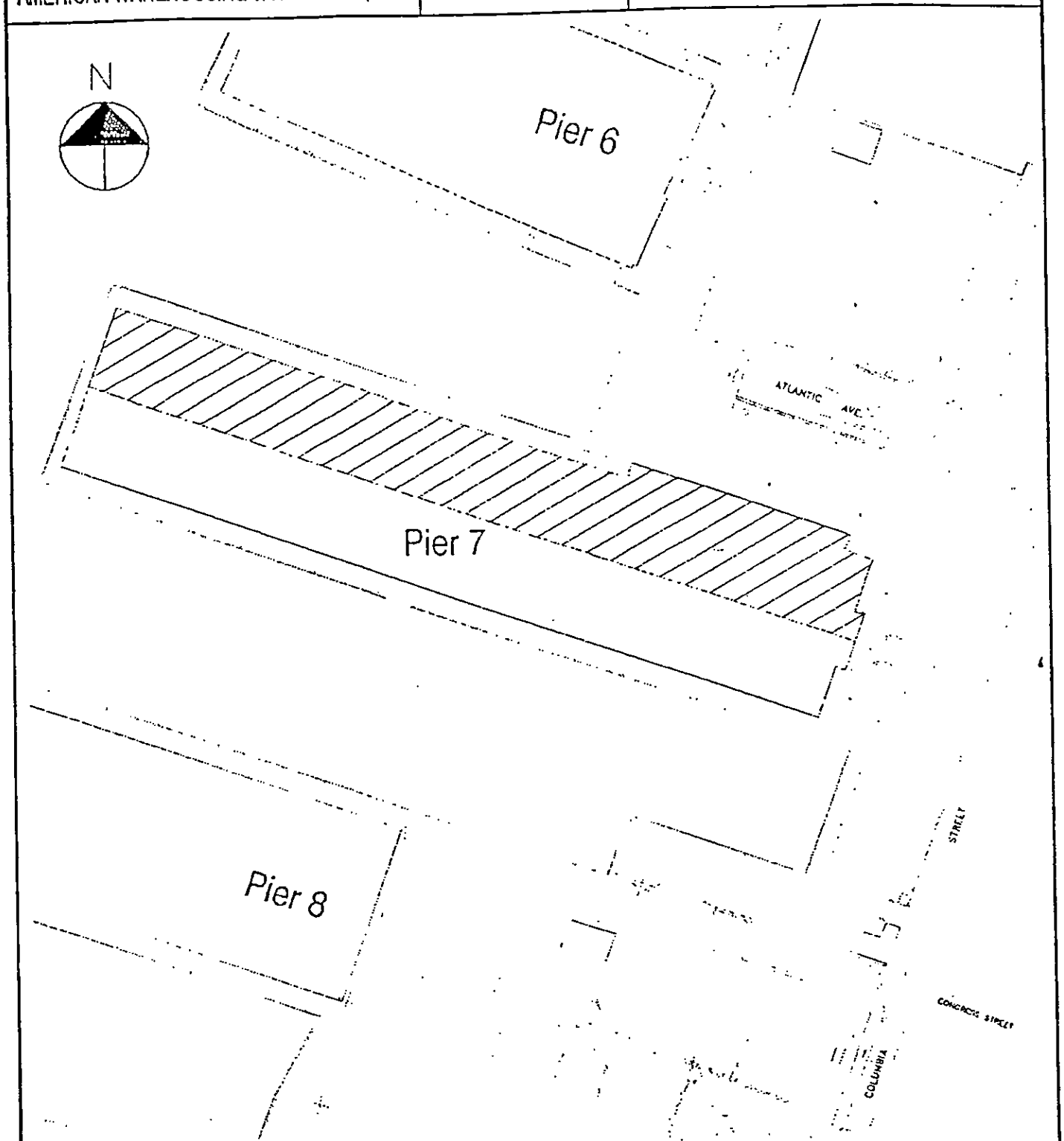
THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

BY: Karen E. Eastman
KAREN E. EASTMAN
SECRETARY

MILTON H. PACHTER, ESQ.
Attorney for Petitioner The Port Authority of
New York & New Jersey

By : Jordan M. Newman, Esq.
Office of Milton H. Pachter, Esq.
225 Park Avenue South – 13th Floor
New York, New York 10003
Telephone: (212) 435-3447

AMERICAN WAREHOUSING of NEW YORK, INC.	BP-302	



Initialed: For the PORT AUTHORITY / For the Lessee	EXHIBIT : A-1	THE PORT AUTHORITY OF NY & NJ BROOKLYN - PORT AUTHORITY MARINE TERMINAL Date : Dec. 1, 1999

NOTICE TO QUIT PREMISES

To: American Warehousing of New York, Inc., Pier 5, Furman Street, Brooklyn, New York 11201, and all other persons occupying the real property hereinafter described.

PLEASE TAKE NOTICE that you have intruded into the property described as the enclosed space on Pier 7, Columbia Street, Brooklyn, New York 11201 shown in diagonal hatching on Exhibit A-1 attached hereto without the permission of The Port Authority of New York and New Jersey, which is entitled to the possession and the occupancy thereof, and that the occupancy thus commenced has continued without its permission.

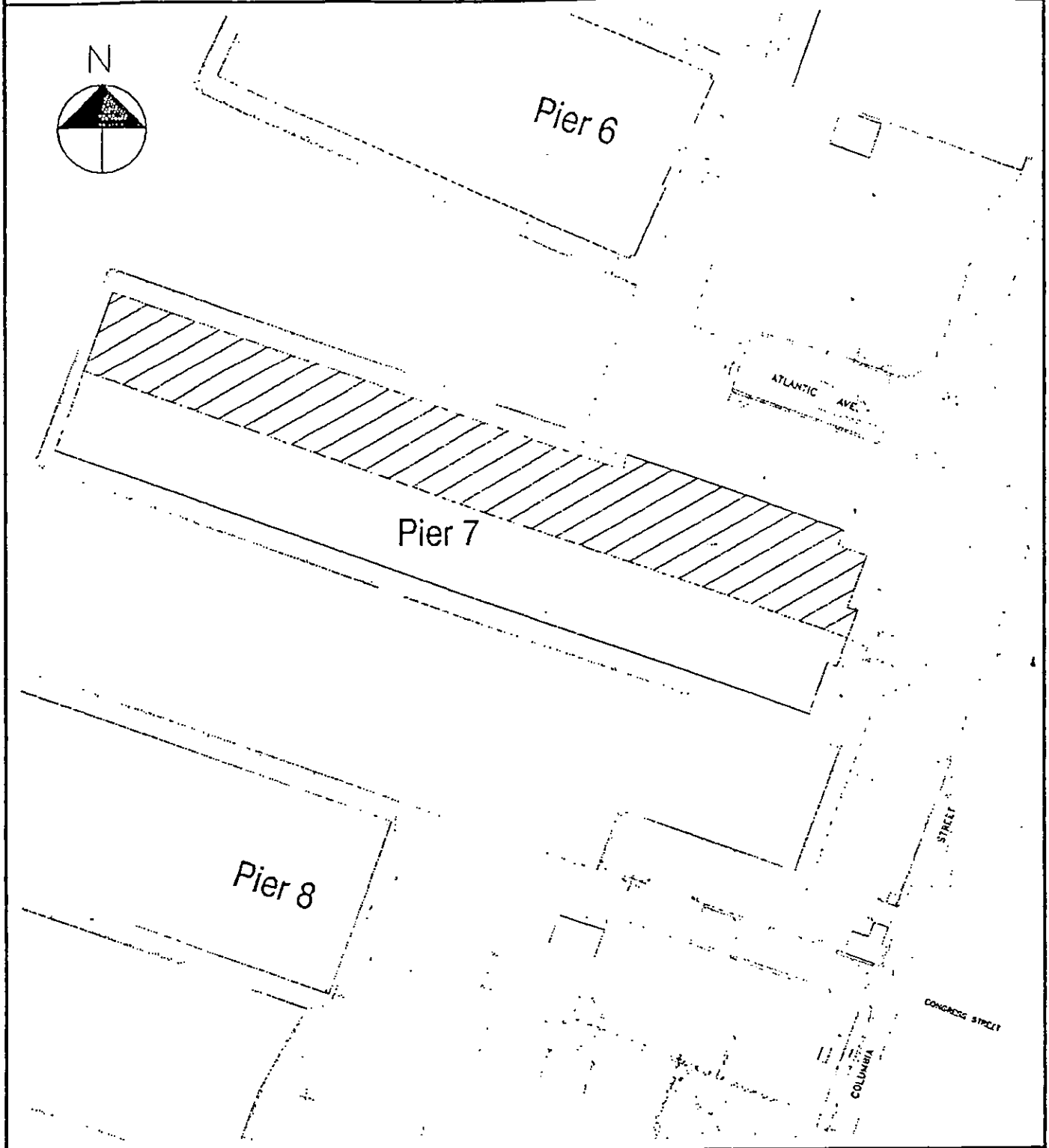
PLEASE TAKE FURTHER NOTICE that you and all other persons occupying said real property are hereby required to quit the same and surrender possession thereof to the undersigned on or before June 30, 2004.

