CC: ALJ (2)

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**BEFORE THE FEDERAL MARITIME COMMISSION**

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**Docket No. 08-03**

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**MAHER TERMINALS, LLC**

**COMPLAINANT**

**v.**

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

**RESPONDENT**

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**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY'S EXCEPTIONS TO THE INITIAL DECISION GRANTING IN PART MOTION FOR SUMMARY JUDGMENT AND DISMISSING CLAIM FOR A REPARATIONS AWARD BASED ON LEASE-TERM DISCRIMINATION CLAIMS**

Respondent, the Port Authority of New York and New Jersey ("Port Authority") hereby submits its Exceptions to the Initial Decision Granting in Part Motion for Summary Judgment and Dismissing Claim for a Reparation Award Based on Lease-Term Discrimination Claims (the "Initial Decision"), dated May 16, 2011.

## PRELIMINARY STATEMENT

The Initial Decision correctly concluded that Maher Terminals, LLC's ("Maher") claim for reparations based on the facial differences between its lease and APM Terminals North America, Inc.'s ("APM") lease—in particular the base rental rate—was time-barred because Maher knew or should have known of these differences nearly eight years before filing its Complaint. The Initial Decision nonetheless permitted Maher's

request for a cease and desist order based on those exact same facial lease differences to remain in the case. Although, as the Initial Decision noted, the relevant statute of limitations does not on its face apply to cease and desist relief, Maher's Complaint does not seek true cease and desist relief, which, as the Commission has noted, is designed to prevent ongoing or future illegal conduct and injury—a fundamental predicate for such relief. Indeed, the Initial Decision correctly noted, based on a solid record of undisputed facts, that there is no ongoing allegedly unlawful lease-term discrimination that is continuing in nature. Rather, Maher's lease-term discrimination claim arises from a discrete set of facts that concluded, at the latest, over ten years ago in October 2000. Maher's request for cease and desist relief seeks to obtain exactly, and no more than, what it attempted to obtain through its time-barred request for reparations, *i.e.*, monetary relief from its contractual obligations to the Port Authority.

In essence, and due to financial decisions they evidently now regret, Maher's new owners are attempting, through the use of the cease and desist label, to evade the long-standing obligations of Maher's lease with the Port Authority, notwithstanding the time-bar of the statute of limitations. Maher, however, cannot obtain through the back door what it cannot obtain through the front door simply by changing rubric. Where a party has sat on its rights for many years and suffers the predictable dismissal of its reparations claim through the straightforward application of the statute of limitations, there is no reason to permit it to obtain the precisely equivalent relief on a prospective basis through invocation of the Commission's cease and desist powers. The same reasons that render statutes of limitations so important to the proper functioning of our legal system and that require dismissal of Maher's request for reparations here, apply equally to Maher's

remaining request for relief. Thus, for example, Maher's request for a cease and desist order and the time-barred reparations request depend on exactly the same testimony—from witnesses whose memories have inevitably faded in the more than a decade since the operative events in this case occurred.

Accordingly, and as more fully set forth below, the Port Authority respectfully files these Exceptions to the Initial Decision insofar as it permitted Maher's request for a cease and desist order to proceed with respect to its assertions of lease-term discrimination.

## FACTUAL BACKGROUND

This action involves two leases between the Port Authority and marine terminal operators located at Port Elizabeth in New Jersey. On January 6, 2000, the Port Authority entered into a lease with Maersk Container Service Company, Inc. ("Maersk"), now known as APM, which was publicly filed with the Commission as FMC Agreement No. 20116, date-stamped August 2, 2000 (the "Maersk Lease"). *See* Maersk Lease at 08PA00020316, Jan. 6, 2000, attached as Exhibit ("Ex.") A to Declaration of Kevin F. Meade ("Meade Dec."). On October 1, 2000, the Port Authority entered into a lease with Maher (the "Maher Lease"). *See* Maher Lease at 08PA00001884, Oct. 1, 2000, Meade Dec. Ex. B.

The Maher Lease was negotiated by Brian and Basil Maher, among others, and signed by Brian Maher, who ran Maher's business for nearly thirty years prior to the lease's execution. *See* Maher Lease at 08PA00001998, Meade Dec. Ex. B (signed by Brian Maher); Brian Maher Dep. 12:22-14:5, 27:11-17, June 9, 2008, Meade Dec. Ex. C. Mr. Maher continued to operate the business for nearly six-and-a-half years thereafter,

until mid-July 2007, at which time the Maher brothers sold the Maher business to RREEF, [redacted] *See* Mosca Dep. 108:10-110:11, June 11, 2008, Meade Dec. Ex. D.

On June 3, 2008, nearly eight years after Maher entered into its lease with the Port Authority, Maher's new owners filed the Complaint in this proceeding, alleging that the Maher Lease improperly provided for differing rental and financing terms and differing investment, throughput, first point of rest for automobiles, and security deposit requirements as compared with the Maersk Lease. *See* Compl. ¶ IV.B, June 11, 2008. Based solely upon these differing terms, Maher alleged violations of the Shipping Act—specifically, 46 U.S.C. §§ 41106(2), (3), and 41102(c)—and claimed to have "sustained and continued to sustain injuries and damages . . . amounting to a sum of millions of dollars." Compl. ¶ VI.A. Maher sought both reparations and a cease and desist order.[1]

Maher's new owners thereafter repeatedly and expressly underscored—including in briefs filed with the Commission and its Interrogatory Responses—that Maher's lease-term discrimination claim is based squarely, and solely, on the facial terms of the two leases agreed upon more than seven-and-a-half years previously; that its damages were not based on anything other than the facial differences between the leases; and that its claims for thirty years' worth of reparations arising from its lease-term discrimination

[1] The Port Authority moved for summary judgment with respect to Maher's lease-term discrimination claim (including Maher's request both for reparations and cease and desist relief). It did not move for summary judgment with respect to Maher's refusal to deal allegations, which allegedly occurred in 2007 and 2008. Although the Port Authority believes such allegations are without merit, they are not at issue in these Exceptions.

allegations were fixed at the time that its thirty-year lease was signed.[2] Based on these undisputed facts, the Port Authority moved for summary judgment on February 25, 2011 based upon the Shipping Act's three-year statute of limitations. *See* 46 U.S.C. § 41301(a).

Following the submission of the Port Authority's motion and Maher's reply, the ALJ meticulously took additional steps to identify the undisputed facts, and to ensure that there were no facts material to summary judgment that were subject to any genuine dispute. Thus, the ALJ directed the Port Authority to submit a statement of undisputed material facts—along with citations to the record supporting its position "establishing the fact or demonstrating that it is uncontroverted." *See* Order to Supplement R. on PANYNJ's Mot. for Partial Summ. J., at 2-3 (ALJ Apr. 1, 2011). Maher was then directed to submit a counter-statement to the extent that it believed that any of the facts set forth in the Port Authority's statement could be disputed. *See id.* at 3. The parties submitted these statements on April 8, 2011, and April 15, 2011. *See* Initial Decision at 13-14. As reflected in the Initial Decision, this cautious process initiated by the ALJ served to crystallize and confirm the absence of any material factual disputes. For example, among other admissions, Maher admitted that it "certainly knew that Maersk had lower rates than [Maher] did" while negotiating the Maher Lease, and had "learned

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[2] *See* Maher's Reply in Opp'n to Respondent's Mot. to Compel Produc. from Complainant & Mot. for Protective Order, at 3, Oct. 9, 2008 (denying that it was seeking "additional" damages beyond those allegedly created by the facial disparities in the lease terms); Compl. ¶ VI.A (alleging that Maher is entitled to "millions of dollars" due to "higher rents, costs, and other undue and unreasonable payments and obligations to [the Port Authority] not required of APMT"); Maher's Resps. to Port Authority's First Set of Interrogs., at 10, Aug. 29, 2008, Meade Dec. Ex. E (claiming damages based on the disparities in the lease terms for the entire period of the lease, calculated to be "approximately $474 million through the 30 year lease period").

of PANYNJ's preference of [APM]" during that same time. *See id.* at 17-18. Therefore, Maher admitted that it "knew or should have known of the facial differences in the lease terms" by the time it signed its lease in 2000. *See id.* at 17.

The Port Authority thus demonstrated in its motion and subsequent statement of undisputed facts, on the undisputed facts and as a matter of law, that Maher not only should have known but *actually knew* all the facts necessary to bring its lease-term discrimination claim by the time it entered into its lease in October 2000, and that therefore Maher's request for reparations was barred by the Shipping Act's three-year statute of limitations. *See* Port Authority's Mot. for Summ. J. of Maher's Lease-Term Discrimination Claims, at 6-7, 21-23, Feb. 25, 2011. Additionally, the Port Authority demonstrated that, as a matter of law, no "continuing violation" exists because Maher did not allege or otherwise show any "overt acts" with respect to lease-term discrimination during the limitations period. *See id.* at 23. Rather, Maher alleged a single discrete set of acts culminating in the signing of the Maher Lease in October 2000, with only the "unabated inertial consequences" of those acts continuing into the limitations period. *See* Initial Decision at 42.

Since the entirety of Maher's lease-term discrimination claim, however styled, arose from this single set of acts resulting in the Maher Lease, and because no ongoing or potential future violations of the Shipping Act pertaining to lease-term discrimination were alleged or shown, Maher's request for cease and desist relief is nothing more than an attempt to obtain some of the monetary relief that is otherwise barred by the statute of limitations simply through use of a different label. Accordingly, the Port Authority asserted that Maher's request for a cease and desist order should be dismissed as well.

In Maher's opposition brief and counter-statement of facts, Maher conceded that it was fully aware of the differences between its lease and the Maersk Lease by the time it entered into its lease in October 2000, but argued that it did not have "conclusive information" that there had been a Shipping Act violation until later, in 2007. *See, e.g.*, Maher's Reply in Opp'n to Respondent's Mot. for Summ. J., at 22-25, Oct. 14, 2011. The Initial Decision properly rejected this contention as without any legal significance, noting the firmly established rule that the statute of limitation begins to run when a complainant knew or should have known that it was actually injured, and not when that party chooses to retain a lawyer or otherwise discovers that it suffered a "legal injury" giving rise to a claim. *See, e.g.*, Initial Decision at 33 ("Maher does not cite any authority—court or agency—supporting its contention that the statute of limitations does not begin to run until a plaintiff or complainant knows that it suffered a legal injury as opposed to an actual injury.").[3]

Maher also argued that its claim was not time-barred because a new and independent claim arose each time that it made a payment under its lease. *See* Maher's Reply in Opp'n to Respondent's Mot. for Summ. J., at 14 ("Any unlawful act, however, which continues becomes not one act but a series of individual actions each time it is enforced and the statute of limitations is to be measured against each act giving rise to an alleged new injury.") (citation omitted). The Initial Decision correctly rejected this argument as well, concluding, after a comprehensive review of relevant case law, that the

[3] The Initial Decision concluded that the undisputed material facts "establish that when Maher signed Lease EP-249 on October 1, 2000, Maher knew the contents of Lease EP-248 and the allegedly more favorable treatment of Maersk/APM," including that Maher paid a higher rent under its lease than did APM. Initial Decision at 23.

mere performance of the lease during the limitations period did not amount to new overt acts giving rise to a Shipping Act violation during the limitations period. *See* Initial Decision at 34 ("The case law makes it abundantly clear that a defendant/respondent must commit an overt act of discrimination within the limitations period for a plaintiff/complainant to receive damages."); *id.* at 36 ("Performance of the alleged anticompetitive contracts during the limitations period is not sufficient to restart the period.") (quoting *Varner v. Peterson Farms*, 371 F.3d 1011, 1020 (8th Cir. 2004)). The Initial Decision thus concluded that Maher's request for reparations was barred by the statute of limitations. *See* Initial Decision at 34 ("To the extent Maher is claiming a right to seek a reparations award in the absence of an overt discriminatory act by PANYNJ within the limitations period, Maher is incorrect.").

The Initial Decision, however, declined to dismiss Maher's self-styled cease and desist claim, on the basis that 46 U.S.C. § 41301(a) "does not state that if a complaint seeking reparations and other relief is filed more than three years after the claim accrues, the claim for other relief must be dismissed with the untimely claim for reparations." Initial Decision at 45. The Initial Decision stated that the statute of limitations "would not prevent the Commission from issuing a cease and desist order in a case brought over three years after the cause of action accrued," and "[i]f the Commission determines that terms in Lease EP-249 violate the Shipping Act by granting an undue preference, the Commission may issue a cease and desist order requiring PANYNJ eliminate the preference." *Id.* at 46. The Initial Decision, however, did not address the Port Authority's core argument—that Maher's cease and desist claim does not seek *bona fide* cease and desist relief and is, in actuality, nothing more than a re-labeled request for

monetary relief subject to the Shipping Act's three-year statute of limitations and, accordingly is, in the particular circumstances here, properly dismissed. Despite denying this aspect of the Port Authority's motion, the Initial Decision determined that "it is in the public interest to permit PANYNJ to seek review of its contention at this time," and thus the Port Authority was granted leave to appeal. *Id.* at 47. The Port Authority therefore files these Exceptions to the Initial Decision.

## ARGUMENT

### I. MAHER'S THINLY-DISGUISED CLAIM FOR DAMAGES SHOULD BE DISMISSED AS TIME-BARRED

The Initial Decision declined to dismiss Maher's request for a cease and desist order on the basis that the statute does not apply to cease and desist relief. The Port Authority does not dispute that the statute on its face does not bar requests for true cease and desist relief.[4] In the circumstances of this case, however, this general proposition does not apply. Maher's Complaint does not present a request for genuine cease and desist relief. Maher failed to present any evidence to show that there is any ongoing unlawful conduct with respect to lease-term discrimination for which a cease and desist order would be warranted. Indeed, the undisputed facts established and the Initial Decision correctly concluded that there is no continuing unlawful lease-term discrimination and that, to the extent that any occurred, such conduct was completed by

[4] The Commission has noted that it has the power to issue a cease and desist order even if a party's request for reparations is time-barred. *See Inlet Fish Producers, Inc v. Sea-Land Serv., Inc.*, 29 S.R.R. 306, 313 (FMC 2001); *Western Overseas Trade & Dev. Corp. v. Asia N. Am. Eastbound Rate Agreement*, 26 S.R.R. 874, 885 n.17 (FMC 1993). As noted below, however, the Port Authority's research has not uncovered any Commission decision holding that after dismissal of a time-barred claim for monetary relief, a party could then obtain the equivalent relief merely by labeling its claim as one for cease and desist relief.

the time Maher signed its lease more than ten years ago. *See* Initial Decision at 33, 41. Therefore, rather than seeking a legitimate cease and desist order to prevent ongoing statutory violations, Maher is plainly seeking the same exact monetary relief on a prospective basis in the form of reduced rent that it sought through its indisputably time-barred request for reparations. Moreover, the purported cease and desist claim—and the Port Authority's defense of it—depends on exactly the same stale evidence as Maher's time-barred reparations claim.

### A. Maher's Cease and Desist Claim Is Substantively Identical to Its Time-Barred Claim for Reparations

Maher is transparently doing nothing more through its purported cease and desist claim than trying to obtain a portion of its time-barred reparations claim through the back door. Form, however, does not rule over substance, and courts have consistently held, in numerous contexts, that artful pleading cannot be used to evade a statute of limitations. *See, e.g.*, *Block v. N.D. ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 284-85 (1983) (plaintiff could not "avoid the [Quiet Title Act's] statute of limitations . . . by the device of an officer's suit," as "[i]t would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading").[5] The United States Court of Appeals for the First

[5] *See also Minehan v. U.S.*, 75 Fed. Cl. 249, 259-60 (2007) (plaintiff could "not rescue an untimely [tax] refund request simply by recharacterizing it as a tort claim," which the court recognized as "artful pleading . . . in an attempt to avoid the statute of limitations"); *Shawnee Trail Conservancy v. U.S. Dep't of Agric.*, 222 F.3d 383, 388 (7th Cir. 2000) ("To allow claimants to avoid the [Quiet Title Act] by characterizing their complaint as a challenge to the federal government's regulatory authority would be to allow parties to seek a legal determination of disputed title without being subject to the limitations placed on such challenges."); *Hall v. Dow Corning Corp.*, 114 F.3d 73, 78 (5th Cir. 1997) (plaintiff could not circumvent the statute of limitations barring her claim under a state medical malpractice statute by "recast[ing] [it] as fraud"); *Raymond v. Mobil Oil Corp.*, 7 F.3d 184, 186 (10th Cir. 1993) (plaintiff's

Circuit relied on this principle in rejecting an attempt to avoid dismissal of a time-barred damages claim by styling it as a claim for a declaratory judgment:

> [Plaintiffs] contend that the statute of limitations is inapplicable to an action cast in the declaratory judgment mold. The argument is meritless. To prevent plaintiffs from making a mockery of the statute of limitations by the simple expedient of creative labeling—styling an action as one for declaratory relief rather than damages—courts must necessarily focus upon the substance of an asserted claim rather than its form. It is settled, therefore, that where legal and equitable claims coexist, equitable remedies will be withheld if an applicable statute of limitations bars the concurrent legal remedy. . . .
>
> We refuse to subvert the real[i]ties of the case before us simply to suit a party's convenience. . . . [Plaintiffs] have been barred from bringing a claim for damages since three years after the denial of their permit applications. Draping their claim in the raiment of the Declaratory Judgment Act, some five years after the window of opportunity framed by the statute of limitations has closed, cannot elude this time bar.

*Gilbert v. City of Cambridge,* 932 F.2d 51, 57-58 (1st Cir. 1991), *cert. denied*, 502 U.S. 866 (1991).

Maher's Complaint fundamentally seeks one thing—a reduction in the amount of rent paid to the Port Authority. Indeed, Maher's interrogatory responses recite its contention that it is entitled to $474 million based on thirty years of rent differential between Maher's Lease and Maersk's Lease. *See* Maher's Resps. to Port Authority's First Set of Interrogs., at 10 (claiming damages based on the disparities in the lease terms for the entire period of the lease, calculated to be "approximately $474 million through the 30 year lease period").

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recharacterization of an otherwise untimely ADEA claim was "merely an exercise in semantics" and likewise time-barred).

Moreover, any possible doubt that Maher's claim for cease and desist relief is nothing more than an effort to obtain the same monetary relief to the extent available on a prospective basis was erased and graphically illustrated by Maher's own recent submission to the ALJ in seeking to oppose a stay pending the appeal of the instant ruling on the Port Authority's summary judgment motion. Specifically, Maher's principal argument against a stay was that any delay in the proceedings would postpone the ultimate day of judgment, with the result that Maher's "losses" would "grow every day until a cease and desist [order] is finally entered in this proceeding." *See* Maher's Mem. Regarding the Authority and the Propriety of a Stay Pursuant to the Order of May 16, 2011, at 7, May 20, 2011 ("The losses total approximately $100 million and grow every day until a cease and desist order is finally entered in this proceeding, which may be some years from now."). Accordingly, it is beyond reasonable dispute that Maher's request for a cease and desist order, which does not seek to bar any ongoing illegal lease-term discrimination conduct, is nothing more nor less than an attempt to recover a portion of its time-barred reparations.

A cease and desist order, however, ordinarily presumes that some unlawful conduct is ongoing.[6] Cease and desist relief, as a rule, is intended to prevent future violations, not to punish past conduct. *See World Line Shipping, Inc & Saeid B. Maralan (aka Sam Bustani) Order to Show Cause*, No. 00-05, 2001 WL 865697, at *1,

[6] *Alex Parsinia d/b/a Pac. Int'l Shipping & Cargo Express*, 27 S.R.R. 1335, 1342 (ALJ 1997) ("a cease and desist order is appropriate when the record shows that there is a likelihood that offenses will continue absent the order and when the record discloses persistent offenses"); *see also Portman Square Ltd.—Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, 28 S.R.R. 80, 86 (ALJ 1998) ("the general rule is that [cease and desist] orders are appropriate when there is a reasonable likelihood that respondents will resume their unlawful activities").

*12-13 (FMC 2001) (concluding, in refusing to permit double recovery for violations of the Shipping Act and of a cease and desist order, that "[t]he purpose of a cease and desist order is not to magnify legal liability for past violations but to restrain recalcitrant parties from committing future violations").[7] Maher has not presented a request for true cease and desist relief. Any allegedly unlawful lease-term discrimination occurred more than ten years ago. A cease and desist order in this case would merely punish the Port Authority for past conduct allegedly committed long ago, rather than restrain ongoing or future violations, all while effectively providing Maher with monetary relief that is clearly barred by the Shipping Act's three-year statute of limitations. The Port Authority's research has not uncovered—and Maher has not cited—any decision of the Commission supporting the view that a complainant may enter into a lease, perform under it for nearly eight years with full knowledge of the allegedly discriminatory terms, have its reparations relief dismissed as time-barred, and yet nevertheless be able to obtain the identical relief through invocation of the Commission's cease and desist authority.[8]

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[7] *See also Fed. Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 806 (1948) ("the effect of the [Federal Trade Commission's ("FTC") cease and desist] order is not to punish or fasten liability on respondents for past conduct but to ban specific practices for the future in accordance with the general mandate of Congress"); *Doyle v. Fed. Trade Comm'n*, 356 F.2d 381, 383 (5th Cir. 1966) (FTC cease and desist orders "are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future") (quoting *Fed. Trade Comm'n v. Ruberoid Co.*, 343 U.S. 470, 473 (1952)); *cf. Precious Metals Assocs., Inc. v. Commodity Futures Trading Comm'n*, 620 F.2d 900, 912 (1st Cir. 1980) ("A cease and desist order is justified when the party who commits statutory transgressions is likely to persist in the contumacy in the future, unless restrained.").

[8] Maher's cases involved instances where a reparations claim was either not asserted or was not time-barred. *See Inlet Fish Producers, Inc.*, 29 S.R.R. at 307, 313, 316 (finding that plaintiffs timely brought a reparations claim and did not seek—or had abandoned—cease and desist relief); *Portman Square*, 28 S.R.R. at 86-87 (issuing a cease and desist order as to unlawful conduct likely to recur, where no reparations were sought, and where no statute of limitations issue arose); *Alex Parsinia*, 27 S.R.R. at 1342 (issuing a cease and desist order as to unlawful conduct likely to recur, where no reparations were sought, and where no statute of limitations issue arose); *Western*

Moreover, dismissal of the cease and desist claim here would be consistent with the analogous line of authority pursuant to which federal courts consistently hold that, where the legal remedy sought in a cause of action is barred by the statute of limitations, "any equitable relief that might otherwise be available . . . in connection with [that] cause[] of action" is also barred. *Williams v. Walsh*, 558 F.2d 667, 671 (2d Cir. 1977); *see also Cope v. Anderson*, 331 U.S. 461, 463-64 (1947) (where a court's equitable jurisdiction is invoked "to enforce the legal obligation here asserted," "equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy"); *Russell v. Todd*, 309 U.S. 280, 289 (1940) ("when the jurisdiction of the federal court is concurrent with that of law, or the suit is brought in aid of a legal right, equity will withhold its remedy if the legal right is barred by the local statute of limitations"); *Algrant v. Evergreen Valley Nurseries Ltd. P'Ship*, 126 F.3d 178, 181-85 (3d Cir. 1997) (joining the Courts of Appeals for the First, Sixth, Ninth, and Tenth Circuits in holding that, "when plaintiffs' claims are barred by a statute of limitations applicable to a concurrent legal remedy, then a court will withhold declaratory

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*Overseas*, 26 S.R.R. at 885 (dismissing complaint seeking reparations for breach of contract as appropriately brought in court under section 8(c) of the Shipping Act and not reaching the issue of whether that reparations claim was barred by the statute of limitations under section 11(g)); *see also A/S Ivarans Rederi v. Companhia De Navegacao Lloyd Brasilerio*, 23 S.R.R. 1543, 1550 (ALJ 1986) (determining that "[a]bsent an allegation anywhere in the complaint that [plaintiff] has paid any money at all under the arbitral decision," the ALJ could "[]not find that this complaint, at this time, is one seeking reparations"); *Balmill Lumber & Sales Corp. v. Port of N.Y. Auth.*, 10 S.R.R. 131, 146-47 (FMC 1968) (ordering that defendants cease and desist from unlawful conduct where plaintiff's reparations claim was timely but unsubstantiated). Even the Commission's decision in *Ceres Marine Terminal v. Maryland Port Administration* with respect to non-waiver of claims was based on its conclusion that complainant's reparations claim was "well within the three-year statute of limitations," and thus "finding a waiver on the basis of that delay would render the statute of limitations a nullity by penalizing a party for waiting the full statutory period before bringing a claim." *See* 29 S.R.R. 356, 357, 372 & n.16 (FMC 2001). Here, Maher took nearly three times the full statutory period.

judgment relief in an independent suit *essentially predicated upon the same cause of action*") (emphasis added).

### B. All of the Policy Justifications that Underlie the Shipping Act's Statute of Limitations for Reparations Claims Apply Equally to Maher's Self-Styled Cease and Desist Claim

The same important policy reasons that underpin the dismissal of Maher's reparations claim on statute of limitations grounds apply equally here to Maher's purported cease and desist claim. Statutes of limitations "represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." *United States v. Kubrick,* 444 U.S. 111, 117 (1979) (citations omitted). They also protect broader systemic goals, such as facilitating the administration of claims and promoting judicial efficiency, *see John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008), and "are not to be disregarded by courts out of a vague sympathy for particular litigants." *Baldwin Cnty. Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984). On the contrary, conscientious adherence to statutes of limitations is "the best guarantee of evenhanded administration of the law." *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980).

Statutes of limitations exist for sound policy reasons. As time passes, witnesses become unavailable or memories fade, and records and evidence are lost, thus prejudicing a party's ability to defend itself from claims that should have been brought in a timely manner. *See W. Overseas Trade & Dev. Corp. v. Asia N. Am. Eastbound Rate Agreement*, 26 S.R.R. 651, 659 (ALJ 1992) ("The objective of statutes of limitations is to prevent stale claims of which the defendant had no prior notice and the facts and merits

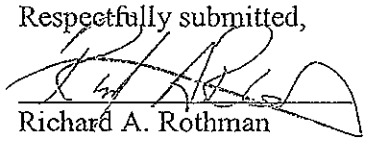
of which become less susceptible of determination due to the fading of memories and loss of records and evidence."). In the typical case involving a request for a cease and desist order, the challenged conduct is either currently ongoing, or occurred recently and is likely to recur. *See World Line Shipping*, 2001 WL 865697, at *1, *12-13; *Portman Square*, 28 S.R.R. at 86; *Alex Parsinia*, 27 S.R.R. at 1342; *see also Coro, Inc. v. Fed. Trade Comm'n*, 338 F.2d 149, 153 (1st Cir. 1964) (the FTC may issue a cease and desist order "only to put a stop to present unlawful practices and to prevent their recurrence in the future"). Witnesses are therefore available, recollections are still fresh, and information necessary to defend against the claim is available. In this case, by contrast, the lease negotiations at issue in Maher's lease-discrimination claim concluded more than ten years ago. Inevitably, memories (to the extent witnesses are still available) have faded, and information relevant to the Port Authority's defense has been lost. Accordingly, to permit Maher's claim to proceed under the cease and desist rubric would subject the Port Authority to the exact sort of prejudice that statutes of limitations are designed to prevent. Maher should not be permitted to sit on its rights while enjoying the benefits of its lease, and then, after eight years, bring an action seeking relief amounting to a time-barred damages claim while avoiding dismissal through mere artful pleading.

## CONCLUSION

For the foregoing reasons, the Port Authority's Exceptions should be granted, and the Initial Decision should be overruled to the extent that it failed to grant the Port Authority's motion for summary judgment in its entirety.

Dated: June 7, 2011

Respectfully submitted,



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[redacted]

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the person listed below in the matter indicated, a copy to each such person.

| | |
|---|---|
| ***Via Email and FedEx***<br>Lawrence I. Kiern<br>Bryant E. Gardner<br>Gerald A. Morrissey III<br>Winston & Strawn LLP<br>1700 K Street, NW<br>Washington, DC 20006 | Dated at New York, NY<br>this 7th day of June, 2011 |

Kristen M. Echemendia

**BEFORE THE**
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**RESPONDENT**

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**DECLARATION OF KEVIN F. MEADE IN SUPPORT OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY'S EXCEPTIONS TO THE INITIAL DECISION GRANTING IN PART MOTION FOR SUMMARY JUDGMENT AND DISMISSING CLAIM FOR A REPARATIONS AWARD BASED ON LEASE-TERM DISCRIMINATION CLAIMS**

I, Kevin F. Meade, declare under penalty of perjury that the following is true and correct.

1. I am an associate at the law firm of Weil, Gotshal & Manges LLP, counsel for The Port Authority of New York and New Jersey (the "Port Authority") in the above-captioned litigation. I submit this declaration in support of the Port Authority's Exceptions to the Initial Decision Granting in Part Motion for Summary Judgment and Dismissing Claim for a Reparations Award Based on Lease-Term Discrimination Claims.

2. A true and correct copy of the lease agreement between the Port Authority and Maersk Container Service Company, Inc., Lease No. EP-248, 08PA00020315-20447, dated January 6, 2000, is attached hereto as Exhibit A.

3. A true and correct copy of the lease agreement between the Port Authority and Maher Terminals, LLC ("Maher"), Lease No. EP-249, 08PA00001884-2123, dated October 1, 2000, is attached hereto as Exhibit B.

4. A true and correct copy of transcript excerpts from the June 9, 2008 deposition of M. Brian Maher is attached hereto as Exhibit C.

5. A true and correct copy of transcript excerpts from the June 11, 2008 deposition of Randall P. Mosca is attached hereto as Exhibit D.

6. A true and correct copy of Maher Terminals, LLC's Responses to the Port Authority's First Set of Interrogatories, dated August 29, 2008, is attached hereto as Exhibit E.

Dated: New York, New York
June 7, 2011

Kevin F. Meade

Kevin F. Meade

**Exhibit A**

**FEDERAL MARITIME COMMISSION**
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

Bureau of Trade Analysis

Phone: (202) 523-5793
Fax. (202) 523-4372

August 3, 2000

Robert W. Evans II
The Port Authority Of NY & NJ
New Jersy Marine Terminals
260 Kellogg Street
Port Newark, NJ 0714

Re: Terminal Agreement Between Port Authority of NY & NJ
And Maersk Container Service Company, Inc.
FMC Terminal No. 201106
Date Received: August 2, 2000
Effective Date: August 2, 2000

Dear Mr. Evans:

This acknowledges receipt of the subject agreement filed with the Commission under section 5(a) of the Shipping Act of 1984. A copy of the agreement with its assigned agency number and effective date is enclosed for your records. Please refer to the assigned number when corresponding with the Commission.

Under the Commission's agreement rules, this agreement filing is exempt from the waiting period requirements of the 1984 Act. Therefore, it became effective on filing.

Sincerely,

Robert J. Klapoucky
Office of Agreements

Enclosure

201106

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

MAERSK CONTAINER SERVICE COMPANY, INC.

EFFECTIVE
AUG 02 2000
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

Dated as of January 6, 2000

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Lease No. EP-248

THIS AGREEMENT OF LEASE, made as of the 6th day of January, 2000, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at One World Trade Center, New York, New York 10048; and MAERSK CONTAINER SERVICE COMPANY, INC.(hereinafter called "the Lessee"), a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940, whose representative is: Philip V. Conners.

WITNESSETH, THAT:

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

Section 1. Letting

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

(a) the open area shown in stipple, the enclosed spaces shown in diagonal crosshatching, and the water area shown in diagonal hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area, enclosed spaces, and water area, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the initial premises" or "the premises", and the water area shown in diagonal hatching being hereinafter sometimes called "the initial berthing area" or "the berthing area";

(b) the open area shown in stipple, the enclosed spaces shown in diagonal crosshatching, and the water area shown in diagonal hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A-1", together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area,

enclosed spaces, and water area, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the added premises", and the water area shown in diagonal hatching being hereinafter sometimes called "the added berthing area". The parties agree that the added premises shall become part of the premises under this Agreement in whole or in contiguous portions thereof during the period from January 6, 2000 through December 31, 2003, with the addition to the leasehold of the added premises or any portion thereof to be effective upon ten (10) days' written notice given by the Port Authority to the Lessee setting forth a description of the location and configuration of the added premises or said portion thereof(any such notice being hereinafter called a "Tender Notice", the date any such Tender Notice is given being hereinafter called a "Tender Notice Date" and each date that the added premises or any portion thereof shall become a part of the premises under this Agreement being hereinafter called a "Tender Date").

(c) The initial premises and the added premises, upon its or their respective addition to the leasehold, shall hereinafter in this Agreement be collectively called and shall constitute "the premises", and the berthing area and the added berthing shall similarly be collectively called and shall constitute "the berthing area". The parties agree that the premises constitute non-residential property.

(d) Notwithstanding any other provision of this Agreement, in the event that the added premises or any portion thereof shall not have become a part of the premises under this Agreement by December 31, 2003, then, and in such event, the Lessee shall have the right to terminate this Agreement upon prior written notice given to the Port Authority within one hundred eighty (180) days' of December 31, 2003, and each party shall and does release and discharge the other of and from any claims or demands based on this Agreement or based on any breach or alleged breach hereof with respect to such termination. Termination under the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. In addition, in the event that the added premises or any portion thereof shall not have become a part of the premises under this Agreement by December 31, 2003, then, and in such event, the Port Throughput Lease Year Commencement Date (as defined in Section 42(a)(5)) shall be postponed for one day for each day following December 31, 2003 that all of the added premises have not become part of the premises under this Agreement, but in no event shall said postponement exceed 365 days following the Port Throughput Lease Year Commencement Date.

Section 2. Term

The term of the letting under this Agreement of the initial premises shall commence at 12:01 o'clock A.M. on January 6, 2000 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2029. The term of the letting under this Agreement of the added premises or any portion thereof shall commence at 12:01 o'clock A.M. on the respective date set forth in the notice referred to in Section 1(b) hereof given by the Port Authority with respect to the added premises or any such portion thereof and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2029.

Section 3. Basic Rental

The Lessee shall pay a basic rental during the term of the letting for the initial premises at the annual rate of Five Million Fifty-four Thousand Dollars and No Cents ($5,054,000.00) payable in advance in a monthly installment of Three Hundred Fifty-three Thousand Two Hundred Thirty-six Dollars and Fifty-two Cents ($353,236.52) on January 6, 2000 and thereafter in advance in equal monthly installments of Four Hundred Twenty-one Thousand One Hundred Sixty-six Dollars and Sixty-seven Cents ($421,166.67) on February 1, 2000 and on the first day of each calendar month thereafter occurring during the term of the letting. The Lessee shall pay a basic rental for the added premises at the annual rate of Nineteen Thousand Dollars and No Cents ($19,000.00) for each acre of the added premises, payable in advance in equal monthly installments of One Thousand Five Hundred Eighty-three Dollars and Thirty-four Cents ($1,583.34) for each such acre on the date that such acre becomes part of the premises and on the first day of each calendar month thereafter occurring through the expiration of the term of the letting, except that if any of said added premises shall be less or more than an acre or an exact multiple thereof and/or shall be added on a day other than the first day of a calendar month, the aforesaid basic rental for said added premises shall be prorated to reflect the actual area of said added premises and/or the date of their addition to the leasehold. Effective on the date that all of the added premises have become part of the leasehold or, if such date is not the first day of a calendar month, on the first day of the next calendar month, the Lessee shall pay a combined basic rental for the initial premises and the added premises through the expiration of the term of the letting at the annual rate of Six Million Six Hundred Fifty Thousand Dollars and No Cents ($6,650,000.00) payable in advance in equal monthly installments of Five Hundred Fifty-four Thousand One Hundred Sixty-six Dollars and Sixty-seven Cents ($554,166.67) on the first day of each calendar month occurring during such period.

JNL 6/1/00 LCB 6/27/00

Section 4. Container and Cargo Rental

(a) Except as specifically stated otherwise, for purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

(1) "Lease Year" shall mean each twelve-month period commencing on January 1st and ending on December 31st to occur during the term of the letting under this Agreement;

(2) "Throughput Lease Year" shall mean as the context requires the period commencing on March 1, 2008 (which date is hereinafter called "the Throughput Lease Year Commencement Date") and ending on February 28, 2009 and each period commencing on March 1st and ending on February 28th (or 29th if a leap year) thereafter occurring during the term of the letting under this Agreement, except that the period commencing on March 1, 2029 and ending on December 31, 2029 shall be deemed a Throughput Lease Year (subject to the proration provisions of this Agreement);

(3) "Qualified Containers" shall mean cargo containers (or similar cargo conveyances ((if any)) which shall generally replace, succeed or complement present cargo containers) loaded onto or discharged from vessels berthing at the premises (whether or not stuffed or stripped at the premises, whether or not so loaded or discharged by means of container cranes, and whether or not empty or containing cargo), including without limitation any specialized cargo containers such as flat-racks (flat-racks when empty and bundled together as one unit shall be counted as one container), and shall also be deemed to mean mafis and trailers; but shall not mean containers arriving on shipboard and departing on the same ship and the same voyage if such containers are merely unloaded from the ship at the premises and reloaded in the course of a restowing operation or are merely moved from one location to another location on the same ship in the course of a shifting operation. Containers discharged from vessels berthing at the premises and loaded onto vessels berthing at the premises in the course of a transshipment operation shall be deemed to have been both discharged from such vessels and loaded onto such vessels in one discrete operation for purposes of the computation of the rental payable under this Section;

(4) "Non-container Cargo" shall mean cargo not in cargo containers loaded onto or discharged from vessels berthing at the premises;

(5) "Revenue Ton" shall mean one long ton (a weight of 2,240 pounds) or a measurement ton (40 cubic feet) as determined by the Port Authority acting in its sole discretion;

(6) "Exemption Number" shall mean the sum of two hundred eighty thousand (280,000);

Whenever reference is made to the Exemption Number, it shall mean the Exemption Number reduced by operation of the proration provisions hereof.

(7) "Tier 1 Number of Containers" shall mean from two hundred eighty thousand and one (280,001) Qualified Containers through seven hundred seventy thousand (770,000) Qualified Containers;

(8) "Tier 2 Number of Containers" shall mean the number of Qualified Containers above seven hundred seventy thousand (770,000) Qualified Containers;

(10) "ExpressRail Facility" shall mean an intermodal rail terminal located adjacent to the premises.