Dated: June 11, 2004

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Karen E. Eastman
Secretary

AMERICAN WAREHOUSING of NEW YORK, INC.	BP-302	



Initialed: For the PORT AUTHORITY / For the Lessee	EXHIBIT: A-1	THE PORT AUTHORITY OF NY & NJ BROOKLYN - PORT AUTHORITY MARINE TERMINAL Date: Dec. 1, 1999

State of NEW JERSEY)
) ss.:
County of ESSEX)

AFFIDAVIT OF SERVICE

PATRICIA KEOUGH, being duly sworn deposes and says:

1. I am employed by the Port Authority of New York and New Jersey, am over 18 years of age and am not a party to this action.

2. On June 16, 2004, at approximately 11:30 a.m., I served a copy of the Notice to Quit Premises on American Warehousing of New York, Inc. by personally delivering such copy to Michael Scotto, President of American Warehousing of New York, Inc., at its principal office, Pier 5, Brooklyn-Port Authority Marine Terminal, Brooklyn, New York 11201. Michael Scotto is approximately 5'10" tall, has dark brown hair and is about 50 years of age.

3. On June 17, 2004 I followed up my personal service of the Notice to Quit Premises upon American Warehousing of New York, Inc. with service by Certified Mail, by mailing true copies of the Notice to Quit Premises to the party at the addresses listed below in a sealed wrapper by Certified Mail, Return Receipt Requested with postage thereon prepaid, at a mailbox regularly maintained by the United States Government for the purpose of receiving Certified Mail matter.

4. On June 17, 2004, I followed up my personal service of the Notice to Quit Premises upon American Warehousing of New York, Inc. with service by First Class Mail, by mailing true copies of the Notice to Quit Premises to the party at the addresses listed below in a sealed wrapper by First Class Mail with postage thereon

prepaid, at a mailbox regularly maintained by the United States Government for the purpose of receiving First Class matter.

5. I am exempt from the requirements of Article 8 of the General Business Law regarding process servers since I served the Notice to Quit Premises on behalf of the Port Authority of New York and New Jersey, an agency of the States of New York and New Jersey, in the course of my employment by the Port Authority of New York and New Jersey.

Patricia Keough

Sworn to before me on
17th day of June, 2004

NOTARY PUBLIC

JOHN S. PERRY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 21, 2006

TO: AMERICAN WAREHOUSING OF NEW YORK, INC.
Pier 5
Brooklyn-Port Authority Marine Terminal
Brooklyn, NY 11201

AMERICAN WAREHOUSING OF NEW YORK, INC.
Pier 7
Brooklyn—Port Authority Marine Terminal
Brooklyn, NY 11201

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

KAREN E. EASTMAN being duly sworn deposes and says:

That deponent is the Secretary of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY which is a body corporate and politic, created by Compact between the States of New York and New Jersey with the consent of the Congress named in the foregoing petition; that deponent has read the foregoing Petition; that the same is true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true; and the reason why this verification is made by deponent and not by said landlord is because said landlord is a body corporate and politic, as above described. That the grounds of deponent's belief as to all matters in the said petition not stated upon deponent's knowledge, are investigations which deponent has caused to be made concerning the subject matter of this proceeding, and information acquired by deponent in the course of deponent's duties as such officer of the said corporation, and from the records and papers of said corporation.

The Port Authority of
New York and New Jersey

BY: Karen E. Eastman
KAREN E. EASTMAN
SECRETARY

Sworn to before me this
6 day of July

Notary Public

JAY ADLAI SELCOV
Notary Public, State of New York
No. 02SE4692682
Qualified in New York County
Commission Expires on May 13, 2016

15 pages

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS
----------X

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Petitioner (Landlord),

-against-

AMERICAN WAREHOUSING OF NEW YORK INC., and XYZ CORP.,

Respondents.

Pier 7
Columbia Street
Brooklyn, New York 11201
----------X

Index No. L&T 018968/06

NOTICE OF PETITION
Business Squatter

Petitioner's Business Address
225 Park Avenue South
New York, NY 10003

To the respondent(s) above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE, that a hearing at which you must appear will be held at the Civil Court of the City of New York, County of Kings, Landlord and Tenant Part 52, Room 506 at 141 Livingston Street, Brooklyn, County of Kings, City and State of New York, on August 4, 2006, at 11:00 A.M., on the annexed petition of the Port Authority verified June 7, 2006 which prays for a final judgment of eviction, awarding to the petitioner possession of premises described as follows: consisting of space shown in the diagonal hatching in the attached diagram annexed hereto as Exhibit "A" and located at Pier 7, Columbia Street, Brooklyn, New York, and further granting to the petitioner such other and further relief as is demanded in the petition, which you must answer.

TAKE NOTICE also that your answer may be made at the time of hearing specified above unless this Notice of Petition is served upon you on or before July 27, 2006, in which event you must answer at least three (3) days before the petition is noticed to be heard, either orally before the clerk of the court at his or her office or in writing by serving a copy thereof upon the undersigned attorney for the petitioner, and by filing the original of such written answer with proof of service thereof in the office of the clerk at least three (3) days before the time the petition is noticed to be heard; in addition thereto, you must appear before the court at the time and place hereinabove set forth for the hearing.

JUL 28 '06 08:43 FR AMERICAN WAREHOUSE 718 797 5447 TO 14198218730 P.01/15

TAKE NOTICE, that your answer may set forth any defense or counterclaim you may have against the petitioner if such defense or counterclaim is properly cognizable herein.

TAKE NOTICE also that if you shall fail at such time to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

TAKE NOTICE that your failure to appear and answer may result in final judgment by default for the petitioner in the amount demanded in the petition.

TAKE NOTICE that under section 745 of the Real Property Actions and Proceedings Law, you may be required by the court to make a deposit of use and occupancy, or a payment of use and occupancy to the petitioner, upon your second request for an adjournment or if the proceedings is not settled or a final determination has not been made by the Court within 30 days of the first court appearance. Failure to comply with an initial deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on the issues raised in your answer.

Dated: New York, New York
July , 2006

Chris Gano

2 1 2006

Clerk of the Civil Court
of the City of New York

MILTON H. PACHTER, ESQ.
Attorney for Petitioner The Port Authority of
New York & New Jersey

Jordan M. Newman

By: Jordan M. Newman, Esq..
Office of Milton H. Pachter, Esq.
225 Park Avenue South – 13th Floor
New York, New York 10003
Telephone: (212) 435-3447

JUL 28 '06 08:43 FR AMERICAN WAREHOUSE 718 797 5447 TO 14198218720 P.02/15

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

----------X

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Petitioner (Landlord),

-against-

AMERICAN WAREHOUSING OF NEW YORK, INC. and XYZ CORP.,

Respondents.

Pier 7
Columbia Street
Brooklyn, New York 11201

----------X

Index No. L&T

PETITION

Business Squatter

Petitioner's Business Address:
225 Park Avenue South
New York, NY 10003

The Petitioner, The Port Authority of New York and New Jersey (hereinafter referred to as "Port Authority"), respectfully alleges:

1. The Port Authority is 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, having its principal office at 225 Park Avenue South, County, City and State of New York.

2. The Petitioner is the owner in fee of the premises hereinafter described.

3. Upon information and belief, the respondent, AMERICAN WAREHOUSING OF NEW YORK, INC. is a corporation incorporated under the laws of the State of New York with a principal place of business at Pier 5 Brooklyn - Port Authority Marine Terminal, Brooklyn, New York, New York 11201.

4. Petitioner seeks removal of respondents from the premises, described as follows:

JUL 28 '06 08:44 FR AMERICAN WAREHOUSE 718 797 5447 TO 14195218730 P.05/15

4. Petitioner seeks removal of respondents from the premises, described as follows: Certain space as shown in the diagonal hatching on Exhibit "A" and located at Pier 7, Columbia Street, Brooklyn, New York which is situated within the territorial jurisdiction of this court.

5. Respondents have intruded into and squatted upon the premises without petitioner's permission, and the occupancy has continued to the present time without such permission.

6. On May 23, 2006, petitioner caused a notice to quit to be served upon respondents in the manner prescribed by law. A copy of the notice to quit is annexed as Exhibit B, and the affidavit of service is annexed as Exhibit C.

7. Respondents hold over and continue in possession of the premises without petitioner's permission after the expiration of the time provided in the notice to quit for respondent to vacate the premises.

8. Upon information and belief the above-described premises, possession of which is sought in this proceeding, is not the respondents' principal place of business.

9. The premises involved in this proceeding are not in a multiple dwelling. The premises are not subject to Rent Control, Rent Stabilization or the Emergency Tenant Protection Act of 1974.

JUL 20 '06 08:44 FR AMERICAN WAREHOUSE 718 797 5447 TO 14192218730 P.06/15

WHEREFORE, petitioner prays for a judgment awarding petitioner possession of said premises, and a warrant to remove respondents from possession of said premises together with costs and disbursements.

Dated: New York, New York
June 7, 2006

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

BY: Karen E. Eastman
KAREN E. EASTMAN
SECRETARY

MILTON H. PACHTER, ESQ.
Attorney for Petitioner The Port Authority of
New York & New Jersey

Jordan M. Newman

By: Jordan M. Newman, Esq.
Office of Milton H. Pachter, Esq.
225 Park Avenue South – 13th Floor
New York, New York 10003
Telephone: (212) 435-3447

JUL 28 '06 09:45 FR AMERICAN WAREHOUSE 718 737 5447 TO 14198021875O P.07/15

'CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS
----------X

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Petitioner (Landlord),

-against-

AMERICAN WAREHOUSING OF NEW YORK, INC.,

Respondent (Tenant),

XYZ CORP.*

Respondent (Subtenant).

*Party Unknown
Pier 7
Columbia Street
Brooklyn, New York 11201
----------X

Index No. L&T 014787/06

NOTICE OF PETITION
Business Holdover

Petitioner's Business Address
225 Park Avenue South
New York, NY 10003

To the respondent(s) above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE, that a hearing at which you must appear will be held at the Civil Court of the City of New York, County of Kings, Part 52, Room 506, 141 Livingston Street, Brooklyn, County of Kings, City and State of New York, on April 26, 2006 at 11:00 A.M., on the annexed petition of the Port Authority verified April 3, 2006, which prays for a final judgment of eviction , awarding to the petitioner possession of premises described as follows: the enclosed space on Pier 7, located at Columbia Street, Brooklyn, New York, shown in diagonal hatching in the diagram annexed hereto as Exhibit "A", and further granting to the petitioner such other and further relief as is demanded in the petition, which you must answer.

TAKE NOTICE also that demand is made in the petition herein for judgment against you, the respondents, for the sum of $1,100.98 per day from April 1, 2006 until the premises are vacated or the warrant is executed.

TAKE NOTICE also that your answer may be made at the time of hearing specified above unless this Notice of Petition is served upon you on or before April 18, 2006, in which event you must answer at least three (3) days before the petition is noticed to be heard, either orally before the clerk of the court at his or her office or in writing by serving a copy thereof upon the undersigned attorney for the petitioner, and by filing the

original of such written answer with proof of service thereof in the office of the clerk at least three (3) days before the time the petition is noticed to be heard; in addition thereto, you must appear before the court at the time and place hereinabove set forth for the hearing.

TAKE NOTICE, that your answer may set forth any defense or counterclaim you may have against the petitioner.

TAKE NOTICE also that if you shall fail at such time to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

TAKE FURTHER NOTICE, that your failure to appear and answer may result in final judgment by default for the petitioner in the amount demanded in the petition.

TAKE FURTHER NOTICE, that under Section 745 of the Real Property Actions and Proceedings Law, you may be required by the Court to make a deposit of use and occupancy or a payment of use and occupancy to the petitioner, upon your second request for an adjournment or if the proceeding is not settled or a final determination is not made by the Court within 30 days of the first Court appearance. Failure to comply with an initial deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on the issues raised in your answer.

Dated: April , 2006
New York, New York

S/JACK BAER
APR 5 2006

Clerk of the Civil Court
of the City of New York

MILTON H. PACHTER, ESQ.
Attorney for Petitioner, The Port Authority
of New York and New Jersey

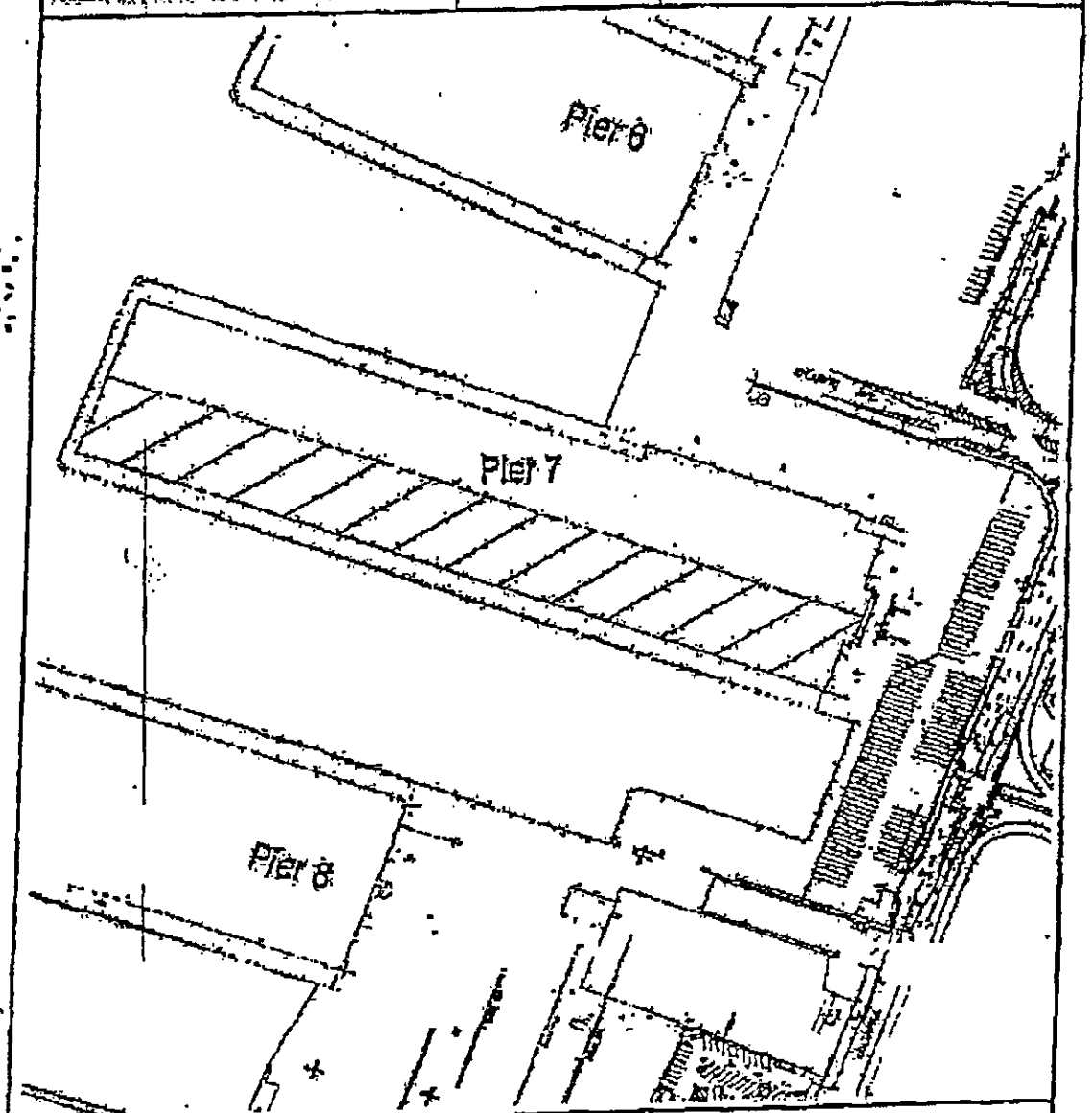
Jordan M. Newman

By: Jordan M. Newman, Esq.
Office of Milton H. Pachter, Esq.
225 Park Avenue South – 13th Floor
New York, New York 10003
Tel.: (212) 435-3447

Matter No. 200610409

Exhibit A

AMERICAN WAREHOUSING of NEW YORK, INC. | BP-302



(initialed:)

For the PORT AUTHORITY

For the Lessee

EXHIBIT: A

BROOKLYN - PORT AUTHORITY
MARINE TERMINAL

Date: Dec. 1, 1999

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS
----------X

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Petitioner (Landlord),

-against-

AMERICAN WAREHOUSING OF NEW YORK, INC.,

Respondent (Tenant),

XYZ CORP.*

Respondent (Subtenant).

*Party Unknown
Pier 7
Columbia Street
Brooklyn, New York 11201
----------X

Index No. L&T

PETITION
Business Holdover

Petitioner's Business Address
225 Park Avenue South
New York, NY 10003

The Petitioner, The Port Authority of New York and New Jersey (hereinafter referred to as "Port Authority") respectfully alleges:

1. The Port Authority is 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, having its principal office at 225 Park Avenue South, City and State of New York.

2. The Petitioner is the owner in fee of the premises hereinafter described, and is the landlord of American Warehousing of New York, Inc. respondent above named, with respect to said premises.

3. Upon information and belief, the respondent-tenant, American

Warehousing of New York, Inc. (hereinafter referred to as "Tenant" or "American"), is a corporation under the laws of the State of New York with a principal place of business at Pier 5, Furman Street, Brooklyn, New York 11201.

4. By written agreement of Lease (hereinafter referred to as "Lease Agreement"), made as of December 1, 1999, and designated Lease No. BP-302, the Port Authority let to American, and American as Lessee hired and took from the Port Authority, space to be used in the operation of its business for a term commencing December 1, 1999 and ending April 30, 2003 unless sooner terminated. American entered into possession of said premises and still occupies the same.

5. On information and belief, respondent XYZ Corp. is the subtenant of respondent American with respect to the premises described below.

6. Petitioner seeks removal of respondents from the premises, demised as aforesaid, and described as follows: Certain space described as the enclosed space on Pier 7, located at Columbia Street, Brooklyn, New York, shown in diagonal hatching in the diagram annexed hereto as Exhibit "A"and which is situated within the territorial jurisdiction of this Court.

7. By reason of the provisions of the Lease Agreement, said lease and the term thereof have expired as of 11:59 p.m. on April 30, 2003.