(b) The Lessee shall pay to the Port Authority a container throughput rental (hereinafter called "the Container Throughput Rental") for each Throughput Lease Year from the Throughput Lease Year Commencement Date through the expiration of the term of the letting under this Agreement equal to the product obtained by multiplying (1) the tier 1 throughput rental rate (hereinafter called "the Tier 1 Rental Rate") applicable for the Throughput Lease Year by the Tier 1 Number of Containers loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year; and (2) the tier 2 throughput rental rate (hereinafter called "the Tier 2 Rental Rate") applicable for the Throughput Lease Year by the Tier 2 Number of Containers loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year. The Tier 1 Rental Rates and the Tier 2 Rental Rates for each Throughput Lease Year are as set forth in the Schedule attached hereto, hereby made a part hereof and marked "Schedule A".

(c) The computation of the Container Throughput Rental for each Throughput Lease Year, or a portion of a Throughput Lease Year, shall be individual to such Throughput Lease Year, or such portion of a Throughput Lease Year, and without relation to any other Throughput Lease Year, or any other portion of any Throughput Lease Year. The time for making payment of the Container Throughput Rental, and the method of calculation thereof, shall be as set forth in paragraph (d) of this Section. The Container Throughput Rental shall be payable on a monthly basis, as set forth in paragraph (d) of this Section, based on

the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the month.

(d) The Lessee shall pay the Container Throughput Rental as follows: on the 30th day of the first month following the month in which the Throughput Lease Year Commencement Date shall occur, and on the 30th day of each and every month thereafter occurring during the Throughput Lease Year in which the Throughput Lease Year Commencement Date shall occur (or the 28th day if a February and the 29th of February if a leap year) and each subsequent Throughput Lease Year occurring during the term of the letting, including the month following the end of each such Throughput Lease Year, the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the preceding month and the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the premises from the date of the commencement of the Throughput Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the month for which the report is made, and such statement shall also include terminal statistics and measures relating to containers handled at and discharged to and from the premises as detailed and required from time to time by the Port Authority. During the period, if any, prior to the Terminal Lease Year Commencement Date, as defined in Section 43(a)(2) hereof, whenever any monthly statement shall show that the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the Throughput Lease Year for which the report is made is in excess of the Exemption Number, the Lessee shall pay to the Port Authority at the time of rendering such statement and at the time of rendering each subsequent monthly statement for such Throughput Lease Year, and the month following such Throughput Lease Year, an amount equal to the product obtained by multiplying the Tier 1 Rental Rate by the Tier 1 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made and the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made. From and after the Terminal Lease Year Commencement Date, whenever any monthly statement shall show that the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the Throughput Lease Year for which the report is made is in excess of, respectively, five hundred thousand (500,000) during the First Terminal Guarantee

Period, as defined in Section 43(a)(5) hereof, six hundred thousand (600,000) during the Second Terminal Guarantee Period, as defined in Section 43(a)(6) hereof, and seven hundred thousand (700,000) during the Third Terminal Guarantee Period, as defined in Section 43(a)(7) hereof, the Lessee shall pay to the Port Authority at the time of rendering such statement and at the time of rendering each subsequent monthly statement for such Throughput Lease Year, and the month following such Throughput Lease Year, an amount equal to the product obtained by multiplying the Tier 1 Rental Rate by the number of Qualified Containers in excess of, respectively, five hundred thousand (500,000) during the First Terminal Guarantee Period, six hundred thousand (600,000) during the Second Terminal Guarantee Period, and seven hundred thousand (700,000) during the Third Terminal Guarantee Period, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made and the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during the month for which such report is made.

(e) Upon any termination of the letting hereunder (even if stated to have the same effect as expiration), the number of Qualified Containers shall be reported and the Container Throughput Rental shall be paid on the 30th day of the first month following the month in which the effective date of such termination occurs, as follows: the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the premises during the Throughput Lease Year in which the effective date of termination falls; the payment then due on account of all Container Throughput Rental for the Throughput Lease Year in which the effective date of termination falls shall be the excess of the Container Throughput Rental for such Throughput Lease Year, computed as follows, over the total of all Container Throughput Rental payments previously made by the Lessee for such Throughput Lease Year: an amount equal to the product obtained by multiplying (1) the Tier 1 Rental Rate by the Tier 1 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year, and (2) the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the premises during such Throughput Lease Year, with the Exemption Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers all being multiplied by a fraction, the numerator of which shall be the number of days from the commencement of such Throughput Lease Year to the effective date of termination and the denominator of which shall be 365. Any amount of the Container Throughput Rental determined to be

owed to the Port Authority pursuant to such calculation shall be paid by the Lessee at the time of rendering the statement.

(f) In the event that the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of basic rental, then the Exemption Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers shall be reduced proportionately to the reduction of the basic rental.

(g) The Lessee shall pay to the Port Authority a non-container cargo throughput rental (hereinafter called "the Non-container Throughput Rental") with respect to Non-container Cargo for each Lease Year to occur during the term of the letting under this Agreement equal to the product obtained by multiplying the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the Lease Year by the respective wharfage charge for such cargo set forth in the Port Authority tariff for Port Authority Marine Terminals published in FMC Schedule PA-10 (or any successor tariff) as such charges may be amended from time to time during the term of the letting. The Non-container Throughput Rental shall be payable on a monthly basis, as set forth in paragraph (h) of this Section, based on the number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the month.

(h) The Lessee shall pay the Non-container Throughput Rental as follows: on the 30th day of the month next following the first month of the first Lease Year, and on the 30th day of each and every month thereafter occurring during such first Lease Year (or the 28th day if a February and the 29th of February if a leap year) and each subsequent Lease Year occurring during the term of the letting, including the month following the end of each such Lease Year, the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the preceding month and the cumulative number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises from the commencement of the Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the month for which the report is made. The Lessee shall pay any amount of Non-container Throughput Rental due under this Section at the time of rendering said report.

(i) Except as set forth in paragraph (f) of this Section, the rentals payable under this Section shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 5. Funded Work Rental

(a) For all purposes of this Agreement, the following terms shall have the respective meanings provided below.

(1) "Annual Construction Period" shall mean, as the context requires, the period commencing on January 6, 2000 and ending on December 31, 2000, and each of the twelve-month periods thereafter occurring during the period from January 1, 2001 through the first anniversary of the completion of the Fifty Foot Deepening, as defined in Section 41(a)(2) hereof; provided, however, that if said first anniversary shall not occur on the last day of a calendar year, the period from the first day of the calendar year in which said first anniversary shall occur through said first anniversary shall be deemed an Annual Construction Period for all purposes of this Section.

(2) "Facility Rental Payment Period" shall mean for the Annual Facility Rental due on account of the payments made by the Port Authority to the Lessee during each Annual Construction Period on account of the cost of the Funded Work, as defined in Section 7(a)(3) hereof, the period from the day next following the end of that Annual Construction Period through December 31, 2029.

(3) "The Port Authority's Costs of the Funded Work" shall mean for each Annual Construction Period 103.5% of all payments made by the Port Authority to the Lessee during such Annual Construction Period on account of the cost of the Funded Work performed by the Lessee.

(4) "Y" shall mean, as the context requires, the number (with the decimal carried to seven places) obtained by dividing the sum of (i) the average of the weekly Index of 25 Revenue Bonds as reported in the publication "The Bond Buyer" for the one hundred eighty (180) day period immediately preceding the expiration of each Annual Construction Period and (ii) one hundred fifty (150) basis points, by the whole number twelve (12). The calculation of Y with respect to Facility Construction Rental and Annual Facility Rental payable on account of the payments made by the Port Authority during any Annual Construction Period on account of the cost of the Funded Work shall be individual to the Facility Construction Rental and Annual Facility Rental payable on account of such payments and without relation to any other rental or any other payments. For purposes of example and illustration only, the Index of 25

Revenue Bonds for the week ending November 22, 1995 was 5.89% as set forth in the table entitled "Bond Buyer Indexes" on page 32 of The Bond Buyer, Vol. 314, No. 29784, New York, N.Y. dated Monday, November 27, 1995. In the event that The Bond Buyer or its weekly Index of 25 Revenue Bonds shall be discontinued at any time during the term of the letting a comparable substitute for such Index shall be mutually agreed upon in writing by the Lessee and the Port Authority within thirty (30) days after discontinuance. In the event that the Port Authority and the Lessee shall fail to agree upon such a substitute within the time hereinabove specified then upon notice of either party such dispute shall be disposed of by arbitration in accordance with the then existing rules of the American Arbitration Association or any successor association and relating to three member arbitration panels. One half of the cost of said arbitration shall be borne by the Port Authority and the other half of said cost shall be borne by the Lessee.

(5) "Monthly Rental Factor" shall mean, as the context requires, the factor or factors derived in accordance herewith from time to time by the application of the following formula:

$$\frac{1}{\frac{1}{Y} - \frac{1}{Y(1+Y)^t}} = \text{Monthly Rental Factor}$$

Where t (a power) equals the number of calendar months (expressed in whole numbers) in any given Facility Rental Payment Period that shall occur during the term of the letting hereunder.

(b) In addition to all other rentals payable by the Lessee under this Agreement, the Lessee shall pay to the Port Authority a rental (hereinafter called "the Facility Construction Rental") equal to the result of (i) multiplying Y for each Annual Construction Period and the product obtained by multiplying the amount of each payment made by the Port Authority to the Lessee during that Annual Construction Period on account of the cost of the Funded Work by the number of days from the date of such payment to the expiration date of that Annual Construction Period and (ii) dividing the result of that calculation by 30. The Facility Construction Rental shall be payable as set forth in paragraph (c) of this Section.

(c) In addition to all other rentals payable by the Lessee under this Agreement, the Lessee shall pay to the Port Authority a rental on account of the payments made by the Port

Authority to the Lessee during each Annual Construction Period on account of the cost of the Funded Work (hereinafter called the "Annual Facility Rental") at a monthly rate equal to the product obtained by multiplying the Monthly Rental Factor calculated in connection with the Facility Rental Payment Period for such Annual Facility Rental by the sum of (i) the amount of the Facility Construction Rental payable by the Lessee pursuant to paragraph (b) of this Section for that Annual Construction Period and (ii) the Port Authority's Costs of the Funded Work as hereinbefore defined for that Annual Construction Period, which rental shall be payable during the Facility Rental Payment Period in advance on the first day thereof and on the first day of each calendar month thereafter during such period. The rental payable pursuant to this paragraph (c) shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 6. Rights of User

(a) The Lessee shall use the premises for the following purposes only, and for no other purpose whatsoever: (i) the loading and unloading predominately of cargo housed in containers, and also of non-containerized cargo, such bulk cargo as shall have the prior and continuing consent of the Port Authority, and ships' stores, supplies and gear on or from seagoing vessels and other craft permitted to be berthed in the berthing area; (ii) the receipt, handling, and storage incidental to the transportation of cargo (whether or not in cargo containers) transported or to be transported by seagoing vessels permitted to be berthed in the berthing area, and of ships' stores, supplies and gear for such vessels; (iii) the parking of motor vehicles, container chassis, and of trailers and semi-trailers owned or operated by the Lessee or by the employees of the Lessee or by persons doing business with it at the Facility for the purposes set forth in this Section; (iv) the storage and repair of cargo containers, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of the Lessee under this Agreement; and (v) the maintenance of office space solely for purposes incidental to the operations of the Lessee set forth in this Section.

(b) The Lessee shall have the right to berth in the berthing area seagoing vessels for which the Lessee acts as stevedore or terminal operator, and operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority, carrying or about to carry general cargo, and tugboats, barges, lighters and other harbor craft serving such seagoing vessels, for loading or discharge of cargo, ships' stores, supplies and gear. Such loading and discharge from seagoing vessels may be accomplished in the berthing area through the medium of barges, lighters, and other

harbor craft moored inshore or offshore. The Lessee shall have the exclusive right to collect dockage and wharf usage charges from seagoing vessels and all other craft, subject to all the terms and provisions of this Agreement. The Lessee shall not use or permit the use of the berthing area except as hereinabove provided.

Section 7. Construction by Lessee

(a)(1) The Lessee understands that construction and installation work is required with respect to its occupancy of and operations on the premises, and the Lessee agrees to and shall perform the following items of work with respect to the premises (each specific work item is hereinafter sometimes called the "specific work item"): (i) the increase of the crane rail capacity to six thousand (6,000) linear feet and structurally strengthening the foundation of six thousand (6,000) linear feet of crane rail, (ii) the reinforcement of the berth to allow for dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not in the color blue on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-2" to fifty (50) feet below mean low water, (iii) the dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not in the color blue on Exhibit A-2 to forty-five (45) feet below mean low water, (iv) the upgrade of the container yard, including the resurfacing of approximately two hundred forty (240) acres of the premises, transtainer runs, ancillary yard support, and reefer outlets, (v) the upgrade of the electric services, (vi) the dredging of the four thousand eight hundred (4,800) linear feet of the berthing area shown in diagonal crosshatching but not in the color blue on Exhibit A-2 to fifty (50) feet below mean low water, (vii) the construction of a maintenance and repair building and a roadability building, (viii) the upgrade of the gate complex, and (ix) the demolition of buildings. The items of work described in subdivisions (i) through (v) of the immediately preceding sentence shall hereinafter be collectively called the "Class A Work" and the items of work described in subdivisions (vi) through (ix) of the immediately preceding sentence shall hereinafter be collectively called the "Class B Work". The Class A Work and the Class B Work shall hereinafter be collectively called "the Lessee's Construction Work". In the event that the Fifty Foot Deepening shall not be completed by December 31, 2009, the Port Authority shall pay to the Lessee the difference between the cost of the performance of the work described in subdivision (ii) hereof to a depth of fifty feet and the cost of the performance of such work to a depth of forty-five feet.

(2) The Port Authority shall reimburse the Lessee in the amount of Thirty Million Four Hundred Thousand Dollars and

No Cents ($30,400,000.00) (hereinafter called "the Construction Work Reimbursement Amount") on account of the performance by the Lessee of a portion of the Class A Work (which portion of the Class A Work is hereinafter called the "Reimbursed Work"). The Construction Work Reimbursement Amount shall be made available to the Lessee during a five-year period commencing upon the completion of the study being performed by the United States Army Corps of Engineers (hereinafter called "the Corps"), as authorized under the Water Resources Development Act of 1996, and entitled the "New York/New Jersey Harbor Navigation Study" (hereinafter called "the Study"). For purposes of this subparagraph, the Study shall be deemed to be completed upon the issuance of a report by the Chief Engineer of the Corps to the United States Congress reporting the results of the Study. The Lessee shall provide the Port Authority with written notice describing the work to be subject to said reimbursement prior to the performance thereof. The Construction Work Reimbursement Amount shall be applied solely to work performed in accordance with the provisions of this Section. The Port Authority shall provide the Lessee with the Construction Work Reimbursement Amount subject to and in accordance with the provisions of paragraph (q) of this Section; provided, however, that the Construction Work Reimbursement Amount shall be applied solely to the reimbursement of costs incurred as determined by the provisions of paragraph (p) of this Section.

(3) The Lessee shall have the option to obtain funding for all or any part of the cost of the Class A Work not paid for by the Port Authority under the provisions of subparagraph (2) of this paragraph and for all or any part of the cost of the Class B Work from the Port Authority and/or from a third party or parties (which portion of the Lessee's Construction Work funded by the Port Authority is hereinafter called the "Funded Work"). If the Lessee obtains any such funding from a third party or parties, the Lessee agrees that in no event shall such third party or parties obtain, directly or indirectly, in connection with such funding any security or other financial interest, lien or other rights in or to this Agreement, the Lessee's interest in the leasehold estate created hereunder or the premises hereunder or any portion thereof. Any portion of the Lessee's Construction Work which is funded by a third party or parties, or by the Lessee out of its own funds or the funds of any entity related by ownership or control to the Lessee, is hereinafter called the "Outside Work". If the Lessee elects to obtain any funding from the Port Authority under the provisions of this subparagraph, the Lessee shall provide the Port Authority with written notice describing the work to be subject to such funding prior to the performance thereof. Funding under this subparagraph shall be in the form of the reimbursement solely of the cost of work performed in accordance with the provisions of this Section (which amount of reimbursement is hereinafter called

"the Funded Work Reimbursement Amount"). The Port Authority shall provide the Lessee with the Funded Work Reimbursement Amount subject to and in accordance with the provisions of paragraph (q) of this Section; provided, however, that the Funded Work Reimbursement Amount shall be applied solely to the reimbursement of costs incurred as determined by the provisions of paragraph (p) of this Section. The Lessee shall pay the Facility Construction Rental and Facility Rental set forth in Section 5 of this Agreement with respect to the Funded Work Reimbursement Amount. Notwithstanding any other provision of this Agreement, the Funded Work Reimbursement Amount shall in no event exceed One Hundred Forty-three Million Six Hundred Thousand Dollars and No Cents ($143,600,000.00).

(4) The Lessee agrees that it will complete the Class A Work within one year of the later of the date that all of the added premises have become part of the premises under this Agreement or the date of the completion of the Forty-five Foot Deepening (as defined in Section 41(a)(1) hereof) (the later of which dates is hereinafter called "the Class A Work Completion Date"), and that it will complete the Class B Work within one year of the date of the completion of the Fifty Foot Deepening (as defined in Section 41(a)(2) hereof). The Port Authority shall not be obligated to provide any portion of the Construction Work Reimbursement Amount for any item constituting a portion of the Class A Work which has been constructed or installed subsequent to the Class A Work Completion Date. The Port Authority shall not be obligated to provide any portion of the Funded Work Reimbursement Amount for any item constituting a portion of the Class A Work which has been constructed or installed subsequent to the Class A Work Completion Date or for any item constituting a portion of the Class B Work which has been constructed or installed subsequent to one year of the date of the completion of the Fifty Foot Deepening.

(5) Notwithstanding any other provision of this Agreement, if work on the Fifty Foot Deepening has not commenced by December 31, 2009, and the Lessee elects not to exercise its termination right under Section 41(c) hereof, the Lessee shall not be required to perform the Class B Work (whether or not the Lessee has then commenced any part of the Class B Work) unless and until work has commenced on the Fifty Foot Deepening, in which case the Class B Work shall be performed by the Lessee and completed within one year of the date of completion of the Fifty Foot Deepening; provided, however, that if at the time that the Fifty Foot Deepening is completed there are fewer than ten (10) full Lease Years remaining in the term of the letting, then (i) the Lessee shall have the option not to perform the Class B Work, and (ii) the Port Authority shall have the option not to provide reimbursement or otherwise fund any of the cost of the Class B

Work regardless of whether it is performed by the Lessee at its option.

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

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

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

(iii) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of the Lessee's Construction Work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, against and from all such claims and demands, and for all loss and expense incurred by it and by them in the defense, settlement or satisfaction thereof including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential.

(c) Prior to the commencement of any of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval a Construction Application in the form supplied by the Port Authority, and containing such terms and conditions as the Port Authority may include, setting forth in detail by appropriate plans and specifications the work the Lessee proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each

contract proposed to be entered into for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Lessee shall identify each of the items constituting the Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. Without limiting the obligations of the Port Authority under paragraph (a)(3) of this Section, the Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for the Lessee's Construction Work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this Section, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The Port Authority shall endeavor to complete its initial review of the Construction Application and plans and specifications within thirty (30) business days after the Port Authority's receipt of a Construction Application and plans and specifications deemed by the Port Authority to be complete, and shall endeavor to complete its review of each revision or modification thereof within twenty (20) business days of the Port Authority's receipt of a revision or modification deemed by the Port Authority to be complete; provided, that, each such Construction Application and plans and specifications and/or revision or modification thereof shall be prepared in accordance with the highest professional standards, of uniformly high quality and well coordinated with respect to all engineering and architectural disciplines. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor, and the contract such contractor is operating under, have been approved by the Port Authority. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Construction Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (j) and (k) of this Section and such performance bonds as the Port Authority may specify. All of the Lessee's Construction Work shall be

performed by the Lessee in accordance with the Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon final completion of all of the Lessee's Construction Work the Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph certifying that all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and the Lessee shall supply the Port Authority with one (1) set of as-built drawings of the Lessee's Construction Work in such form as the Port Authority shall determine. The Lessee shall keep said drawings current during the term of the letting under this Agreement. No changes or modifications to the Lessee's Construction Work shall be made without prior Port Authority consent. Following its receipt of the Lessee's certificate, the Port Authority shall promptly inspect the Lessee's Construction Work and, unless such certification is not correct, or the Port Authority determines that the premises is unsuitable for occupancy and use by the Lessee, a certificate of final completion shall be delivered to the Lessee by the Port Authority.

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

(e) If the Lessee desires to commence construction of portions of the Lessee's Construction Work prior to the approval by the Port Authority of the complete Construction Application and plans and specifications covering all of the Lessee' Construction Work pursuant to paragraph (c) of this Section, the Lessee shall submit to the Port Authority a separate Construction Application for each portion of the Lessee's Construction Work the Lessee so desires to commence (each such portion of the Lessee's Construction Work being hereinafter designated as "Partial Approval Work") which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to such portion of the Lessee's Construction Work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's Construction Work are hereinafter referred to as "the Partial Approval Work Plans" with respect to such portion of the Lessee's Construction Work) setting forth in

detail the work to be performed in connection with each such portion of the Lessee's Construction Work. The Port Authority shall have full and complete discretion as to whether to permit the Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review the Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of the Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

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

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that the Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the City of Elizabeth, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

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

Authority may impose in its approval of the performance of such item of Partial Approval Work.

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

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

(6) In the event that in the opinion of the Port Authority the Lessee at any time during the performance of any portion of any item of Partial Approval Work under the approval granted by the Port Authority pursuant to this paragraph shall fail to comply with all of the provisions of this Agreement with respect to such work or shall fail to comply with the provisions of the Construction Application covering such work and the plans and specifications forming a part thereof, or shall fail to comply with any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the performance of such item of Partial Approval Work, or if in the Port Authority's opinion the Lessee shall be in breach of any of the provisions of this Agreement covering such work or shall be in breach of any of the provisions of the Construction Application and plans and specifications covering the performance of such work, or shall be in breach of any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the work, the Port Authority shall have the right to cause the Lessee to cease all or such part of such item of the Partial Approval Work as is being performed in violation of this Agreement, the Construction

Application and plans and specifications, or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, the Lessee shall promptly cease performance of the portion of the Partial Approval Work specified. The Lessee shall thereupon submit to the Port Authority for its written approval the Lessee's proposal for making modifications, corrections or changes in or to the item of Partial Approval Work that has been or is to be performed so that the same will comply with the provisions of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval covering such work. The Lessee shall not commence construction of the portion of the Partial Approval Work that has been halted until it has received written approval of the proposed modifications, corrections or changes.

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

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

(g) Without limiting the generality of paragraph (c) of this Section the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the Lessee's Construction Work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall conduct no public operations in the premises with respect to any improvements, fixtures or equipment constituting the Lessee's Construction Work or a portion thereof until the Port Authority shall have notified the Lessee in writing that the Lessee's Construction Work or such portion thereof has been completed or substantially completed to its satisfaction, which notice shall be promptly delivered to the Lessee by the Port Authority after completion of such construction work. In the event of any inconsistency between the provisions of this Agreement and those of the Construction Application referred to in paragraph (c) of this Section the provisions of this Agreement shall control.

(h) Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the premises by the Lessee and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Lessee in the premises and shall do all preventive maintenance and make all repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear and tear which does not (i) adversely affect the efficient or proper utilization of any part of the premises, or (ii) adversely affect the appearance of any part of the premises.

(i) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Lessee's Construction Work, and shall use reasonable efforts to cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein

contained shall be deemed to constitute consent to the creation of any lien or claim against the premises or any part thereof, nor to prevent the Lessee from contesting any such liens or claims in good faith. No contractor or third party shall or shall be deemed to have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

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

(i) Commercial General Liability Insurance including but not limited to coverage for Products Liability-Completed Operations and for Broad Form Property Damage and Independent Contractor coverage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section, which coverage shall not exclude claims arising out of or in connection with work performed within fifty feet of railroad property, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $25 million. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards.

(ii) Protection and Indemnity Insurance, if the Lessee's work involves the ownership, maintenance, operation, use, loading or unloading of watercraft, with a minimum combined single limit coverage for bodily injury and property damage of $25 million.

(iii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for bodily injury and property damage of $3 million.

(iv) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5 million.

(v) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S.

Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act, maritime (including coverage for Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

(k) In addition to the insurance required pursuant to the provisions of paragraph (j) of this Section, the Lessee shall procure or cause to be procured prior to the commencement of any of the Lessee's Construction Work Builder's Risk Insurance (All Risk) covering loss or damage (including any loss or damage resulting from flood or earthquake) to any structures, improvements, fixtures and equipment and furnishing and materials on the premises during said construction, whether or not attached to the land, in an amount equal to the full replacement cost. Such insurance shall name the Port Authority as an insured and such policy shall provide that the loss shall be adjusted with the Port Authority, and that the proceeds thereof shall be paid to the Port Authority and shall be made available to the Lessee for and applied strictly and solely to the payment of the cost of the repair, replacement, rebuilding or other performance of the Lessee's Construction Work.

(l) With the exception of the Workers' Compensation and Employers' Liability Insurance policy each policy of insurance described in paragraph (j) of this Section shall include the Port Authority as an additional insured (including, without limitation, for purposes of premises operations and completed-operation), and no such policy shall contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair the coverages resulting from the Port Authority's status as an additional insured or the coverage under the contractual liability endorsement described in subdivision (i) of paragraph (j) of this Section. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured. Such insurance shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(m) Unless otherwise set forth herein, each policy of insurance described in paragraphs (j) and (k) of this Section shall be subject to the applicable provisions of Section 15(e) of this Agreement.

(n) Title to and property in all improvements and fixtures placed, constructed or installed in or on the premises, including all such improvements and fixtures as shall constitute the Lessee's Construction Work, shall vest in the Port Authority upon placement, construction or installation thereof and title to and property in any and all equipment and trade fixtures removable without substantial injury to the premises placed in or installed upon the premises shall vest in the Lessee upon the installation thereof. No equipment or trade fixtures shall be removed by the Lessee prior to the expiration date of the letting under this Agreement unless replaced with substantially similar property. Without limiting any other term of this Agreement, and notwithstanding the foregoing provisions, upon notice given by the Port Authority prior to the expiration or earlier termination of the letting of the premises under this Agreement the Lessee shall remove from the premises any improvements, fixtures, trade fixtures, or equipment (provided same may be accomplished at reasonable cost to the Lessee) as the Port Authority may specify in its notice, and shall repair any damage to the premises caused by such removal.

(o) In the performance of the Lessee's Construction Work the Lessee shall not create nor permit to continue any situation or condition that may cause or be conducive to any labor troubles at the Facility which interferes with the progress of other construction work at the Facility. The determinations of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority, the Lessee shall or shall cause its contractor to rectify as soon as possible any condition specified in the notice. In the event of failure by the Lessee or any of its contractors to comply with the requirements of this paragraph (whether or not such failure is due to the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with any portion of the Lessee's Construction Work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee shall promptly reinstate the permission to the Lessee to perform the Lessee's Construction Work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(p) To the extent permitted by sound accounting practice, the sum of the following items of cost incurred by the Lessee in performing the Reimbursed Work and/or the Funded Work shall constitute the reasonable cost thereof for the purposes of this Agreement:

(1) The Lessee's payments to contractors;

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

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

(4) The Lessee's payments of premiums for performance bonds and for the insurance the Lessee is required to maintain in effect in accordance with the provisions of paragraphs (j) and (k) of this Section during the period of construction only;

(5) The Lessee's payments for engineering services in connection with the Reimbursed Work and/or the Funded Work, and during the period of the construction only;

(6) The Lessee's payments for architectural, planning and design services in connection with the Reimbursed Work and/or the Funded Work;

(7) The sum of the costs approved under items (4), (5) and (6) of this paragraph shall not exceed 20% of the sum of the costs approved under items (1), (2) and (3) of this paragraph; if in fact there is any such excess, such excess shall not be a part of the cost incurred by the Lessee in the performance of the Reimbursed Work and/or the Funded Work for the purposes of this Section.

No payment or payments on account of administrative or other overhead costs and no payment to employees of the Lessee shall be included in the cost of the Reimbursed Work and/or the Funded Work whether or not allocated to the cost of the work by the Lessee's own accounting practices. No payment to a firm or corporation wholly or partially owned by or in common ownership with the Lessee (unless the performance and the cost of the work by said firm or corporation in common ownership with the Lessee shall have been approved in advance by the Port Authority) shall be included in the cost of the Reimbursed Work and/or the Funded Work.

(q) On or about the tenth day of the first calendar month following the commencement of the Lessee's Construction Work, the Lessee shall certify to the Port Authority by written certification subscribed by a responsible officer of the Lessee: (i) the amount of the Lessee's Construction Work performed by the Lessee in the preceding month showing separately the amount of Class A Work, Class B Work, Outside Work, Reimbursed Work, and Funded Work performed respectively on each specific work item during such month; the cost of each such category of work; the amount of the cost of each such category of work incurred by the Lessee during such month; and the amount paid by the Lessee on account of the cost of each such category of work during such month, if any; (ii) that except for the amount, if any, stated in such certificate to be due for services and materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due on account of the purchase of any equipment or fixtures described in the certificate or for labor, wages, materials, supplies or services in connection with any work described therein which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen statutory or similar lien or alleged lien upon any such work or upon the premises or any part thereof, or upon the Lessee's leasehold interest therein, nor are any of the equipment, or fixtures described in such certificate secured by any liens, mortgages, security interests or other encumbrances. Nothing contained herein shall be deemed or construed as a submission by the Port Authority to the application to itself of any such lien or a waiver by the Lessee to contest such lien in good faith; and (iii) that all of the work for which the amount set forth in the certificate is due has been performed in accordance with the Lessee's approved plans and specifications and the provisions of this Agreement. Such certificate shall also contain a certification by the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of paragraph (c) of this Section certifying that all of the work described in the certificate has been performed in accordance with the final plans and specifications approved by the Port Authority covering such work. Following its receipt of the Lessee's certificate, the Port Authority shall remit to the Lessee an amount equal to the amount paid by the Lessee for the portion of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and also less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the Lessee's Construction Work described in the certificate. On or about the tenth day of each month thereafter during the period of the performance of the Lessee's Construction Work, the Lessee shall deliver a similar certificate to the Port Authority signed by a responsible officer of the Lessee which certificate shall certify the amount the Lessee's

Construction Work performed by the Lessee in the preceding month showing separately the amount of Class A Work, Class B Work, Outside Work, Reimbursed Work, and Funded Work performed respectively on each specific work item during such month; the cost of each such category of work; the amount of the cost of each such category of work incurred by the Lessee during such month; the amount paid by the Lessee on account of the cost of each such category of work during such month, if any; the cumulative amount of the cost of each such category of work incurred by the Lessee on account of the Lessee's Construction Work described in the certificate from the date of the commencement of the Lessee's Construction Work; and the cumulative amount of all payments made on account of the cost of each such category of work from the date of the commencement of the Lessee's Construction Work, and such certificate shall also contain the statements set forth in subdivisions (ii) and (iii) of this paragraph both with respect to the Lessee's Construction Work described in the certificate and all of the Lessee's Construction Work previously performed by the Lessee. Each such certificate shall also contain a certification by the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of paragraph (c) of this Section certifying that all of the work described in the certificate has been performed in accordance with the final plans and specifications approved by the Port Authority covering such work. Following its receipt of such certificate the Port Authority shall remit to the Lessee an amount equal to the amount paid by the Lessee for the portion of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and less the amount of claims, if any, made against the Port Authority by subcontractors, materialmen or workmen on account of any of the Lessee's Construction Work described in the certificate. Upon final completion of all of the work on each specific work item to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall submit to the Port Authority a certification signed by a responsible officer thereof that all such work has been completed, which certificate shall certify separately the final cost of such specific work item stating separately the respective cost of any of such work constituting Outside Work, Reimbursed Work and/or Funded Work, the respective cumulative payments made by the Lessee on account of any Outside Work, Reimbursed Work and/or Funded Work, and shall also certify the items set forth above in subdivisions (ii) and (iii) of this paragraph with respect to all of the work performed on the specific work item. In addition the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of this Section shall certify that all work on the specific work item has been performed in accordance with the final plans and specifications approved by

the Port Authority covering such work. The Lessee shall also supply to the Port Authority such supporting documents and records as the Port Authority shall deem necessary to substantiate the matters set forth in the Lessee's certificate. The Port Authority shall have the right (but shall not be obliged) to conduct an interim inspection and audit in connection with the specific work item certified as completed, and shall have the rights in the conduct of such interim inspection and audit as are set forth below in this paragraph in regard to the final inspection and audit. If all of the work performed on such specific work item has been completed in accordance with the approved plans and specifications and the provisions of this Agreement and the Lessee's certificate is fully satisfactory to the Port Authority, the Port Authority shall pay to the Lessee on account of the cost of the specific work item constituting Reimbursed Work and/or Funded Work the amount equivalent to the difference between the sum obtained by adding together all prior payments made to the Lessee under the provisions of this paragraph on account of the cost of the specific work item and the final cost of such work constituting Reimbursed Work and/or Funded Work, as certified by the Lessee, less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the work constituting the specific work item. No payment made by the Port Authority on account of the cost of a specific work item as set forth above in the paragraph shall be considered final until the final determination of the cost of the Lessee's Construction Work as set forth below in this paragraph. Upon final completion of all of the Lessee's Construction Work to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall certify to the Port Authority by final written certification signed by a responsible officer of the Lessee that all of the Lessee's Construction Work has been completed, which certificate shall certify the final cost of such work for each specific work item, the respective cumulative payments made by the Lessee on account of such respective costs stating separately the payments on account of Outside Work, Reimbursed Work and/or Funded Work and shall also certify the items set forth above in subdivisions (ii) and (iii) of this paragraph with respect to all of the work. In addition, the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of this Section shall certify that all of the work has been performed in accordance with the final plans and specifications approved by the Port Authority covering such work. Promptly after examination and approval of such certificates, and such supporting documents and records as the Port Authority shall deem necessary to substantiate the certificates, the Port Authority shall finally inspect the premises and the work and promptly after such inspection the Port Authority shall notify the Lessee if all of the work has been performed in accordance with the

approved plans and specifications and the provisions of this Agreement. If all of the work has been completed in accordance with the approved plans and specifications, and the provisions of this Agreement, the Port Authority will pay to the Lessee an amount equivalent to the difference between the sum obtained by adding together all prior payments made to the Lessee under the provisions of this paragraph by the Port Authority on account of the cost of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work and the lesser of (i) the reasonable cost, as defined in paragraph (p) of this Section, of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work, or (ii) the Construction Work Reimbursement Amount (as to the Reimbursed Work) and/or the Funded Work Reimbursement Amount (as to the Funded Work). If the sum of all of the previous payments made by the Port Authority to the Lessee on account of the cost of the Lessee's Construction Work constituting Reimbursement Work and/or Funding Work exceeds the lesser of (i) the reasonable cost, as defined in paragraph (p) of this Section, of the Lessee's Construction Work constituting Reimbursement Work and/or Funding Work or (ii) the Construction Work Reimbursement Amount (as to the Reimbursed Work) and/or the Funded Work Reimbursement Amount (as to the Funded Work), the Lessee shall pay to the Port Authority the amount of such excess on demand. No payment made by the Port Authority to the Lessee pursuant to the provisions of this paragraph, including, without limitation, any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be deemed final until the cost of the Lessee's Construction Work has been finally determined by the Port Authority. Any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost shall not be deemed a final determination of the cost of the Lessee's Construction Work. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Lessee's Construction Work to examine and audit the records and other documentation of the Lessee which pertain to and will substantiate such cost. In no event whatsoever shall the cost of any portion of the Lessee's Construction Work as finally determined and computed in accordance with the provisions of paragraph (p) of this Section and in accordance with the provisions of this paragraph include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any improvements, equipment or fixtures or the performance of any work unless such are actually and completely installed in and or made to the premises nor shall cost include the costs of any equipment, fixture or improvements which are

secured by liens, mortgages, other encumbrances or conditional bills of sale.

(r) The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Reimbursed Work shall be limited in amount to the Construction Work Reimbursement Amount. The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Funded Work shall be limited in amount to the Funded Work Reimbursement Amount. No contractor or third party shall or shall be deemed to have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

(s) Upon completion of each specific work item and at the time for the Port Authority to determine the amount, if any, payable by the Port Authority to the Lessee on account of the cost of said specific work item, the Port Authority shall render a bill to the Lessee setting forth an amount equal to three and one half percent (3.5%) of the cost of any Outside Work and/or Reimbursed Work performed by the Lessee with respect to said specific work item, and the Lessee shall pay such amount to the Port Authority within fifteen (15) days of receipt of such bill. Upon completion of the Lessee's Construction Work and at the time for the Port Authority to determine the amount, if any, remaining to be paid by the Port Authority to the Lessee on account of the cost of the Lessee's Construction Work, the Port Authority shall render a bill to the Lessee setting forth an amount equal to three and one half percent (3.5%) of the cost of any Outside Work and/or Reimbursed Work performed by the Lessee with respect to the Lessee's Construction Work reduced by any amounts paid by the Lessee to the Port Authority under the provisions of the immediately preceding sentence, and the Lessee shall pay such amount to the Port Authority within fifteen (15) days of receipt of such bill.

(t) Without limiting any of the terms and conditions hereof, the Lessee understands and agrees that it shall put into effect prior to the commencement of the Lessee's Construction Work an affirmative action program and Minority Business Enterprise (MBE) program and Women-owned Business Enterprise (WBE) program in accordance with the provisions of Schedule E, attached hereto and hereby made a part hereof. The provisions of Schedule E shall be applicable to the Lessee's contractor or contractors and subcontractors at any tier of construction as well as to the Lessee, and the Lessee agrees to include the provisions of Schedule E in all of its construction contracts so as to make the provisions and undertakings set forth in Schedule

E the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. The Lessee agrees to and shall require its contractors and subcontractors to furnish to the Port Authority such data, including but not limited to compliance reports, relating to the operation and implementation of the affirmative action, MBE, and WBE programs of the Lessee and its contractor, contractors, and subcontractors at any tier of construction called for under the provisions of this paragraph and Schedule E annexed hereto as the Port Authority may request at any time and from time to time and the Lessee agrees to and shall also require that its contractors and subcontractors at any tier of construction make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions of this paragraph and Schedule E annexed hereto to effectuate the goals of affirmative action, MBE, and WBE programs. The obligations imposed on the Lessee under this paragraph and Schedule E annexed hereto shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(u) In addition to and without limiting any terms and provisions hereof, the Lessee shall provide in all of its contracts and subcontracts covering the Lessee's Construction Work, or any portion thereof, that:

(1) The contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships and on-the-job training;

(2) At the request of either the Port Authority or the Lessee, the contractor shall request such employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the Lessee to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder;

(3) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

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

(5) "Contractor" as used in paragraph (t) and in this paragraph shall include each contractor and subcontractor at any tier of construction.