8. On February 23, 2006 there was personally served on respondent American on and on respondent XYZ Corp. a Notice Terminating Tenancy, a copy of which is annexed hereto as Exhibit "B" notifying respondents that their tenancy would expire on March 31, 2006. Annexed hereto as Exhibit "C" is the affidavit of service of said notice.

9. Respondents have refused and still refuse to quit and deliver up possession of the premises to petitioner, and hold over and continue in possession after the expiration of term without permission of petitioner.

10. The fair value of the use and occupancy of premises is $1,100.98 per day.

11. The above-described premises, possession of which is sought in this proceeding, is not the respondents' principal place of business.

12. The premises involved in this proceeding are not in a multiple dwelling. The premises are not subject to Rent Control, Rent Stabilization or the Emergency Tenant Protection Act of 1974 because they are rented for business purposes.

WHEREFORE, petitioner prays for judgment awarding petitioner possession of said premises, for a warrant to remove respondents from possession of said premises, for a judgment and respondents for use and occupancy in the amount of $1,100.98 per day from April 1, 2006 until the execution of the warrant, together with costs and disbursements.

Dated: New York, New York
April 3, 2006

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

BY: Karen E. Eastman
Karen E. Eastman
Secretary

Matter No. 200610409

MILTON H. PACHTER, ESQ.
Attorney for Petitioner The Port Authority
of New York New Jersey

Jordan M. Newman

By: Jordan M. Newman, Esq.
Office of Milton H. Pachter, Esq.
225 Park Avenue South – 13th Floor
New York, New York 10003
Tel.: (212) 435-3447

Matter No. 200610409

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

AMERICAN WAREHOUSING OF NEW YORK, INC.

LAW DEPARTMENT
LEASES DIVISION
2002 NOV -5 P 3:15

Dated as of December 1, 1999

THIS AGREEMENT OF LEASE, made as of the 1st day of December, 1999, by and between THE PORT AUTHORITY of NEW YORK and NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office and place of business at 225 Park Avenue South, New York, New York 10003 and AMERICAN WAREHOUSING OF NEW YORK, INC., a New York corporation (hereinafter called "the Lessee") with an office and place of business at Pier 5, Furman Street, Brooklyn, New York 11201, whose representative is Michael Scotto, President,

WITNESSETH, That:

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

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

> the enclosed space shown in diagonal hatching on the sketch attached hereto, hereby made a part hereof, and marked "Exhibit A",

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

ARTICLE II. The term of the letting shall commence at 12:01 o'clock A.M. on December 1, 1999 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on April 30, 2003. The parties specifically agree that the term of the letting under this Agreement shall in no event be extended beyond the period ending at 11:59 o'clock P.M. on April 30, 2003.

ARTICLE III. The Lessee shall pay basic rental under Special Endorsement No. 2.

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

> For the temporary receipt, storage and distribution of cocoa beans and related cocoa products and such other non-hazardous commodities as shall have the prior and continuing consent of the Port Authority for the account of persons, firms and corporations other than the Lessee.

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

TITLE	NUMBER	DATE
Thirty-day Termination	Standard Endorsement No. L1.1	2/10/81
Services	Standard Endorsement No. L5.1	10/6/75
Brooklyn-Port Authority Marine Terminal	Standard Endorsement No. L19.7	10/6/64
Insurance	Standard Endorsement No. L21.1	3/25/82
Abatement	Standard Endorsement No. L27.4	10/6/68

Special Endorsements
Space Plan – Exhibits A and A-1
Schedule naming Rules, Regulations, Rates and Charges applying at
Port Authority Marine Terminals - Exhibit R

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

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

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ATTEST:

SECRETARY

By

RICHARD M. LARRABEE

Title DIRECTOR, PORT COMMERCE DEPT.

(Seal)

AMERICAN WAREHOUSING OF NEW YORK, INC.

ATTEST:

Secretary

By

Title President

(Corporate Seal)

APPROVED:

FORM TERMS

TERMS AND CONDITIONS

SECTION 1. ***Ingress and Egress***

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

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

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

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

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

SECTION 3. ***Rules and Regulations***

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

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

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

SECTION 4. *Method of Operation*

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. ***Signs***

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

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

SECTION 6. ***Indemnity***

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

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

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

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

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

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

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

SECTION 8. ***Casualty***

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the premises with its consent) so as to render it untenantable in whole or substantial part, then

(1) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence, and the rental hereunder shall be abated as provided in this Agreement, for the period from the occurrence of the damage to the completion of the repairs or rebuilding, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(2) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage or if one or more of the structures or buildings which are a part of the premises or the entire premises require rebuilding, then the Port Authority shall have options: (i) to proceed with due diligence to repair or to rebuild as necessary or (ii) to terminate the letting as to the damaged structure or structures, building or buildings or portion thereof only; or (iii) to cancel this Agreement and terminate the letting as to the entire premises; and the rental payable under this Agreement shall be abated, as provided in this Agreement, either, as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination, for the area or areas involved.

(b) "Substantial part" shall mean for the purpose of this Section at least twenty-five percent (25%) of the usable floor space in the structure or building or part thereof comprising the premises, or, if there is more than one structure or building on the premises, at least twenty-five percent (25%) of the aggregate usable floor space comprising the premises in all of the structures and buildings covered by insurance.

(c) The parties hereby stipulate that if the premises are in New Jersey neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the premises are in New York, neither the provisions of Section 227 of the Real Property Law of New York nor those of any other similar statute shall extend or apply to this Agreement.

(d) In the event of damage to or a partial or total destruction of the premises, the Lessee shall within five days of the occurrence commence to remove all of its damaged property and all debris thereof from the premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand.

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

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

(b) The Lessee shall not sublet the premises or any part thereof without the prior written consent of the Port Authority.

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

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

SECTION 10. ***Condemnation***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. ***Prohibited Acts***

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

(b) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the premises; *provided, however,* that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machine installed except at the sole discretion of the Port Authority.

SECTION 16. ***Termination***

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

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

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

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

(4) The letting or the interest of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(5) The Lessee, if a corporation, shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

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

(7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee, and such possession or control shall continue in effect for a period of fifteen (15) days; or

(8) The Lessee shall voluntarily abandon, desert or vacate the premises or discontinue its operations at the premises or at the Facility or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the premises, regardless of the fault of the Lessee; or

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

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required hereunder when due to the Port Authority; or

(11) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this agreement, on its part to be kept, performed or observed, within ten (10) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

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

SECTION 17. ***Right of Re-entry***

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 16 of these Terms and Conditions, have the right to re-enter the premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

SECTION 18. ***Waiver of Redemption***

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

SECTION 19. ***Survival of the Obligations of the Lessee***

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 16 of these Terms and Conditions, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 17 of these Terms and Conditions, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Article II hereof, and the amount or mounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

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

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

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

SECTION 20. ***Reletting by the Port Authority***

The Port Authority, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon any re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions, may occupy the premises or may relet the premises and shall have the right to permit any person, firm or corporation to enter

upon the premises and use the same. Such reletting may be of part only of the premises or of the premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions have the right to repair and to make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the said premises or portion thereof during the balance of the term of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port Authority may itself during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

SECTION 21. ***Remedies to Be Nonexclusive***

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

SECTION 22. ***Surrender***

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

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

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

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

SECTION 24. ***Notices***

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

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

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

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

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

SECTION 26. ***Premises***

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

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

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

SECTION 27. ***Postponement***

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

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

SECTION 28. ***Force Majeure***

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

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

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

SECTION 29. ***Brokerage***

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

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

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

In addition to all other rights under this Agreement, the Port Authority shall have the right to terminate the letting under this Agreement without cause, at any time, on thirty (30) days' notice to the Lessee in advance. Termination under the provisions of this Standard Endorsement shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the letting.

Standard Endorsement No. L1.1
Thirty-Day Termination
All Facilities
2/10/81

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

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

(c) Unless the Port Authority has expressly undertaken to heat the enclosed portions of the premises, if any, the Lessee agrees to heat the enclosed portions of the premises to a sufficient temperature so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings which, or a portion or portions of which, are included in the premises, (including but not limited to any sewer-rent or other charge for the use of a sewer system or sysems), the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, pay, in accordance with such notice, such charge, fee, rent or assessment or such increase thereof (or the portion thereof allocated by the Port Authority to the premises or to the operations of the Lessee under this Agreement) either directly to the governmental body, authority or agency, or to the public utility, or directly to the Port Authority, as such notice may direct. All payments to be made by the Lessee hereunder shall constitute items of additional rental.

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

(f) In the event any one or more structures within or attached to the premises but not accessible directly from the enclosed portion of the premises is or are in use as a valve-room or valve-rooms for a sprinkler system, the same shall not be deemed a portion of the premises hereunder, and the Lessee shall afford access thereto through and across the premises at all times as required by the Port Authority for itself or its contractors, with or without tools, equipment, parts and supplies.