**[There is no Section 8 in this Agreement]**

Section 9. Environmental Responsibilities

(a) For purposes of the Agreement, the following terms shall have the respective meanings provided below:

(1) "Analyzed Item" and Analyzed Items" shall mean all of the pollutants which were tested for as part of the Initial Existing Condition.

(2) "Commencement Initial Existing Condition" shall mean upon the delivery by the Port Authority to the Lessee of the report and test results described in paragraph (j)(1) of this Section, the results of such report and test results setting forth the levels of the Analyzed Items in the soil and upper aquifer of the added premises, as applied by the methodology set forth in paragraph (k) below for the establishment of the level of the Analyzed Items for all portions of the added premises.

(3) "Consultant" shall have the meaning set forth therefor in paragraph (j)(1) of this Section.

(4) Environmental Damages" shall mean any one or more of the following: (i) the presence in, on, or under the premises of any Hazardous Substance whether such presence occurred prior to or during the term of the letting under this Agreement or resulted from any act or omission of the Lessee or others, and/or (ii) the disposal, discharge, release or threatened release of any Hazardous Substance from the premises or of any

Hazardous Substance from under the premises and/or (iii) the presence of any Hazardous Substance in, on or under other property at the Facility as a result of (a) the Lessee's use and occupancy of the premises or the performance of the Lessee's Construction Work or (b) a migration of a Hazardous Substance from the premises or from under the premises or (c) the Lessee's operations at the Facility, and/or (iv) any personal injury, including wrongful death, or property damage, arising out of or related to any Hazardous Substance described in (i), (ii) or (iii) above, and/or (v) the violation of any Environmental Requirement pertaining to any Hazardous Substance described in (i), (ii) or (iii) above, the premises and/or the activities thereon.

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

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

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

(6) "Exhibit I" shall mean the test results and report described in and as delivered by the Port Authority to the Lessee pursuant to paragraph (j)(1) hereof as the same may be supplemented and superseded pursuant to the provisions of this Section 9.

(7) "Existing Condition" shall mean the Initial Existing Condition as superseded and supplemented in accordance with this Section by each Succeeding Existing Condition.

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

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

(10) "Initial Existing Condition" shall mean the Commencement Initial Existing Condition as superseded and supplemented in accordance with this Section by each Updated Initial Existing Condition.

(11) "Succeeding Existing Condition" shall mean upon the delivery of a report and test results described in paragraph (n) hereof, if any, the results

of such report and test results setting forth the levels of the Analyzed Items in the soil and upper aquifer of the added premises together with those portions of Exhibit I which have not been superseded, as applied by the methodology set forth in paragraph (k) below for the establishment of the level of the Analyzed Items for all portions of the added premises, provided, however, and notwithstanding the foregoing, in no event shall the level of any Analyzed Item in any Succeeding Existing Condition be above the lower of (i) the level for such Analyzed Item as set forth in the Initial Existing Condition, or (ii) the lowest level to which such Analyzed Item has been remediated to as shown in a Succeeding Existing Condition.

(12) "Updated Initial Existing Condition" shall mean upon the delivery by one party to the other of a report and test results described in paragraph (j)(2) of this Section, if any, the results of such report and test results setting forth the levels of the Analyzed Items in the soil and upper aquifer of the added premises together with those portions of Exhibit I which have not been superseded, as applied by the methodology set forth in paragraph (k) below for the establishment of the level of the Analyzed Items for all portions of the added premises, provided, however, no Updated Initial Existing Condition shall include any Hazardous Substance whose presence in, on or under the added premises was caused by or resulted from any act or omission of the Lessee or whose presence in, on or under the added premises occurred after the Tender Date of such added premises.

(b) Without limiting the generality of any of the other terms and provisions of the Agreement and except as otherwise set forth in paragraph (1)(3) of this Section, the Lessee hereby expressly agrees to assume all responsibility for and relieve the Port Authority from any and all risks of any kind whatsoever caused by, arising out of or in connection with the conditions of the premises whether any such conditions existed prior to, on or after the effective date of the letting of the premises, including without limitation all Environmental Requirements and all Environmental Damages.

(c) Without limiting the Lessee's obligations elsewhere under the Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which or at any time are in effect during the term of the letting under the Agreement, the Lessee understands

and agrees that it shall be obligated, at its cost and expense, to comply with all Environmental Requirements which are applicable to or which affect (i) the premises, (ii) the operations of the Lessee or others with the consent of the Lessee at the premises or the Lessee's operations at the Facility, (iii) the occupancy and use of the premises by the Lessee or by others with its consent or (iv) any Hazardous Substance which has migrated from or from under the premises. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of the Lessee. Without limiting the generality of the foregoing and as part of the Lessee's fulfillment of the foregoing obligations, the Lessee shall be responsible, at its cost and expense and subject to the direction of the Port Authority, for:

(1) The preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, remedial action workplan, no further action letter, remediation agreement or any other documentation or information;

(2) the obtaining of any surety bond or the giving of any other financial assurances;

(3) the obtaining from all Governmental Authorities of any approval of a negative declaration or no further action letter or other form of release or mitigation; and

(4) complying with the provisions of all Environmental Requirements becoming effective on the termination, expiration or surrender of the letting of the premises or of any portion thereof under the Agreement, or on the closure or transfer of the Lessee's operations at the premises.

(d) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in the Agreement and except as set forth in paragraph (1)(3) below, the Lessee shall, at its sole cost and expense and in accordance with and subject to the provisions of Section 20 of the Agreement, upon notice from the Port Authority, promptly take all actions to:

(1) remove, clean-up and remediate all Analyzed Items from the added premises to the extent of any increase in the level of any Analyzed Item above the Existing Condition;

(2) completely remove, clean up and remediate all Hazardous Substances in, on or under the premises and at the Facility resulting from or in connection with the Lessee's use and occupancy of the premises or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Facility by the Lessee or which have been disposed of, released, discharged or otherwise placed in, on or under the premises during the term of the letting of the premises under the Agreement or during the term of any previous agreement between the Lessee and the Port Authority covering the Lessee's use and/or occupancy of the premises or any portion thereof;

(3) clean up and remediate all Hazardous Substances in, on or under the premises or which have migrated from or from under the premises to any other property which any Governmental Authority or any Environmental Requirement or any violation thereof require to be remediated or cleaned up; and

(4) clean up and remediate all Hazardous Substances in, on or under the premises or which have migrated from or from under the premises necessary to mitigate any Environmental Damages.

(e) The obligations set forth in paragraph (d) of this Section shall include but not be limited to the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work; shall be performed in a good, safe and workmanlike manner; and shall minimize any impact on activities off the premises. The Lessee shall promptly provide the Port Authority with copies of all test results and reports generated in connection with such obligations.

(f) Without limiting the Port Authority's remedies under the Agreement or at law or in equity, the Port Authority shall have the right during and after the term of the letting of the premises under the Agreement to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Lessee of its environmental obligations under the Agreement

including without limitation all the Lessee's obligations under this Section 9. In the event that the Lessee fails to comply with or perform any of such obligations, the Port Authority at any time during or subsequent to the termination, expiration or surrender of the letting of the premises or any portion thereof may elect (but shall not be required) to perform such obligations and upon demand the Lessee shall pay to the Port Authority as additional rent its costs thereof, including all overhead costs as determined by the Port Authority. For the purposes of this paragraph, the term "costs" shall be as defined in Section 21 of the Agreement.

(g) Without limiting any other of the Lessee's obligations under the Agreement, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the General Manager of the Facility, at the cost and expense of the Lessee and at any time during or subsequent to the term of the letting of the premises under the Agreement, with such information, documentation, records, correspondence, notices, reports, test results, certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, and the Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same when and as directed by the Port Authority. The Lessee agrees that except as set forth in paragraph (1)(3) hereof any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee at the Lessee's cost and expense. Further, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the General Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority and by a Governmental Authority to the Lessee within two (2) business days that the same are made available to or received by the Lessee with respect to any Environmental Requirements.

(h) Without limiting the generality of any other provision contained in the Agreement and except as set forth in paragraph (1)(3) hereof, the Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, employees and representatives from all claims, demands, penalties, fines, liabilities (including strict liability), settlements, attorney and consultant fees, investigation and laboratory fees, cleanup and remediation costs, court costs and litigation expenses, damages, judgments, losses, costs and expenses of whatsoever kind or nature and whether known or unknown, contingent or

otherwise, just or unjust, groundless, unforeseeable or otherwise, arising or alleged to arise out of or in any way related to any Environmental Damages, or the risks and responsibilities assumed hereunder by the Lessee for the condition of the premises. If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(i) (1) Without limiting the generality of any provision of the Agreement, in the event that any Environmental Requirement sets forth more than one compliance standard, the Lessee agrees that the standard or standards to be applied in connection with any obligation it may have under the Agreement with respect to Environmental Requirements shall be that which requires or permits the lowest level of a Hazardous Substance; provided, however, in the event such lowest level of a Hazardous Substance requires or allows the imposition of any restriction of any nature whatsoever upon the use or occupancy of the premises or any other portion of the Facility or upon any operations or activities conducted or to be conducted on the premises or the Facility or upon the transfer of the premises or the Facility, then the Lessee shall remediate and clean up to such a level so that there is no such restriction placed upon the use and occupancy of the premises or the Facility or upon any operations or activities conducted or to be conducted on the premises or the Facility.

(2) The Lessee further agrees that, notwithstanding the terms and conditions of subparagraph (i)(1) above, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion and without any obligation whatsoever to the Lessee or otherwise to do so, to designate any level or levels or standard or standards of remediation or cleanup permitted or required under any Environmental Requirement, and such designation shall be binding upon the Lessee with respect to its obligations under the Agreement with respect to Environmental Requirements.

(j) (1) The current lessee of the added premises has heretofore taken water and soil samples from test borings and wells at the added premises and which samples are being tested on behalf

of said lessee by Prime Environmental Incorporated (hereinafter called the "Consultant") for Analyzed Items. When said test results of the Analyzed Items and report thereon are completed by the Consultant and provided to the Port Authority, the Port Authority shall deliver said test results and report to the Lessee and upon delivery of such tests results and report to the Lessee they shall be and become "Exhibit I" to this Agreement.

(2) Without limiting any of the rights of the Port Authority hereunder, the Port Authority shall have the right and the Lessee(subject to the provisions of Section 20 hereof)may, but neither shall have any obligation to, take soil and water samples from in, on and under the added premises, and for such soil and water samples, if any, taken by the Lessee and/or the Port Authority from the added premises during the period from the Tender Notice Date for such added premises and the ninetieth ($90^{th}$) day after the Tender Date for such added premises (which period is hereinafter called the "Additional Testing Period"), upon delivery of such report and test results based upon samples taken from the added premises during the Additional Testing Period therefore to the other party and provided that such sampling and testing has been performed in accordance with paragraph (j)(3) below, such report and test results shall supersede Exhibit I or the applicable portions thereof if the test results and report are of Analyzed Items which have been previously tested and the results thereof reported in Exhibit I and the existing and new test results are from samples taken from the same well or a new well or boring which is immediately adjacent to such well or boring and shall supplement Exhibit I or the applicable portions thereof if the test results and report would not supersede any test results and reports in Exhibit I as aforesaid.

(3) All sampling of the added premises shall be performed so as to produce a fair and representative sampling and testing of the added premises and all sampling, testing and

preparation of any associated report shall be performed by a New Jersey State approved independent consultant and laboratory and shall be performed in accordance with the New Jersey Department of Environmental Protection Field Sampling Procedures Manual, May 1992, as the same may hereafter be supplemented, amended or superseded.

(k) The methodology to be used for the purpose of this Section 9 to determine for any Existing Condition the level of an Analyzed Item at any location in the added premises shall be for ground water, straight line interpolation methodology utilizing principles of hydrogeologic interpretation, and for soil, GEOPACK, an EPA geostatistical software system, and notwithstanding any other evidence to the contrary, the Existing Condition as so determined shall set forth and constitute for all purposes as between the Lessee and the Port Authority the levels of the Analyzed Items in the soil and ground water in, on and under the added premises.

(l) (1) Without limiting the generality of any other provision of the Agreement, the Lessee agrees that it has accepted the added premises with the Initial Existing Condition.

(2) It is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal and depositing (all of the foregoing being hereinafter collectively called "Disposal"), whether on or off the Facility, of any soil, dirt, sand, water or other matter (hereinafter collectively called the "Matter") excavated, disturbed or removed by the Lessee (or by any contractor or contractors of the Lessee) at or from the premises (or any other area of the Facility) at any time or times including, without limitation, any and all Disposal of said Matter in connection with the performance of the Lessee's Construction Work (as defined Section 7 of the Agreement) and any and all remediation and Disposal of said Matter and any and all other remediation, Disposal and cleanup (whether soil, upper aquifer or otherwise) necessary, required or appropriate as a result of, caused by, incidental to or triggered by such excavation, disturbance or removal of the Matter or arising therefrom, and the taking or doing of any and all other action or actions necessary, required or appropriate in connection therewith, shall be the sole and complete responsibility of the Lessee including, without limitation, all costs and expenses thereof and

any and all claims, penalties or other expenses relating thereto. The foregoing obligations of the Lessee shall obtain and apply with full force and effect irrespective of the nature or source of any contaminant, pollutant, chemical, waste or other substance or whether any of the same is an Analyzed Item or whether any of the same is at a level or levels above or below the level or levels of the Existing Condition or whether there has or has not been any increase in such level or levels. The Lessee shall perform all of the foregoing in accordance with and subject to all the terms, provisions, covenants and conditions of the Agreement.

(3) Notwithstanding anything to the contrary in the Agreement, the Lessee shall have no obligation under the Agreement with respect to the Existing Condition (other than the obligations described in subparagraph (2) of this paragraph (1) and paragraph (q) below) including, but not limited to, any obligation to remediate the Existing Condition or to pay any claim, penalty or expense with respect thereto; provided, however, if any of the levels of the Analyzed Items, or any of them, in the soil or the groundwater of or under the added premises shall increase above the Existing Condition, then the Lessee shall have such obligations with respect to such increase to the extent required by and in accordance with the terms and conditions of the Agreement.

(m) Without limiting the generality of the provisions of Section 22 of the Agreement, the Port Authority and its designees shall have the right but not the obligation to enter upon the added premises upon forty-eight (48) hours' notice to the Lessee to conduct testing and related activities from the existing wells made by the borings referred to in paragraph (j) of this Section, to make additional wells and borings and to conduct testing and related activities therefrom and to perform such activities as shall be necessary to remediate the Existing Condition including, but not limited to, conducting pumping operations from the wells made by borings referred to in paragraph (j) of this Section and this paragraph (m). In the exercise of the foregoing rights, the Port Authority and its designees shall not unreasonably interfere with the use and occupancy of the added premises by the Lessee.

(n) If after any remediation performed on the added premises, whether by the Lessee, the Port Authority or a third party, the Port Authority shall sample and test the

soil and upper aquifer of the added premises or portions thereof and shall set forth the results of such tests in a report (it being understood, however, that the Port Authority shall not have any obligation hereunder to perform such sampling and testing or to set forth the results thereof in a report), upon delivery of such report and test results to the Lessee, such report and test results shall supersede Exhibit I or the applicable portions thereof if the test results and report are of Analyzed Items which have been previously tested and the results thereof reported in Exhibit I and the existing and new test results are from samples taken from the same well or a new well or boring which is immediately adjacent to such well or boring and shall supplement Exhibit I or the applicable portions thereof if the test results and report would not supersede any test results and reports in Exhibit I as aforesaid.

(o) Without limiting the generality of the provisions of Section 16 of the Agreement, the Lessee agrees to protect and maintain the wells made by the borings referred to in paragraphs (j)and (m) of this Section and shall repair any damage thereto not caused by the activities of the Port Authority or its designees, if any, pursuant to paragraphs (j) and (m) of this Section.

(p) Without limiting the generality of any other term or provision of the Agreement, all of the obligations of the Lessee under this Section 9 shall survive the expiration or earlier termination of the letting of the premises.

Section 10. 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 its successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising

or alleged to arise out of the closing of any way or other area whether within or outside the Facility; provided, that, a reasonably equivalent means of ingress and egress remains available. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in, along, across or through any streets, ways and walks near the premises.

Section 11. Governmental and Other Requirements

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

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items, including without limitation all Environmental Requirements, now or at any time during the occupancy of the premises by the Lessee which as a matter of law are applicable to or which affect (i) the premises, (ii) the operations of the Lessee at the premises or the Facility, (iii) the use and occupancy of the premises and/or (iv) any Hazardous Substance which has migrated from the premises. The Lessee, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the premises and perform all remediation work and clean up of Hazardous Substances required in order to fully satisfy the compliance obligations set forth in this Agreement.

(c) The obligation of 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 12. 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 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 ten (10) days before the Lessee shall be required to comply therewith.

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

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

Section 13. 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 as soon as reasonably possible the Lessee shall remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or of any others on the premises with the consent of the Lessee.

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

(c) 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 in or near the Facility.

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

(f) The Lessee shall not 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 may subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

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

(i) The Lessee shall permit the use of the premises (not excluding the berthing area) at any time and from time to time for the installation, maintenance and operation of such navigation lights as may be required by the United States Coast Guard or other governmental authority having jurisdiction, and the Lessee shall furnish such electricity as may be required for use by navigation lights which may be so installed.

(j) The Lessee shall not do or permit to be done any act or thing on the premises or at the Facility which (i) will invalidate or conflict with any fire insurance policies covering the premises or any part thereof, or the Facility, or any part thereof, or (ii) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (iii) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the Insurance Services office of New Jersey, or of any other board or

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

(k) 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 the appropriate number of its employees in the use of all such, equipment, including in such training periodic drills.

(l) The Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), owned or operated by the Lessee, or by a corporation, company or other organization or person associated, affiliated or connected with the Lessee or for which the Lessee acts as agent, stevedore or terminal operator, (or of others going to or from the premises on business with the Lessee) which shall have sunk, settled or become partially or wholly submerged at the Facility. In addition, the Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), which shall have sunk, settled or become partially or wholly submerged in the berthing area. The provisions of the immediately preceding sentence shall be applicable whether or not the aforesaid object is owned by the Lessee or is connected in any way with the Lessee or its occupancy of or operations at the premises, and the Port Authority shall have no obligation to raise or remove any such object unless its presence in the berthing area is the result of the sole negligence or willful act of the Port Authority.

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

Section 14. 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 at the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the premises and the Facility to the condition thereof prior to the placement of such advertising, sign, poster or device. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every such piece of advertising, sign, poster or device and so to restore the premises and the Facility after receipt of written notice from the Port Authority, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

Section 15. Indemnity and Liability Insurance

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the premises by the Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others on the premises with the consent of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees on the premises or elsewhere at the Facility, or out of the acts or omissions of others on the premises with the consent of the Lessee, including claims and demands of the party, if any, 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.

(b) If so directed by the Port Authority, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) in which event it shall not,

without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or its provisions of any statutes respecting suits against the Port Authority.

(c) The Lessee, in its own name as assured, shall maintain and pay the premiums on the following described policies of liability insurance:

(i) Commercial General Liability Insurance including but not limited to coverage for Premises-Operations and Products Liability-Completed Operations, which coverage shall not exclude claims arising out of or in connection with operations conducted within fifty feet of railroad property, with a minimum combined single limit coverage for bodily injury and property damage of $ 5,000,000.00. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If the Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of $2,000,000.00.

(iii) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5,000,000.00.

(iv) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act, maritime (including coverage for Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

(d)With the exception of the Workers' Compensation and Employers' Liability Insurance Policy, each policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured (including, without limitation, for purposes of premises operations and completed-operations) and each such policy shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Each such policy shall contain a contractual liability endorsement covering the indemnity obligations of the Lessee under this Section and such policies shall not contain any care, custody or control exclusions. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

(e)As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority within fifteen (15) days after the execution of this Agreement by the Port Authority and the Lessee and the delivery to the Lessee of a fully executed copy thereof (which date is hereinafter called "the Commencement Date"). In the event any binder is delivered it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A binder evidencing each renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting hereunder, as the letting may be from time to time extended, and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance or as to coverages or minimum limits, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain one or more

new and satisfactory policies in replacement. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

Section 16. 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. Without limiting the generality of the immediately preceding sentence or any obligations of the Lessee with respect to the added premises, the Lessee agrees that upon the commencement of the letting it shall place the initial premises in good operating condition and shall keep such premises in good operating condition throughout the term of the letting.

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

(c) Subject to the provisions of paragraph (f) of this Section and Section 17 of this Agreement, throughout the term of the letting under this Agreement, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforseen, structural or otherwise; and without limiting the generality of the foregoing the Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said premises or the Lessee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items: (1) paving, which shall mean maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, catch basins, underground storm water pipes, and grate support systems. In addition, the Lessee shall be responsible for maintenance repairs, and damages, that are required above the structural concrete chamber of catch basins and manholes. Such repairs shall include the concrete brick collar, concrete collar, brick collar, asphalt concrete pavement, Portland cement concrete pavement, the frame and grate or manhole cover and silt bucket when and where applicable. For the purpose of manhole and catch basin repair, the top of the structural chamber shall be the top of the concrete slab that covers the vertical walls of the

underground manhole structure, and for the purpose of catch basin and manhole repair, the top of the structural chamber shall be the top of the (cast-in-place or pre-cast) vertical walls of the underground catch basin and manhole structure; (2) crane rails and rail foundations; (3) scales; (4) rail tracks on the premises; (5) lights, light poles and light pole foundations; (6) sprinkler systems; (7) gas and electric from the meter (utility companies are responsible up to the meter); (8) water pits; (9) container cranes; (10) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (11) the plumbing system, fixtures and equipment, and all finished plumbing; (12) buildings and all parts thereof; (13) special mooring devices and special loading devices, whether mechanical, electrical, hydraulic or otherwise; (14) fencing, (15) signs; (16) fire extinguishers; and (17) all painting. The Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement of the term of the letting thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the buildings or other structures on the premises or adversely affect the efficient or the proper utilization of any part of the premises or the environmental condition thereof. The Lessee shall make frequent periodic inspections of the premises and subject to Sections 7, 17 and 20 of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(d) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the premises and shall promptly replace or repair the same within twenty (20) days after such loss, theft or damage (except that if any such repair requires activity over a period of time, then the Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and the

Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at the commencement of the letting, reasonable wear not materially affecting the efficient use and functioning of the same excepted.

(e)(1) Until and unless the berthing area has been deepened as part of the Class A Work, upon sixty (60) days' notice from the Lessee that any part of the berthing area has shallowed to a depth of thirty-eight (38) feet below mean low water, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by governmental authorities having jurisdiction) to dredge such part of the berthing area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of forty (40) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(2) From and after such time that the deepening of the berthing area has been completed as part of the Class A Work, upon sixty (60) days' notice from the Lessee that any part of the berthing area has shallowed to a depth of forty-three (43) feet below mean low water, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by governmental authorities having jurisdiction) to dredge such part of the berthing area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of forty-five (45) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(3) From and after such time that the second deepening of the berthing area has been completed as part of the Class B Work, upon sixty (60) days' notice from the Lessee that any part of the berthing area has shallowed to a depth of forty-eight (48) feet below mean low water, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by

governmental authorities having jurisdiction) to dredge such part of the berthing area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of fifty (50) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(4) Notwithstanding any other provision of this Section, in the event that the Port Authority shall determine that the Estimated Cubic Yard Cost, as hereinafter defined, will exceed Eighty Dollars and No Cents ($80.00) (which amount is hereinafter called "the Base Cost"), the Port Authority shall not be obligated to perform the dredging work set forth in subparagraph (1), (2) or (3) of this paragraph unless the Lessee shall pay for any amount of the Estimated Cubic Yard Cost which shall exceed the Base Cost. "The Estimated Cubic Yard Cost" shall mean the total cost of dredging the portion of the berthing area described in the Lessee's notice given to the Port Authority under the aforesaid subparagraphs calculated in terms of the cost of such work per cubic yard of dredged material, with such estimate to include the cost of transporting and disposal of any dredged material and a Port Authority overhead charge of fifteen percent (15%) of all such other costs. In the event that the Port Authority shall determine that the Estimated Cubic Yard Cost of any such dredging will exceed the Base Cost, the Port Authority shall so notify the Lessee and the Lessee shall have the right to elect to have the dredging performed subject to its obligation to pay for any such excess cost. In the event that the Lessee shall not elect to pay such excess cost of the dredging, the Port Authority shall be relieved of its obligation to perform such dredging until such time, if ever, that it shall determine that the Estimated Cubic Yard Cost of such dredging does not exceed the Base Cost. The Base Cost shall be subject to adjustment during the term of the letting under this Agreement in accordance with the provisions of subparagraph (5) of this paragraph.

(5) As used in this subparagraph:

(i) "Index" shall mean the Construction Cost Index published by ENR Magazine.

(ii) "Base Period" shall mean the

calendar month of December, 1999.

(iii) "Adjustment Period" shall mean, as the context requires, the calendar month of December, 2000 and the calendar month of December in each calendar year which thereafter occurs during the term of the letting under this Agreement.

(iv) "Anniversary Date" shall mean, as the context requires, January 1, 2001 and each anniversary of such date which thereafter occurs during the term of the letting under this Agreement.

(v) "Percentage Change" shall mean the percentage of change in the Index on each Anniversary Date equal to a fraction the numerator of which shall be the difference between (aa) the Index for the Adjustment Period immediately preceding such Anniversary Date and (bb) the Index for the Adjustment Period immediately preceding the Anniversary Date which immediately precedes such Anniversary Date, and the denominator of which shall be the Index for the Adjustment Period immediately preceding the Anniversary Date which immediately precedes such Anniversary Date.

Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through the day preceding the next Anniversary Date, or the expiration date of the term of the letting under this Agreement, as the case may be, the Base Cost set forth in subparagraph 4 of this paragraph shall be adjusted by adding to or subtracting from the Base Cost, as the case may be, the product obtained by multiplying the Base Cost by the Percentage Change for such Anniversary Date. For purposes of any adjustment under this subparagraph, the Base Cost employed in the calculation described in the immediately preceding sentence shall be the Base Cost as previously adjusted under this paragraph.

In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised or ENR Magazine shall cease to publish the Index, then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in construction costs in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine. If after an adjustment in the Base Cost shall have been fixed for any period, the Index used for computing such adjustment shall be changed or adjusted, then the adjustment of the Base Cost for that period shall be recomputed accordingly.

(6) Notwithstanding any other provision of this Section, the Port Authority shall not be obligated to perform the dredging work set forth in subparagraph (1), (2) or (3) of this paragraph as to any part of the portion of the berthing area described in the Lessee's notice given to the Port Authority under the aforesaid subparagraphs as long as any vessel or other floating structure, equipment or other personal property (whether or not intended to be floating) is sunk, settled or partially or wholly submerged in such part of the berthing area. The provisions of this subparagraph shall be applicable whether or not the aforesaid object is owned by the Lessee or is connected in any way with the Lessee or its occupancy of or operations at the premises. The Port Authority shall have no obligation to raise or remove any such object unless its presence in the berthing area is the result of the sole negligence or willful act of the Port Authority.

(f) Except under circumstances as to which paragraph (b) of this Section applies, upon receipt of notice that repair or replacement of such of the following as are located in or are a part of the premises is required: (1) the structure of the wharf, fender systems (but not backing logs or bumpers), and standard mooring devices; (2) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the premises or closest meter on the premises servicing said water pit (but in no event the ships' water pits themselves); and (3) the underground sanitary systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the premises in a reasonably good condition for the operations of the Lessee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the premises to a better condition than that existing at the commencement of the letting. The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of the Lessee under any other provision of this Agreement. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable, except as expressly provided in Section 17 of this Agreement. If the Port Authority shall fail, after a reasonable period of time to perform its repair and replacement obligations under this paragraph, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay the Lessee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to the Lessee a credit against its rental obligations under this Agreement in an

amount equal to such expenditures. Furthermore, prior to the commencement by the Port Authority of any work set forth in 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 any work required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Lessee for such work as provided in this paragraph. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, the Lessee's officers, employees, agents, and representatives which may arise from the condition of the premises or any part thereof, or from the failure of 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. Except as set forth above, the Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, employees, agents, and representatives from any liability for damages to the Lessee, consequential, or otherwise, in connection with any of the provisions of this paragraph concerning repairs or replacements to any portion of the premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(g) The obligation of 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 at any time because of this release the insurance carrier of any policy covering the premises or any part thereof shall increase the premiums otherwise payable for fire, extended coverage or rental coverage applicable to the premises the Lessee shall pay to the Port Authority an amount equivalent to such increase or increases on demand; and provided, further, that if at any time this release shall invalidate any such policy of insurance or reduce, limit, or void the rights of the Port Authority thereunder, or if because of this release, any such insurance carrier shall cancel such endorsement or refuse to renew the same or shall take any other action to alter, decrease or diminish the

benefits of the Port Authority under the policy, then the release shall be void and of no effect.

Section 17. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the premises are damaged the Lessee shall rebuild the same with due diligence. Without in any way limiting the obligations of the Lessee set forth in the first sentence of this paragraph, with respect to all portions of the premises, the Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the term of the letting under this Agreement:

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

(2) Unless otherwise directed by the Port Authority, the property damage insurance policy required by this paragraph shall name the Port Authority and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide that loss, if any, shall be adjusted with and payable to the Port Authority. As to any insurance required by this paragraph, a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority on or before the Commencement Date. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each

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

The proceeds of insurance from coverages secured in accordance with this paragraph shall be made available to the Lessee and shall be applied by the Lessee strictly and solely to the repair, replacement, or rebuilding of the premises as provided in this Agreement. The procedures for such rebuilding shall be the same as for the initial construction as set forth in Section 7. The Lessee shall not be entitled to any abatement of the rentals payable hereunder at any time by reason of such casualty.

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

(c) In the event of damage to or a partial or total destruction of the premises, the Lessee shall within thirty (30) days after the occurrence commence to remove from the premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to the Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of



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sale, the Lessee shall pay such excess to the Port Authority on demand. Without limiting any term or provision of this Agreement, the Lessee shall indemnify and save harmless the Port Authority, its officers, agents, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise.

Section 18. 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, without the prior written consent of the Port Authority.

(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 paragraphs (a) or (b) of this Section or if the premises are occupied by any person, firm or corporation other than the Lessee, the Port Authority may collect rent from any assignee, sublessee, or anyone who claims a right to this Agreement or to the letting or who occupies the premises, and shall apply the net amount collected to the rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraphs (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 in this Agreement.

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the Facility or any portion thereof for any purpose other than as provided in Section 6 of this Agreement.

Section 19. Condemnation

(a) In any action or other proceeding by any governmental agency or agencies superior to the Port Authority for the taking for a public use of any interest in all or part of the premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Lessee shall not be entitled to

assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee; provided, however, that this paragraph shall not be construed to prevent the Lessee from making a possible claim against the condemning party for an award for moving or relocation expenses, for trade fixtures and for other fixtures and improvements owned by the Lessee to the extent that such fixtures and improvements are owned by the Lessee and have been paid for by the Lessee, if such claims are then permitted by law and if such award is made separately from the award which the Port Authority will be entitled to in the condemnation proceeding, and will not reduce the amount thereof, but this provision shall not be deemed a recognition by the Port Authority of the validity of any such claims.

(b) In the event that all or any portion of the premises is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the premises so required. Such termination shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the premises so required upon the effective date of such termination in the same condition as that required for the delivery of the premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. 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 in Section 49 hereof and the Container Throughput Rental and Minimum Rental shall be abated proportionately.

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

Section 20. Construction by the Lessee

Except as may be otherwise expressly provided in Section 7, the Lessee shall not erect any structures, make any improvements or do any other construction work on the premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures without the prior consent of the Port Authority. Except for the Lessee's personal property, in the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, shall give notice to the Lessee to remove the same, or 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 21. 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 any of the rentals set forth in this Agreement. No payment made by the Lessee to the Port Authority under this Section shall be or be deemed a waiver by the Lessee of any right to contest its making of such payment.

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

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

Section 22. Rights of Entry Reserved

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and on behalf of furnishers of

utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the premises at all reasonable times to make such repairs, replacements or alterations as the Port Authority shall deem necessary or advisable and, from time to time, to construct or install over, in or under the premises new systems or parts thereof, and to use the premises for access to other parts of the Facility otherwise not conveniently accessible; provided, however that in the exercise of such rights of access, repair, alteration or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

(c) 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 so to move such property after written 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 impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises or for any injury or damage to the premises or to any property of the Lessee or of any other person located therein or thereon (other than those occasioned by the acts of the Port Authority).

(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 23. 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 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 any building or buildings or portion of any building or buildings, if any are included in the premises (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the premises (except to the extent required for the operation of the container cranes on the premises and the movement and storage of containers). If any construction or installation is contemplated in this Agreement, the height thereof above ground shall be as determined solely by the Port Authority.

Section 24. Prohibited Acts

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

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

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

(d) Except as set forth in paragraph (e) of this Section, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the premises of any vending-machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation or dispensing of food, beverages, tobacco, tobacco products, or merchandise of any kind whether or not included in the above categories, or of any equipment or devices for the furnishing to the public of service of any kind including therein, without limitation thereto, telephone pay stations.

(e)(1) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the premises for the sale of merchandise of all types or for the rendering of services, provided, however, that no such machine or device shall be installed except upon the request of the Lessee. If the Port Authority does not install and maintain any such machine that the Lessee may reasonably request, the Lessee shall have the right to do so, provided, however, (1) that the Lessee shall pay or cause to be paid to the Port Authority each month for each machine upon the same basis for the preceding month as any concessionaire, permittee or licensee of the Port Authority then operating machines at the Facility for the sale of similar merchandise or the rendering of similar services, and (2) that in the event the Lessee exercises such right the Port Authority, at any time thereafter, may substitute for the Lessee's machines other machines selling similar merchandise or services operated by the Port Authority or by its licensee, permittee or concessionaire, and thereupon the Lessee shall remove its machines.

(2) The Lessee shall have the right to operate a cafeteria for over-the-counter sales to employees of the Lessee of food, non-alcoholic beverages and other merchandise normally sold in such an establishment at no profit to the Lessee and either directly

by the Lessee or by an independent contractor who has received a permit from the Port Authority.

(f) The Lessee shall not overload any floor and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this paragraph (j) or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear.

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

(h) The Lessee shall not keep or store in the premises, explosives, inflammable liquids or solids or oxidized materials or use any cleaning materials having a harmful corrosive effect on any part of the premises, except for those materials normally used in the operation of a marine terminal and stored in a structure normally used for the storage of such materials and made safe for the storage thereof.

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

(j) The Lessee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on or from the premises, and shall not dispose of, release or discharge or permit anyone subject to its control or authority to dispose of, release or discharge any Hazardous Substance at the Facility. Any Hazardous Substance disposed of, released or discharged by the Lessee (or permitted by the Lessee to be disposed of, released or discharged) on or from the premises or at the Facility, shall upon notice by the Port Authority to the Lessee and subject to the provisions of Section 20 hereof, be completely removed, cleaned up and/or remediated by the Lessee. The obligations of the Lessee pursuant to this paragraph shall survive the expiration or termination of this Agreement.

Section 25. 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 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, 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 or bonded within thirty (30) days; or

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required under this Agreement when due to the Port Authority; 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 twenty (20) 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 twenty (20) 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 twenty (20) days' written notice terminate the letting and the rights of the Lessee under this Agreement, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

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

Section 26. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 25 of this Agreement, have the right to re-enter the premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or other legal proceedings, or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 27. 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 28. 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 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Section 2 hereof, subject to the provisions of Section 29 hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place. The Port Authority may maintain separate actions each

month to recover the damage or deficiency then due, or at its option and at any time may sue to recover the full deficiency (less the proper discount) for the entire unexpired term.

(b) The amount or amounts of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) shall be:

(1) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including, without limitation thereto, all sums constituting additional rental under Section 21 of this Agreement, and all sums constituting the rentals under Section 3, Section 4, Section 5 and Section 43(b) of this Agreement, accrued prior to the effective date of termination, and the cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the term or on the expiration date originally fixed or within a stated time after expiration or termination; and

(2) an amount equal to the cost and the expenses of the Port Authority in connection with the termination, cancellation, regaining, possession and restoring and reletting the premises, the Port Authority's legal expenses and costs, and the Port Authority costs and expenses for the care and maintenance of the premises during any period of vacancy, and any brokerage fees and commission in connection with any reletting; and

(3) on account of the Lessee's basic rental, Facility Rental, and Minimum Rental obligations, an amount equal to the then present value of all basic rental, Facility Rental, and Minimum Rental payable with respect to the premises as provided for in this Agreement for the entire term following the effective date of termination, as originally fixed in this Agreement, less the amount thereof which may have been actually paid to the Port Authority by the Lessee; and

(4) on account of the Lessee's obligations under this Agreement with respect to the Container Throughput Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the Tier 1 Rental Rate, the Tier 2 Rental Rate, and the Rent Guarantee Number (as said rates and number would have escalated in the Throughput Lease Years remaining in the term of letting at the time of the Termination) shall be applied respectively to the "annual number of the Tier 1 Number of Containers" and the

"annual number of the Tier 2 Number of Containers," as defined below, and the result so obtained shall be multiplied by the number of full Throughput Lease Years remaining in the term of the letting at the time of the Termination. The "annual number of the Tier 1 Number of Containers" and the "annual number of the Tier 2 Number of Containers" shall be, respectively, the Tier 1 Number of Containers and the Tier 2 Number of Containers loaded onto or discharged from vessels berthing at the premises during the last full Throughput Lease Year to occur prior to the Termination. In the event that the Termination shall be on other than the last day of a Throughput Lease Year, for purposes of calculating the rental due hereunder for the period from the day after the Termination through the end of the Throughput Lease Year in which the Termination shall occur, the Exemption Number, the Tier 1 Number of Containers, the Tier 2 Number of Containers, and the Rent Guarantee Number shall each be prorated for the period from the day after the Termination through the end of the Throughput Lease Year in which the Termination shall occur; and

(5) on account of the Lessee's obligations under this Agreement with respect to the Non-container Throughput Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the applicable charge per revenue ton prevailing at the time of Termination shall be multiplied by the "average number of revenue tons per month" as defined below and the product so obtained shall in turn be multiplied by the number of full calendar months remaining in the term of the letting at the time of Termination. The "average number of revenue tons per month" shall be calculated by dividing the total number of revenue tons of Non-container Cargo loaded onto or discharged from vessels berthing at the premises during the last full twelve months immediately preceding the Termination by twelve (12).

(c) Without limiting the generality of any other provision of this Section, in the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement, the Port Authority shall have the right to require the Lessee to assign to the Port Authority any then outstanding contract or contracts entered into by the Lessee for the performance of the

Lessee's Construction Work. The contract or contracts to be so assigned, if any, shall be determined by the Port Authority acting in its sole discretion and designated by written notice from the Port Authority to the Lessee. In the event that the Lessee shall assign any such contract to the Port Authority under the provisions of this paragraph, the Lessee shall be fully responsible and liable for the payment of any amounts accrued under such contract through the date that the letting shall have been terminated in accordance with a notice of termination as provided in Section 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement. The Lessee agrees that it shall include in each contract entered into by it for the performance of the Lessee's Construction Work provisions allowing the assignment of said contract to the Port Authority. Nothing contained in this paragraph shall be or be deemed an agreement by the Port Authority to accept an assignment and/or to perform any contract entered into by the Lessee for the performance of the Lessee's Construction Work or shall create or be deemed to create any rights against the Port Authority in any contractor or other third party with respect to any such contract,

Section 29. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 25 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, may occupy the premises or may relet the premises and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. Such reletting may be of part only of the premises or of the premises, 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 25 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, have the right to repair and to make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the premises (or portion thereof) during the balance of the Term as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port

Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance of a surrender. It is understood by the Port Authority and the Lessee that the Port Authority has no obligation to relet the premises or any portion thereof or to use or occupy the premises or any portion thereof itself, except to the extent as may be required by law.

Section 30. Remedies to Be Nonexclusive

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

Section 31. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Section 16(c) hereof regarding the condition of the premises at the expiration or termination of the letting hereunder.

(b) Unless required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the premises, all its equipment, removable fixtures and other personal property, and all property of third persons for which the Lessee is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the premises, repairing all damage caused by any removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, provided, however, that the Port Authority shall have given the Lessee twenty (20) days' notice of the Port Authority's intent to sell such property at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, the Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents,

employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise.

Section 32. Acceptance of Surrender of Lease

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

Section 33. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port Authority or the Lessee, except as otherwise expressly provided herein, shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an office of such party, officer or representative during regular business hours; or (iii) delivered to the residence of such party, officer or representative at any time; or (iv) if directed to the Lessee, delivered to the premises at any time to the offices of the terminal manager; or (v) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office, the address of which is set forth in Page 1 of this Agreement, as their respective offices where notices and requests may be served.

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

Section 34. General

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

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

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

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

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

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

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

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

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

(e) The Section headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(f) All payments required of the Lessee by this Agreement shall be made by mail to the Port Authority at P. O. Box 17309, Newark, New Jersey, 07194, or to such other address as may be substituted therefor.

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

(h) As used in Sections 13 and 22, the phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

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

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

The rights of the Port Authority in the Facility are those acquired by it pursuant to the order described in the preceding sentence, together with those which may be acquired by any subsequent order or orders, deed or deeds or other instruments transferring or assigning additional adjacent property. No greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power to grant under the orders, deeds, or other instruments, as the circumstances may require.

(k) In the event that obstruction lights are now or in the future shall be installed on the premises, the Lessee agrees to furnish the Port Authority without charge, electricity for energizing such obstruction lights daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and sunrise may vary from day to day throughout the year) and for such other periods as may be directed or requested by the Control Tower of Newark Airport.

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

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

(n) So long as the Lessee shall pay all rentals provided for in this Agreement and shall observe and perform all the terms, covenants and conditions on the Lessee's part to be observed and performed under this Agreement, the Lessee may peaceably and quietly enjoy the premises, during the term of the letting, without hindrance or molestation by anyone claiming by, through or under the Port Authority, subject, nevertheless, to the terms, covenants and conditions of this Agreement, it being understood that the Port Authority's liability hereunder shall obtain only so long as it remains the owner of the premises.

(o) This Agreement and the letting hereunder are and shall be 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 although the provisions of this Section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Lessee, the Lessee shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this Section as the Port Authority may request.

(p) Without in any way 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 any one or more vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment while the same are at, coming to or leaving the premises, except for damages to the Facility (other than the premises) caused by any one or more of such vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment as may be coming to or leaving the premises without previous knowledge on the part of the Lessee.

(q) The Lessee recognizes that height restrictions, due primarily to the proximity of Newark Airport to the premises, now exist and that they may at any time be changed, including changes that make them more onerous and restrictive. The Lessee and all persons, firms and corporations using the premises or any part thereof with the express or implied consent of the Lessee, shall at all times obey such height restrictions as may be posted from time to time or otherwise communicated to the Lessee by the Port Authority, whether or not through the Manager of the Facility.

Section 35. Premises

(a) The Port Authority shall deliver the premises to the Lessee in its presently existing "as is" condition. The Lessee agrees to and shall take the premises in its "as is" condition and the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the premises for the Lessee's use.

(b) 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 as existing and has found the same to be suitable and satisfactory for the operations of the Lessee contemplated and permitted under this Agreement. Without limiting any obligation of the Lessee to

commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the operations of the Lessee, so that there is possibility of injury or damage to life or property, and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

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

Section 36. Force Majeure

(a) Neither the Port Authority nor the Lessee shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided, however, that this paragraph shall not apply to failures by the Lessee to pay the rentals specified in Sections 3, 4 and 5 hereof and shall not apply to any other charges or money payments payable by the Lessee; and, provided, further, that this paragraph shall not prevent the Port Authority from exercising its right of termination under Sections 25, 43, and 46 hereof or the Lessee from exercising its right of termination under Section 41 hereof.

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

(c) Except as provided in Section 42(e) hereof, no abatement, diminution of reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or

future law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the state, county or city government, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 37. 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 and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Agreement.

Section 38. Non-Liability of Individuals

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

Section 39. Services

(a) The Port Authority shall be under no obligation to supply the Lessee with any services provided by utility companies and other service providers, including but not limited to water, gas, electricity, sewer service, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service.

(b) The Lessee shall promptly pay all water-bills covering its own consumption, including but not limited to water delivered and sold by the Lessee to vessels berthing at the premises. In the event that any such water-bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute an item of additional rental, payable to the Port Authority on demand.

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

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings, which, or a portion or portions of which, are included in the premises, the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, pay, in accordance with any such notice, such 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 other entity, or directly to the Port Authority, as such notice may direct. All such payments 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) Without in any wise affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of Section 16 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), ship-filling lines and other water-using equipment and facilities.

**[There is no Section 40 in this Agreement]**

Section 41. Termination Rights

(a)(1) For purposes of this Agreement, the term "Forty-five Foot Deepening" shall mean the following work to be performed by the United States Corps of Engineers (hereinafter called "the Corps") or such successor or other United States agency performing the present functions of the Corps: the completion of a channel of a depth of forty-five (45) feet below mean low water in

the Kill Van Kull and the Newark Bay sufficient to allow passage of a single ship at one time to or from the Elizabeth-Port Authority Marine Terminal. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey.

(2) For purposes of this Agreement, the term "Fifty Foot Deepening" shall mean the following work to be performed by the Corps or such successor or other United States agency performing the present functions of the Corps: the completion of a channel of a depth of fifty (50) feet below mean low water in the Kill Van Kull and the Newark Bay sufficient to allow passage of a single ship at one time to or from the Elizabeth-Port Authority Marine Terminal. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey.

(b) In the event that the Forty-five Foot Deepening has not been completed by December 31, 2004, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2005, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Forty-five Foot Deepening or to perform the Forty-five Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that the Forty-five Foot Deepening is not completed by December 31, 2004 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

(c) In the event that the Fifty Foot Deepening has not been completed by December 31, 2009, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2010, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the

date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that the Fifty Foot Deepening is not completed by December 31, 2009 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

(d)(1) In the event that the study being performed by the Corps, as authorized under the Water Resources Development Act of 1996, and entitled the "New York/New Jersey Harbor Navigation Study" (hereinafter called "the Study"), shall upon completion specifically state that the Fifty Foot Deepening will not be completed by December 31, 2009, then the Lessee shall have the right to terminate the letting under this Agreement on one (1) year's prior written notice to the Port Authority; provided, that, such notice shall not be effective unless received by the Port Authority no later than one hundred eighty (180) days following completion of the Study and unless the effective date of termination under such notice shall be on or before June 30, 2002; and further provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that the Study shall state that the Fifty Foot Deepening will not be completed by December 31, 2009 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph. For purposes of this paragraph, the Study shall be deemed to be completed upon issuance of a report by the Chief Engineer of the Corps to the United States Congress reporting the results of the Study.

(2) In the event that the Lessee shall terminate the letting under this Agreement pursuant to the provisions of subparagraph (1) of this paragraph, the Port Authority shall pay to the Lessee on account of the cost of the Lessee's performance, if any, of any portion of the Class A Work that is not Reimbursed Work, the determination of which cost shall be subject to the provisions of paragraph (p) of Section 7 hereof, a sum equal to the product obtained by multiplying (i) the cost of such work paid for by the Lessee by (ii) a fraction, the numerator of which shall be the number of whole calendar months (in the term of the letting as originally set forth) subsequent to the effective date of termination, and the denominator of which shall be the total number of months in the term of the letting as originally set forth, provided, however, that any sum payable to the Lessee under this subparagraph shall be reduced by the amount of (aa) any reimbursement paid by the Port Authority to the Lessee on account of the performance of such work under the provisions of paragraphs (a)(3), (p), and (q) of Section 7 hereof as Funded Work; and (bb) any liens, mortgages, security interests or other encumbrances upon any such work; and further provided, that, any sum payable to the Lessee under this subparagraph shall be conditioned upon the Lessee's having delivered possession of the premises to the Port Authority in accordance with the provisions of this Agreement. On the payment by the Port Authority for any such work, all equipment, fixtures and improvements in the premises constituting any part of such work and all interest of the Lessee therein which have not already become the property of the Port Authority shall be and become the property of the Port Authority and the Lessee shall execute any and all instruments necessary to transfer title and any such interest.

(e) In the event that authorization from the United States Congress to perform the Fifty Foot Deepening is not obtained by December 31, 2002, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2003, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph

shall constitute its sole remedy in the event that authorization from the United States Congress to perform the Fifty Foot Deepening is not obtained by December 31, 2002 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

(f) In the event that a project cooperation agreement with respect to the Fifty Foot Deepening is not fully executed by December 31, 2005, the Lessee shall have the right to terminate the letting under this Agreement effective as of December 31, 2006, on one (1) year's prior written notice to the Port Authority; provided, that, the Lessee shall not be in default in the payment of any rental under this Agreement or under notice of default as to which any applicable period to cure has passed, or under notice of termination, from the Port Authority, either on the date of its giving of such notice to the Port Authority or the effective date thereof. Termination pursuant to the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Agreement. Nothing contained in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to obtain any governmental permit or other governmental authorization with respect to the performance of the Fifty Foot Deepening or to perform the Fifty Foot Deepening. The Lessee agrees that the termination right set forth in this paragraph shall constitute its sole remedy in the event that a project cooperation agreement with respect to the Fifty Foot Deepening is not fully executed by December 31, 2005 and shall and does release and discharge the Port Authority of and from any and all claims and demands based on the termination of the letting under this Agreement under this paragraph.

Section 42. Port Guarantee

(a) For purposes of this Agreement, the following terms shall have the meanings set forth below:

(1) "Carrier" shall mean Maersk Inc. as agent for its disclosed principals (as such principals are defined in paragraph (h) of Section 46 hereof);

(2) "Carrier's Containers" shall mean containers carrying cargo for which a disclosed principal of Maersk Inc. is acting as common carrier;

(3) "Port" shall mean the Port of New York District (as defined in Section 44 hereof);

(4) "Port Throughput Lease Year" shall mean as the context requires the Lease Year commencing on the Port

Throughput Lease Year Commencement Date and each Lease Year thereafter occurring during the letting under this Agreement;

(5) "Port Throughput Lease Year Commencement Date" shall mean the first Lease Year following the completion of the Forty-five Foot Deepening (as defined in Section 41(a)(1) hereof); provided, however, that if the ExpressRail Facility (as defined in Section 4(a)(10) hereof) is not available to the Lessee on the date determined above, then the Port Throughput Lease Year Commencement Date shall be postponed until the day that the ExpressRail Facility is available to the Lessee; and further provided, however, that the Port Throughput Lease Year Commencement Date shall be postponed until the day that all of the added premises have become part of the premises under this Agreement.

(6) "First Port Guarantee Period" shall mean the period from the Port Throughput Lease Year Commencement Date through the day immediately preceding the first Lease Year following the completion of the Fifty Foot Deepening (as defined in Section 41(a)(2) hereof);

(7) "Second Port Guarantee Period" shall mean the period from the first day of the first Lease Year following the completion of the Fifty Foot Deepening through December 31, 2014; and

(8) "Third Port Guarantee Period" shall mean the period from January 1, 2015 through the expiration of the term of the letting under this Agreement.

(b) The Lessee agrees that the number of the Carrier's Containers transported to or from the Port shall not be less than the following: (1) three hundred sixty-five thousand (365,000) of the Carrier's Containers during each Port Throughput Lease Year to occur during the First Port Guarantee Period, (2) four hundred forty thousand (440,000) of the Carrier's Containers during each Port Throughput Lease Year to occur during the Second Port Guarantee Period, and (3) five hundred fifteen thousand (515,000) of the Carrier's Containers during each Port Throughput Lease Year to occur during the Third Port Guarantee Period.

(c) The determination of the number of the Carrier's Containers transported to or from the Port during any Port Throughput Lease Year shall be as shown in the reports made by the Carrier to the New York Shipping Association, or successor organization, for purposes of cargo assessment, with the Carrier to provide the Port Authority with a copy of any such report within five (5) days of the Carrier's making such report to the New York Shipping Association.

(d) In the event that for each of any two consecutive Port Throughput Lease Years the number of the Carrier's Containers transported to or from the Port shall be less than the number thereof required under the provisions of paragraph (b) of this Section, the basic rental payable by the Lessee under Section 3 hereof shall be increased for the Port Throughput Lease Year next following the second of the aforesaid consecutive Port Throughput Lease Years (which next following Port Throughput Lease Year is hereinafter called "the First Adjustment Year") in accordance with the provisions of the Schedule attached hereto, hereby made a part hereof and marked "Schedule B", with the calculation of the increased basic rental to be based on the number of the Carrier's Containers transported to or from the Port for the second of said two consecutive years. The basic rental payable pursuant to the provisions of the immediately preceding sentence shall be subject to adjustment for each and every Port Throughput Lease Year following the First Adjustment Year as follows: (1) if for the First Adjustment Year or any Port Throughput Lease Year following the First Adjustment Year the number of the Carrier's Containers transported to or from the Port shall be less than the number thereof required under the provisions of paragraph (b) of this Section, the basic rental for the next following Port Throughput Lease Year shall be increased or decreased or shall remain the same according to the provisions of Schedule B; and (2) if for the First Adjustment Year or any Port Throughput Lease Year following the First Adjustment Year the number of the Carrier's Containers transported to or from the Port shall be equal to or greater than the number thereof required under the provisions of paragraph (b) of this Section, the basic rental payable by the Lessee under Section 3 hereof for the next following Port Throughput Lease Year and each Port Throughput Lease Year thereafter occurring during the letting shall be decreased to the level set forth in said Section 3 until such time, if ever, that the event described in the first sentence of this paragraph shall reoccur, in which event such basic rental shall again be increased in accordance with the provisions of the first sentence of this paragraph; provided, however, that in no event shall such basic rental be decreased below the amount payable under Section 3 prior to any adjustment thereof under the provisions of this paragraph. The procedures for the increase or decrease of the basic rental payable by the Lessee under Section 3 hereof pursuant to the provisions of this paragraph shall be subject to repetition from and after the First Adjustment Year through the remainder of the term of the letting under this Agreement.

(e) In the event that for any Port Throughput Lease Year the number of the Carrier's Containers transported to or from the Port shall be less than the number thereof required under the provisions of paragraph (b) of this Section (which required number of containers for each respective Port Throughput Lease Year is hereinafter in this paragraph called the "Port Guarantee Number"), and the Lessee can demonstrate to the Port Authority that such

failure resulted from general economic conditions beyond the control of the Lessee's major customers that caused a substantial decrease in ocean shipping volumes that otherwise would reasonably have been expected to move through the Port, then upon request by the Lessee it may meet with the Port Authority to discuss the possibility of a reduction in the Port Guarantee Number for said Port Throughput Lease Year; provided, however, that any such reduction shall in no event be applicable except to said Port Throughput Lease Year. Nothing contained in this paragraph shall or shall be construed to impose an obligation on either the Port Authority or the Lessee to agree to any reduction in said Port Guarantee Number and each of the parties shall have as full discretion in discussing a proposed reduction in said Port Guarantee Number as if this paragraph had not been agreed to. The Lessee specifically acknowledges that this paragraph does not grant nor shall it be deemed to grant the Lessee any rights whatsoever to have said Port Guarantee Number reduced. The Lessee shall have the burden of proof as to any of the factual matters set forth above in this paragraph.

Section 43. Terminal Guarantee

(a) For purposes of this Agreement, the following terms shall have the meanings set forth below:

(1) "Terminal Lease Year" shall mean as the context requires the Lease Year commencing on the Terminal Lease Year Commencement Date and each Lease Year thereafter occurring during the term of the letting under this Agreement;

(2) "Terminal Lease Year Commencement Date" shall mean the later of the following: (i) March 1, 2008 or (ii) the first Lease Year following the completion of the Forty-five Foot Deepening (as defined in Section 41(a)(1) hereof); provided, however, that if the ExpressRail Facility is not available to the Lessee on the date determined above, then the Terminal Lease Year Commencement Date shall be postponed until the day that the ExpressRail Facility is available to the Lessee;

(3) "Rent Guarantee Number" shall mean the following: (i) two hundred twenty thousand (220,000) Qualified Containers for each Terminal Lease Year to occur during the First Terminal Guarantee Period, (ii) three hundred twenty thousand (320,000) Qualified Containers for each Terminal Lease Year to occur during the Second Terminal Guarantee Period, and (iii) four hundred twenty thousand (420,000) Qualified Containers for each Terminal Lease Year to occur during the Third Terminal Guarantee Period;

(4) "Terminal Guarantee Number" shall mean the following: (i) two hundred seventy thousand (270,000) Qualified Containers for each Terminal Lease Year to occur during the First Terminal Guarantee Period, (ii) three hundred thirty thousand

(330,000) Qualified Containers for each Terminal Lease Year to occur during the Second Terminal Guarantee Period, and (iii) three hundred ninety thousand (390,000) Qualified Containers for each Terminal Lease Year to occur during the Third Terminal Guarantee Period; provided, however, that empty containers shall be included in the Terminal Guarantee Number only to the extent that they are transported to or from the premises in the normal course of business.

(5) "First Terminal Guarantee Period" shall mean the period from the Terminal Lease Year Commencement Date through the day immediately preceding the first Lease Year following the completion of the Fifty Foot Deepening;

(6) "Second Terminal Guarantee Period" shall mean the period from the first day of the first Lease Year following the completion of the Fifty Foot Deepening through December 31, 2014; and

(7) "Third Terminal Guarantee Period" shall mean the period from January 1, 2015 through the expiration of the term of the letting under this Agreement.

(b) The Lessee shall pay a minimum rental (hereinafter called the "Minimum Rental") for each Terminal Lease Year in the following amounts: (1) for each Terminal Lease Year during the First Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the First Terminal Guarantee Period; (2) for each Terminal Lease Year during the Second Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the Second Terminal Guarantee Period; and (3) for each Terminal Lease Year during the Third Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the Third Terminal Guarantee Period. The Minimum Rental for each Terminal Lease Year shall be payable to the Port Authority in advance in equal monthly installments on the first day of each month to occur during such Terminal Lease Year.

(c) (1) In the event that for each of any two consecutive Terminal Lease Years to occur during the First Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than the Terminal Guarantee Number for the First Terminal Guarantee Period, the Port Authority shall have the right to terminate the letting under this Agreement of the portion of the premises shown on the sketch attached hereto, hereby made a part hereof and marked

"Exhibit A-3". Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said second consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect and the Port Authority shall have one hundred eighty (180) days from said ninety (90) period to provide notice of termination to the Lessee under this subparagraph. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the portion of the premises shown on Exhibit A-3 and the letting thereof pursuant to the provisions of Section 25 hereof. Such termination shall not affect the letting as to the balance of the premises under this Agreement and the letting as to the balance of the premises shall continue in full force and effect notwithstanding such termination.

(2) If the premises under this Agreement shall be reduced pursuant to the provisions of paragraph (c)(1) of this Section, the following adjustments shall be made effective upon the first day that the premises shall be so reduced: (i) the basic rental under Section 3 of this Agreement shall be payable at the annual rate of Three Million Eight Hundred Thousand Dollars and No Cents ($3,800,000.00) payable in advance in equal monthly installments of Three Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($316,666.67); (ii) the Exemption Number shall be one hundred sixty thousand (160,000), the Tier 1 Number of Containers shall be from one hundred sixty thousand and one (160,001) Qualified Containers through four hundred forty thousand (440,000) Qualified Containers and the Tier 2 Number of Containers shall be the number of Qualified Containers above four hundred forty thousand (440,000); (iii) the Rent Guarantee Number for each Terminal Lease Year to occur during the First Terminal Guarantee Period shall be reduced to one hundred twenty-five thousand seven hundred fifteen (125,715) Qualified Containers; (iv) the Rent Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to one hundred eighty-two thousand eight hundred fifty-eight (182,858) Qualified Containers; (v) the Rent Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers; (vi) the Terminal Guarantee Number for each Terminal Lease Year to occur during the First Terminal Guarantee Period shall be reduced to one hundred seventy-one thousand four

hundred thirty (171,430) Qualified Containers; (vii) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to two hundred five thousand seven hundred fifteen (205,715) Qualified Containers; and (viii) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers.

(3) Notwithstanding any other provision of this Section, in the event that for each of any two consecutive Terminal Lease Years to occur during the First Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than one hundred seventy-one thousand four hundred thirty (171,430) Qualified Containers, the Port Authority shall have the right to terminate the letting under this Agreement upon one (1) year's prior written notice given to the Lessee at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth ($180^{th}$) day following the end of said second consecutive Terminal Lease Year. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(d) (1) In the event that for each of any two consecutive Terminal Lease Years to occur during the Second Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than the Terminal Guarantee Number for the Second Terminal Guarantee Period, the Port Authority shall have the right to terminate the letting under this Agreement of the portion of the premises shown on Exhibit A-3 hereto. Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth ($180^{th}$) day following the end of said second consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said second consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect and the Port Authority shall have one hundred eighty (180) days from said ninety (90) period to provide notice of termination to the Lessee under this subparagraph. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the portion of the premises shown on Exhibit A-3

and the letting thereof pursuant to the provisions of Section 25 hereof. Such termination shall not affect the letting as to the balance of the premises under this Agreement and the letting as to the balance of the premises shall continue in full force and effect notwithstanding such termination.

(2) If the premises under this Agreement shall be reduced pursuant to the provisions of paragraph (d)(1) of this Section, the following adjustments shall be made effective upon the first day that the premises shall be so reduced: (i) the basic rental under Section 3 of this Agreement shall be payable at the annual rate of Three Million Eight Hundred Thousand Dollars and No Cents ($3,800,000.00) payable in advance in equal monthly installments of Three Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($316,666.67); (ii) the Exemption Number shall be one hundred sixty thousand (160,000), the Tier 1 Number of Containers shall be from one hundred sixty thousand and one (160,001) Qualified Containers through four hundred forty thousand (440,000) Qualified Containers and the Tier 2 Number of Containers shall be the number of Qualified Containers above four hundred forty thousand (440,000); (iii) the Rent Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to one hundred eighty-two thousand eight hundred fifty-eight (182,858) Qualified Containers; (iv) the Rent Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers; (v) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Second Terminal Guarantee Period shall be reduced to two hundred five thousand seven hundred fifteen (205,715) Qualified Containers; and (vi) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers.

(3) Notwithstanding any other provision of this Section, in the event that for each of any two consecutive Terminal Lease Years to occur during the Second Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than two hundred five thousand seven hundred fifteen (205,715) Qualified Containers, the Port Authority shall have the right to terminate the letting under this Agreement upon one (1) year's prior written notice given to the Lessee at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth ($180^{th}$) day following the end of said second consecutive Terminal Lease Year. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(e) (1) In the event that for each of any two consecutive Terminal Lease Years to occur during the Third Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than the Terminal Guarantee Number for the Third Terminal Guarantee Period, the Port Authority shall have the right to terminate the letting under this Agreement of the portion of the premises shown on Exhibit A-3 hereto. Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said second consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect and the Port Authority shall have one hundred eighty (180) days from said ninety (90) period to provide notice of termination to the Lessee under this subparagraph. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the portion of the premises shown on Exhibit A-3 and the letting thereof pursuant to the provisions of Section 25 hereof. Such termination shall not affect the letting as to the balance of the premises under this Agreement and the letting as to the balance of the premises shall continue in full force and effect notwithstanding such termination.

(2) If the premises under this Agreement shall be reduced pursuant to the provisions of paragraph (e)(1) of this Section, the following adjustments shall be made effective upon the first day that the premises shall be so reduced: (i) the basic rental under Section 3 of this Agreement shall be payable at the annual rate of Three Million Eight Hundred Thousand Dollars and No Cents ($3,800,000.00) payable in advance in equal monthly installments of Three Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($316,666.67); (ii) the Exemption Number shall be one hundred sixty thousand (160,000), the Tier 1 Number of Containers shall be from one hundred sixty thousand and one (160,001) Qualified Containers through four hundred forty thousand (440,000) Qualified Containers and the Tier 2 Number of Containers shall be the number of Qualified Containers above four hundred forty thousand (440,000); (iii) the Rent Guarantee Number for each Terminal Lease Year to occur during the Third Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers; and (iv) the Terminal Guarantee Number for each Terminal Lease Year to occur during the Third

Terminal Guarantee Period shall be reduced to two hundred forty thousand (240,000) Qualified Containers.

(3) Notwithstanding any other provision of this Section, in the event that for each of any two consecutive Terminal Lease Years to occur during the Third Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less than two hundred forty thousand (240,000) Qualified Containers, the Port Authority shall have the right to terminate the letting under this Agreement upon one (1) year's prior written notice given to the Lessee at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said second consecutive Terminal Lease Year. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(f) In the event that for the last Terminal Lease Year to occur during the First Terminal Guarantee Period and for the first Terminal Lease Year to occur during the Second Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less respectively than the Terminal Guarantee Number for the First Terminal Guarantee Period and the Terminal Guarantee Number for the Second Terminal Guarantee Period, the provisions of paragraph (d) shall be applicable; and in the event that for the last Terminal Lease Year to occur during the Second Terminal Guarantee Period and for the first Terminal Lease Year to occur during the Third Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the premises shall be less respectively than the Terminal Guarantee Number for the Second Terminal Guarantee Period and the Terminal Guarantee Number for the Third Terminal Guarantee Period, the provisions of paragraph (e) shall be applicable.

Section 44. Records

(a) The Lessee shall maintain in accordance with accepted accounting practice during the term of the letting under this Agreement and for three years thereafter records and books of account (including, without limitation, bills of lading and manifests) recording all transactions in any way connected with or reflecting upon the payment of any rental by the Lessee pursuant to Sections 3, 4, 5 or 43(b) hereof, and which records and books of account shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session, and permit, in ordinary business hours during such time, the examination

and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any of such records and books of account of any company which is owned or controlled by the Lessee, if said company performs services, similar to those performed by the Lessee, anywhere in the Port of New York District.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Lessee may maintain the records and books of account referred to in said paragraph (a) outside of the Port of New York District, subject to the following conditions:

(1) If any such records and books of account have been maintained outside of the Port of New York District, but within the continental United States, then the Port Authority in its sole discretion may (i) require such records and books of account to be produced within the Port of New York District or (ii) examine such records and books of account at the location at which they have been maintained and in such event the Lessee shall pay to the Port Authority when billed all travel costs and related expenses, as determined by the Port Authority, for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit, or

(2) If any such records and book of account have been maintained outside the continental United States then, in addition to the costs specified in subparagraph (1) of this paragraph, the Lessee shall pay to the Port Authority when billed all other costs of the examination and audit of such records and books of account including without limitation salaries, benefits, travel costs and related expenses, overhead costs and fees and charges of third party auditors retained by the Port Authority for the purpose of conducting such audit and examination.

(c) The foregoing auditing costs, expenses and amounts set forth in subparagraphs (1) and (2) of paragraph (b) of this Section shall be deemed additional rent under this Agreement payable to the Port Authority with the same force and effect as all other rents payable hereunder.

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

Section 45. Affirmative Action

(a) The Lessee shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) In addition to and without limiting the foregoing and without limiting the provisions of Schedule E attached hereto and hereby made a part hereof, it is hereby agreed that the Lessee, in connection with its continuing operation, maintenance and repair of the premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Facility, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within sixty (60) days after the commencement of the Term to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes as the Port Authority and the Lessee may agree upon from time to time. The Lessee throughout the Term shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to, annual reports. The obligations imposed on the Lessee under this paragraph shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(c) "Minority" as used herein shall be as defined in paragraph II (c) of Part of Schedule E.

(d) In the implementation of this Section the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such

compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(e) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

(f) Nothing in this Section shall grant or be deemed to grant to the Lessee the right to make any agreement or award for concessions or consumer services at the Facility.

Section 46. Right of Termination - Ownership and Control

(a) (1) The Lessee hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that it is a privately held corporation organized and existing under the laws of the State of Delaware, that ten thousand (10,000) shares of common stock constitute all its issued and outstanding securities, that the owner of one hundred percent (100%) of the shares is Maersk Inc., that there are no other shares issued and outstanding, and that there are no other individuals or corporations and no partnerships or other entities having a direct or indirect beneficial ownership of any portions of the Lessee.

(2) The Lessee hereby represents to the Port Authority that Maersk Inc. (hereinafter called "Maersk") is a corporation organized and existing under the laws of New York and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880. The Lessee further represents to the Port Authority that Aktieselskabet Dampskibsselskabet Svendborg and Dampskibsselskabet af 1912, Aktieselskab control Maersk and have greater than fifty percent (50%) of the direct or indirect beneficial ownership of Maersk and retain voting control. The ownership interest of Maersk, as described in paragraph (a)(1) of this Section, in the Lessee is hereinafter called "the Ownership Interest." The Lessee further represents that Maersk is engaged as the exclusive United States agent on behalf of its disclosed principals, as defined in paragraph (h) of this Section, in the conduct of a worldwide waterborne ocean container shipping business (which business is hereinafter called "the Shipping Business" and which disclosed principals are hereinafter called "the Shipping Companies"). The Lessee recognizes the fact that a transfer of securities in the Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or with respect to the identity of the parties in control of the Lessee or the degree thereof, is for practical purposes a transfer or disposition of the rights obtained by the Lessee through this Agreement. The Lessee

further recognizes that because of the nature of the obligations of the Lessee hereunder, the qualifications and identity of the Lessee and its security holders are of particular concern to the Port Authority. The Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Lessee for the faithful performance of all obligations and covenants hereunder. The Lessee further recognizes and agrees that the aforesaid connection of Maersk with the Shipping Business in conjunction with its holding the Ownership Interest is a major inducement for the Port Authority's entering into this Agreement, and that it is of great importance to the Port Authority, in order to achieve the business and regional economic goals of this Agreement, that the Lessee be owned by an entity or entities having said connection with the Shipping Business in order to assure the availability of cargo to meet the foregoing business and regional economic goals of the Port Authority. The combination of an entity or entities owning the Lessee and having said connection with the Shipping Business is hereinafter called "the Shipping Entity." Therefore, the Lessee represents and agrees for itself and Maersk, and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, which approval shall be given or withheld promptly, there shall be no transfer of any securities in the Lessee by Maersk to any other person; nor shall Maersk suffer any transfer of such securities to be made; nor shall there be or be suffered to be made by the Lessee or by any owner of securities therein, any other change in the ownership of such securities or in the relative distribution thereof, or with respect to the identity of the parties in control of the Lessee or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional new securities or classification of securities or otherwise; except another entity controlled by Maersk or the disclosed principals and as to which Maersk or the disclosed principals has at least fifty percent (50%) of the direct or indirect beneficial ownership and retains voting control; and the Lessee further represents and agrees for itself and Maersk, and any successor in interest thereof, respectively, that the direct ownership and control of the Lessee shall be as set forth in paragraph (a)(1) of this Section except as shall be otherwise approved by the Port Authority pursuant to the provisions of this paragraph (a)(2). In addition, and without limiting the provisions of the immediately preceding sentence, the Lessee represents and agrees for itself and Maersk, and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, which approval shall be given or withheld promptly, (i) there shall be no change in the agency status of Maersk with respect to the Shipping Companies, and (ii) there shall be no transaction, whether involving the transfer of securities as described in the immediately preceding sentence and/or any transfer of securities or assets by or of the Lessee and/or Maersk and/or the Shipping

Companies, directly or indirectly, such that the Shipping Entity shall not be fully and completely in existence upon the completion of any such transaction. The Port Authority and the Lessee acknowledge and agree that the provisions of the immediately preceding sentence shall not apply to any internal transfer or exchange of the Shipping Business or any part thereof between the Shipping Companies or a subsidiary, affiliate or related company thereof. In addition, the provisions of said sentence shall not apply to the transfer by the Shipping Companies or any one of them of control of the direct or indirect beneficial ownership of the Shipping Business to another entity; provided, however, that Maersk shall have, in all material respects, the same agency relationship with said entity immediately subsequent to such transfer as it had with the Shipping Companies immediately prior to such transfer and the same shall continue for the term of the letting under this Agreement. The transfer of the Shipping Business as described in the immediately preceding sentence and in accordance with the provisions thereof may be repeated throughout the term of the letting without the prior written approval of the Port Authority.

(b) In the event there shall be a transfer, purchase or exchange of any assets of the Lessee, or of a subsidiary entity of the Lessee, which shall result in this Agreement and the letting hereunder becoming substantially the only asset of the Lessee, unless the Port Authority shall have given its written consent thereto, then upon the occurrence of any such event or at any time thereafter during the continuance thereof the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25(a)(11) hereof.

(c) The Lessee acknowledges the Lessee's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Lessee with the provisions contained in this Section shall be and be deemed an event of default under Section 25 of this Agreement, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of said Section 25 hereof. It is understood and agreed that the Port Authority shall not be entitled and hereby waives any rights to injunctive relief or specific performance with respect to any such default.

(d) The foregoing right of termination shall be in addition to all other rights of termination the Port Authority has under this Agreement and the failure of the Port Authority to exercise its right of termination under this Section at any time in which it may have such right shall not affect, waive or limit its right to exercise said right of termination at any subsequent time.

(e) The phrase "direct or indirect beneficial ownership" shall include without limiting the generality thereof the

direct or indirect power through contract, arrangement, understanding, relationship or otherwise to dispose of or to direct the disposal of, or to vote or to direct the voting of, any voting security of an entity.

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

(g) The Lessee shall promptly advise the Port Authority of any change in the representations made in paragraph (a)(1) or (2) of this Section.

(h) For purposes of this Agreement, the "disclosed principals" are Aktieselskabet Dampskibsselskabet Svendborg and Dampskibsselskabet af 1912, Aktieselskab, corporations registered in Copenhagen, Denmark, and having offices at Esplanaden 50, DK-1098 Copenhagen K, Denmark, and its or their affiliates, subsidiaries and related companies. An "affiliate", "subsidiary", or "related company" is any entity engaged in the shipping business with respect to which Aktieselskabet Dampskibsselskabet Svendborg and/or Dampskibsselskabet af 1912, Aktieselskab has at the effective date of this Agreement or thereafter at least fifty percent (50%) of the direct or indirect beneficial ownership thereof and retains voting control.

Section 47. Tax Election

(a) Attached hereto as Exhibit Y is a form of election pursuant to Section 142(b) of the Internal Revenue Code of 1986, as amended. The Lessee acknowledges that two counterparts of said form of election have been delivered to it by the Port Authority. Upon the execution of this Agreement by the Lessee and its delivery to the Port Authority, the Lessee shall execute the said two counterparts and deliver one fully executed counterpart to the Port Authority with its delivery of this Agreement, and the Lessee shall keep the second executed counterpart with its records for the balance of the entire term of the letting under this Agreement.

(b) The Lessee is not acquiring an ownership interest in the premises defined in Section 1 of this Agreement. Capital expenditures in connection with the premises have been, or are expected to be made, in whole or in part by the Port Authority from "exempt facility bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986) issued by the Port Authority from

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

(c) In the event the Lessee records any documents in lieu of recording this Agreement, such documents shall incorporate the substance of paragraph (b) of this Section.

(d) It is understood that the election set forth in paragraph (b) of this Section shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the premises leased to the Lessee pursuant to this Agreement which are installed by the Lessee in or on the premises leased to the Lessee pursuant to this Agreement and which shall be deemed to be and remain the property of the Lessee.

Section 48. Guaranty

The Lessee shall cause to be executed by Maersk Inc. simultaneously with the execution and delivery by the Lessee of this Agreement to the Port Authority, a Contract of Guaranty in the form attached hereto and hereby made a part hereof, which Contract of Guaranty shall guarantee the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of this Agreement, and the Lessee shall keep and maintain said Contract of Guaranty in full force and effect. The existence of the contract of guaranty described in this Section shall not limit or alter any other remedies of the Port Authority under this Agreement, and the Port Authority may from time to time and at any time elect to pursue (or not to pursue) its rights under this contract of guaranty without thereby limiting, voiding or relinquishing any of its other rights or remedies under this Agreement.

Section 49. Abatement

If at any time during the term of the letting under this Agreement the Lessee shall become entitled to an abatement of basic rental, whether pursuant to the terms of this Agreement, or otherwise, such abatement shall be computed as follows: for each

square foot of open area constituting part of the premises the use of which is denied the Lessee, at the annual rate of $0.436. Except as provided in this Section, no abatement of rental shall be claimed by or allowed to the Lessee.

Section 50. Late Charges

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time there for by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 25 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 Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 51. Entire Agreement

The within Agreement consists of pages number 1 through 104, together with Schedules A ,B, E, and Exhibits A-1, A-2 and A-3 and Y. It constitutes the entire agreement between the Port

Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

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

ATTEST:

Karen J. Eastman
Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By Lillian C. Borrone
LILLIAN C. BORRONE
DIRECTOR, PORT DEPT.