Standard Endorsement No. L 5.1

Services

All Facilities

10/6/75

(a) As used in this Agreement:

(1) "Brooklyn-Port Authority Marine Terminal", "Brooklyn-Port Authority Piers", "Facility", or "marine terminal" shall mean the real property, buildings, structures, fixtures, improvements and other property, including without limitation thereto leasehold interests in property, located in the Boroughs of Manhattan and Brooklyn, in the Counties of New York and Kings, in the City and State of New York, transferred or assigned to the Port Authority under the provisions of any one or more (including all) of the following deeds and agreements:

(i) Deed dated March 1, 1956 from New York Dock Company to the Port Authority, recorded in the office of the City Register, New York County, on March 6, 1956 in Liber 4956 of Conveyances, on pp.356 et seq., and in the Office of the City Register, Kings County, on March 6, 1956 in Liber 8422 of Conveyances on pp.458 et seq.;

(ii) Deed dated March 1, 1956 from The Trustees and Associates of the Brooklyn Benevolent Society to the Port Authority, recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp.96 et seq.;

(iii) Agreement of lease dated June 2, 1916, made between the City of New York and New York Dock Company, referred to as "the Montague Street Lease", recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp.150 et seq.

(iv) Agreement dated March 21, 1950, made between the City of New York and New York Dock Company renewing the lease described in paragraph (iii) above, recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp.118 et seq.;

(v) Agreement of lease dated June 2, 1916, made between the City of New York and New York Dock Company, referred to as "the Joralemon Street Lease", recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp.186 et seq.;

(vi) Agreement dated October 23, 1946, made between the City of New York and New York Dock Company, renewing the lease described in paragraph (v) above, recorded in the Office of the City Register, Kings County, in Liber 8423 of Conveyances on pp.111 et seq.; and

(vii) Assignment of leasehold interests mentioned in paragraphs (iii) (iv) (v) and (vi) as of March 1, 1956 by New York Dock Company to The Port of New York Authority, recorded in the Office of the City Register, Kings County, on March 7, 1956, in Liber 8423 of Conveyances, on pp.130 et seq.;

and such additional property adjacent thereto (not including any property to the south of Conover Street) as the Port Authority may have heretofore or may hereafter acquire for marine terminal purposes, and additional buildings, structures, fixtures, improvements and other property which may have been heretofore or may hereafter be installed or constructed for marine terminal purposes on any property or properties heretofore mentioned.

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

(3) "Manager of the Facility" 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 York, for the time being, or his duly designated representative or representatives.

Brooklyn-Port Authority Marine Terminal

(b) The rights of the Port Authority in the Facility are those acquired by it pursuant to the deeds and agreements described in paragraph (a)(1) of this Standard Endorsement, and by subsequent conveyances, and no greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power thereunder to grant. In the event the premises under this Agreement or any portion thereof constitute all or a portion of the premises as to which the Port Authority is the Lessee under any one or more of the agreements described in subparagraphs (ii), (iv), (v) and (vii) of the said paragraph (a)(1), or under any other agreement of lease, the letting under this Agreement shall in any event terminate simultaneously with the termination or expiration of the letting under such agreement or agreements of lease; provided, however, that in the event only a portion of the premises hereunder is included within the premises under such expiring agreement or agreements of lease, the letting hereunder shall continue, as to the balance of the premises hereunder, in accordance with the terms of this Agreement.

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

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

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

(f) The rights and operations of the Lessee under this Agreement are subject to the terms of a certain agreement of lease made between the Port Authority and New York Dock Railway dated March 1, 1956, as the same may be extended or amended. The said agreement of lease covers premises and rights-of-way at the Facility and grants rights and privileges at the Facility in connection with the operations of a railway thereat. The Lessee shall not do, or permit its employees, contractors, invitees or those doing business with it to do, anything which will interfere or conflict with the exercise of rights or operations under the said agreement of lease.

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

Standard Endorsement No. L 19.7 (2 pages)
Brooklyn-Port Authority Marine Terminal
Brooklyn-Port Authority Marine Terminal
10/6/64

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

SCHEDULE

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

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

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

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

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

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

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

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of the Lease as herein amended or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of No Abatement

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of $2.50*

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in the Lease as herein amended, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under the Lease as herein amended the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

* during the period from June 1, 2000 through November 30, 2001; at the annual rate of $2.5875 during the period from December 1, 2001 through November 30, 2002; and at the annual rate of $2.6781 during the period from December 1, 2002 through April 30, 2003.

SPECIAL ENDORSEMENTS

1. Notwithstanding the provisions of paragraph (c) of Section 7 of the Terms and Conditions of this Agreement, the Lessee shall not be obligated, except as provided in paragraph (b) of said Section 7 and except as provided hereinafter in this Special Endorsement, to make any repairs to the sprinkler system on or serving the premises, or any structural repairs or replacements to the following parts of the premises: the roof, floors, exterior walls, exterior pavement, foundations and supporting members. After receipt by the Port Authority of notice from the Lessee that repair or replacement of any of the foregoing parts of the premises is needed (stating precisely the items of work required), the Port Authority shall make the same to the extent necessary to keep such part of the premises in a reasonably good condition for the operations of the Lessee under this Agreement; but the Port Authority shall not be obligated to make repairs or replacements to bring the premises to a better condition than that existing at the commencement of the letting. The Port Authority shall have no obligation whatsoever under this Special Endorsement to make repairs or replacements of any structure, building, installation or fixture, or any part of any of them, which have been brought to or built or installed on the premises by the Lessee or its contractor, whether or not with the prior consent of the Port Authority, whether or not the same has become part of the premises under this Agreement and whether or not title thereto has vested in the Port Authority. The responsibility of the Port Authority under this Special Endorsement shall be limited to bearing the expense of the repair or replacement and, without limitation of the foregoing, the Port Authority shall have no obligation whatsoever with respect to any repairs or replacements which are the obligation of the Lessee under other provisions of this Agreement. The Port Authority shall have no obligation with respect to any repairs or replacements which are required because of a casualty, whether or not insured or insurable, except as expressly provided in Section 8 of the said Terms and Conditions. If the Port Authority shall fail after a reasonable time to perform its obligations hereunder, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay to the Lessee its actual certified cash expenditures therefor or, at the option of the Port Authority, shall extend to the Lessee in an amount equal to such expenditures a credit against its rental obligations under this Agreement. Furthermore, prior to commencement by the Port Authority of any work set forth in the Lessee's notice to the Port Authority, the Lessee shall take all precautions necessary to protect persons or property at the

Facility, including the immediate performance by the Lessee of such work as may be required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Lessee for such work as hereinabove provided. Without limiting any obligation of the Lessee under this Agreement, the Port Authority, at any time and from time to time during the letting, may enter the premises for the purpose of making repairs or replacements, or for the purpose of performing maintenance, whether or not the Port Authority is obligated hereunder to do the same and whether or not the Port Authority has received a notice, request or other communication from the Lessee concerning any such repair or replacement, provided that this right of the Port Authority shall not constitute or be deemed to constitute any obligation or duty on the Port Authority either to the Lessee or others to make any repairs or replacements, do any maintenance or do anything else in connection therewith. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives from and against all claims and demands of any and all third persons whatsoever, including without limitation thereto the Lessee's employees, officers, agents and representatives, for personal injuries (including death) or property damage, which may arise from the condition of the premises or any part thereof or from failure of the Lessee to notify the Port Authority of conditions requiring repair or replacement, or from the failure of the Lessee to make timely corrections of dangerous or potentially dangerous conditions in or on the premises. The Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, agents, employees, contractors and subcontractors, and their employees, from all liability for damage to the Lessee, consequential or otherwise, in connection with any provision of this Special Endorsement concerning repair or replacement of any portion of the premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

2. The Lessee shall pay basic rental to the Port Authority during the term of the letting as follows: (a) during January 2000, at the annual rate of Eighty-nine Thousand Eight Hundred Sixty-six Dollars and No Cents ($89,866.00) payable in advance in a single monthly installment of Seven Thousand Four

Hundred Eighty-eight Dollars and Eighty-three Cents ($7,488.83) on January 1, 2000; (b) during February 2000, at the annual rate of One Hundred Seventy-nine Thousand Seven Hundred Thirty-four Dollars and No Cents ($179,734.00) payable in advance in a single monthly installment of Fourteen Thousand Nine Hundred Seventy-seven Dollars and Sixty-seven Cents ($14,977.67) on February 1, 2000; (c) during the period from March 1, 2000 through May 31, 2000, both dates inclusive, at the annual rate of Two Hundred Sixty-nine Thousand Six Hundred Dollars and No Cents ($269,600.00) payable in advance in equal monthly installments of Twenty-two Thousand Four Hundred Sixty-six Dollars and Sixty-seven Cents ($22,466.67) on March 1, 2000 and on the first day of each calendar month thereafter during such period; (d) during the period from June 1, 2000 through November 30, 2001, both dates inclusive, at the annual rate of Three Hundred Thirty-seven Thousand and No Cents ($337,000.00) payable in advance in equal monthly installments of Twenty-eight Thousand Eighty-three Dollars and Thirty-three Cents ($28,083.33) on June 1, 2000 and on the first day of each calendar month thereafter during such period; (e) during the period from December 1, 2001 through November 30, 2002, both dates inclusive, at the annual rate of Three Hundred Forty-eight Thousand Seven Hundred Ninety-five Dollars and No Cents ($348,795.00) payable in advance in equal monthly installments of Twenty-nine Thousand Sixty-six Dollars and Twenty-five Cents ($29,066.25) on December 1, 2001 and on the first day of each calendar month thereafter during such period; and (f) during the period from December 1, 2002 through April 30, 2003, both dates inclusive, at the annual rate of Three Hundred Sixty-one Thousand Two Dollars and Eighty-three Cents ($361,002.83) payable in advance in equal monthly installments of Thirty Thousand Eighty-three Dollars and Fifty-seven Cents ($30,083.57) on December 1, 2002 and on the first day of each calendar month thereafter during such period.