(Title) _____
(seal)

ATTEST:

John A. Leppink
Secretary

MAERSK CONTAINER SERVICE COMPANY, INC.

By C. A. Scroe

(Title) President
(seal)

APPROVED:

| FORM | TERMS |
|---|---|
| | |



08PA00020423

SCHEDULE A

| LEASE YEAR BEGINNING: | TIER 1 RENTAL RATE (280,001 TO 770,000) | TIER 2 RENTAL RATE (770,001 & ABOVE) |
|---|---|---|
| March 1, 2008 | $5.67 | $4.25 |
| March 1, 2009 | $12.67 | $9.50 |
| March 1, 2010 | $19.00 | $14.25 |
| March 1, 2011 | $19.00 | $14.25 |
| March 1, 2012 | $21.00 | $15.75 |
| March 1, 2013 | $21.00 | $15.75 |
| March 1, 2014 | $21.00 | $15.75 |
| March 1, 2015 | $23.00 | $17.25 |
| March 1, 2016 | $23.00 | $17.25 |
| March 1, 2017 | $23.00 | $17.25 |
| March 1, 2018 | $25.00 | $18.75 |
| March 1, 2019 | $25.00 | $18.75 |
| March 1, 2020 | $25.00 | $18.75 |
| March 1, 2021 | $27.00 | $20.25 |
| March 1, 2022 | $27.00 | $20.25 |
| March 1, 2023 | $27.00 | $20.25 |
| March 1, 2024 | $29.00 | $21.75 |
| March 1, 2025 | $29.00 | $21.75 |
| March 1, 2026 | $29.00 | $21.75 |
| March 1, 2027 | $31.00 | $23.25 |
| March 1, 2028 | $31.00 | $23.25 |
| March 1, 2029 | $31.00 | $23.25 |

# SCHEDULE B

| Period | Volume Threshold | | Rental Increase Per acre | | New Rental Per Acre *See Note 1* |
|---|---|---|---|---|---|
| First Port Guarantee Period | 365,000 | 0 | 0 | | $ 19,000 |
| | 355,000 | 10% | $ 1,900 | | $ 20,900 |
| | 345,000 | 20% | $ 3,800 | | $ 22,800 |
| | 335,000 | 30% | $ 5,700 | | $ 24,700 |
| | 325,000 | 40% | $ 7,600 | | $ 26,600 |
| | 315,000 | 50% | $ 9,500 | | $ 28,500 |
| | 305,000 | 60% | $ 11,400 | | $ 30,400 |
| | 295,000 | 70% | $ 13,300 | | $ 32,300 |
| | 285,000 | 80% | $ 15,200 | | $ 34,200 |
| | 275,000 | 90% | $ 17,100 | | $ 36,100 |
| | 265,000 | 100% | $ 19,000 | *See Note 2* | $ 38,000 |
| Second Port Guarantee Period | 440,000 | 0 | 0 | | $ 19,000 |
| | 427,500 | 10% | $ 1,900 | | $ 20,900 |
| | 415,000 | 20% | $ 3,800 | | $ 22,800 |
| | 402,500 | 30% | $ 5,700 | | $ 24,700 |
| | 390,000 | 40% | $ 7,600 | | $ 26,600 |
| | 377,500 | 50% | $ 9,500 | | $ 28,500 |
| | 365,000 | 60% | $ 11,400 | | $ 30,400 |
| | 352,500 | 70% | $ 13,300 | | $ 32,300 |
| | 340,000 | 80% | $ 15,200 | | $ 34,200 |
| | 327,500 | 90% | $ 17,100 | | $ 36,100 |
| | 315,000 | 100% | $ 19,000 | *See Note 3* | $ 38,000 |
| Third Port Guarantee Period | 515,000 | 0 | 0 | | $ 19,000 |
| | 502,500 | 10% | $ 1,900 | | $ 20,900 |
| | 490,000 | 20% | $ 3,800 | | $ 22,800 |
| | 477,500 | 30% | $ 5,700 | | $ 24,700 |
| | 465,000 | 40% | $ 7,600 | | $ 26,600 |
| | 452,500 | 50% | $ 9,500 | | $ 28,500 |
| | 440,000 | 60% | $ 11,400 | | $ 30,400 |
| | 427,500 | 70% | $ 13,300 | | $ 32,300 |
| | 415,000 | 80% | $ 15,200 | | $ 34,200 |
| | 402,500 | 90% | $ 17,100 | | $ 36,100 |
| | 390,000 | 100% | $ 19,000 | *See Note 3* | $ 38,000 |

Note 1: for example (using the First Guarantee Period); if volume decreases to 355,000 then basic rental increases to $20,900 per acre; if volume decreases to 345,000 then basic rental increases to $22,800 per acre, etc.

Note 2: rent per acre will continue to increase by an additional $1,900 per acre for each additional shortfall of 10,000 containers

Note 3: rent per acre will continue to increase by an additional $1,900 per acre for each additional shortfall of 12,500 containers

SCHEDULE E

PART I

Affirmative Action Guidelines - Equal Employment Opportunity

I. The Lessee agrees to comply with and the Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter and in paragraphs (t) and (u) of Section 7 of the Agreement to which this schedule is attached (herein called "the Agreement"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

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

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

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

(1) Minority participation: 32%

(2) Female participation: 6.9%

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

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

(b) The Contractor shall provide written notification to the Lessee and the Lessee agrees to provide written notification to the Manager of the Equal Opportunity Programs Unit of the Port Authority within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(c) As used in these specifications:

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

(2) "Minority" includes:

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

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

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

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

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

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

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

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

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

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

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each phase of the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the premises are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the premises.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

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

(7) Review, at least every six months the Contractor's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-premises supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construciton work at the premises. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing buisness.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the premises and in other areas of a Contractor's workforce.

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

(12) Conduct, at least every six months, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and supplies, including circulation of solicitations to minority and female contractor associations and other business associations.

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

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

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

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

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

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

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

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

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

(q) Without limiting any other obligation, term or provision under the Lease, the Contractor shall cooperate with all federal, state or local agencies established for the purpose of implementing affirmative action compliance programs and shall comply with all procedures and guidelines established or which may be established by the Port Authority.

## PART II

### Minority Business Enterprises/Women-Owned Business Enterprises

The Lessee agrees to and shall require the general contractor or other construction supervisor and each of the Lessee's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the construction work, pursuant to the provisions hereof and in accordance with the Agreement. For purposes hereof, Minority Business Enterprise (MBE) shall mean any business enterprise which is at least fifty-one percentum owned by or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, Women-owned Business Enterprise (WBE) shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by women and such ownership is real, substantial and continuing. A minority shall be as defined in paragraph II(c) of Part I of this Schedule E. "Meaningful participation" shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and Women-owned Business Enterprises, of which at least twelve percent (12%) are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(a) Dividing the Work to be subcontracted into smaller portions where feasible.

(b) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

(c) Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.

(d) Utilizing the list of eligible MBEs and WBEs maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.

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

(f) Insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.

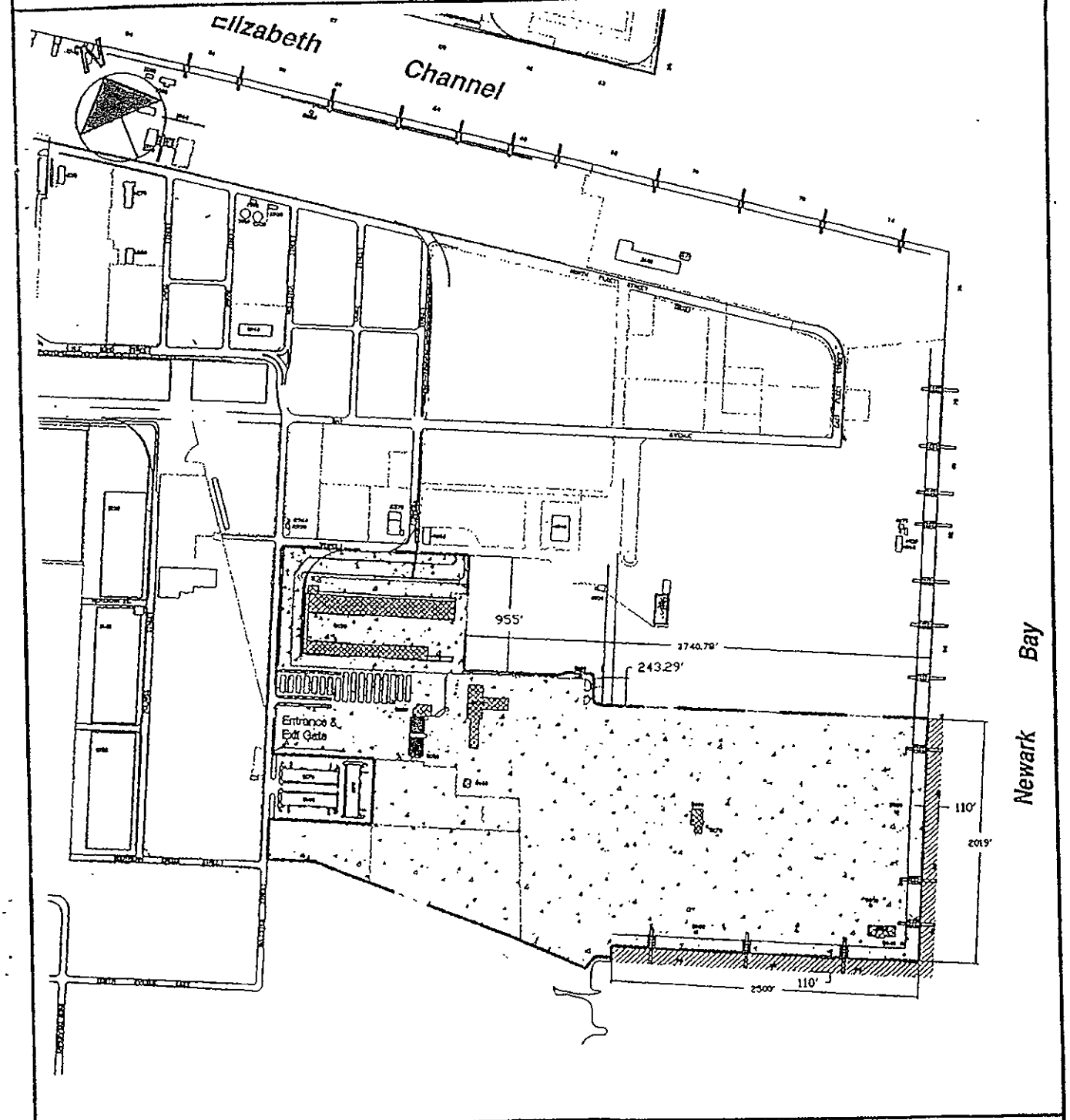
(g) Not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs, where appropriate.

For the Port Authority

Initialled:

For the Lessee

Maersk Container Service Company, Inc. | EP-248




Initialed:

LeB

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

A

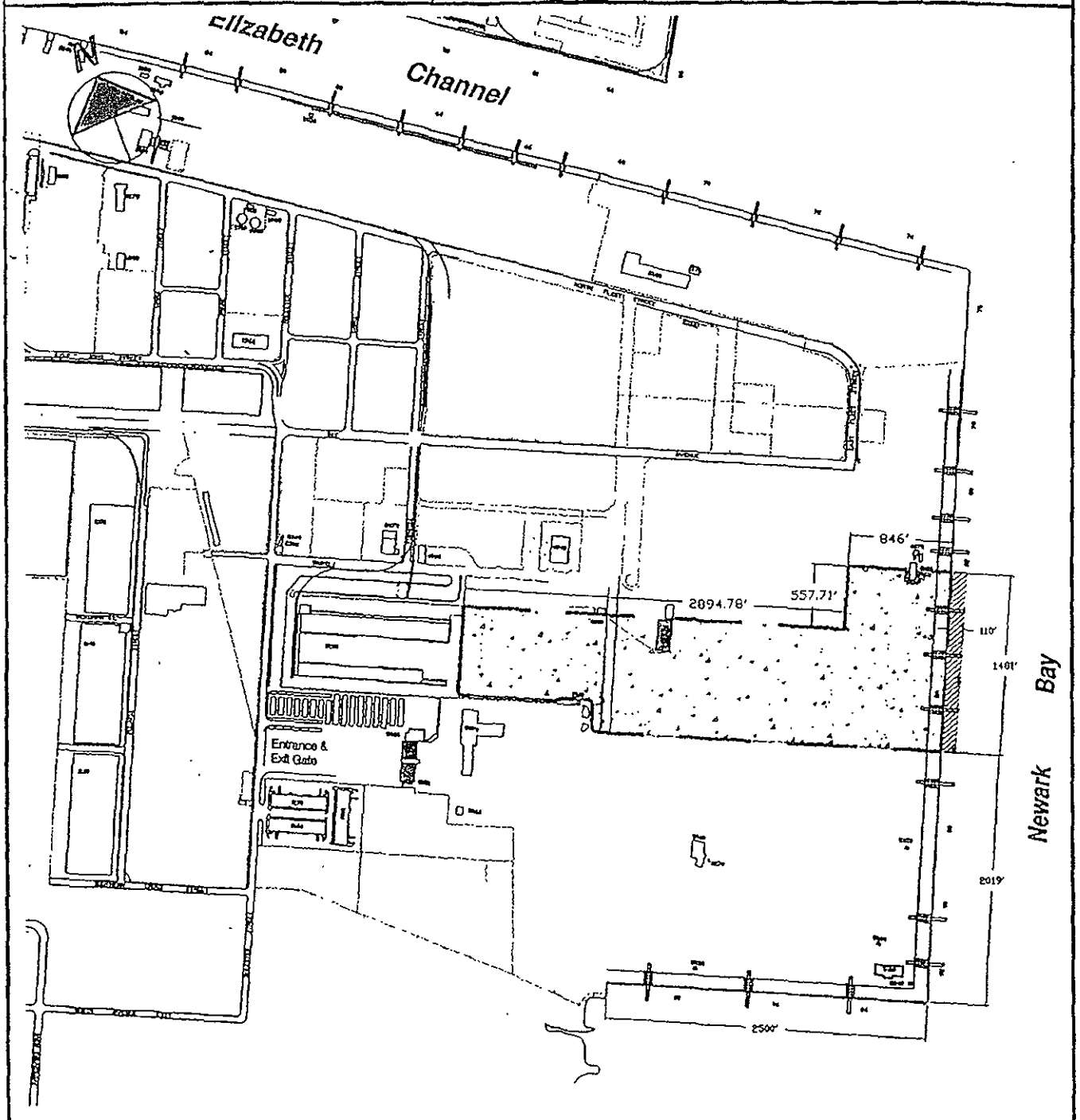
THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Jan. 1, 1999

08PA00020436

Maersk Container Service Company, Inc. | EP-248




Initialed:

LeB

For the PORT AUTHORITY

RCS

For the Lessee

EXHIBIT :

**A-1**

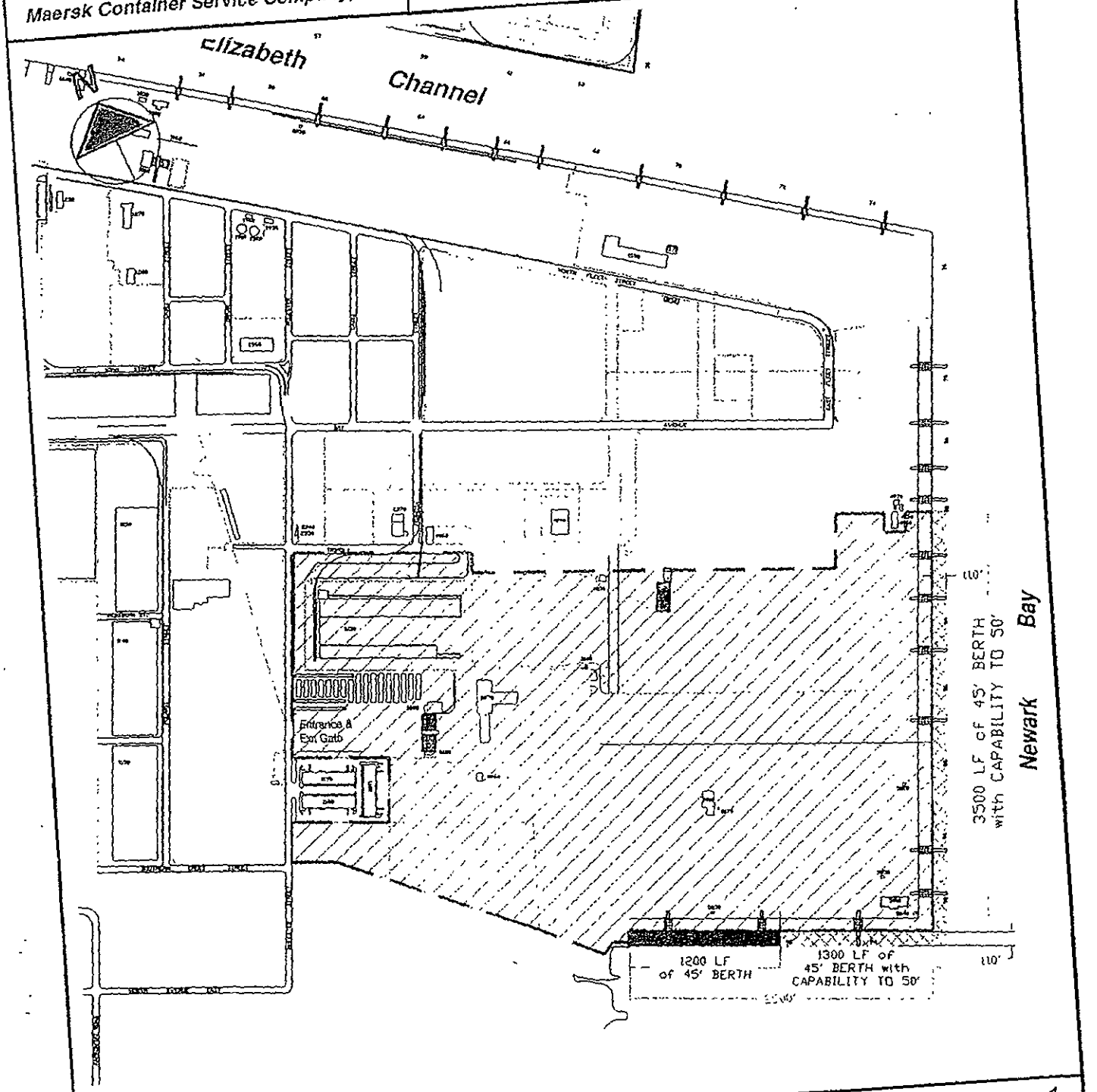
THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Jan. 1, 1999

Maersk Container Service Company, Inc.

EP-248




Initialed:

LWB

For the PORT AUTHORITY

RCS

For the Lessee

EXHIBIT :

**A-2**

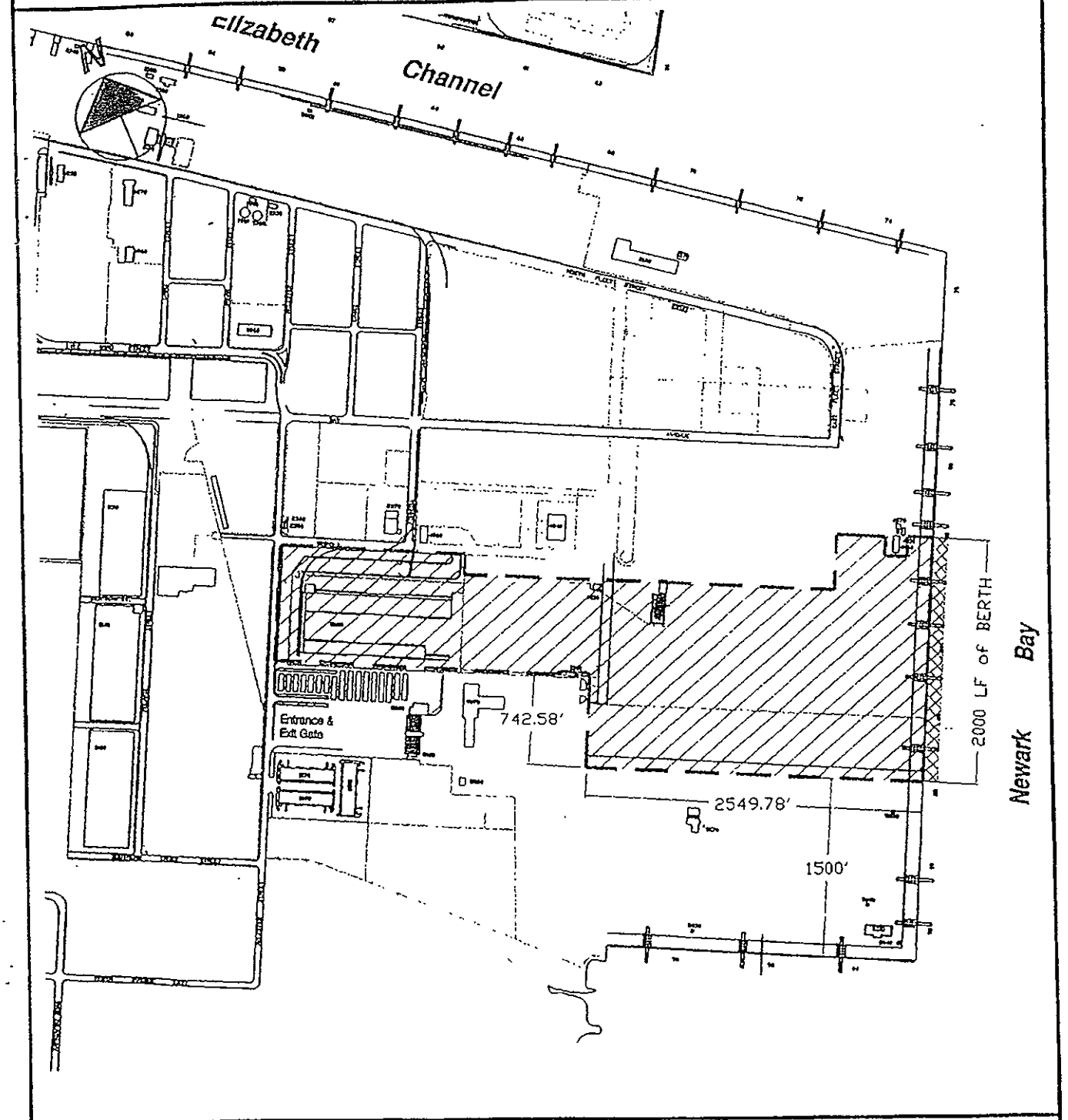
THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Jan 1, 1999

08PA00020438

Maersk Container Service Company, Inc. | EP-248




Initialed:

JCB

For the PORT AUTHORITY

QCS

For the Lessee

EXHIBIT :

**A-3**

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Jan. 1, 1999

08PA00020439

EXHIBIT Y

ELECTION

(PURSUANT TO SECTION 142 (b) OF THE
INTERNAL REVENUE CODE OF 1986)

1. MAERSK CONTAINER SERVICE COMPANY, INC. (hereinafter called "the Lessee") pursuant to an Agreement of Lease bearing Port Authority Lease No. EP-248 (hereinafter called "the Lease") made under date of January 6, 2000, between the Lessee and The Port Authority of New York and New Jersey (hereinafter called "the Port Authority"), has leased a site and the structures, improvements, additions, buildings and facilities located or to be located thereon at the Elizabeth-Port Authority Marine Terminal, all as described in the Lease (hereinafter called "the Leased Premises") to be used basically as marine terminal premises constituting a portion of a public port for a term commencing on January 6, 2000 and expiring December 31, 2029.

2. The principal office of the Port Authority is at One World Trade Center, New York, New York 10048 and its taxpayer identification number is 13-6400654W.

3. The principal office of the Lessee is at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880 and its taxpayer identification number is 22-3471729.

4. Capital expenditures in connection with the Leased Premises have been, or are expected to be made, in whole or in part by the Port Authority from "exempt facility bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986) issued by the Port Authority from time to time (such capital expenditures being hereinafter called "the Property").

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

6. It is understood that the foregoing election shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the

Leased Premises, installed by the Lessee in or on the Leased Premises pursuant to the Lease, and which are deemed to be and remain the property of the Lessee.

ATTEST:

John A. Loeppich

Secretary
(Corporate Seal)

MAERSK CONTAINER SERVICE COMPANY, INC.

By [signature]

(Title) President

Dated: JUNE 1, 2000

CONTRACT OF GUARANTY

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic, created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office at One World Trade Center, in the Borough of Manhattan, in the City, County and State of New York 10048, has under consideration the attached agreement of lease dated as of January 6, 2000 and bearing Port Authority file number EP-248 covering the letting of premises at the Elizabeth-Port Authority Marine Terminal (which agreement of lease is hereinafter called "the Lease") by and between the Port Authority and Maersk Container Service Company, Inc. (hereinafter called "the Lessee"), a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880, which said Lease includes, without limitation thereto, a provision for the guaranty of the obligations of the Lessee under the Lease; and

WHEREAS, Maersk Inc. (hereinafter called "the Guarantor"), a corporation organized and existing under the laws of the State of New York and having an office and place of business at Giralda Farms, Madison Avenue, Madison, N.J. 07940-0880, in order to induce the Port Authority to enter into the Lease, is willing to guarantee the payment by the Lessee of the rentals and other monetary obligations which the Lessee has under the Lease and to guarantee the performance, fulfillment and observance by the Lessee of all the other terms, provisions, covenants and conditions of the Lease on the part of the Lessee to be performed, fulfilled and observed;

NOW, THEREFORE, for and in consideration of the foregoing, the Guarantor hereby covenants and agrees with the Port Authority as follows:

1. The Guarantor hereby absolutely and unconditionally guarantees, promises and agrees that the Lessee will duly and punctually pay all rentals and other monetary obligations which it has or shall have under the Lease, and that the Lessee will faithfully and fully perform, fulfill and observe all the other terms, provisions, covenants and conditions of the Lease on the part of the Lessee to be performed, fulfilled and observed.

2. The Guarantor hereby waives and dispenses with any notice of non-payment, non-performance or non-observance or proof of notice or demand whereby to charge it therefor, and agrees that the validity of this Contract of Guaranty and the obligations of the Guarantor hereunder shall in no wise be terminated, affected or impaired by reason of any failure on the part of the Port Authority to insist upon strict performance under the Lease, or by the assertion by the Port Authority against the Lessee of any of the rights or remedies reserved to the Port Authority under the provisions of the Lease, or by the institution, prosecution, withdrawal, discontinuance or settlement of any judicial or other proceeding by the Port Authority against the Lessee.

3. The obligations of the Guarantor hereunder shall not be released or affected in any way by the Port Authority's receipt, application or release of security given for the performance and observance of the terms, conditions and provisions to be performed, observed or fulfilled under the Lease, and the receipt of such security shall not limit or alter the remedies of the Port Authority under this Contract of Guaranty and the Port Authority may from time to time and at any time elect to pursue (or not to pursue) its rights under this Contract of Guaranty without thereby limiting, voiding or relinquishing any of its rights or remedies under the Lease.

4. The liability of the Guarantor hereunder shall in no way be affected by:

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

(b) The impairment, limitation or modification of the liability of the Lessee or its estate in bankruptcy, or of any remedy for the enforcement of the liability of the Lessee under the Lease, resulting from the operation of any present or future provision of the Bankruptcy

Code or any other statute or from the decision of any court having jurisdiction over the Lessee or its estate; or

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

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

5. This Contract of Guaranty shall remain and continue in full force and effect as to any and every renewal, modification or extension of the Lease, whether in accordance with the terms thereof or by a separate or additional document, and notwithstanding any such renewal, modification or extension, whether or not the Guarantor has specifically consented to such renewal, modification or extension. The liability of the Guarantor hereunder shall in no way be affected by the failure of the Port Authority to obtain the Guarantor's consent to any such renewal, modification or extension, notwithstanding that the Port Authority may have previously obtained such consent with respect to a prior renewal, modification or extension.

6. Acceptance of this Contract of Guaranty and reliance thereon by the Port Authority shall be evidenced by the execution of the Lease by the Port Authority without any further act or notice. If, for any reason, any part of the obligations of the Guarantor hereunder shall be held invalid or unenforceable, the balance of the said obligations shall nevertheless remain in full force and effect. Failure physically to attach a copy of the Lease to this Contract of Guaranty shall not void, alter or affect this Contract of Guaranty, or alter or amend the obligations of the Guarantor hereunder.

IN WITNESS WHEREOF, the Guarantor has caused these presents to be executed as of the 2 day of JUNE, ~~1999~~ 2000.

ATTEST:

Bo V. Lamb
Secretary

MAERSK INC.

By PV Connors

(Title) Exec Vice President
(Corporate Seal)

STATE OF New Jersey )
) ss.
COUNTY OF Morris )

On the 2nd day of June, ~~1999~~ 2000, before me, the subscriber, a notary public of State of New Jersey, personally appeared Mr. Philip Y. Connors, the Executive Vice President President of Maersk Inc., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Carmel M. Siegel
(notarial seal and stamp)

CARMEL M. SIEGEL
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 4/26/2004

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

On this 27th day of June, 1999, before me, the subscriber, a notary public LILIAN C. BORROTO DIRECTOR, PORT DEPT. state of New York, personally appeared , the of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Commissioners.

Nancy S. Gonzalez

(notarial seal and stamp)

NANCY S. GONZÁLEZ
NOTARY PUBLIC, STATE OF NY
QUALIFIED NEW YORK COUNTY
NO. 31-4993233

COMMISSION EXPIRES 3/09/2002

STATE OF North Carolina
COUNTY OF Mecklenburg ss.

On this 18 day of June, ~~1999~~ 2000, before me, the subscriber, a notary public of the state of North Carolina, personally appeared Anthony A. Sciosia, the President of Maersk Container Service Company, Inc., who I am satisfied is the person who has signed the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and that the within instrument is the voluntary act and deed of such corporation, made by virtue of the authority of its Board of Directors.

Monica Allison

(notarial seal and stamp)

MY COMMISSION EXPIRES APRIL 6, 2002

08PA00020446

# Exhibit B

AGREEMENT OF LEASE

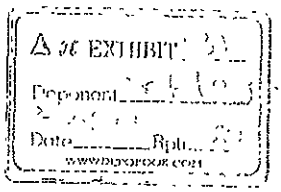
EP-249

between

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

and

MAHER TERMINALS, INC.
(Lessee)



Dated as of October 1, 2000

CONFORMED COPY

RWE File

08PA00001884

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Exhibit I

Lease No. EP-249

THIS AGREEMENT OF LEASE, made as of the First day of October, 2000 (hereinafter called the "Agreement"), by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at One World Trade Center, New York, New York 10048; and MAHER TERMINALS, INC. (hereinafter called the "Lessee"), a corporation organized and existing under the laws of the State of New Jersey and having an office and place of business at One Journal Square Plaza, Jersey City, New Jersey 07306, whose representative is: M. Brian Maher.

WITNESSETH, THAT:

WHEREAS, the Lessee is currently the lessee and permittee of and the Port Authority is currently the lessor and grantor of certain premises at the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union and State of New Jersey, pursuant to that certain Lease dated as of April 8, 1971 bearing Port Authority File Number EP-78, as amended (hereinafter called the "Lease EP-78"); that certain lease dated as of February 15, 1984 bearing Port Authority File Number EP-148, as amended (hereinafter called the "Lease EP-148"); and that certain permit dated as of January 24, 1992 bearing Port Authority File Number PEP-49, as amended (hereinafter called the "Permit PEP-49") (the Lease EP-78, the Lease EP-148 and the Permit PEP-49 are hereinafter collectively called the "Current Leases.") The premises which are the subject of the Current Leases and which are described in detail in the Current Leases, are herein referred to as the "Old Premises."

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

Section 1. Letting

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

(a) the open area and the enclosed spaces shown in stipple and diagonal cross hatching and the water area shown in diagonal hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area, enclosed spaces, and water area, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called the "Initial Premises", and the water area shown in diagonal hatching being hereinafter sometimes called the "Berthing Area".

(b) the open area and the enclosed spaces shown in diagonal hatching and diagonal cross hatching, all as so shown on sketches hereto attached, hereby made a part hereof, and marked "Exhibit A-1", "Exhibit A-2" and "Exhibit A-3", together the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called the "Added Premises". The parties agree that: (i) the Lessee shall not be responsible for the demolition of the warehouses and other structures currently on the Added Premises; and (ii) the Added Premises shall be delivered to the Lessee in a straddle grade paved condition after completion of the Port Authority's construction program (including the removal of the rail tracks at the current ExpressRail) and shall become part of the premises under this Agreement in whole or in contiguous portions thereof effective upon ten (10) days' written notice given by the Port Authority to the Lessee setting forth a description of the location and configuration of the Added Premises or said portion thereof (any such notice being hereinafter called a "Tender Notice", the date any such Tender Notice is given being hereinafter called a "Tender Notice Date" and each date that the Added Premises or any portion thereof shall become a part of the premises under this Agreement being hereinafter called a "Tender Date").

(c) The Initial Premises and the Added Premises, upon its or their respective addition to the leasehold, shall hereinafter in this Agreement be collectively called and shall constitute the "Premises". The parties agree that the Premises constitute non-residential property.

(d) Notwithstanding the foregoing, the parties hereto acknowledge and agree, in order to reconfigure the Premises as shown on Exhibit A, Exhibit A-1, Exhibit A-2 and Exhibit A-3, that it will be necessary for the Lessee to surrender portions of the Old Premises (the "Partial Surrender") and to lease other

terminal space at the Facility. It is understood and agreed that in the event the Lessee fails to deliver the Partial Surrender in a timely manner, the Lessee shall be responsible to the Port Authority, shall hold the Port Authority harmless and shall make such payments as shall be necessary to compensate fully the Port Authority for all additional costs for delay of construction of the ExpressRail Facility (as hereinafter defined) and/or any damages or losses to the Port Authority arising out of that certain lease dated as of January 6, 2000 bearing Port Authority File Number EP-248 between the Port Authority and Maersk Container Service Company, Inc.

For Purposes of this Agreement, it is agreed that the order of Lessee's Partial Surrender shall be as follows:

(i) the first portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes Buildings 4000 and 4040 and a 50 foot working area around each such portion which shall be Partially Surrendered by the date reasonably specified by the Port Authority.

(ii) the second portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes approximately fifty (50) acres to be designated by the Port Authority in the Building 4000 area which shall be Partially Surrendered by the date reasonably specified by the Port Authority which is to be subsequent to the time the Lessee is provided those portions of the Added Premises known as the 1300 series area (which constitutes approximately eighteen (18) acres) and the 2200 series area (which constitutes approximately thirty-two (32) acres) improved in a manner consistent herewith.

(iii) the third portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes approximately eight (8) acres, to be designated by the Port Authority in the Building 4000 area (excepting Building 4010 and permitting Building 4010 to remain active) which shall be Partially Surrendered by the date reasonably specified by the Port Authority, which is to be at the same time or subsequent to the Partial Surrender of the fifty (50) acres referenced in (ii) above.

(iv) the fourth portion of the Old Premises to be Partially Surrendered by the Lessee will be that portion of the Old Premises which constitutes Building 4010 and the remainder of the Old Premises which will not constitute part of the Premises (approximately ninety-six (96) acres) which shall be Partially Surrendered by the date reasonably specified by the Port Authority which is to be subsequent to the time the Lessee is

provided with the remainder of the Added Premises which is not then part of the Premises (principally the "old" Expressrail facility) improved in a manner consistent herewith.

(e) (i) The Lessee recognizes that the Port Authority contemplates development and construction of an intermodal rail facility on land comprised of areas adjacent to the Premises and areas presently comprising part of the Old Premises (hereinafter called the "ExpressRail Facility".) The Lessee hereby grants to the Port Authority, its employees, agents, representatives, contractors, subcontractors and designees the right to enter the Premises twenty-four (24) hours a day, seven (7) days a week for the purpose of performing the work on the ExpressRail Facility. The Lessee agrees that there shall be no reduction or abatement of any of the rentals payable hereunder on account of the work described in this paragraph, and that the performance thereof shall not constitute an eviction, or constructive eviction of the Lessee.

(ii) The Lessee shall have the right to cross the rail track which will service the ExpressRail Facility and adjacent space at such crossings so long as such crossings and the utilization thereof shall not unreasonably interfere with the safe and efficient operation of the ExpressRail Facility.

Section 2. Term

The term of the letting under this Agreement of the Initial Premises shall commence at 12:01 o'clock A.M. on October 1,2000 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on September 30, 2030. The term of the letting under this Agreement of the Added Premises or any portion thereof shall commence at 12:01 o'clock A.M. on the respective date set forth in the notice referred to in Section 1(b) hereof given by the Port Authority with respect to the Added Premises or any such portion thereof and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on September 30, 2030.

Section 3. Rental

A. Basic Rental

(a) The Lessee shall pay a basic rental during the term of the letting for the Initial Premises at the annual rate of Thirteen Million Thirty-eight Thousand Dollars and No Cents ($13,038,000.00) payable in advance in equal monthly installments of One Million Eighty-six Thousand Five Hundred Dollars and No Cents ($1,086,500.00) on October 1, 2000 and on the first day of each calendar month thereafter occurring during the term of the letting. The Lessee shall pay a basic rental for the Added Premises at the annual rate Thirty-nine Thousand Seven Hundred

Fifty Dollars and No Cents ($39,750.00) subject to periodic adjustment as set forth in paragraph (b) of this Section 3 for each acre of the Added Premises, payable in advance in equal monthly installments of Three Thousand Three Hundred Twelve Dollars and Fifty Cents ($3,312.50) for each such acre on the date that such acre becomes part of the Premises and on the first day of each calendar month thereafter occurring through expiration of the term of the letting, except that if any of said Added Premises shall be less or more than one acre or an exact multiple thereof and/or shall be added on a day other than the first day of a calendar month, the aforesaid basic rental for said Added Premises shall be prorated to reflect the actual area of said Added Premises and/or the date of their addition to the leasehold. Effective on the date that all of the Added Premises have become part of the leasehold or, if such date is not the first day of a calendar month, the Lessee shall pay a combined basic rental for the Initial Premises and the Added Premises through the expiration of the term of the letting at the annual rate of Seventeen Million Six Hundred Eighty-eight Thousand Seven Hundred Fifty Dollars and No Cents ($17,688,750.00) subject to periodic adjustment as set forth in paragraph (b) of this Section 3, payable in advance in equal monthly installments of One Million Four Hundred Seventy-four Thousand Sixty-two Dollars and Fifty Cents ($1,474,062.50) on the first day of each calendar month occurring during such period.

(b) The basic rental set forth in paragraph (a) above shall be increased during the term of the letting by two percent (2%) per annum, compounded annually, commencing on the first anniversary of the date of the commencement of the term of the letting hereunder and on each anniversary date thereafter.

(c) The parties hereto acknowledge that as of the commencement of the term hereof and during the reconfiguration period the actual number of acres which constitute the space leased hereunder may not consist of four hundred forty-five (445) acres. Accordingly, in the event that at any time during the term hereof the actual number of acres which shall constitute the space leased hereunder shall be greater than or less than four hundred forty-five (445) acres, then during such time the basic rental set forth in paragraph (a) above, adjusted as provided in paragraph (b) above, (as well as any other item which is to be adjusted pursuant to this paragraph (c)) shall be increased or decreased proportionally based upon the ratio of the actual number of acres which constitute the space leased hereunder at that time to four hundred forty-five (445).

B. <u>Additional Rental</u>

The Lessee acknowledges and agrees that as of the commencement date of this Agreement the balance of the

unamortized capital investment under Lease 148 is Fourteen Million Three Hundred Forty-six Thousand Two Hundred Sixty-seven Dollars and Two Cents ($14,346,267.02) (hereinafter called the "Unamortized Amount"). In consideration of the making of this Agreement, the Lessee hereby agrees to pay to the Port Authority the full amount of the Unamortized Amount and the Port Authority has agreed to permit such payment to be made in one hundred thirty-five (135) consecutive monthly installments each in the amount of One Hundred Seventy-five Thousand Six Hundred Seven Dollars and Sixty-one Cents ($175,607.61) payable in advance on October 1, 2000 and on the first day of each and every calendar month thereafter through and including December 1, 2011. The payments described in this subparagraph shall be paid as additional rental by the Lessee to the Port Authority in the same manner and shall be collectible with like remedies as payment of all other rental under this Agreement, except that such payments shall not be subject to abatement, reduction or suspension for any reason whatsoever and the Lessee's obligations to make the payments described in this subparagraph shall be unaffected by any termination, revocation or expiration of the term of the letting under this Agreement. Upon any such termination, revocation or termination of the term of the letting hereunder, the entire unpaid balance of the Unamortized Amount shall immediately become due and payable by the Lessee to the Port Authority. Upon a default in the payment of any one of the installments described in this subparagraph, then at the election of the Port Authority, by notice to the Lessee, the entire unpaid balance of the Unamortized Amount shall thereupon become due and payable to the Port Authority, without set off, credit for advance payment or other adjustment, said unpaid balance being determined in accordance with the schedule attached hereto, hereby made a part hereof and marked "Schedule I", and further, failure of the Lessee to pay any installment described in this subparagraph, notwithstanding any such election by the Port Authority, shall constitute a default under Section 25(a)(10) of this Agreement. No acceptance by the Port Authority of any payment hereunder after the occurrence of any default in the payment of any installment described in this subparagraph shall be deemed a waiver of any right on the part of the Port Authority to accelerate the remaining unpaid balance of the Unamortized Amount.

Section 4. Container and Cargo Rental

(a) Except as specifically stated otherwise, for purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

(1) "Lease Year" shall mean each twelve-month period commencing on January 1st and ending on December 31st to occur during the term of the letting under this Agreement;

(2) "Throughput Lease Year" shall mean as the context requires the period commencing on October 1, 2008 (which date is hereinafter called the "Throughput Lease Year Commencement Date") and ending on September 30, 2009 and each Lease Year thereafter occurring during the term of the letting under this Agreement;

(3) "Qualified Containers" shall mean cargo containers loaded onto or discharged from vessels berthing at the Premises (whether or not stuffed or stripped at the Premises, whether or not so loaded or discharged by means of container cranes, and whether or not empty or containing cargo), including without limitation any specialized cargo containers such as flat-racks (flat-racks when empty and bundled together as one unit shall be counted as one container), and shall also be deemed to include automobiles loaded or discharged from vessels berthing at the Premises with six (6) automobiles being equal to one (1) cargo container; but shall not mean containers arriving on shipboard and departing on the same ship and the same voyage if such containers are merely unloaded from the ship at the Premises and reloaded in the course of a restowing operation or are merely moved from one location to another location on the same ship in the course of a shifting operation. Containers discharged from vessels berthing at the Premises and loaded onto vessels berthing at the Premises in the course of a transshipment operation shall be deemed to have been both discharged from such vessels and loaded onto such vessels in one discrete operation (i.e., only counted one time) for purposes of the computation of the number of Qualified Containers;

(4) "Non-container Cargo" shall mean bulk cargo not in cargo containers loaded onto or discharged from vessels berthing at the Premises;

(5) "Revenue Ton" shall mean one long ton (a weight of 2,240 pounds) or a measurement ton (40 cubic feet) as determined by the Port Authority acting in its sole discretion;

(6) "Exemption Number" shall mean the sum of three hundred fifty-six thousand (356,000);

Whenever reference is made to the Exemption Number, it shall mean the Exemption Number adjusted by operation of the proration provisions of Section 3(c) hereof.

(7) "Tier 1 Number of Containers" shall mean, for each Throughput Lease Year, the number of Qualified Containers

from three hundred fifty-six thousand and one (356,001) Qualified Containers through nine hundred eighty thousand (980,000) Qualified Containers;

(8) "Tier 2 Number of Containers" shall mean, for each Throughput Lease Year, the number of Qualified Containers above nine hundred eighty thousand (980,000) Qualified Containers;

(b) The Lessee shall pay to the Port Authority a container throughput rental (hereinafter called the "Container Throughput Rental") for each Throughput Lease Year from the Throughput Lease Year Commencement Date through the expiration of the term of the letting under this Agreement equal to the product obtained by multiplying (1) the tier 1 throughput rental rate (hereinafter called the "Tier 1 Rental Rate") applicable for the Throughput Lease Year by the Tier 1 Number of Containers loaded onto or discharged from vessels berthing at the Premises during such Throughput Lease Year; and (2) the tier 2 throughput rental rate (hereinafter called the "Tier 2 Rental Rate") applicable for the Throughput Lease Year by the Tier 2 Number of Containers loaded onto or discharged from vessels berthing at the Premises during such Throughput Lease Year. The Tier 1 Rental Rates and the Tier 2 Rental Rates for each Throughput Lease Year are as set forth in the Schedule attached hereto, hereby made a part hereof and marked "Schedule A".

(c) The computation of the Container Throughput Rental for each Throughput Lease Year, or a portion of a Throughput Lease Year, shall be individual to such Throughput Lease Year, or such portion of a Throughput Lease Year, and without relation to any other Throughput Lease Year, or any other portion of any Throughput Lease Year. The time for making payment of the Container Throughput Rental, and the method of calculation thereof, shall be as set forth in paragraph (d) of this Section. The Container Throughput Rental shall be payable on a monthly basis, as set forth in paragraph (d) of this Section, based on the number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the month.

(d) The Lessee shall pay the Container Throughput Rental as follows:

On the 30th day of the first month following the month in which the Throughput Lease Year Commencement Date shall occur, and on the 30th day of each and every month thereafter occurring during the Throughput Lease Year in which the Throughput Lease Year Commencement Date shall occur and each subsequent Throughput Lease Year occurring during the term of the letting, including the month following the end of each such Throughput Lease Year, the Lessee shall render to the Port

Authority a statement certified by a responsible officer of the Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the preceding month and the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises from the date of the commencement of the Throughput Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the month for which the report is made.

During the period, if any, subsequent to the Throughput Lease Year Commencement Date and prior to the Terminal Lease Year Commencement Date, as defined in Section 42(a)(2) hereof, whenever any monthly statement shall show that the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the Throughput Lease Year for which the report is made is in excess of the Exemption Number, the Lessee shall pay to the Port Authority at the time of rendering such statement and at the time of rendering each subsequent monthly statement for such Throughput Lease Year, and the month following such Throughput Lease Year, an amount equal to the product obtained by multiplying the Tier 1 Rental Rate by the Tier 1 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during the month for which such report is made and the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during the month for which such report is made.

From and after the Terminal Lease Year Commencement Date, whenever any monthly statement shall show that the cumulative number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the Throughput Lease Year for which the report is made is in excess of, respectively, six hundred fifty thousand (650,000) but less than nine hundred eighty thousand (980,000) during the First Terminal Guarantee Period, as defined in Section 42(a)(5) hereof, seven hundred seventy-five thousand (775,000) but less than nine hundred eighty thousand (980,000) during the Second Terminal Guarantee Period, as defined in Section 42(a)(6) hereof, the Lessee shall pay to the Port Authority at the time of rendering such statement and at the time of rendering each subsequent monthly statement for such Throughput Lease Year, and the month following such Throughput Lease Year, an amount equal to the product obtained by multiplying the Tier 1 Rental Rate by the number of Qualified Containers in excess of, respectively, six hundred fifty thousand (650,000) during the First Terminal

Guarantee Period, and seven hundred seventy-five thousand (775,000) during the Second Terminal Guarantee Period, as the case may be, loaded onto or discharged from vessels berthing at the Premises during the month for which such report is made and the product obtained by multiplying the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during the month for which such report is made.

(e) Upon any termination of the letting hereunder (even if stated to have the same effect as expiration), the number of Qualified Containers shall be reported and the Container Throughput Rental shall be paid on the 30th day of the first month following the month in which the effective date of such termination occurs, as follows: the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises during the Throughput Lease Year in which the effective date of termination falls; the payment then due on account of all Container Throughput Rental for the Throughput Lease Year in which the effective date of termination falls shall be the excess of the Container Throughput Rental for such Throughput Lease Year, computed as follows, over the total of all Container Throughput Rental payments previously made by the Lessee for such Throughput Lease Year: an amount equal to the product obtained by multiplying (1) the Tier 1 Rental Rate by the Tier 1 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during such Throughput Lease Year, and (2) the Tier 2 Rental Rate by the Tier 2 Number of Containers, as the case may be, loaded onto or discharged from vessels berthing at the Premises during such Throughput Lease Year, with the Exemption Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers all being multiplied by a fraction, the numerator of which shall be the number of days from the commencement of such Throughput Lease Year to the effective date of termination and the denominator of which shall be 365. Any amount of the Container Throughput Rental determined to be owed to the Port Authority pursuant to such calculation shall be paid by the Lessee at the time of rendering the statement.

(f) In the event that the Lessee shall at any time by the provisions of Section 3.A(c) or any other provision of this Agreement become entitled to an abatement of basic rental, then the Exemption Number, the Tier 1 Number of Containers, and the Tier 2 Number of Containers shall be reduced proportionately to the reduction of the basic rental.

(g) The Lessee shall pay to the Port Authority a non-container cargo throughput rental (hereinafter called the "Non-container Throughput Rental") with respect to Non-container Cargo

for each Lease Year to occur during the term of the letting under this Agreement equal to the product obtained by multiplying the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the Premises during the Lease Year by the respective wharfage charge for such cargo set forth in the Port Authority tariff for Port Authority Marine Terminals published in FMC Schedule PA-10 (or any successor tariff) as such charges may be amended from time to time during the term of the letting. The Non-container Throughput Rental shall be payable on a monthly basis, as set forth in paragraph (h) of this Section, based on the number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the Premises during the month.

(h) The Lessee shall pay the Non-container Throughput Rental as follows: on the 30th day of the month next following the first month of the first Lease Year, and on the 30th day of each (or the 28th day if a February and the 29th day of February if a leap year) and every month thereafter occurring during such first Lease Year and each subsequent Lease Year occurring during the term of the letting, including the month following the end of each such Lease Year, the Lessee shall render to the Port Authority a statement certified by a responsible officer of the Lessee showing the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the Premises during the preceding month and the cumulative number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the Premises from the commencement of the Lease Year for which the report is made through the last day of the preceding month; each monthly statement shall be accompanied by monthly vessel activity reports to substantiate the statement, showing the total number of Revenue Tons of Non-container Cargo loaded onto or discharged from vessels berthing at the Premises during the month for which the report is made. The Lessee shall pay any amount of Non-container Throughput Rental due under this Section at the time of rendering said report.

(i) Except as set forth in paragraph (f) of this Section, the rentals payable under this Section shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 5. Funded Work Rental

(a) For all purposes of this Agreement, the following terms shall have the respective meanings provided below.

(1) "Annual Construction Period" shall mean, as the context requires, the period commencing on October 1, 2000 and ending on December 31, 2000, and each of the twelve-month

periods thereafter occurring during the period from January 1, 2001 through December 31, 2020.

(2) "Facility Rental Payment Period" shall mean for the Annual Facility Rental due on account of the payments made by the Port Authority to the Lessee during each Annual Construction Period on account of the cost of the Funded Work, as defined in Section 7(a)(3) hereof, the period from the day next following the end of that Annual Construction Period through September 30, 2030.

(3) "The Port Authority's Costs of the Funded Work" shall mean for each Annual Construction Period 103.5% of all payments made by the Port Authority to the Lessee during such Annual Construction Period on account of the cost of the Funded Work performed by the Lessee.

(4) "Y" shall mean, as the context requires, the number (with the decimal carried to seven places) obtained by dividing the sum of (i) the average of the weekly Index of 25 Revenue Bonds as reported in the publication "The Bond Buyer" for the one hundred eighty (180) day period immediately preceding the expiration of each Annual Construction Period and (ii) one hundred seventy-five (175) basis points, by the whole number twelve (12). The calculation of Y with respect to Facility Construction Rental and Annual Facility Rental payable on account of the payments made by the Port Authority during any Annual Construction Period on account of the cost of the Funded Work shall be individual to the Facility Construction Rental and Annual Facility Rental payable on account of such payments and without relation to any other rental or any other payments. For purposes of example and illustration only, the Index of 25 Revenue Bonds for the week ending November 22, 1995 was 5.89% as set forth in the table entitled "Bond Buyer Indexes" on page 32 of The Bond Buyer, Vol. 314, No. 29784, New York, N.Y. dated Monday, November 27, 1995. In the event that The Bond Buyer or its weekly Index of 25 Revenue Bonds shall be discontinued at any time during the term of the letting a comparable substitute for such Index shall be mutually agreed upon in writing by the Lessee and the Port Authority within thirty (30) days after discontinuance. In the event that the Port Authority and the Lessee shall fail to agree upon such a substitute within the time hereinabove specified then upon notice of either party such dispute shall be disposed of by arbitration in accordance with the then existing rules of the American Arbitration Association or any successor association. One half of the cost of said arbitration shall be borne by the Port Authority and the other half of said cost shall be borne by the Lessee.

(5) "Monthly Rental Factor" shall mean, as the context requires, the factor or factors derived in accordance

herewith from time to time by the application of the following formula:

$$\frac{1}{\frac{1}{Y} - \frac{1}{Y(1+Y)^{t}}} = \text{Monthly Rental Factor}$$

Where t (a power) equals the number of calendar months (expressed in whole numbers) in any given Facility Rental Payment Period that shall occur during the term of the letting hereunder.

(b) In addition to all other rentals payable by the Lessee under this Agreement, the Lessee shall pay to the Port Authority a rental (hereinafter called "the Facility Construction Rental") equal to the result of (i) multiplying Y for each Annual Construction Period and the product obtained by multiplying the amount of each payment made by the Port Authority to the Lessee during that Annual Construction Period on account of the cost of the Funded Work by the number of days from the date of such payment to the expiration date of that Annual Construction Period and (ii) dividing the result of that calculation by 30. The Facility Construction Rental shall be payable as set forth in paragraph (c) of this Section.

(c) In addition to all other rentals payable by the Lessee under this Agreement, the Lessee shall pay to the Port Authority a rental on account of the payments made by the Port Authority to the Lessee during each Annual Construction Period on account of the cost of the Funded Work (hereinafter called the "Annual Facility Rental") at a monthly rate equal to the product obtained by multiplying the Monthly Rental Factor calculated in connection with the Facility Rental Payment Period for such Annual Facility Rental by the sum of (i) the amount of the Facility Construction Rental payable by the Lessee pursuant to paragraph (b) of this Section for that Annual Construction Period and (ii) the Port Authority's Costs of the Funded Work as hereinbefore defined for that Annual Construction Period, which rental shall be payable during the Facility Rental Payment Period in advance on the first day thereof and on the first day of each calendar month thereafter during such period. The rental payable pursuant to this paragraph (c) shall not be subject to abatement or suspension or reduction for any reason whatsoever.

(d) Notwithstanding the foregoing provisions of this Section, at any time after the one hundred twentieth ($120^{th}$) monthly payment of payments due pursuant to this Section 5 with respect to any specific construction project of the Funded Work,

the Lessee shall have the right to pay, in whole or in part, to the Port Authority on the first day of a calendar month the unamortized portion of the Port Authority's Costs or a portion of the unamortized portion of the Port Authority's Costs with respect to such specific construction project (hereinafter called a "Prepayment Amount") as follows:

(i) The Lessee shall pay to the Port Authority at the time of and together with any Prepayment Amount a prepayment fee of three percent (3%) of the Prepayment Amount being prepaid during the period from the one hundred twenty-first ($121^{st}$) through the one hundred ninety-second ($192^{nd}$) monthly payment of payments due pursuant to this Section 5.

(ii) The Lessee shall pay to the Port Authority at the time of and together with any Prepayment Amount a prepayment fee of two percent (2%) of the Prepayment Amount being prepaid during the period from the one hundred ninety-third ($193^{rd}$) through the two hundred sixty-fourth ($264^{th}$) monthly payment of payments due pursuant to this Section 5.

(iii) The Lessee shall pay to the Port Authority at the time of and together with any Prepayment Amount a prepayment fee of one percent (1%) of the Prepayment Amount being prepaid during the period from the two hundred sixty-fifth ($265^{th}$) through the last monthly payment of payments due during the term pursuant to this Section 5.

In the event of such a prepayment, the payments due to this Section 5 shall, with respect to such specific construction project, cease as of the date of such prepayment if such unamortized costs are paid in full, or if only a portion of such unamortized cost is paid, then such payments shall be recalculated, prospectively, as if only the unpaid portion of such costs constituted the full amount of the Port Authority's costs with respect to such specific construction project. For purposes of this paragraph (d), the unamortized portion of the costs of any specific construction project, shall be the present value (calculated in accordance with the generally recognized principles of financial analysis) of all the remaining monthly payments attributable to such specific construction project determined pursuant to Section 5 discounted, at the same monthly rate as was utilized when such payments were determined (such rate being referred to as "Y" in Section 5).

Section 6. <u>Rights of User</u>

(a) The Lessee shall use the Premises for the following purposes only, and for no other purpose whatsoever: (i) the loading and unloading predominately of cargo housed in containers, and also of non-containerized cargo, such bulk cargo

as shall have the prior and continuing written consent of the Port Authority, and ships' stores, supplies and gear on or from seagoing vessels and other craft permitted to be berthed in the Berthing Area; (ii) the receipt, handling, and storage incidental to the transportation of cargo (whether or not in cargo containers) transported or to be transported by seagoing vessels permitted to be berthed in the Berthing Area, and of ships' stores, supplies and gear for such vessels; (iii) the parking of motor vehicles and of trailers and semi-trailers owned or operated by the Lessee or by the employees of the Lessee or by persons doing business with it at the Facility for the purposes set forth in this Section; (iv) the storage and repair of cargo containers, chassis, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of the Lessee under this Agreement; (v) for the operation of a cafeteria or cafeterias for the over-the-counter sales to officers and employees of the Lessee and their families and to business guests of such officers and employees, of food, beverages and other merchandise normally sold in such an establishment at no profit to the Lessee and either directly by the Lessee or by an independent contractor(s) of the Lessee who has/have received a permit or permits from the Port Authority so to do; provided, however, in the event the operation of such cafeteria(s) violates health regulations and upon notice of termination of such operation from the Port Authority, the Lessee or the independent contractor(s), as the case may be, shall immediately cease such operation as specified in said notice; and (vi) such office space (with related automobile parking) incidental to and necessary for the foregoing operations of the Lessee.

(b) The Lessee shall have the right to berth in the Berthing Area seagoing vessels for which the Lessee acts as stevedore or terminal operator, and operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority, carrying or about to carry general cargo, and tugboats, barges, lighters and other harbor craft serving such seagoing vessels, for loading or discharge of cargo, ships' stores, supplies and gear. Such loading and discharge from seagoing vessels may be accomplished in the Berthing Area through the medium of barges, lighters, and other harbor craft moored inshore or offshore. The Lessee shall have the exclusive right to collect dockage and wharf usage charges from seagoing vessels and all other craft, subject to all the terms and provisions of this Agreement. The Lessee shall not use or permit the use of the Berthing Area except as hereinabove provided.

Section 7. Construction by Lessee

(a)(1) The Lessee understands that construction and installation work is required with respect to its occupancy of and operations on the Premises, and the Lessee agrees to and shall perform the following items of work with respect to the Premises: (i) the structural strengthening of the foundation of four thousand five hundred (4,500) linear feet of crane rail (which needs not be contiguous) and construction of new 100 foot gauge crane rail, (ii) reinforcement of the berth to allow for dredging of three thousand three hundred (3,300) linear feet (which needs not be contiguous) of the Berthing Area to fifty (50) feet below mean low water, (iii) dredging of three thousand three hundred (3,300) linear feet (which needs not be contiguous) of the Berthing Area to forty-five (45) feet below mean low water (hereinafter in this Agreement called the "Forty-five Foot Dredging"), (iv) the upgrade of the container yard, including the resurfacing of approximately one hundred forty-five (145) acres of the Premises, transtainer runs, ancillary yard support, and reefer outlets, (v) dredging of three thousand three hundred (3,300) linear feet (which needs not be contiguous) of the Berthing Area to fifty (50) feet below mean low water (hereinafter in this Agreement called the "Fifty Foot Dredging"), (vi) the upgrade of the container yard, including the resurfacing of approximately one hundred ninety (190) acres of the Premises that were not included in item (iv).

Items (i) through (iv) shall hereinafter be collectively called the "Class A Work", and items (v) and (vi) shall hereinafter be collectively called the "Class B Work".

Subject to the Lessee's obtaining the Port Authority's approval thereof as provided in paragraph (c) of this Section, in addition to the Class A Work and the Class B Work the Lessee may perform the following items of work on the Premises: (i) the structural strengthening of the foundation of three thousand five hundred ten (3,510) linear feet of crane rail (which needs not be contiguous) and construction of new 100-foot gauge crane rail, (ii) installation of seven hundred fifty (750) linear feet of new crane rail foundation and crane rail (which needs not be contiguous), (iii) relocation of the gate complex system and the upgrade of the electric services, (iv) the upgrade of the electrical infrastructure and power distribution system, (v) the construction of a maintenance and repair building, an administration building, (vi) the upgrade of the gate complex, (vii) the demolition of buildings, (viii) the purchase and installation of container cranes for use at the Premises to be owned by the Port Authority, and (ix) any other construction projects to be approved in advance by the Port Authority at its sole discretion and done at the marine terminal. Items (i) through (ix) shall hereinafter be collectively called the "Class

C Work." The Class A Work, the Class B Work and the Class C Work shall hereinafter be collectively called the "Lessee's Construction Work".

(2) The Port Authority shall reimburse the Lessee the amount of up to the first Forty-six Million Dollars and No Cents ($46,000,000.00) (hereinafter called the "Construction Work Reimbursement Amount") on account of the performance by the Lessee of the Lessee's Construction Work (the "Reimbursed Work") prior to the expiration of the a five-year period commencing on October 1, 2000. However, the Construction Work Reimbursement Amount shall not be used for the purchase and installation of container cranes. The Lessee shall provide the Port Authority with written notice describing the work to be subject to said reimbursement prior to the performance thereof. The Construction Work Reimbursement Amount shall be applied solely to work performed in accordance with the provisions of this Section. The Port Authority shall provide the Lessee with the Construction Work Reimbursement Amount subject to and in accordance with the provisions of paragraph (q) of this Section; provided, however, that the Construction Work Reimbursement Amount shall be applied solely to the reimbursement of costs incurred as determined by the provisions of paragraph (p) of this Section.

(3) The Port Authority shall also reimburse the Lessee on account of the performance by the Lessee of the balance of the Lessee's Construction Work (the "Funded Work"). The Lessee shall provide the Port Authority with written notice describing the work to be subject to such funding prior to the performance thereof. Funding under this subparagraph shall be in the form of the reimbursement solely of the cost of work performed in accordance with the provisions of this Section (which amount of reimbursement is hereinafter called the "Funded Work Reimbursement Amount"). The Port Authority shall provide the Lessee with the Funded Work Reimbursement Amount subject to and in accordance with the provisions of paragraph (p) of this Section; provided, however, that the Funded Work Reimbursement Amount shall be applied solely to the reimbursement of costs incurred as determined by the provisions of paragraph (o) of this Section. The Lessee shall pay the Facility Construction Rental and Facility Rental set forth in Section 5 of this Agreement with respect to the Funded Work Reimbursement Amount. Notwithstanding any other provision of this Agreement, the Funded Work Reimbursement Amount shall in no event exceed Two Hundred Four Million Dollars and No Cents ($204,000,000.00).

(4) The Lessee agrees that it will complete the construction projects of the Class A Work within one year of the date of the completion of the Forty-five Foot Deepening (as defined in Section 41(a) hereof), and that it will complete the construction projects of the Class B Work within one year of the

date of the completion of the Fifty Foot Deepening (as defined in Section 41(b) hereof). The Port Authority shall not be obligated to provide any portion of the Construction Work Reimbursement Amount or the Funded Work Reimbursement Amount for any portion of the Class A Work which has been constructed or installed subsequent to one year of the date of the completion of the Forty-five Foot Deepening. The Port Authority shall not be obligated to provide any portion of the Construction Work Reimbursement Amount or the Funded Work Reimbursement Amount for any portion of the Class B Work which has been constructed or installed subsequent to one year of the date of the completion of the Fifty Foot Deepening. In addition, the Port Authority shall not be obligated to provide any portion of the Construction Work Reimbursement Amount or the Funded Work Reimbursement Amount for any infrastructure construction projects of the Class A Work, the Class B Work or the Class C Work after December 31, 2020.

(5) Notwithstanding any other provision of this Agreement, if work on the Fifty Foot Deepening has not commenced by December 31, 2009, the Lessee shall not be required to perform the Class B Work (whether or not the Lessee has then commenced any part of the Class B Work) unless and until work has commenced on the Fifty Foot Deepening, in which case the Class B Work shall be performed by the Lessee and completed within one year of the date of completion of the Fifty Foot Deepening.

(6) The Port Authority has entered into a Project Cooperation Agreement with the United States Department of Army for the construction of the Kill Van Kull and Newark Bay Channels, New York and New Jersey, dated as of January 13, 1999 (hereinafter, as the same has been or may hereinafter be amended or supplemented, called the "Cooperation Agreement"). In the event that the Port Authority shall enter into a subsequent agreement regarding any additional construction of the Kill Van Kull and Newark Bay Channels of a similar nature to the Cooperation Agreement, the provisions of this paragraph shall apply with respect to said subsequent agreement and the Lessee's obligations hereunder as if it were the Cooperation Agreement. In connection with the Cooperation Agreement, the Port Authority (i) has undertaken or may in the future undertake certain obligations respecting the operation and maintenance of the "local service facilities" in a manner compatible with the authorized purposes of the "Project" (as such quoted terms are defined in the Cooperation Agreement); and (ii) has authorized the "Government" to enter upon property that the Port Authority now or hereafter owns or controls for access to the "general navigation features" (as such quoted terms are defined in the Cooperation Agreement) for the purpose of inspection and, if necessary, for the purpose of operating and maintaining the general navigation features. The performance by the Lessee of the Forty-five Foot Dredging and Fifty Foot Dredging as required

in this paragraph is therefore a special consideration and inducement to the making of this Agreement by the Port Authority, and the Lessee further covenants and agrees that if the United States Corps of Engineers or any other governmental office or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with the Cooperation Agreement shall make orders, recommendations or suggestions respecting the performance of dredging of any portion or portions of the berthing area in addition to the Forty-five Foot Dredging and the Fifty Foot Dredging, the Lessee will promptly comply therewith at its sole cost and expense, at the time or times, when and to the extent that the Port Authority may direct.

(b) With respect to the Lessee's Construction Work while the Port Authority recognizes that the Lessee is neither an insurance company nor authorized to actually insure the risk of the Port Authority, the Lessee agrees that it shall, in effect, act as the insurer of the Port Authority, and its Commissioners, officers, agents and employees against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, any contractors of the Lessee, the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, excepting only risks which result solely from affirmative willful acts done by the Port Authority subsequent to commencement of the work:

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

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

(iii) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of the Lessee's Construction Work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, against and from all such claims and demands, and for all loss and expense incurred by it and by them in the defense, settlement

or satisfaction thereof including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential.

(c) Each discreet portion of the Lessee's Construction Work proposed by the Lessee and approved by the Port Authority shall be herein called a "specific construction project". Prior to the commencement of any specific construction project of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval a Construction Application or Construction Applications in the form supplied by the Port Authority, and containing such terms and conditions as the Port Authority may include, setting forth in detail by appropriate plans and specifications the work the Lessee proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into for the performance of such work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Lessee shall identify separately each of the specific construction projects constituting the Class A Work, Class B Work and Class C Work and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and specifications for such work. The plans and specifications to be submitted by the Lessee shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer of the State of New Jersey who shall be responsible for the administration of the work in accordance with the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this Section, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary. Following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor and the contract such contractor is operating under have been approved by the Port Authority. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Construction Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (j) and (k) of this

Section and such performance bonds as the Port Authority may specify. All specific construction projects of the Lessee's Construction Work shall be performed by the Lessee in accordance with the Construction Applications and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon final completion of all of the Lessee's Construction Work pertaining to each specific construction project the Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph certifying that all of such work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, and upon completion thereof the Lessee shall supply the Port Authority with two (2) sets of as-built drawings of each specific construction project of the Lessee's Construction Work in such form as the Port Authority shall determine. The Lessee shall keep said drawings current during the term of the letting under this Agreement. No changes or modifications to any specific construction project shall be made without prior Port Authority consent. Following its receipt of the Lessee's certificate, the Port Authority shall inspect the Lessee's Construction Work pertaining to the specific construction project and, unless such certification is not correct, or the Port Authority determines that the Premises is unsuitable for occupancy and use by the Lessee, a certificate of final completion with respect to the specific construction project (hereinafter called the "Certificate of Completion") shall be delivered to the Lessee by the Port Authority, subject to the condition that all risks thereafter with respect to the construction and installation of the same and any liability therefor for negligence or other reason shall be borne by the Lessee. The Lessee shall not use or permit the use of the specific construction project or any portion thereof for the purposes set forth in this Agreement until such certificate is received from the Port Authority and the Lessee shall not use or permit the use of the specific construction project or any portion thereof even if such certificate is received if the Port Authority states in any such certificate that the same cannot be used until certain other specified portions of the Lessee's Construction Work are completed.

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

(e) If the Lessee desires to commence construction of a portion or portions of a specific construction project prior to the approval by the Port Authority of the complete Construction Application and plans and specifications for such specific construction project pursuant to paragraph (c) of this Section, the Lessee shall submit to the Port Authority a separate Construction Application for each portion of such specific construction project the Lessee so desires to commence (each such portion of such specific construction project being hereinafter designated as "Partial Approval Work") which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to such portion of the specific construction project (the final and complete plans, specifications, drawings, and data covering each such portion of each specific construction project are hereinafter referred to as "the Partial Approval Work Plans" with respect to such portion of such specific construction project) setting forth in detail the work to be performed in connection with each such portion of the specific construction project. The Port Authority shall have full and complete discretion as to whether to permit the Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review the Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of the Construction Application with respect to a Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such Partial Approval Work subject to and in accordance with the following terms and conditions:

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

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication

by the Port Authority that the Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the City of Elizabeth, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

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

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

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

(6) In the event that in the opinion of the Port Authority the Lessee at any time during the performance of a Partial Approval Work under the approval granted by the Port Authority pursuant to this paragraph shall fail to comply with all of the provisions of this Agreement with respect to such work

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

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

(f) Without limiting the generality of any of the provisions of this Agreement, any specific construction project

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

(g) Without limiting the generality of paragraph (c) of this Section the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any specific construction project of the Lessee's Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with any specific construction project of the Lessee's Construction Work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall conduct no public operations in the Premises with respect to any improvements, fixtures or equipment constituting a specific construction project of the Lessee's Construction Work or a portion thereof until the Port Authority shall have notified the Lessee in writing that the specific construction project of Lessee's Construction Work or such portion thereof has been completed or substantially completed to its satisfaction. In the event of any inconsistency between the provisions of this Agreement and those of the Construction Application(s) referred to in paragraph (c) of this Section the provisions of this Agreement shall control.

(h) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of any specific construction project of the Lessee's Construction Work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Premises or any part thereof, nor to prevent the Lessee from contesting claims in

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

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

(i) Commercial General Liability Insurance including but not limited to coverage for Products Liability-Completed Operations and for Broad Form Property Damage and Independent Contractor coverage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section, which coverage shall not exclude claims arising out of or in connection with work performed within fifty feet of railroad property, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of $25 million. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards.

(ii) Protection and Indemnity Insurance, if the Lessee's work involves the ownership, maintenance, operation, use, loading or unloading of watercraft, with a minimum combined single limit coverage for bodily injury and property damage of $25 million.

(iii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for bodily injury and property damage of $2 million.

(iv) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5 million.

(v) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act, maritime (including coverage for

Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

(j) In addition to the insurance required pursuant to the provisions of paragraph (i) of this Section, the Lessee shall procure or cause to be procured prior to the commencement of each specific construction project of the Lessee's Construction Work Builder's Risk Insurance (All Risk) covering loss or damage (including any loss or damage resulting from flood or earthquake) to any structures, improvements, fixtures and equipment and furnishing and materials on the Premises during said construction, whether or not attached to the land, in an amount equal to the full replacement cost. Such insurance shall name the Port Authority as an insured and such policy shall provide that the loss shall be adjusted with the Port Authority, and that the proceeds thereof shall be paid to the Port Authority and shall be made available to the Lessee for and applied strictly and solely to the payment of the cost of the repair, replacement, rebuilding or other performance of such specific construction project of the Lessee's Construction Work.

(k) With the exception of the Workers' Compensation and Employers' Liability Insurance policy each policy of insurance described in paragraph (i) of this Section shall include the Port Authority as an additional insured (including, without limitation, for purposes of Premises operations and completed-operation), and no such policy shall contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair the coverages resulting from the Port Authority's status as an additional insured or the coverage under the contractual liability endorsement described in subdivision (i) of paragraph (i) of this Section. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured. Such insurance shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(l) Unless otherwise set forth herein, each policy of insurance described in paragraphs (i) and (j) of this Section shall be subject to the applicable provisions of Section 15(e) of this Agreement.

(m) Title to and property in all improvements and fixtures placed, constructed or installed in or on the Premises, including all such improvements and fixtures as shall constitute the Lessee's Construction Work, shall vest in the Port Authority upon placement, construction or installation thereof provided, however, that title to and property in any and all equipment and trade fixtures removable without substantial injury to the Premises placed in or installed upon the Premises, the cost of which has not been reimbursed by the Port Authority to the Lessee as part of the Construction Work Reimbursement Amount or the Funded Work Reimbursement Amount, shall vest in the Lessee upon the installation thereof. No equipment or trade fixtures title to which is vested in the Port Authority shall be removed from the Premises by the Lessee. Without limiting any other term of this Agreement, and notwithstanding the foregoing provisions, upon notice given by the Port Authority either prior to or within sixty (60) days after expiration or earlier termination of the letting of the Premises under this Agreement the Lessee shall remove from the Premises any improvements, fixtures, trade fixtures, or equipment as the Port Authority may specify in its notice, and shall repair any damage to the Premises caused by such removal.

(n) In the performance of each specific construction project of the Lessee's Construction Work the Lessee shall not permit any situation or condition to continue that may cause or be conducive to any labor troubles at the Facility which interferes with the progress of other operations or construction work at the Facility. The determinations of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority, the Lessee shall or shall cause its contractor to immediately rectify any condition specified in the notice. In the event of failure by the Lessee or any of its contractors to immediately comply with the requirements of this paragraph (whether or not such failure is due to the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with each portion of each specific construction project of the Lessee's Construction Work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee shall reinstate the permission to the Lessee to perform the subject specific construction project of the Lessee's Construction Work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes,

boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(o) To the extent permitted by sound accounting practice, the sum of the following items of cost incurred by the Lessee in performing the Reimbursed Work and/or the Funded Work shall constitute the reasonable cost thereof for the purposes of this Agreement:

(1) The Lessee's payments to contractors;

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

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

(4) The Lessee's payments of premiums for performance bonds and for the insurance the Lessee and its subcontractors is required to maintain in effect in accordance with the provisions of paragraphs (i) and (j) of this Section or which is commercially reasonable to maintain during the period of construction only;

(5) The Lessee's payments for engineering services in connection with the Reimbursed Work and/or the Funded Work, and during the period of the construction only;

(6) The Lessee's payments for architectural, planning and design services in connection with the Reimbursed Work and/or the Funded Work;

(7) The sum of the costs approved under items (4), (5) and (6) of this paragraph shall not exceed 20% of the sum of the combined costs approved under items (1), (2) and (3) of this paragraph; if in fact there is any such excess, such excess shall not be a part of the cost incurred by the Lessee in the performance of the Reimbursed Work and/or the Funded Work for the purposes of this Section.

No payment or payments on account of administrative or other overhead costs and no payment to employees of the Lessee shall be included in the cost of the Reimbursed Work and/or the Funded Work whether or not allocated to the cost of the work by the Lessee's own accounting practices. No payment to a firm or

corporation wholly or partially owned by or in common ownership with the Lessee shall be included in the cost of the Reimbursed Work and/or the Funded Work.