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

4. In addition to all other rentals and charges payable under the Lease as herein amended, the Lessee shall pay to the Port Authority an additional rental for security guard service as follows: (a) at the annual rate of Thirty-three Thousand Dollars and No Cents ($33,000.00) during the period from May 1, 2000 through November 30, 2001, payable in advance in

equal monthly installments of Two Thousand Seven Hundred Fifty Dollars and No Cents ($2,750.00) on May 1, 2000 and on the first day of each calendar month thereafter during such period; (b) at the annual rate of Thirty-four Thousand One Hundred Fifty-five Dollars and No Cents ($34,155.00) during the period from December 1, 2001 through November 30, 2002, payable in advance in equal monthly installments of Two Thousand Eight Hundred Forty-six Dollars and Twenty-five Cents ($2,846.25) on December 1, 2001 and on the first day of each calendar month thereafter during such period; and (c) at the annual rate of Thirty-five Thousand Three Hundred Fifty Dollars and Forty-three Cents ($35,350.43) during the period from December 1, 2002 through April 30, 2003, payable in advance in equal monthly installments of Two Thousand Nine Hundred Forty-five Dollars and Eighty-seven Cents ($2,945.87) on December 1, 2002 and on the first day of each calendar month thereafter during such period.

5. The policy of commercial general liability insurance required by Standard Endorsement No. L21.1 to this Agreement (a) shall include a contractual liability endorsement covering the Lessee's indemnity obligations under this Agreement, and (b) shall include the Port Authority as an additional insured, including but not limited to coverage for premises operations and completed operations. The policy of automobile liability insurance required by said Standard Endorsement No. L21.1 shall cover all owned, non-owned and hired vehicles. In addition to the policies of insurance required under said Standard Endorsement No. L21.1, the Lessee in its own name as assured shall secure and pay the premium or premiums for a policy of warehousemen's legal liability insurance in the minimum limit of $5,000,000 per occurrence. Said policy of warehousemen's legal liability insurance shall cover and insure against such hazards and risks as are customarily insured under such a policy, shall cover the operations of the Lessee under this Agreement, shall be effective throughout the term of the letting, shall be subject to the provisions of paragraph (e) of said Standard Endorsement No. L21.1, and shall contain an endorsement waiving any rights of subrogation of the insurer against the Port Authority. Each policy of insurance required by said Standard Endorsement No. L21.1 shall contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not

limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

6. Notwithstanding anything contained in this Agreement, the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the limits set forth in any insurance policies required to be maintained by it under this Agreement or to change or modify the insurance coverages required under this Agreement and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority.

7. The number of pounds avoirdupois contemplated in paragraph (h) of Section 4 of the Terms and Conditions of this Agreement for the premises is as follows: five hundred (500).

8. The Port Authority shall deliver the premises to the Lessee in its "as is" condition. The Lessee acknowledges that it has thoroughly inspected the premises and agrees to take the same in such "as is" condition. The Port Authority shall have no responsibility or obligation hereunder for finishing work or for preparation of the premises for the Lessee's use.

9. Without limiting the generality of any provision of this Agreement, the Port Authority shall have no obligation to provide any utilities or services to the premises or any portion thereof during the term of the letting under this Agreement.

10. (a) The Lessee shall have the right at any time during the term of the letting from and after August 1, 2002 to add to the premises under this Agreement the enclosed space shown in diagonal hatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-1" (which enclosed space is sometimes hereinafter called "the option space"). The option space shall be added to the premises under this Agreement upon sixty (60) days' notice given by the Lessee to the Port Authority, with the letting thereof to be in accordance with the terms and conditions set forth below in this Special Endorsement.

(b) In the event that the Lessee shall exercise its option under paragraph (a) of this Special Endorsement to have the option space added to the premises under this Agreement, the Port Authority shall let to the Lessee and the Lessee shall hire and take from the Port Authority, in addition to the premises heretofore let to the Lessee under this Agreement, the letting as to which shall continue in full force and effect,

subject to and in accordance with all the terms, provisions, covenants and conditions of this Agreement, the option space, together with the structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located therein or thereon, the said enclosed space, and the said structures, fixtures, improvements and other property (all of which is sometimes hereinafter in this Agreement called "the additional premises") to be and become a part of the premises under the Lease at 12:01 o'clock A.M. on the date set forth in the Lessee's notice described in paragraph (a) of this Special Endorsement (which date is hereinafter called "the Additional Premises Commencement Date"), subject to and in accordance with all of the terms, covenants and conditions of this Agreement (including, without limitation, Section 27 of the Terms and Conditions of this Agreement entitled "Postponement"), for a term expiring on the date of expiration set forth in Article II of this Agreement, unless sooner terminated. The parties hereby acknowledge that the additional premises will constitute non-residential property.

(c) The Lessee shall use the additional premises solely for the purposes set forth in Article IV of the Lease, and for no other purpose or purposes whatsoever.

(d) The Port Authority shall deliver the additional premises to the Lessee in its then existing "as is" condition. The Lessee acknowledges that prior to the execution of its option under paragraph (a) of this Special Endorsement, it will have thoroughly examined and inspected the additional premises. The Lessee agrees to and shall take the additional premises in its then "as is" condition and the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the additional premises for the Lessee's use.

(e) The Lessee acknowledges that it has not relied and will not rely upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the suitability of the additional premises for the operations permitted thereon by 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 additional premises will be used initially or at any time during the letting thereof under this Agreement which is in a condition unsafe or improper for the conduct of the Lessee's operations therein under this Agreement so that there is possibility of injury or damage to life or property. For all purposes of this Agreement the

additional premises hereunder (notwithstanding any statement elsewhere in this Agreement of any rule for the measurement of the area thereof) shall be deemed to include all of the enclosing partitions, and the adjacent exterior building walls and glass to and including the exterior surface thereof.

(f) The Port Authority shall have no obligation to supply to the Lessee any services or utilities in the additional premises.

(g) In addition to all other rentals payable under this Agreement, the Lessee shall pay a basic rental for the additional premises according to the following schedule commencing on the Additional Premises Commencement Date: (i) during the period from August 1, 2002 through November 30, 2002, both dates inclusive, at the annual rate of Three Hundred Forty-eight Thousand Seven Hundred Ninety-five Dollars and No Cents ($348,795.00) payable in advance in equal monthly installments of Twenty-nine Thousand Sixty-six Dollars and Twenty-five Cents ($29,066.25) on August 1, 2002 and on the first day of each calendar month thereafter during such period; and (ii) during the period from December 1, 2002 through April 30, 2003, both dates inclusive, at the annual rate of Three Hundred Sixty-one Thousand Two Dollars and Eighty-three Cents ($361,002.83) payable in advance in equal monthly installments of Thirty Thousand Eighty-three Dollars and Fifty-seven Cents ($30,083.57) on December 1, 2002 and on the first day of each calendar month thereafter during such period.

11. In addition to all other rights under this Agreement, the Lessee shall have the right to terminate the letting, without cause, at any time, on thirty (30) days' prior written notice to the Port Authority; provided, however, that any notice given by the Lessee in accordance with the provisions of this Special Endorsement shall not be effective if the Lessee is under notice of default as to which any applicable period to cure has passed, or is under notice of termination, from the Port Authority, either on the date of the giving of said notice or on the intended effective date thereof. Termination under the provisions of this Special Endorsement shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement.