(p) On or about the tenth day of the first calendar month following the commencement of each specific construction project of the Lessee's Construction Work and on the tenth day of each calendar month thereafter, the Lessee shall certify to the Port Authority by written certification subscribed by a responsible officer of the Lessee as follows:

(i) the amount of the Lessee's Construction Work performed by the Lessee in the preceding month showing separately the amount of work performed under each specific construction project for Class A Work, Class B Work, Class C Work, Reimbursed Work, and Funded Work respectively during such month; the cost of the work under each specific construction project described in the certificate; the amount paid by the Lessee on account of such cost during such month, if any; and the cumulative amount of the cost of each such project incurred by the Lessee on account of such work described in the certificate from the commencement of such work;

(ii) that except for the amount, if any, stated in such certificate to be due for services and materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due on account of the purchase of any equipment or fixtures described in the certificate or for labor, wages, materials, supplies or services in connection with any work described therein which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen statutory or similar lien or alleged lien upon any such work or upon the Premises or any part thereof, or upon the Lessee's leasehold interest therein, nor are any of the equipment, or fixtures described in such certificate secured by any liens, mortgages, security interests or other encumbrances. Nothing contained herein shall be deemed or construed as a submission by the Port Authority to the application to itself of any such lien; and

(iii) that all of the work for which the amount set forth in the certificate is due has been performed in accordance with the Lessee's approved plans and specifications and the provisions of this Agreement.

Such certificate shall also contain a certification by the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of paragraph (c) of this Section certifying that all of the work described in the certificate has been performed in accordance with the final plans

and specifications approved by the Port Authority covering such specific construction project.

Following its receipt of the Lessee's certificate, the Port Authority shall remit to the Lessee an amount equal to the cost paid by the Lessee for the portion of the specific construction project constituting Reimbursed Work and/or Funded Work performed by the Lessee in the preceding month described in the certificate less ten percent (10%) thereof and also less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the work described in the certificate.

Upon final completion of each specific construction project of the Lessee's Construction Work to be performed by the Lessee as set forth in the Lessee's approved plans and specifications with respect to such specific construction project and the issuance by the Port Authority of a Certificate of Completion with respect to such specific construction project as prescribed in paragraph (c) of Section 7 hereof, the Lessee shall certify to the Port Authority with respect to such specific construction project the final cost of such work for such specific construction project, the respective cumulative payments made by the Lessee on account of such respective costs stating separately the payments on account of Reimbursed Work and/or Funded Work and shall also certify the items set forth above in subdivisions (ii) and (iii) of this paragraph with respect to all of the work pertaining to such specific construction project. In addition, the architect or engineer who sealed the Lessee's plans and specifications with respect to such specific construction project pursuant to the provisions of paragraph (c) of this Section shall certify that all of the work has been performed in accordance with the final plans and specifications approved by the Port Authority covering such work.

After examination and approval of such certificates, and such supporting documents and records as the Port Authority shall deem necessary to substantiate the certificates, the Port Authority will pay to the Lessee an amount equivalent to the difference between the sum obtained by adding together all prior payments made to the Lessee under the provisions of this paragraph by the Port Authority on account of the cost of the specific construction project constituting Reimbursed Work and/or Funded Work and the lesser of (i) the reasonable cost, as defined in paragraph (o) of this Section, of the specific construction project constituting Reimbursed Work and/or Funded Work, or (ii) the Construction Work Reimbursement Amount (as to the Reimbursed Work) and/or the Funded Work Reimbursement Amount (as to the Funded Work).

If the sum of all of the previous payments made by the Port Authority to the Lessee on account of the cost of the Lessee's Construction Work with respect to a specific construction project constituting Reimbursed Work and/or Funded Work exceeds the lesser of (i) the reasonable cost, as defined in paragraph (o) of this Section, of the Lessee's Construction Work constituting Reimbursed Work and/or Funded Work or (ii) the Construction Work Reimbursement Amount (as to the Reimbursed Work) and/or the Funded Work Reimbursement Amount (as to the Funded Work), the Lessee shall pay to the Port Authority the amount of such excess on demand. No payment made by the Port Authority to the Lessee pursuant to the provisions of this paragraph, including, without limitation, any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be deemed final until the cost of the specific construction project has been finally determined by the Port Authority. Any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost shall not be deemed a final determination of the cost of the specific construction project. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost.

The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of each specific construction project to examine and audit the records and other documentation of the Lessee which pertain to and will substantiate such cost.

In no event whatsoever shall the cost of a specific construction project as finally determined and computed in accordance with the provisions of paragraph (o) of this Section and in accordance with the provisions of this paragraph include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any improvements, equipment or fixtures or the performance of any work unless such are actually and completely installed in and or made to the Premises nor shall cost include the costs of any equipment, fixture or improvements which are secured by liens, mortgages, other encumbrances or conditional bills of sale.

(q) The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Reimbursed Work shall be limited in amount to the Construction Work Reimbursement Amount. The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Funded Work shall be limited in amount to the Funded Work Reimbursement Amount. No contractor

or third party shall or shall be deemed to have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

(r) Without limiting any of the terms and conditions hereof, the Lessee understands and agrees that it shall put into effect prior to the commencement of any specific construction project of the Lessee's Construction Work an affirmative action program and Minority Business Enterprise (MBE) program and Women-owned Business Enterprise (WBE) program in accordance with the provisions of Schedule E, attached hereto and hereby made a part hereof. The provisions of Schedule E shall be applicable to the Lessee's contractor or contractors and subcontractors at any tier of construction as well as to the Lessee, and the Lessee agrees to include the provisions of Schedule E in all of its construction contracts so as to make the provisions and undertakings set forth in Schedule E the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. The Lessee agrees to and shall require its contractors and subcontractors to furnish to the Port Authority such data, including but not limited to compliance reports, relating to the operation and implementation of the affirmative action, MBE, and WBE programs of the Lessee and its contractor, contractors, and subcontractors at any tier of construction called for under the provisions of this paragraph and Schedule E annexed hereto as the Port Authority may request at any time and from time to time and the Lessee agrees to and shall also require that its contractors and subcontractors at any tier of construction make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions of this paragraph and Schedule E annexed hereto to effectuate the goals of affirmative action, MBE, and WBE programs. The obligations imposed on the Lessee under this paragraph and Schedule E annexed hereto shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(s) In addition to and without limiting any terms and provisions hereof, the Lessee shall provide in all of its contracts and subcontracts covering the Lessee's Construction Work, or any portion thereof, that:

(1) The contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons are afforded equal employment opportunity without discrimination. Such programs

shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships and on-the-job training;

(2) At the request of either the Port Authority or the Lessee, the contractor shall request such employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the Lessee to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder;

(3) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

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

(5) "Contractor" as used in paragraph (t) and in this paragraph shall include each contractor and subcontractor at any tier of construction.

Section 8. Environmental Responsibilities

(a) For purposes of this Agreement, the following terms shall have the respective meanings provided below:

(1) "Analyzed Item" shall mean in the singular and "Analyzed Items" shall mean in the plural all of the pollutants for which the samples set forth in Exhibit I were tested.

(2) "Bay Avenue Premises" shall mean that portion of the Premises shown in crosshatching on Exhibit A.

(3) "Environmental Damages" shall mean any one or more of the following: (i) the presence in, on, or under the Premises of any Hazardous Substance whether

such presence occurred prior to or during the term of the letting under this Agreement or resulted from any act or omission of the Lessee or others, and/or (ii) the disposal, discharge, release or threatened release of any Hazardous Substance from the Premises or of any Hazardous Substance from under the Premises and/or (iii) the presence of any Hazardous Substance in, on or under other property at the Facility as a result of (a) the Lessee's use and occupancy of the Premises or the performance of the Lessee's Construction Work or (b) a migration of a Hazardous Substance from the Premises or from under the Premises or (c) the Lessee's operations at the Facility, and/or (iv) any personal injury, including wrongful death, or property damage, arising out of or related to any Hazardous Substance described in (i), (ii) or (iii) above, and/or (v) the violation of any Environmental Requirement pertaining to any Hazardous Substance described in (i), (ii) or (iii) above, the Premises and/or the activities thereon.

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

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

the transfer of property on which Hazardous Substances exist; and

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

(5) "Exhibit I" shall mean the exhibit attached hereto, hereby made a part hereof and marked "Exhibit I" entitled "Environmental Baseline Field Program Bay Avenue Terminal Elizabeth Port Authority Marine Terminal" dated January 2000 and containing four volumes.

(6) "Existing Condition" shall mean the Initial Existing Condition as superseded and supplemented in accordance with this Section by each Succeeding Existing Condition.

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

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

(9) "Initial Existing Condition" shall mean the report and test results in Exhibit I setting forth the levels of the Analyzed Items in the soil and upper aquifer of the Bay Avenue Premises as applied by the methodology set forth in paragraph (j) below for the establishment of the level of the Analyzed Items for all portions of the Bay Avenue Premises.

(10) "Migrated Hazardous Substances" shall mean Hazardous Substances in, on or under the Premises which have migrated from outside the Premises, or from outside the groundwater under the Premises and which Hazardous Substances where not disposed of, discharged or released by or as a result of the acts or omissions of the Lessee.

(11) "Succeeding Existing Condition" shall mean upon the delivery of a report and test results described in paragraph (m) hereof, if any, the results of such report and test results setting forth the levels of the Analyzed Items in the soil and upper aquifer of the Bay Avenue Premises together with those portions of Exhibit I which have not been superseded, as applied by the methodology set forth in paragraph (j) below for the establishment of the level of the Analyzed Items for all portions of the Bay Avenue Premises, provided, however, and notwithstanding the foregoing, in no event shall the level of any Analyzed Item in any Succeeding Existing Condition be above the lower of (i) the level for such Analyzed Item as set forth in the Initial Existing Condition, or (ii) the lowest level of such Analyzed Item as shown in any test report or test result delivered to the Lessee pursuant to paragraph (m) hereof.

(b) (1) Without limiting the generality of any of the other terms and provisions of this Agreement and subject to the terms and provisions of paragraph (b)(2) below, the Lessee hereby expressly agrees to assume all responsibility for and relieve the Port Authority from and reimburse the Port Authority for any and all risks, claims, penalties, costs and expenses of any kind whatsoever relating to, caused by, arising out of or in connection with the conditions of the Premises whether any such conditions existed prior to, on or after the effective date of the letting of the Premises to the Lessee hereunder, including without limitation, all Environmental Damages and all Environmental Requirements which the Lessee is obligated to comply with pursuant to this Agreement.

(2) It is hereby agreed and understood that except as set forth in paragraphs (k), (q) and (r) of this

Section 8 the Lessee shall not be responsible for the remediation or removal of (x) the Existing Condition on the Bay Avenue Premises or (y) for Migrated Hazardous Substances.

(c) Without limiting the Lessee's obligations elsewhere under this Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which or at any time are in effect during the term of the letting under this Agreement, the Lessee understands and agrees that except with respect to remediation and removal of the Existing Condition on the Bay Avenue Premises and Migrated Hazardous Substances which the Lessee is not responsible for pursuant to paragraph (b)(2) of this Section 8, it shall be obligated, at its cost and expense, to comply with and relieve the Port Authority from compliance with all Environmental Requirements which are applicable to or which affect (i) the Premises, (ii) the operations of the Lessee or others with the consent of the Lessee at the Premises or the Lessee's operations at the Facility, (iii) the occupancy and use of the Premises by the Lessee or by others with its consent or (iv) any Hazardous Substance which has migrated from or from under the Premises. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of the Lessee. Without limiting the generality of the foregoing and as part of the Lessee's fulfillment of the foregoing obligations, the Lessee shall be responsible, at its sole cost and expense and subject to the direction of the Port Authority, for:

(1) the preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, remedial action workplan, no further action letter, remediation agreement or any other documentation or information;

(2) the obtaining of any surety bond or the giving of any other financial assurances; and

(3) complying with the provisions of all Environmental Requirements becoming effective on the termination, expiration or surrender of the letting of the Premises or of any portion thereof under this Agreement, or on the closure or transfer of the Lessee's operations at the Premises.

(d) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall, at its sole cost and expense and in accordance with and subject to the provisions of

Section 20 of this Agreement, upon notice from the Port Authority, promptly take all actions to:

(1) remove and remediate all Analyzed Items from the Bay Avenue Premises to the extent of any increase in the level of any Analyzed Item above the Existing Condition except for any such increase due to a Migrated Hazardous Substance;

(2) completely remove and remediate all Hazardous Substances in, on or under the Premises and at the Facility resulting from or in connection with the Lessee's use and occupancy of the Premises or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Facility by the Lessee or which have been disposed of, released, discharged or otherwise placed in, on or under the Premises during the term of the letting of the Premises under this Agreement or during the term of any previous agreement between the Lessee and the Port Authority covering the Lessee's use and/or occupancy of the Premises or any portion thereof;

(3) except with respect to remediation and removal of the Existing Condition in the Bay Avenue Premises and Migrated Hazardous Substances which the Lessee is not responsible for pursuant to paragraph (b)(2) of this Section 8, remove and remediate all Hazardous Substances in, on or under the Premises or which have migrated from or from under the Premises to any other property which any Governmental Authority or any Environmental Requirement or any violation thereof required to be remediated or removed; and

(4) except with respect to remediation and removal of the Existing Condition in the Bay Avenue Premises and Migrated Hazardous Substances which the Lessee is not responsible for pursuant to paragraph (b)(2) of this Section 8, remove and remediate all Hazardous Substances in, on or under the Premises or which have migrated from or from under the Premises necessary to mitigate any Environmental Damages.

(e) The obligations set forth in paragraph (d) of this Section shall include but not be limited to the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans and the performance of any removal, remediation, containment, operation, maintenance, monitoring or restoration work; shall be performed in a good, safe and workmanlike manner; and shall minimize any impact on activities off the Premises. The Lessee

shall promptly provide the Port Authority with copies of all test results and reports generated in connection with such obligations.

(f) Without limiting the Port Authority's remedies under this Agreement or at law or in equity, the Port Authority shall have the right during and after the term of the letting of the Premises under this Agreement to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Lessee of its environmental obligations under this Agreement including without limitation all the Lessee's obligations under this Section 8. In the event that the Lessee fails to comply with or perform any of such obligations, the Port Authority at any time during or subsequent to the termination, expiration or surrender of the letting of the Premises or any portion thereof may elect (but shall not be required) to perform such obligations and upon demand the Lessee shall pay to the Port Authority as additional rent its costs thereof, including all overhead costs as determined by the Port Authority. For the purposes of this paragraph, the term "cost" shall be as defined in Section 21 of this Agreement.

(g) Without limiting any other of the Lessee's obligations under this Agreement and except with respect to remediation and removal of the Existing Condition in the Bay Avenue Premises and Migrated Hazardous Substances which the Lessee is not responsible for pursuant to paragraph (b)(2) of this Section 8, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the Manager of the Facility, at the cost and expense of the Lessee and at any time during or subsequent to the term of the letting of the Premises under this Agreement, with such information, documentation, records, correspondence, notices, reports, test results, certifications and any other information as the Port Authority shall request in connection with any Environmental Damages or any Environmental Requirement which the Lessee is obligated to comply with under this Agreement, and the Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same when and as directed by the Port Authority. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee at the Lessee's cost and expense. Further, the Lessee agrees, unless otherwise directed by the Port Authority, to provide the Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority and by a Governmental Authority to the Lessee within two (2) business days that the same are made available to or received by the Lessee with respect to any Environmental Damages and any Environmental

Requirement which the Lessee is obligated to comply with pursuant to this Agreement.

(h) Without limiting the generality of any other provision contained in this Agreement and except with respect to remediation and removal of the Existing Condition in the Bay Avenue Terminal and Migrated Hazardous Substances which the Lessee is not responsible for pursuant to paragraph (b)(2) of this Section 8, the Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, employees and representatives from all claims, demands, penalties, fines, liabilities (including strict liability), settlements, attorney and consultant fees, investigation and laboratory fees, removal and remediation costs, court costs and litigation expenses, damages, judgments, losses, costs and expenses of whatsoever kind or nature and whether known or unknown, contingent or otherwise, just or unjust, groundless, unforeseeable or otherwise, arising or alleged to arise out of or in any way related to any Environmental Damages or any Environmental Requirement which the Lessee is obligated to comply with pursuant to this Agreement, or the risks and responsibilities assumed hereunder by the Lessee for the condition of the Premises or a breach or default of the Lessee's obligations under this Section 8. If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(i) (1) Without limiting the generality of any provision of this Agreement, in the event that Environmental Requirements set forth more than one compliance standard, the Lessee agrees that except as otherwise designated by the Port Authority pursuant to paragraph (i)(2) below the standard or standards to be applied in connection with any obligation it may have under this Agreement with respect to any Environmental Requirement shall be that which requires or permits the lowest level of a Hazardous Substance; provided, however, in the event such lowest level of one or more Hazardous Substance requires or allows the imposition of any restriction of any nature whatsoever upon the use or occupancy of the Premises or any other portion of the Facility or upon any operations or activities conducted or to be conducted on the Premises or the Facility or upon the transfer of the Premises or the Facility, then the Lessee shall remediate such Hazardous Substances to such a level so that there is no such restriction placed upon

the use and occupancy of the Premises or the Facility or upon any operations or activities conducted or to be conducted on the Premises or the Facility.

(2) The Lessee further agrees that, notwithstanding the terms and conditions of subparagraph (i)(1) above, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion and without any obligation whatsoever to the Lessee or otherwise to do so, to designate any higher level or levels of Hazardous Substances or less stringent standard or standards than those required by paragraph (i)(1) above to be applied in connection with any obligation the Lessee may have under this Agreement with respect to any Environmental Requirement and such designation shall be binding upon the Lessee with respect to its obligations under this Agreement with respect to such Environmental Requirement, provided, however, the Port Authority shall have no right to designate any level or standard pursuant to this paragraph (i)(2) which would result in the Lessee being in violation of any Environmental Requirement.

(j) The methodology to be used for the purpose of this Section 8 to determine for any Existing Condition the level of an Analyzed Item at any location in, on or under the Bay Avenue Premises shall be for both soil and ground water, straight line interpolation methodology and, notwithstanding any other evidence to the contrary, the Existing Condition as so determined shall set forth and constitute for all purposes as between the Lessee and the Port Authority the levels of the Analyzed Items in the soil and ground water in, on and under the Bay Avenue Premises.

(k) (1) It is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal and depositing (all of the foregoing being hereinafter collectively called "Disposal"), whether on or off the Facility, of any soil, dirt, sand, silt, dredged material, water or other matter (hereinafter collectively called the "Matter") excavated, disturbed or removed by the Lessee (or by any contractor or contractors of the Lessee) at, from or under the Premises (or any other area of the Facility) at any time or times and regardless of the nature or composition of such Matter, including without limitation, any and all Disposal of said Matter in connection with the performance of the Lessee's Construction Work (as defined Section 7 of this Agreement) and any and all remediation and Disposal of said Matter and any and all other remediation and Disposal (whether soil, upper aquifer or otherwise) necessary, required or appropriate as a result of, caused by, incidental to or triggered by such excavation, disturbance or removal of the Matter or arising therefrom, and the taking or doing of any and

all other action or actions necessary, required or appropriate in connection therewith, shall be, except as set forth in paragraph (k)(2) below, the sole and complete responsibility of the Lessee including, without limitation, all costs and expenses thereof and any and all Environmental Damages, Environmental Requirements, claims, penalties and other expenses relating thereto. The foregoing obligations of the Lessee shall obtain and apply with full force and effect irrespective of the nature or source of any contaminant, pollutant, chemical, waste or other substance or whether any of the same is Hazardous Substance or whether any of the same is at a level or levels above or below the level or levels of any of the Analyzed Items constituting the Existing Condition or whether there has or has not been any increase in such level or levels or whether any of the same is a Migrated Hazardous Substance. The Lessee shall perform all of the foregoing in accordance with and subject to all the terms, provisions, covenants and conditions of this Agreement.

(2) Notwithstanding the foregoing set forth in paragraph (k)(1) above, (x) the Port Authority shall pay all costs and expenses for the Disposal of Matter dredged in fulfillment of the Port Authority's obligations pursuant to Section 16(e) hereof and all of the costs and expenses of the Disposal of such dredged Matter shall be included in the "Estimated Cost of a Dredging Project" and the "Actual Cost of a Dredging Project" as defined in said Section 16(e), and (y) the Lessee shall pay all costs and expenses for the Disposal of all Matter performed as part of the Lessee's Construction Work and all of the costs and expenses for the Disposal of such Matter shall be included in the Construction Work Reimbursement Amount or the Funded Work Reimbursement Amount, as applicable, to the extent set forth in Section 7 hereof, provided, however, the Port Authority shall not pay or reimburse the Lessee for the Disposal of any Matter nor shall the costs and expenses of the Disposal of any Matter be applied against the Construction Work Reimbursement Amount or the Funded Work Reimbursement Amount if such Matter was disposed of, released, discharged or otherwise placed on, under or about the Facility by the Lessee.

(3) Without limiting the generality of any other term or condition of this Lease, title to any Matter on the Premises or the Facility excavated by the Lessee and not used at the Premises shall vest in the Lessee upon the excavation thereof and all such Material shall be delivered and deposited by the Lessee at the Lessee's sole cost and expense to a location off the Facility in accordance with the terms and conditions of this Lease and all Environmental Requirements. The entire proceeds, if any, of the sale or other disposition of the Material shall belong to the Lessee.

(4) In the event the Lessee discovers any Hazardous Substance in, on or under the Premises, the Lessee in reporting such Hazardous Substance shall direct such report to the attention of such individual at the subject governmental authority as the Facility Manager shall require in order to assure consistency in the environmental management of the Facility.

(5) Promptly upon final disposition of any Hazardous Substance from the Premises or the Facility, the Lessee shall submit to the Port Authority a "Certification of Final Disposal" stating the type and amount of material disposed, the method of disposal and the owner and location of the disposal facility. The format of such certification shall follow the requirements, if any, of governmental agencies having jurisdiction as if the Port Authority were a private organization and the name of the Port Authority shall not appear on any certificate or other document as a generator or owner of such material.

(l) Without limiting the generality of the provisions of Section 22 of this Agreement, the Port Authority and its designees shall have the right but not the obligation to enter upon the Bay Avenue Premises upon forty-eight (48) hours' notice to the Lessee to conduct testing and related activities from the existing wells made by the borings referred to in Exhibit I, to make additional wells and borings and to conduct testing and related activities therefrom and to perform such activities as shall be necessary to remediate the Existing Condition and any Migrated Hazardous Substance.

(m) If after any remediation performed on the Bay Avenue Premises, whether by the Lessee, the Port Authority or a third party, the Port Authority samples and tests the soil and upper aquifer of the Bay Avenue Premises or portions thereof and sets forth the results of such tests in a report (it being understood, however, that the Port Authority shall not have any obligation hereunder to perform such sampling and testing or to set forth the results thereof in a report), upon delivery of such report and test results to the Lessee, such report and test results shall supersede Exhibit I or the applicable portions thereof if the test results and report are of Analyzed Items which have been previously tested and the results thereof reported in Exhibit I and the existing and new test results are from samples taken from the same well or a new well or boring which is immediately adjacent to such well or boring and shall supplement Exhibit I or the applicable portions thereof if the test results and report would not supersede any test results and reports in Exhibit I as aforesaid.

(n) Without limiting the generality of the provisions of Section 16 of this Agreement, the Lessee agrees to protect and maintain the wells made by the borings referred to in Exhibit I and paragraph (m) of this Section and shall repair any damage thereto not caused by the activities of the Port Authority or its designees, if any, pursuant to paragraphs (l) and (m) of this Section.

(o) Without limiting the generality of any other term or provision of this Agreement, all of the obligations of the Lessee under this Section 8 shall survive the expiration or earlier termination of the letting of the Premises or any portion thereof.

(p) The terms and conditions of this Section 8 are intended to allocate obligations and responsibilities between the Lessee and the Port Authority, and nothing in this Section shall limit, modify or otherwise alter the rights and remedies which the Port Authority or the Lessee may have against third parties at law, equity or otherwise.

(q) Notwithstanding any other term or provision of this Agreement and subject to paragraph (r) below, the Lessee shall be responsible for the remediation of the Existing Condition to the extent that the Existing Condition was caused by the acts or omission of the Lessee or by the acts or omissions any sublessees or others who occupied the Bay Avenue Premises with the permission of the Lessee prior to the term of the letting under this Agreement.

(r) Notwithstanding any other term or condition of this Agreement, it is hereby understood and agreed that the Lessee's obligations under this Agreement, including without limitation paragraphs (b), (c), (d), (e), (g), (h), (i) and (k) of this Section, shall not be nor be deemed to be affected in any way whatsoever if the Existing Condition or any portion thereof or any Migrated Hazardous Substance, is or will be remediated or removed by the Lessee in whole or in part in the fulfillment of any of the Lessee's obligations under this Agreement, whether due to the fact the Lessee cannot remediate or remove one or more Hazardous Substances for which it is responsible to remediate or remove without remediating or removing one or more Analyzed Items or any Migrated Hazardous Substance for which it is not responsible for remediating or removing or due to the cost or expedience or for any other reason, and in no event shall the Port Authority have any responsibility for such remediation or removal including without limitation any obligation to share in the cost of such remediation or removal.

(s) The Lessee acknowledges a Deed Notice (formerly a Declaration of Environmental Restriction) may be recorded by the Port Authority with respect to the Bay Avenue Premises and further it is hereby agreed that no such filing is an obligation of the Port Authority under this Agreement. The Lessee agrees that neither the filing of such Deed Notice nor any other action taken by the Port Authority in compliance with any Environmental Requirement applicable to the Existing Condition shall be a breach of this Agreement or any other obligation of the Port Authority at law or in equity with respect to the letting of the Premises to the Lessee hereunder, including without limitation, any breach of any implied or express covenant of quiet enjoyment. It is contemplated that the installation and maintenance of engineering controls and other conditions may be required in connection with the permission to record and the recording of the Deed Notice. Without limiting any other term or provision of this Agreement, the Port Authority shall have the right to enter upon the Premises for the purpose of installing any such engineering controls or for the taking of any other action necessary to file, as a condition of or required by such Deed Notice, provided, however, nothing in this paragraph (s) is intended to nor shall relieve the Lessee of any of its obligations under this Agreement, including without limitation, its obligations pursuant to Section 16 hereof. Further, it is hereby agreed that this Agreement and the Lessee's letting and use and occupancy of the Premises shall be subject to the requirements of such Deed Notice and the Lessee shall comply with all the requirements of such Deed Notice to the extent of the Lessee's obligations set forth elsewhere in this Agreement other than in this paragraph (s).

Section 9. [There is no Section 9]

Section 10. 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 its successors and assigns, of and from any and

all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area whether within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in, along, across or through any streets, ways and walks near the Premises.

Section 11. Governmental and Other Requirements

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

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items (each a "Legal Requirement"), including without limitation all Environmental Requirements, now or at any time during the occupancy of the Premises by the Lessee which as a matter of law are applicable to or which affect (i) the Premises, (ii) the operations of the Lessee at the Premises or the Facility, and/or (iii) the use and occupancy of the Premises. The Lessee, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the Premises required in order to fully satisfy the compliance obligations set forth in this Section.

(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.

(d) The Lessee, at its expense, after notice to the Port Authority, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement or Environmental Requirement, provided that: (a) the Port Authority shall not be subject to civil or criminal penalty or to prosecution for a crime, nor shall the Facility or any part thereof be subject to being condemned or vacated, or subject to any lien or encumbrance, by reason of non-compliance or otherwise by reason of such contest; (b) before the commencement of such contest, the Lessee shall furnish to the Port Authority a letter of credit or surety bond satisfactory to the Port Authority, in

form, substance and amount, and shall indemnify the Port Authority against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); and (c) the Lessee shall keep the Port Authority regularly advised as to the status of such proceedings. The Port Authority shall be deemed subject to prosecution for a crime if the Port Authority or any of its Commissioners, officers, employees or agents is charged with a crime of any kind whatever unless such charge is withdrawn five (5) days before such party is required to plead or answer thereto.

Section 12. 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 (the "Rules and Regulations") 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 as Exhibit R to this Agreement, then the Port Authority will notify the Lessee thereof either by delivery of a copy, or by publication in a newspaper published in the Port of New York District, or by making a copy available at the office of the Secretary of the Port Authority.

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

Section 13. 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 (24) hours the Lessee shall remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or of any others on the Premises with the consent of the Lessee.

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

(c) 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 in or near the Facility.

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

(f) The Lessee shall not 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 may subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

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

(i) The Lessee shall permit the use of the Premises (not excluding the Berthing Area) at any time and from time to time for the installation, maintenance and operation of such navigation lights as may be required by the United States Coast Guard or other governmental authority having jurisdiction, and the Lessee shall furnish such electricity as may be required for use by navigation lights which may be so installed.

(j) The Lessee shall not do or permit to be done any act or thing on the Premises or at the Facility which (i) will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof, or the Facility, or any part thereof, or (ii) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (iii) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the Insurance Services office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the Premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, make all improvements, alterations and repairs of the Premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. Subject to the right of the Lessee to contest same as set forth in Paragraph 11(d), if by reason of any failure on the part of the Lessee to comply with the provisions of this paragraph, any rate for fire insurance, extended coverage or rental insurance on the Premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

(k) 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

firefighting and fire-extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be, for the use of which such equipment is designed, and shall train its employees in the use of all such, equipment, including in such training periodic drills.

(l) The Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), owned or operated by the Lessee, or by a corporation, company or other organization or person associated, affiliated or connected with the Lessee or for which the Lessee acts as agent, stevedore or terminal operator, (or of others going to or from the Premises on business with the Lessee) which shall have sunk, settled or become partially or wholly submerged at the Facility. In addition, the Lessee shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), which shall have sunk, settled or become partially or wholly submerged in the Berthing Area. The provisions of the immediately preceding sentence shall be applicable whether or not the aforesaid object is owned by the Lessee or is connected in any way with the Lessee or its occupancy of or operations at the Premises, and the Port Authority shall have no obligation to raise or remove any such object unless its presence in the Berthing Area is the result of the sole negligence or willful act of the Port Authority.

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

Section 14. 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 at the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the Premises and the Facility to the condition thereof prior to the placement of such advertising, sign, poster or device. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and

every such piece of advertising, sign, poster or device and so to restore the Premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

Section 15. Indemnity and Liability Insurance

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the Premises by the Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others on the Premises with the consent of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees on the Premises or elsewhere at the Facility, or out of the acts or omissions of others on the Premises with the consent of the Lessee, including claims and demands of the party, if any, 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.

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

(c) The Lessee, in its own name as assured, shall maintain and pay the premiums on the following described policies of liability insurance:

(i) Commercial General Liability Insurance including but not limited to coverage for Premises-Operations and Products Liability-Completed Operations, which coverage shall not exclude claims arising out of or in connection with operations conducted within fifty feet of railroad property, with a minimum combined single limit coverage for bodily injury and property damage of $10,000,000.00. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If the Lessee's operations entail the ownership, maintenance,

operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of $2,000,000.00.

(iii) Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5,000,000.00.

(iv) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act, maritime (including coverage for Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

(d) With the exception of the Workers' Compensation and Employers' Liability Insurance Policy, each policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured (including, without limitation, for purposes of Premises operations and completed-operations) and each such policy shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Each such policy shall contain a contractual liability endorsement covering the indemnity obligations of the Lessee under this Section and such policies shall not contain any care, custody or control exclusions. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the

protections afforded the Port Authority as an additional insured.

(e) As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority, as the case may be, either prior to the commencement of the term hereof (with respect to insurance provided for in this Section 15) or prior to the commencement of any specific work item (with respect to insurance provided for in Section 7).. In the event any binder is delivered it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A binder evidencing each renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting hereunder, as the letting may be from time to time extended (or after the completion of a specific work item with respect to the insurance provided for in Section 7), and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. Notwithstanding the foregoing, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the minimum limits to commercially reasonable amounts, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same or substitute such carrier with another carrier satisfactory to the Port Authority.

Section 16. Maintenance and Repair

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

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

(c) Subject to the provisions of paragraph (f) of this Section and Section 17 of this Agreement, throughout the term of the letting under this Agreement, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the Premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforseen, structural or otherwise; and without limiting the generality of the foregoing the Lessee shall do all preventive maintenance, maintain and make repairs and replacements, structural or otherwise to all improvements located on the Premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Premises or the Lessee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items: (1) paving, which shall mean maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, catch basins, underground storm water pipes, and grate support systems. In addition, the Lessee shall be responsible for maintenance repairs, and damages, that are required above the structural concrete chamber of catch basins and manholes. Such repairs shall include the concrete brick collar, concrete collar, brick collar, asphalt concrete pavement, Portland cement concrete pavement, the frame and grate or manhole cover and silt bucket when and where applicable. For the purpose of manhole and catch basin repair, the top of the structural chamber shall be the top of the concrete slab that covers the vertical walls of the underground manhole structure, and for the purpose of catch basin and manhole repair, the top of the structural chamber shall be the top of the (cast-in-place or pre-cast) vertical walls of the underground catch basin and manhole structure; (2) crane rails and rail foundations; (3) scales; (4) rail tracks on the Premises which are installed by the Lessee as part of Lessee's Construction Work (specifically excluding all rail tracks currently on the Premises as well as any tracks which cross the Premises and serve any other part of the Facility; (5) lights, light poles and light pole foundations; (6) sprinkler systems; (7) gas and electric from the meter (utility companies are responsible up to the meter); (8) water pits; (9) container cranes; (10) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (11) the plumbing system, fixtures and equipment, and all finished plumbing; (12) buildings and all parts thereof; (13) special mooring devices and special loading devices, whether mechanical, electrical, hydraulic or otherwise; (14) fencing, (15) signs; (16) fire extinguishers; and (17) all painting. The Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good

condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the buildings or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises or the environmental condition thereof. The Lessee shall make frequent periodic inspections of the Premises and subject to Sections 7, 17 and 20 of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship. With respect to anything originally supplied or installed by the Port Authority, the Lessee shall have the benefit of the warranty, if any, running to the Port Authority, to the extent assignment thereof does not impair or void the same.

(d) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it is responsible, located or to be located in or on the Premises and shall promptly replace or repair the same within twenty (20) days after such loss, theft or damage (except that if any such repair requires activity over a period of time, then the Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and the Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement in the same condition as at the commencement of the letting (or such later time at which the Lessee became responsible for same), reasonable wear not materially affecting the efficient use and functioning of the same excepted.

(e) (1) Except with respect to those portions of the Berthing Area which have been deepened to a depth of forty-five (45) or fifty (50) feet (which shall be subject to the provisions of subsections (2) and (3) of this Paragraph respectively), upon sixty (60) days' notice from the Lessee that any part of the Berthing Area (excluding the area of the natural

slope) has shallowed to a depth of thirty-six (36) feet below mean low water, then upon the Lessee's making such part of the Berthing Area available for dredging operations, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by governmental authorities having jurisdiction) to dredge such part of the Berthing Area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of thirty-eight (38) feet below mean low water (excluding the area of the natural slope). The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(2) With respect to those portions of the Berthing Area which had been deepened to a depth of forty-five (45) feet prior to the commencement of the term hereof or which are deepened to a depth of forty-five (45) feet as part of the Lessee's Construction Work, upon sixty (60) days' notice from the Lessee that any such part of the Berthing Area has shallowed to a depth of forty-three (43) feet below mean low water, then upon the Lessee's making such part of the Berthing Area available for dredging operations, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted by governmental authorities having jurisdiction) to dredge such part of the Berthing Area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of forty-five (45) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(3) With respect to those portions of the Berthing Area which are deepened to a depth of fifty (50) feet as part of the Lessee's Construction Work, upon sixty (60) days' notice from the Lessee that any part of the Berthing Area has shallowed to a depth of forty-eight (48) feet below mean low water, then upon the Lessee's making such part of the Berthing Area available for dredging operations, the Port Authority, at no expense to the Lessee, shall proceed (to the extent permitted

by governmental authorities having jurisdiction) to dredge such part of the Berthing Area specified in the said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of fifty (50) feet below mean low water. The term "mean low water" as used in this subparagraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this subparagraph shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling.

(4) (i) Notwithstanding any other provision of this Section, in the event the Port Authority shall determine that the Estimated Cost of a Dredging Project (as defined below) on average may exceed Eighty Dollars and No Cents ($80.00) (adjusted as provided hereinafter) per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations (including normal overdredge amounts) called for hereunder, the the Port Authority shall not be obligated to perform such Dredging Project unless the Lessee agrees to pay the Port Authority the amount by which its Actual Cost of such Dredging Project on average exceeds Eighty Dollars and No Cents ($80.00) (adjusted as provided hereinafter) for cubic yard. Notwithstanding the foregoing, if the Lessee shall not agree to pay such excess to the Port Authority with respect to a Dredging Project, the Port Authority shall nevertheless be required to perform such Dredging Project if the Lessee shall provide a subsequent notice, not more frequently than once a year, with respect to such Dredging Project (or if same is included in a notice with respect to a subsequent larger or different Dredging Project) and the Lessee shall either be willing, as of the time of the sending of such subsequent notice, to pay the excess with respect to such Dredging Project or the Estimated Cost of such Dredging Project is then estimated to be on average less than or equal to Eighty Dollars and No Cents ($80.00) (adjusted as provided hereinafter) per cubic yard at the time of such subsequent notice is given.

(ii) In the event the Lessee shall have agreed to pay the excess dredging costs as provided in Subsection (i) with respect to any Dredging Project and in the further event the Port Authority's Actual Cost of such Dredging Project on average shall exceed Eighty Dollars and No Cents ($80.00) (adjusted as provided hereinafter) per cubic yard then upon the completion of such Dredging Project the Port Authority shall render a bill, supported by substantiating documents, to the Lessee setting forth the Port Authority's Actual Cost of such Dredging Project

and the amount of same on average in excess of Eighty Dollars and No Cents ($80.00) (adjusted as provided hereinafter) per cubic yard and the Lessee shall promptly pay the amount of such excess to the Port Authority.

(iii) For the purposes of this Agreement:

A "Dredging Project" shall mean the dredging of a specific portion of the Berthing Area as specified in a notice given as provided in subparagraph (1), (2) or (3) of this Paragraph.

The "Estimated Cost of a Dredging Project" shall mean the estimated total cost of a Dredging Project and shall include, but not be limited to, the cost of dredging, transportation, processing (including amendment, separation, removal, transportation and disposal of trash and debris), disposal (including mobilization at disposal sites) of any dredged material, insurances, compliance with environmental laws and obtaining necessary permits, work to address unanticipated site conditions; and an amount equal to: (i) fifteen percent (15%) of all the foregoing if the Estimated Cost of a Dredging Project per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations as determined by post-dredge soundings (including normal overdredge amounts) does not exceed Twenty-four Dollars and No Cents ($24.00); (ii) twelve and one-half percent (12.5%) of all the foregoing if the Estimated Cost of a Dredging Project per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations as determined by post-dredge soundings (including normal overdredge amounts) exceeds Twenty-four Dollars and No Cents ($24.00) but does not exceed Thirty-five Dollars and No Cents ($35.00); and (iii) ten percent (10%) of all the foregoing if the Estimated Cost of a Dredging Project per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations as determined by post-dredge soundings (including normal overdredge amounts) exceeds Thirty-five Dollars and No Cents ($35.00).