12. If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of basic rental,

additional rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Special Endorsement, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals set forth herein. Nothing in this Special Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 16 of the Terms and Conditions of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Special

SPECIAL ENDORSEMENTS

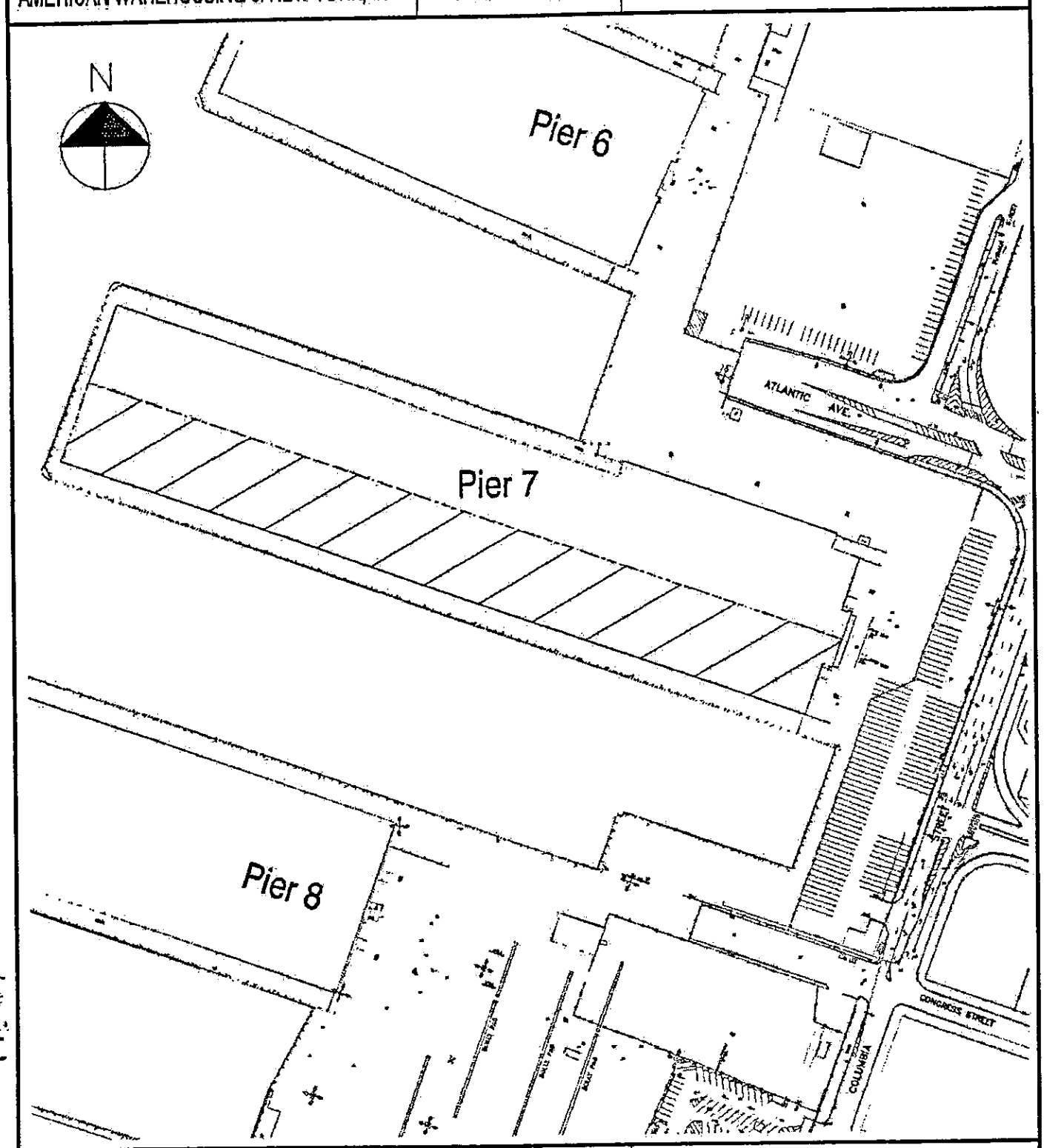
Endorsement shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

For the Port Authority

Initialled:

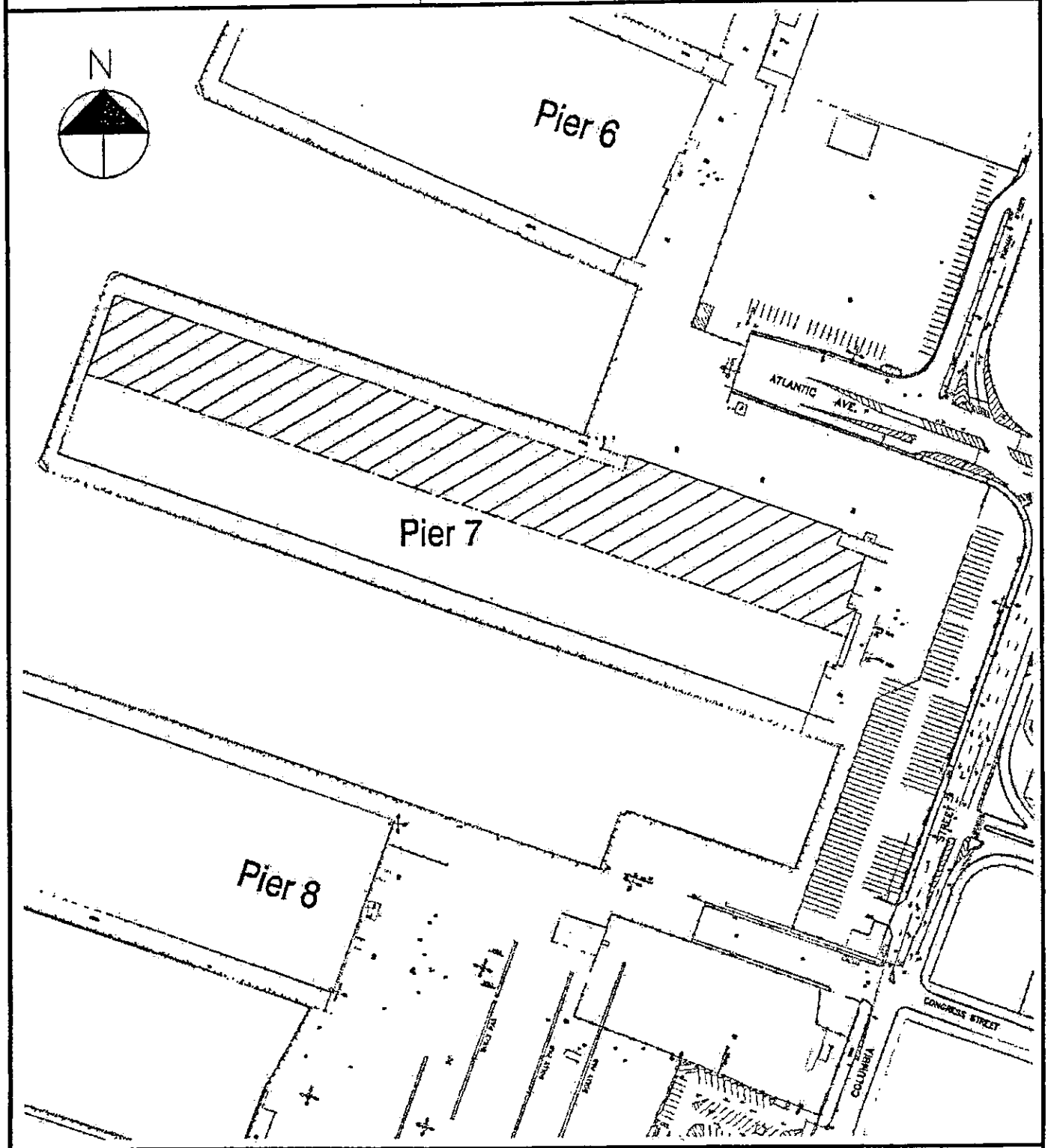
For the Lessee

AMERICAN WAREHOUSING of NEW YORK, INC.	BP-302	



Initialed: For the PORT AUTHORITY / For the Lessee	EXHIBIT : A	THE PORT AUTHORITY OF NY & NJ BROOKLYN - PORT AUTHORITY MARINE TERMINAL Date: Dec. 1, 1999

AMERICAN WAREHOUSING of NEW YORK, INC.	BP-302	



Initialed: For the PORT AUTHORITY / For the Lessee	EXHIBIT: A-1	THE PORT AUTHORITY OF NY & NJ BROOKLYN - PORT AUTHORITY MARINE TERMINAL Date: Dec. 1, 1999

Form - All-Purpose Ack. N.Y. (rev 9/1/99)

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

On the 24 day of October in the year 2002, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael Scotto, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(~~s~~) is (~~are~~) subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ capacity~~(ies)~~, and that by his/~~her/their~~ signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Elaine M Costello
(notarial seal and stamp)

ELAINE M. COSTELLO
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in Kings County
Commission Expires July 14, 2003

STATE OF New York
) ss.
COUNTY OF New York

On the 7th day of Nov. in the year 2002, before me, the undersigned, a Notary Public in and for said state, personally appeared RICHARD M. LARRABEE DIRECTOR, PORT COMMERCE DEPT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Millie Dominguez
(notarial seal and stamp)

MILLIE DOMINGUEZ
Notary Public - State of New York
NO. 01DO6051706
Qualified in Bronx County
My Commission Expires 12/4/03

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FEDERAL MARITIME COMM

BEFORE THE
FEDERAL MARITIME COMMISSION
Washington, D.C.

SERVED
AUG 11 2004
FEDERAL MARITIME COMMISSION

Docket No. 04 - 09

VERIFIED COMPLAINT OF AMERICAN WAREHOUSING OF NEW YORK, INC.

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Attorneys for American Warehousing of New York, Inc.

August 5, 2004

2370564

BEFORE THE
FEDERAL MARITIME COMMISSION

Washington, D.C.

AMERICAN WAREHOUSING OF NEW YORK, INC. Pier 5, Furman Street Brooklyn, New York 11201 Complainant, v. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY 225 Park Avenue South New York, New York 10003 Respondent.	x	Docket No. 04 - 09

COMPLAINT

Complainant American Warehousing of New York, Inc., by undersigned counsel, pursuant to Section 11 of the Shipping Act of 1984 (the "Act"), as amended, 46 U.S.C. app. §1710(a), brings this Complaint against Respondent The Port Authority of New York and New Jersey, and in support thereof states as follows:

1. Complainant American Warehousing of New York, Inc. ("AWNY") is a corporation organized and existing under the laws of the State of New York. AWNY is engaged in the foreign commerce of the United States in the business of storing, handling and distributing cocoa and certain other commodities for the account of AWNY's ocean common carrier, non-vessel-operating common carrier ("NVOCC"), ocean freight forwarder, marine terminal operator ("MTO"), and shipper customers. AWNY's principal place of business is Pier 5, Furman Street, Brooklyn, New York 11201.

2. Respondent, The Port Authority of New York and New Jersey ("The Port Authority"), is 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. The Port Authority was formed to provide, inter alia, efficient transportation and port commerce facilities and services that move people and goods within the New York-New Jersey region and access therefrom to the rest of the nation and to the world. The Port Authority's principal place of business is 225 Park Avenue South, New York, New York 10003.

3. Jurisdiction is proper before the Federal Maritime Commission pursuant to Section 11 of the Act, 46 U.S.C. app. §1710 because as alleged herein The Port Authority has violated, and continues to violate, Sections 10(d)(3) and 10(d)(4) of the Act, 46 U.S.C. app. §§1709 (d)(3) and 1709(d)(4) respectively.

4. In 1999, AWNY purchased all of the assets of Commodities Storage, Inc. and pursuant to that transaction AWNY was assigned the rights as lessee under a lease with The Port Authority for the premises known as Pier 7 at the Brooklyn Marine Terminal in Brooklyn, New York (hereinafter referred to as "Pier 7" or "the Premises").

5. Upon expiration of the pre-existing lease in December 1999, AWNY executed an Agreement of Lease for the Premises. At the request of The Port Authority, the Agreement of Lease was backdated such that the lease term commenced in December 1999 and ended in April 2003. A true and accurate copy of the Agreement of Lease is attached hereto as Exhibit A and incorporated herein by reference.

6. The stated purpose of the Agreement of Lease was ". . . [f]or the temporary receipt, storage and distribution of cocoa beans and related cocoa products and other such non-hazardous commodities as shall have the prior and continuing consent of The Port

Authority for the account of persons, firms and corporations other than the Lessee." (See Exhibit A, Agreement of Lease at p.1).

7. Upon expiration of the Agreement of Lease in April 2003, AWNY remained in possession of the Premises pursuant to an agreement with The Port Authority, with the reasonable expectation that a long-term extension/renewal of the Agreement of Lease would be negotiated in good faith and ultimately executed and entered into by the parties.

8. During the course AWNY's attempts to engage The Port Authority in discussions for an extension/renewal of the Agreement of Lease, various disputes arose. These disputes were caused by: The Port Authority's actual and constructive boycott of AWNY's maritime transportation operations; The Port Authority's unlawful interference with AWNY's ability to provide services to its ocean carrier, NVOCC, ocean freight forwarder, MTO, and shipper customers; and The Port Authority's decision to render one of several in a series of pretextual and unsubstantiated "termination notices" that were part of The Port Authority's continued stance of refusing to enter into meaningful and good faith lease negotiations.

9. Contemporaneous with the disputes described above in paragraph 8, AWNY nonetheless continued to make all reasonable attempts to resolve any difficulties and enter into negotiations with The Port Authority for extension/renewal of the lease.

10. On December 17, 2003, AWNY filed a Verified Judicial Review Petition in the Supreme Court of the State of New York (pursuant to CPLR Article 78) seeking, inter alia, a declaratory judgment annulling The Port Authority's Notice of Termination.

11. On or about May 17, 2004, the Verified Petition was discontinued by stipulation of the parties.

12. During the period May 17, 2004 to June 16, 2004 , AWNY attempted in good faith to negotiate with The Port Authority a long-term extension/renewal of the Agreement of Lease. The Port Authority's failure to negotiate in good faith with AWNY violates Sections 10(d)(3) and 10(d)(4) of the Act, 46 U.S.C. app. §§ 1709(d)(3) and 1709(d)(4) respectively.

13. It is essential to AWNY's business operations, as is the case generally with marine warehousing operators, that AWNY have in place a long-term lease with The Port Authority so that AWNY can then negotiate long-term commitments with its common carrier, NVOCC, ocean freight forwarder, MTO, and shipper customers. At all times, The Port Authority was advised that AWNY was suffering a loss of business due to the uncertainty of its lease of the Premises.

14. During the course of the discussions, The Port Authority repeatedly refused to entertain any proposal for a long-term extension/renewal of the Agreement of Lease.

15. Reasons given by The Port Authority as to why it would not enter into a long-term lease extension have proved to be unsubstantiated and purely pretextual.

16. At the same time that The Port Authority maintained that it could not or did not want to enter into long term leases with AWNY or others, The Port Authority nevertheless continued to enter into and operate under long-term leases with other entities at its other terminals. For example, The Port Authority (i) on December 1, 2000, executed a 30-year lease with Port Newark Container Terminal LLC; (ii) on October 1, 2000, executed a 30-year lease renewal with Maher Terminals, Inc.; and (iii) on January 6, 2000, executed a 30-year lease with Maersk Container Service Company, Inc.

17. On June 16, 2004, the Port Authority unilaterally broke off and/or refused to enter into a dialogue with AWNY with respect to the Premises. On July 6, 2004, The Port

Authority served AWNY with a Notice of Petition and Petition for a Commercial Holdover in the Civil Court of the City of New York, Kings County, seeking the removal of AWNY from the Premises known as Pier 7. AWNY is seeking to lay these issues properly before the Commission.

COUNT I
(Violation of 46 U.S.C. app. §1709 (d)(3))

18. Paragraphs 1 through 17 are incorporated herein by reference.

19. Respondent, The Port Authority is a "marine terminal operator" as said term is defined in Section 3(14) of the Act, 46 U.S.C. app. §1702(14).

20. Section 10(d)(3) of the Act, 46 U.S.C. app. §1709(d)(3), provides that "[t]he prohibitions in subsections (b)(10) and (13) of this section apply to marine terminal operators." Accordingly, it is unlawful for a marine terminal operator such as The Port Authority to "unlawfully refuse to deal or negotiate" a lease extension/renewal with AWNY.

21. By acting as aforesaid, The Port Authority has violated, and continues to violate, Section 10(d)(3) of the Act, 46 U.S.C. app. §1709(d)(3). The Port Authority has not provided any material or reasonable justification for its refusal to negotiate or enter into a long-term lease renewal with AWNY and appears to be attempting to divert business. The Port Authority's actions have given AWNY's competitors at other terminals and geographic locations an unfair advantage in that they are able to enter into long-term contracts or agreements with their ocean carrier, NVOCC, ocean freight forwarder, MTO, and shipper customers. As a result of The Port Authority's refusal to deal or negotiate, AWNY is unable to enter into stable and long-term commitments or agreements with its customers. Moreover, The Port Authority's refusal to deal or negotiate a long-term lease adversely affects

AWNY's ability to formulate necessary long-term business forecasting, operational planning, and investments. As a result, AWNY has suffered and will suffer monetary damages in an amount yet to be determined, but exceeding $15,000,000.00 per year.

COUNT II
(Violation of 46 U.S.C. app. §1709 (d)(4))

22. Paragraphs 1 through 21 are incorporated herein by reference.

23. Section 10(d)(4) of the Act, 46 U.S.C. app. §1709(d)(4), provides: "No marine terminal operator may give undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person."

24. By acting as aforesaid, The Port Authority has violated, and continues to violate, Section 10(d)(4) of the Act, 46 U.S.C. app. §1709(d)(4). The Port Authority has not provided any material or reasonable justification for its refusal to negotiate or enter into a long-term lease renewal with AWNY and appears to be diverting business. The Port Authority's actions have given AWNY's competitors at other terminals and geographic locations an unfair advantage in that they are able to enter into long- term commitments or agreements with their common carrier, NVOCC, ocean freight forwarder, MTO, and shipper customers. AWNY is unable to enter into similar commitments or agreements with its customers and as a result has suffered monetary damages in an amount yet to be determined, but exceeding $15,000,000.00 per year.

WHEREFORE, Complainant prays that Respondent be required to answer the charges herein; that after due hearing, an order be made commanding Respondent (i) to cease all actions to terminate Complainant's leasehold relationship with Complainant; (ii) to recommence discussions with the Complainant in good faith for a long-term extension of the

Agreement of Lease similar to those entered into by The Port Authority for its other terminals; (iii) to establish and put in force such practices as the Commission determines to be lawful and reasonable; and (iv) to pay to Complainant by way of reparation for the unlawful conduct hereinabove described, in an amount yet to be determined, but exceeding $15,000,000.00 per year, with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; and that such other and further order or orders be made as the Commission so determines to be appropriate.

VERIFICATION

The undersigned declares and certifies under penalty of perjury that the statements set forth in this instrument are true and correct.

Michael Scotto
For and behalf of
American Warehousing of New York, Inc.

Dated: August 5, 2004

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Respectfully submitted,

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Counsel to American Warehousing of New York, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Complaint has been served upon the persons or organizations on the following service list, this 5th day of August 2004, in the manner indicated below:

Christopher C. Horak

Office of the Secretary
The Port Authority of New York
and New Jersey
225 Park Avenue South
New York, New York 10003
(by First Class Mail)