The "Actual Cost of a Dredging Project" shall mean the actual total cost of a Dredging Project and shall include, but not be limited to, the cost of dredging, transportation, processing (including amendment; separation, removal, transportation and disposal of trash and debris), disposal (including mobilization at disposal sites) of any dredged material, insurances, compliance with environmental laws and obtaining necessary permits, work to address unanticipated site conditions; and an amount equal to: (i) fifteen percent (15%) of all the foregoing if the Actual Cost of a Dredging Project per cubic yard calculated from the difference in bottom

elevations as determined by pre-dredge soundings and the bottom elevations as determined by post-dredge soundings (including normal overdredge amounts) does not exceed Twenty-four Dollars and No Cents ($24.00); (ii) twelve and one-half percent (12.5%) of all the foregoing if the Actual Cost of a Dredging Project per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations as determined by post-dredge soundings (including normal overdredge amounts) exceeds Twenty-four Dollars and No Cents ($24.00) but does not exceed Thirty-five Dollars and No Cents ($35.00); and (iii) ten percent (10%) of all the foregoing if the Actual Cost of a Dredging Project per cubic yard calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations as determined by post-dredge soundings (including normal overdredge amounts) exceeds Thirty-five Dollars and No Cents ($35.00).

(iv) For purposes of this Paragraph (e), the Eighty Dollar ($80) figure referenced throughout this Paragraph shall be increased by two percent (2%) per annum, compounded annually, commencing as of January 1, 2001 and each subsequent January 1st occurring during the term of the letting.

(5) Notwithstanding any other provision of this Section, the Port Authority shall not be obligated to perform the dredging work set forth in subparagraph (1), (2) or (3) of this paragraph as to any part of the portion of the Berthing Area described in the Lessee's notice given to the Port Authority under the aforesaid subparagraphs as long as any vessel or other floating structure, equipment or other personal property (whether or not intended to be floating) is sunk, settled or partially or wholly submerged in such part of the Berthing Area. The provisions of this subparagraph shall be applicable whether or not the aforesaid object is owned by the Lessee or is connected in any way with the Lessee or its occupancy of or operations at the Premises. The Port Authority shall have no obligation to raise or remove any such object unless its presence in the Berthing Area is the result of the sole negligence or willful act of the Port Authority.

(f) Except under circumstances as to which paragraph (b) of this Section applies, upon receipt of notice that repair or replacement of such of the following as are located in or are a part of the Premises is required: (1) the structure of the wharf including decking, fender systems (but not backing logs or bumpers), and standard mooring devices; (2) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the Premises or closest meter on the Premises servicing said water pit (but in no event

the ships' water pits themselves); and (3) the underground sanitary systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the Premises in a reasonably good condition for the operations of the Lessee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the Premises to a better condition than that existing at the commencement of the letting (or, in the case of improvements made during the letting, in as good condition as at the time of the installation or construction thereof). The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of the Lessee under any other provision of this Agreement. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable, except as expressly provided in Section 17 of this Agreement. If the Port Authority shall fail, after a reasonable period of time to perform its repair and replacement obligations under this paragraph, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay the Lessee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to the Lessee a credit against its rental obligations under this Agreement in an amount equal to such expenditures. Furthermore, prior to the commencement by the Port Authority of any work set forth in 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 any work required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Lessee for such work as provided in this paragraph. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, the Lessee's officers, employees, agents, and representatives which may arise from the condition of the Premises or any part thereof, or from the failure of 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. Except as set forth above, the Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, employees, agents, and representatives from any liability for damages to the Lessee, consequential, or otherwise, in connection with any of the

provisions of this paragraph concerning repairs or replacements to any portion of the Premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(g) The obligation of the Lessee as set forth in paragraphs (b) and (c) of this Section and in Section 17 in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured (including, but not limited to, fire, extended coverage or pier and wharf insurance) is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that if at any time because of this release the insurance carrier of any policy covering the Premises or any part thereof shall increase the premiums otherwise payable for fire, extended coverage or rental coverage applicable to the Premises the Lessee shall pay to the Port Authority an amount equivalent to such increase or increases on demand; and provided, further, that if at any time this release shall invalidate any such policy of insurance or reduce, limit, or void the rights of the Port Authority thereunder, or if because of this release, any such insurance carrier shall cancel such endorsement or refuse to renew the same or shall take any other action to alter, decrease or diminish the benefits of the Port Authority under the policy, then the release shall be void and of no effect.

Section 17. 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, or under a policy of pier or wharf insurance, carried by it on (1) the wharf, fender systems (but not backing logs or bumpers), and standard mooring devices; (2) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the Premises or closest meter on the Premises servicing said water pit (but in no event the ships' water pits themselves); or (3) the underground sanitary systems; 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 the Premises 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 the wharf or 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 wharf area, 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 per cent (25%) of the usable wharf area or 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 per cent (25%) of the aggregate usable floor space comprising the Premises in all of the structures and buildings covered by insurance.

The Port Authority shall not be obligated to obtain or maintain in force any insurance referred to in this Section, and, furthermore, if any such insurance is maintained and if any damage described in this paragraph (a) shall have been caused or contributed to by the fault of the Lessee, its officers, employees, or others on or at the Premises with the Lessee's consent, then, notwithstanding the foregoing, the Port Authority shall have no obligation to repair such damage unless the proceeds of insurance covering such damage actually paid to the Port Authority by the insurance company are at least equal in amount to the Port Authority's estimate of the cost of such repairs. Nothing herein shall be construed to imply as an obligation on the Port Authority to carry any such insurance.

The Port Authority will notify the Lessee if the Port Authority cancels any fire, extended coverage, all-risk, or pier or wharf insurance, or if it does not renew a policy of such insurance, provided such insurance is in effect on the Commencement Date hereunder.

(c) In the event the letting under this Agreement is terminated pursuant to the provisions of this paragraph, this Agreement and the letting hereunder shall cease and expire on the effective date of termination stated in the notice as if such date were the date originally stated herein for the expiration of this Agreement. Such termination shall not relieve the Lessee of any obligations or liabilities which shall have accrued on or before the effective date of termination stated in the notice, or which shall mature on such date.

(d) In the event that as a result of a casualty, whether or not insured or insurable, any portion of the Premises other than (1) the wharf including decking, fender systems (but not backing logs or bumpers), and standard mooring devices; (2) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the Premises or closest meter on the Premises servicing said water pit (but in no event the ships' water pits themselves); or (3) the underground sanitary systems; the lessee shall rebuild the same with due diligence. With respect to all portions of the Premises other than (1) the wharf including decking, fender systems (but not backing logs or bumpers), and standard mooring devices; (2) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the Premises or closest meter on the Premises servicing said water pit (but in no event the ships' water pits themselves); or (3) the underground sanitary systems, the Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the term of the letting under this Agreement:

(1) All risk property damage insurance covering the full replacement cost of any such property owned, leased, or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the Premises, except for any personal property owned by the Port Authority. Full replacement cost shall be determined by the Port Authority. No omission on the part of the Port Authority to make such determination shall relieve the Lessee of its obligations to maintain the

appropriate insurance under this paragraph. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New Jersey, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination and boiler and machinery hazards and risks (if said coverage regarding nuclear property losses and contamination is or becomes available at commercially reasonable rates).

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

The proceeds of insurance from coverages secured in accordance with this paragraph shall be made available to the Lessee and shall be applied by the Lessee strictly and solely to the repair, replacement, or rebuilding of the Premises as provided in this Agreement. The procedures for such rebuilding shall be the same as for the initial construction as set forth in Section 8. The Lessee shall not be entitled to any abatement of the rentals payable hereunder at any time by reason of such casualty.

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

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

Section 18. Assignment and Sublease

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

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

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of paragraphs (a) or (b) of this Section or if the Premises are occupied by any person, firm or corporation other than the Lessee, the Port Authority may collect rent from any assignee, sublessee, or anyone who claims a right to this Agreement or to the letting or who occupies the Premises, and shall apply the net amount collected to the rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraphs (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 in this Agreement.

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the Facility or any portion thereof for any purpose other than as provided in Section 8 of this Agreement.

Section 19. 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, except for the possible claim to an award for trade fixtures installed by the Lessee and/or an award for moving expenses if (i) such claim is then allowed by law and (ii) such award is made separate and apart from the award made or to be made to the Port Authority in such proceeding and any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority; 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.

(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 results in a change of more than thirty percent (30%) (increase or decrease) of the ratio of the number of linear feet of wharf available to the Lessee (exclusive of the wharf adjacent to Berths 52 and 54) over the then number of acres constituting the Premises, then the Lessee shall have an option exercisable by notice given to the Port Authority within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

(g) On any taking, the various provisions providing for an adjustment of the rents payable hereunder as a result of a variation in the number of acres which actually constitutes

the Premises as compared to four hundred forty-five (445) acres shall apply.

(h) Notwithstanding any other provision hereof (including, but not limited to, the provisions of Section 5) in the event that Lessee is deprived of the effective use of any improvement made pursuant to Section 7 which constitutes Funded Work and for which Facility Construction Rental is being paid as provided in Section 5, then and in that event:

(i) If the taking is permanent, the Facility Construction Rental attributable to such improvement shall be forgiven. It is understood that the forgiving of the Facility Construction Rental pursuant to this paragraph shall constitute a discharge of such Facility Construction Rental and not a deferral thereof and for all other purposes hereof (including, but not limited to, the determination of the unamortized amount of any Funded Work) such Facility Construction Rental which is discharged pursuant to this paragraph shall be treated as if same had been paid.

(ii) If the taking is temporary, then during the period of time that Lessee is deprived of such use, the Facility Construction Rental attributable to such improvement shall be forgiven. It is understood that the forgiving of Facility Construction Rental pursuant to this paragraph shall constitute a discharge of each payment of Facility Construction Rental due during the period Lessee is deprived of such use and not a deferral thereof and for all other purposes hereof (including, but not limited to, the determination of the unamortized amount of any Funded Work) such Facility Construction Rental which is discharged pursuant to this paragraph shall be treated as if same had been paid.

Section 20. Other Construction by the Lessee

Except as may be otherwise expressly provided in Section 7, the Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures without the prior consent of the Port Authority. In the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting,

or any extension or renewal thereof, shall give notice to the Lessee to remove the same, or 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. Notwithstanding the foregoing or the provision of Sections 7 and 16 of this Agreement, the Lessee shall have no obligations to change, restore or remove any part or aspect of the Premises (hereinafter called the "Restoration Obligations") to the condition the same was in before the completion of any specific work item, unless at the time of approval of the Tenant Alteration Application and plans submitted by the Lessee, the Port Authority has specifically required such Restoration Obligations.

Section 21. 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 any of the rentals set forth in this Agreement.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the Port Authority and the Lessee, any receipt showing any payment of any sum or sums by the Port Authority for any work done or material furnished shall be prima facie evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost thereof, any time report of any employee of the Port Authority showing hours of work or labor allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof, shall

likewise be prima facie evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" as used in this Section 21 shall mean and include: (1) Payroll costs, including contributions to welfare plans, retirement plans, or the cost of participation in other pension plans or systems, insurance costs, sick-leave pay, holiday, vacation and authorized-absence pays; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) 30% of the sum of the foregoing.

Section 22. Rights of Entry Reserved

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

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

(c) 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 so to move such property after written direction from the Port Authority to do so, the



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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 impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the Premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Premises or for any injury or damage to the Premises or to any property of the Lessee or of any other person located therein or thereon (other than those occasioned by the acts of the Port Authority).

(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 23. 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 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 any building or buildings or portion of any building or buildings, if any are included in the Premises (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the Premises (except to the extent required for the placement of lights, utilities, the placement and operation of container cranes and other equipment on the Premises and the movement and storage of containers, chassis and other cargo). If any construction or installation is contemplated in this Agreement, the height thereof above ground shall be as determined solely by the Port Authority.

Section 24. Prohibited Acts

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

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

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

(d) The Lessee shall not overload any floor and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this paragraph (d) or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear.

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

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

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

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

(i) The Lessee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on or from the Premises, and shall not dispose of, release or discharge or permit anyone subject to its control or authority to dispose of, release or discharge any Hazardous Substance at the Facility. Any Hazardous Substance disposed of, released or discharged by the Lessee (or permitted by the Lessee to be disposed of, released or discharged) on or from the Premises or at the Facility, shall upon notice by the Port Authority to the Lessee and subject to the provisions of Section 20 hereof, be completely removed, cleaned up and/or remediated by the Lessee. The obligations of the Lessee pursuant to this paragraph (i) shall survive the expiration or termination of this Agreement.

Section 25. Termination

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

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United

States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

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

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

(4) Except as otherwise provided by this Agreement, 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) Except with respect to reorganizations satisfying the requirements of Section 368(a) of the Internal Revenue Code of 1986 and as otherwise provided by this Agreement, the Lessee shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

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

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

continue in effect for a period of 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 forty-five (45) days by action of any governmental agency from conducting its operations on the Premises, regardless of the fault of the Lessee; or

(9) Any lien shall be filed against the Premises because of any act or omission of the Lessee and shall not be discharged or bonded within thirty (30) days; or

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required under this Agreement when due to the Port Authority; 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' written notice terminate the letting and the rights of the Lessee under this Agreement, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

cancellation to be effective upon the date specified in such notice.

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

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

Section 26. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 25 of this Agreement, have the right to re-enter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or other legal proceedings, or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 27. 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 28. 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 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the

event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 26 of this Agreement, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Section 2 hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due, or at its option and at any time may sue to recover the full deficiency (less the proper discount) for the entire unexpired term.

(b) The amount or amounts of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) shall be:

(1) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including, without limitation thereto, all sums constituting additional rental under Section 21 of this Agreement, and all sums constituting the rentals under Section 3, Section 4, Section 5 and Section 42 of this Agreement, accrued prior to the effective date of termination, and the cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the term or on the expiration date originally fixed or within a stated time after expiration or termination; and

(2) an amount equal to the cost and the expenses of the Port Authority in connection with the termination, cancellation, regaining, possession and restoring and reletting the Premises, the Port Authority's legal expenses and costs, and the Port Authority costs and expenses for the care and maintenance of the Premises during any period of vacancy, and any brokerage fees and commission in connection with any reletting; and

(3) on account of the Lessee's basic rental and Facility Rental obligations, an amount equal to the then present value of all basic rental and Facility Rental payable with respect to the Premises as provided for in this Agreement for the entire term following the effective date of termination, as originally fixed in this Agreement, less the amount thereof which may have

been actually paid to the Port Authority by the Lessee; and

(4) on account of the Lessee's obligations under this Agreement with respect to the Container Throughput Rental and the Minimum Rental, an amount equal to the amount of such rentals which would have been paid by the Lessee during the balance of the term if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the Tier 1 Rental Rate, the Tier 2 Rental Rate, and the Rent Guarantee Number (as said rates and number would have escalated in the Throughput Lease Years remaining in the term of letting at the time of the Termination) shall be applied respectively to the "annual number of the Tier 1 Number of Containers" and the "annual number of the Tier 2 Number of Containers," as defined below, and the result so obtained shall be multiplied by the number of full Throughput Lease Years remaining in the term of the letting at the time of the Termination. The "annual number of the Tier 1 Number of Containers" and the "annual number of the Tier 2 Number of Containers" shall be, respectively, the Tier 1 Number of Containers and the Tier 2 Number of Containers loaded onto or discharged from vessels berthing at the Premises during the last full Throughput Lease Year to occur prior to the Termination. In the event that the Termination shall be on other than the last day of a Throughput Lease Year, for purposes of calculating the rental due hereunder for the period from the day after the Termination through the end of the Throughput Lease Year in which the Termination shall occur, the Exemption Number, the Tier 1 Number of Containers, the Tier 2 Number of Containers, and the Rent Guarantee Number shall each be prorated for the period from the day after the Termination through the end of the Throughput Lease Year in which the Termination shall occur; and

(5) on account of the Lessee's obligations under this Agreement with respect to the Non-container Throughput Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the applicable charge per revenue ton prevailing at the time of Termination shall be

multiplied by the "average number of revenue tons per month" as defined below and the product so obtained shall in turn be multiplied by the number of full calendar months remaining in the term of the letting at the time of Termination. The "average number of revenue tons per month" shall be calculated by dividing the total number of revenue tons of Non-container Cargo loaded onto or discharged from vessels berthing at the Premises during the last full twelve months immediately preceding the Termination by twelve (12).

Section 29. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 25 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or of the Premises, 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 25 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 26 of this Agreement, have the right to repair and to make structural or other changes in the Premises, including changes which alter the character of the Premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the Premises (or portion thereof) during the balance of the Term as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the Premises as the Port Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance of a surrender. It is understood by the Port Authority and the Lessee that the Port Authority has no obligation to relet the Premises or any portion thereof or to use or occupy the Premises or any portion thereof itself, except to the extent as may be required by law.



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Section 30. Remedies to Be Nonexclusive

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

Section 31. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Sections 16 and 20 hereof regarding the condition of the Premises at the expiration or termination of the letting hereunder.

(b) Unless required for the performance by the Lessee of its obligations hereunder (in which event removal shall be permitted during the last two (2) months of the term hereof), the Lessee shall have the right at any time during the letting to remove from the Premises, all equipment, removable fixtures and other personal property to which it has title, and all property of third persons for which the Lessee is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the Premises, repairing all damage caused by any removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, the Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise.

Section 32. Acceptance of Surrender of Lease

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

Section 33. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either the Port Authority or the Lessee, except as otherwise expressly provided herein, shall be in writing (which shall include a telegram when delivered to the telegraph company), and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an office of such party, officer or representative during regular business hours; or (iii) delivered to the residence of such party, officer or representative at any time; or (iv) if directed to the Lessee, delivered to the Premises at any time; or (v) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office, the address of which is set forth in Page 1 of this Agreement, as their respective offices where notices and requests may be served.

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

Section 34. General

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

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

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

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

except that the Lessee may use contractors in the performance of its obligations to perform the Lessee's Construction Work, comply with Environmental Requirements, maintain and repair the Premises and the equipment thereon and to supply watching and stevedoring services, including, coopering, clerking, checking, and extra labor functions at the Facility or to assist it with (but not to be responsible for performing) any other of the Lessee's obligations under this Agreement, provided, that if separate contractors are engaged to perform any of the foregoing services nevertheless the active management, direction, administration, executive action and overhead functions involved in the operations of the Lessee shall all be performed at all times during the letting solely by the Lessee, its officers and employees, and provided, further, that the Lessee shall be fully responsible to the Port Authority for the acts and omissions of such contractors and their officers, agents, representatives, employees and persons on the Premises with their consent to the same extent as if the same were the employees of the Lessee. None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Premises with its consent.

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

(c) Unless otherwise stated in this Agreement, in its use of the Premises the Lessee shall act only for its own account and, without limiting the generality of the foregoing, shall not act as agent, representative, factor, broker,

forwarder, bailee, or consignee without legal title to the subject matter of the consignment, except to the extent necessary for exercise of the rights of user granted by this Agreement.

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

(e) The Section headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(f) All payments required of the Lessee by this Agreement shall be made by mail to the Port Authority at P. O. Box 17309, Newark, New Jersey, 07194, or to such other address as may be substituted therefor.

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

(h) As used in Sections 7, 13 and 22, 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, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other communications systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

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

(j) As used in this Agreement, the "Elizabeth-Port Authority Marine Terminal" shall mean the land and premises in the City of Elizabeth, in the County of Union and State of New Jersey, title to which was vested in the Port Authority by an Order Vesting Title in and Directing Delivery of Possession to The Port of New York Authority dated March 14, 1958, filed March 17, 1958 in the Superior Court of New Jersey, Law Division,

Union County, Docket No. L-7065-56, in the case of The Port of New York Authority, plaintiff, vs. Edward J. Grassman, et als., defendants, the lands title to which was so conveyed having been described fully in the Second Amended Complaint filed in the said case on May 16, 1957; and shall include lands contiguous to the lands so described, within the County of Union, which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes. The rights of the Port Authority in the Facility are those acquired by it pursuant to the order described in the preceding sentence, together with those which may be acquired by any subsequent order or orders, deed or deeds or other instruments transferring or assigning additional adjacent property. No greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power to grant under the orders, deeds, or other instruments, as the circumstances may require.

(k) In the event that obstruction lights are now or in the future shall be installed on the Premises, the Lessee agrees to furnish the Port Authority without charge, electricity for energizing such obstruction lights daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and sunrise may vary from day to day throughout the year) and for such other periods as may be directed or requested by the Control Tower of Newark Airport.

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

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

(n) So long as the Lessee shall pay all rentals provided for in this Agreement and shall observe and perform all the terms, covenants and conditions on the Lessee's part to be observed and performed under this Agreement, the Lessee may peaceably and quietly enjoy the Premises, during the term of the

letting, without hindrance or molestation by anyone claiming by, through or under the Port Authority as lessor hereunder or any successor lessor, subject, nevertheless, to the terms, covenants and conditions of this Agreement, it being understood that the Port Authority's liability as lessor hereunder shall obtain only so long as it remains the owner of the Premises. The provisions of this paragraph not be deemed to modify the rights expressly granted to the Port Authority to terminate this Agreement and/or exercise any other remedies which it may have in the event of a default by the Lessee in its obligations hereunder after giving by the Port Authority of any required notice and the expiration of any applicable cure period.

(o) Subject to the last sentence of this paragraph, this Agreement and the letting hereunder are and shall be 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 (a "Superior Mortgage"), and although the provisions of this Section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Lessee, the Lessee shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this Section as the Port Authority may request. The Port Authority agrees that it will execute and permit the Lessee to record a Memorandum of Lease or similar document to be prepared by the Lessee providing summary notice of the terms and conditions hereof. The foregoing subordination of the Lessee's interest under this Agreement shall be contingent upon the Port Authority obtaining from the holder of such Superior Mortgage an agreement to the effect that so long as the Lessee is not in default in payment and performance of its obligations under this Agreement beyond applicable notice and cure periods, Lessee's possession of the Premises shall not be disturbed by reason of a foreclosure of such Superior Mortgage.

(p) Without in any way 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 any one or more vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment while the same are at, coming to or leaving the Premises, except for damages to the Facility (other than the Premises) caused by any one or more of such vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment as may be coming to or leaving the Premises without previous knowledge on the part of the Lessee.

(q) The Lessee recognizes that height restrictions, due primarily to the proximity of Newark Airport to the Premises, now exist and that they may at any time be changed, including changes that make them more onerous and restrictive. The Lessee and all persons, firms and corporations using the Premises or any part thereof with the express or implied consent of the Lessee, shall at all times obey such height restrictions as may be posted from time to time or otherwise communicated to the Lessee by the Port Authority, whether or not through the Manager of the Facility.

(r) The Port Authority, for the benefit of itself and of others using the Facility with its consent, shall have the right of access and passage for vessels along, upon and across the waters of the berthing area or any part thereof, to the extent only that such right may be exercised without unreasonably interfering with the operations of the Lessee.

(s) Reference in this Agreement to the singular shall be meant to include reference to the plural and vice versa. Reference in this Agreement to the masculine gender shall be meant to include the female and neuter and vice versa. The definition ascribed to any term herein shall govern all uses of such term, including uses of such term prior to the appearance of the definition.

(t) In the event that two or more copies of this Agreement are executed by all of the parties hereto, each executed copy shall be deemed an original, but all shall collectively constitute the same instrument. In the event that two or more counterparts of this Agreement are executed all such counterparts shall collectively constitute the same instrument.

(u) All agreements and covenants herein contained are severable. In the event that any provision of this Agreement should be held to be unenforceable, the validity and enforceability of the remaining provisions hereof shall not be affected thereby. Any court (or arbitrator) construing this Agreement is expressly granted the authority to revise any invalid or unenforceable provision hereof in order to render same enforceable.

(v) This Agreement shall be governed in accordance with the laws of the State of New Jersey.

Section 35. <u>Premises</u>

(a) Except as provided in Paragraph (d), the Port Authority shall deliver the Premises to the Lessee in its presently existing "as is" condition. The Lessee agrees to and shall take the Premises in its "as is" condition and the Port Authority shall have no obligations under this Agreement for

finishing work or preparation of any portion of the Premises for the Lessee's use. The Lessee acknowledges that a portion of the Premises were previously leased by the Port Authority to the Lessee under the Lease EP-148. Notwithstanding the provisions set forth in the first two sentences of this paragraph, and without otherwise limiting the generality thereof, the Lessee agrees that its obligations under Section 16 and Section 31(a) of this Agreement shall include, without limitation, the delivery of such portion of the Premises to the Port Authority upon expiration or earlier termination of the letting hereunder in the condition set forth in Sections 16 and 20 of this Agreement.

(b) 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 as existing and has found the same to be suitable and satisfactory for the operations of the Lessee contemplated and permitted under this Agreement. Without limiting any obligation of the Lessee to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the Premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the operations of the Lessee, so that there is possibility of injury or damage to life or property, and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition. The Lessee hereby further acknowledges that it has during the term of the Lease EP-148 performed repairs and construction and installed improvements on the premises, title to all of which it is hereby agreed has vested in the Port Authority. In the event that as of the commencement of the term of the letting under this Agreement, the Lessee shall not have kept any or all of the foregoing in good condition as required under the Lease EP-148, the Lessee shall place and keep the same in good condition as required under this Agreement.

Any liabilities or obligations which by the terms of the Lease EP-148, or letter agreements or permits thereunder to make alterations, mature at the expiration or termination of said lease, shall be deemed to survive and mature at the expiration or earlier termination of this Agreement.

(c) The Port Authority shall not be liable to the Lessee for injury or death to any person or persons whomsoever, or for damage to any property whatsoever at any time in the Premises or elsewhere at the Facility, including but not limited to any such injury, death or damage from falling material,

water, rain, hail, snow, gas, steam, or electricity, whether the same may leak into, or flow from any part of the Facility or from any other place or quarter.

(d) The Port Authority agrees that as part of its renovations to the new ExpressRail Facility that it shall demolish building 4000, including the portion on the Premises, and remove the resulting debris from the Premises.

Section 36. Force Majeure

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

(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 of reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the state, county or city government, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 37. 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 and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Agreement.

Section 38. 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.

Section 39. Services

(a) Except as provided in this Section 39, the Port Authority shall be under no obligation to supply the Lessee with any services provided by utility companies and other service providers, including but not limited to water, gas, electricity, sewer service, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service.

(b) (1) The Lessee shall promptly pay all water and sewer charges both covering its own consumption and water delivered by the Lessee to vessels berthing at the Premises issued by the municipality or public utility supplying such water or the Port Authority, as the case may be.

(2) In the event the municipality or public utility is the direct provider of cold water and sewer service, the Lessee shall make arrangements with such entity for such service and pay bills directly to the provider for same. If any such bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute an item of additional rental, payable to the Port Authority on demand.

(3) In the event the Port Authority provides, furnishes and supplies to the Lessee cold water and sewer service, the Lessee shall pay water bill and sewer charges directly to the Port Authority. Such bills may include the cost to the Port Authority of supplying such water and sewer service

and an amount which shall be fifteen percent (15%) of the amount charged by the municipality or public utility including, but not limited to, costs for the purchase, supply, distribution, construction, maintenance and administration of water supply and sewer service. The charge therefor shall be payable by the Lessee when billed as additional rental in the same manner and with like remedies as for all other rental under this Agreement. The quantity of water consumed shall be measured by the meter or meters installed for the purpose or determined by survey, as the case may be; provided, however, that if for any reason, any meter or meters fail to record the consumption of water, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period immediately before or after the interruption, as elected by the Port Authority.

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

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the Premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings, which, or a portion or portions of which, are included in the Premises, the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, pay, in accordance with any such notice, such 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 other entity, or directly to the Port Authority, as such notice may direct. All such payments 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) Without in any wise affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of Section 16 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), ship-filling lines and other water-using equipment and facilities.

Section 40. Security

(a) Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deposit with the Port Authority (and shall keep deposited throughout the letting under this Agreement) either the sum of One and a Half Million Dollars and No Cents ($1,500,000.00) in cash, or bonds of the United States of America, or of the State of New Jersey, or of the State of New York, or of The Port Authority of New York and New Jersey, having a market value of that amount, as security for the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of this Agreement on its part to be fulfilled, kept, performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Lessee may deposit such bond or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Lessee) in a manner satisfactory to the Port Authority. The Lessee may request the Port Authority to accept a registered bond in the Lessee's name and if acceptable to the Port Authority the Lessee shall deposit such bond together with a bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Lessee any expenses incurred by the Port Authority in re-registering a bond to the name of the Lessee shall be borne by the Lessee. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of the Lessee. With respect to any bonds deposited by the Lessee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Lessee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port

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

(b) The Lessee may at any time during the term of the letting under this Agreement offer to deliver to the Port Authority, as security for all obligations of the Lessee under this Agreement, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of One and a Half Million Dollars and No Cents ($1,500,000.00). The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such letter of credit shall provide that it shall continue throughout the term of the

letting under this Agreement and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter. Upon notice of cancellation of a letter of credit the Lessee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in accordance with paragraph (a) of this Section or another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under paragraph (a) of this Section. Failure to provide such a letter of credit at any time during the term of the letting, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit shall be deemed to be a breach of this Agreement on the part of the Lessee. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Lessee made thereafter, the Port Authority will return the security deposit, if any, theretofore made under and in accordance with the provisions of paragraph (a) of this Section. The Lessee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the letting and fulfillment of the obligations of the Lessee under this Agreement. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Lessee, on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to its full amount.

(c) Notwithstanding the foregoing, the Lessee shall have the right to change its option as set forth in paragraphs (a) and (b) above from time to time but not more often than once every two years during the term of the letting under this Agreement.

(d) For purposes of the provisions set forth in this Section, the Lessee hereby certifies that its I.R.S. Employer Identification No. is 22-1465814.

Section 41. Approach Channel Depths

(a) For purposes of this Agreement, the term "Forty-five Foot Deepening" shall mean the following work to be performed by the United States Corps of Engineers (hereinafter called "the Corps") or such successor or other United States agency performing the present functions of the Corps: the completion of a channel of a depth of forty-five (45) feet below mean low water in the Kill Van Kull and the Newark Bay sufficient to allow passage of a single ship at one time to or

from portion or portions of the Berthing Area which has or have been deepened by the Lessee to forty-five (45) feet. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey.

(b) For purposes of this Agreement, the term "Fifty Foot Deepening" shall mean the following work to be performed by the Corps or such successor or other United States agency performing the present functions of the Corps: the completion of a channel of a depth of fifty (50) feet below mean low water in the Kill Van Kull and the Newark Bay sufficient to allow passage of a single ship at one time to or from portion or portions of the Berthing Area which has or have been deepened by the Lessee to fifty (50) feet. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey.

Section 42. Terminal Guarantee

(a) For purposes of this Agreement, the following terms shall have the meanings set forth below:

(1) "Terminal Lease Year" shall mean as the context requires the Lease Year commencing on the Terminal Lease Year Commencement Date and each Lease Year thereafter occurring during the term of the letting under this Agreement;

(2) "Terminal Lease Year Commencement Date" shall mean the later of the following: (i) January 1, 2008 or (ii) the first Lease Year following the completion of the Forty-five Foot Deepening (as defined in Section 41(a) hereof);

(3) "Rent Guarantee Number" shall mean the following: (i) six hundred fifty thousand (650,000) Qualified Containers for each Terminal Lease Year to occur during the First Terminal Guarantee Period, and (ii) seven hundred seventy-five thousand (775,000) Qualified Containers for each Terminal Lease Year to occur during the Second Terminal Guarantee Period and the Third Terminal Guarantee Period, subject to the Exemption Number contained in Section 4(a)(6) of this Agreement;

(4) "Terminal Guarantee Number" shall mean the following: (i) three hundred forty thousand (340,000) Qualified Containers for each Terminal Lease Year to occur during the First Terminal Guarantee Period, (ii) four hundred twenty thousand (420,000) Qualified Containers for each Terminal Lease Year to occur during the Second Terminal Guarantee Period; and (iii) nine hundred thousand (900,000) Qualified Containers for each Terminal Lease Year to occur during the Third Terminal

Guarantee Period; provided, however, that empty containers shall be included in the Terminal Guarantee Number only to the extent that they are transported to or from the Premises in the normal course of business which may include the loading or discharge of empty containers from vessels or voyages specifically dedicated to the movement of empty containers.

Whenever reference is made to a Rent Guarantee Number or a Terminal Guarantee Number such number shall be adjusted by operation of the proration provision contained in Section 3.A(c) of this Agreement.

(5) "First Terminal Guarantee Period" shall mean the period from the Terminal Lease Year Commencement Date through the day immediately preceding the first Lease Year following the completion of the Fifty Foot Deepening;

(6) "Second Terminal Guarantee Period" shall mean the period from the first day of the first Lease Year following the completion of the Fifty Foot Deepening through December 31, 2014; and

(7) "Third Terminal Guarantee Period" shall mean the period from January 1, 2015 through the expiration of the term of the letting under this Agreement.

(b) The Lessee shall pay a minimum rental (hereinafter called the "Minimum Rental") for each Terminal Lease Year in the following amounts: (1) for each Terminal Lease Year during the First Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the First Terminal Guarantee Period; and (2) for each Terminal Lease Year during the Second Terminal Guarantee Period and the Third Terminal Guarantee Period, the product obtained by multiplying (i) the Tier 1 Rental Rate for the equivalent Throughput Lease Year (as set forth in Schedule A attached hereto) by (ii) the Rent Guarantee Number for the Second Terminal Guarantee Period. The Minimum Rental for each Terminal Lease Year shall be payable to the Port Authority in advance in equal monthly installments on the first day of each month to occur during such Terminal Lease Year.

(c) Notwithstanding any provision to the contrary contained in this Section, the Rent Guarantee Number of seven hundred seventy-five thousand (775,000) Qualified Containers, as set forth in subparagraph (3)(ii) of paragraph (a) of this Section 42, shall not be increased and shall remain at six hundred fifty thousand (650,000) Qualified containers for purposes of the calculation of the guaranteed rental so long as the Fifty Foot Dredging shall not have been completed. The

calculation of the guaranteed rental shall be made based on the six hundred fifty thousand (650,000) Qualified Containers until such time as the Fifty Foot Dredging is completed. Upon the completion thereof, the calculation of the next payable guaranteed rental shall reflect the Rent Guarantee Number of six hundred fifty thousand (650,000) Qualified Containers for any portion of the Throughput Lease Year preceding the completion of the Fifty Foot Dredging and shall reflect the Rent Guarantee number of seven hundred seventy-five thousand (775,000) Qualified Containers for any portion of the Throughput Lease Year following the completion thereof, unless the Fifty Foot Dredging shall be completed on the last day of the Throughput Lease Year, in which event the Rent Guarantee Number for the entire Throughput Lease Year in which the Fifty Foot Dredging next following the Throughput Lease Year in which the Fifty Foot Dredging shall be completed and thereafter during the Second Terminal Guarantee Period and the Third Terminal Guarantee period shall be seven hundred seventy-five thousand (775,000) Qualified Containers.

(d) In the event that for any two consecutive Terminal Lease Years to occur during the First Terminal Guarantee Period or the Second Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises shall be less than the Terminal Guarantee Number for the applicable Terminal Guarantee Period, the Port Authority shall have the right to terminate the letting under this Agreement. Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said second consecutive Terminal Lease Year through the one hundred eightieth ($180^{th}$) day following the end of said second consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said second consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof and after notice of such failure is provided to Lessee, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the letting under this Agreement pursuant to the provisions of Section 25 hereof.

(e) In the event that for any three consecutive Terminal Lease Years to occur during the Third Terminal Guarantee Period, the number of Qualified Containers loaded onto or discharged from vessels berthing at the Premises shall be less than the Terminal Guarantee Number for the Third Terminal Guarantee Period, the Port Authority shall have the right to

terminate the letting under this Agreement. Termination under this subparagraph shall be effected by the Port Authority's giving the Lessee one (1) year's prior written notice at any time during the period from the first day following the end of the said third consecutive Terminal Lease Year through the one hundred eightieth (180th) day following the end of said third consecutive Terminal Lease Year; provided, however, that if the Lessee shall fail to submit to the Port Authority the certified statement required under Section 4(d) hereof for the end of the said third consecutive Terminal Lease Year within ninety (90) days of the date for the submission thereof, the parties agree that it shall be presumed that the Lessee's throughput is insufficient and that the termination right of the Port Authority under this subparagraph is in effect. Termination under the provisions of this subparagraph shall be governed by Section 25 hereof, and the Port Authority shall have the right to terminate the letting under this Agreement pursuant to the provisions of Section 25 hereof.

(f) Notwithstanding any provision to the contrary contained in this Section, the Terminal Guarantee Number of nine hundred thousand (900,000) Qualified Containers, as set forth in subparagraph (4)(iii) of paragraph (a) of this Section 42, shall not apply and shall remain at three hundred forty thousand (340,000) Qualified Containers so long as the Fifty Foot Dredging shall not have been completed.

Section 43. Records

(a) The Lessee shall maintain in accordance with accepted accounting practice during the term of the letting under this Agreement and for three years thereafter records and books of account (including, without limitation, bills of lading and manifests) recording all transactions in any way connected with or reflecting upon the payment of any rental by the Lessee pursuant to Sections 3, 4 or 5 hereof, and which records and books of account shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session, and permit, in ordinary business hours during such time, the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any of such records and books of account of any company which is owned or controlled by the Lessee, if said company performs services, similar to those performed by the Lessee, anywhere in the Port of New York District.

(b) Nothing contained in this Agreement shall be deemed to render any records, or any statement, of the Lessee required to be maintained or supplied hereunder conclusive as to

any of the matters set forth therein. The Port Authority may at its sole discretion, in lieu of any records or books of account or statements of the Lessee, employ its own records and books of account for the calculation of any amounts to be paid under this Agreement.

Section 44. Affirmative Action

(a) The Lessee shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) In addition to and without limiting the foregoing and without limiting the provisions of Schedule E attached hereto and hereby made a part hereof, it is hereby agreed that the Lessee, in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Facility, shall throughout the term of the letting under this Agreement commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within sixty (60) days after the commencement of the term of the letting under this Agreement to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes as the Port Authority and the Lessee may agree upon from time to time. The Lessee throughout the term of the letting under this Agreement shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to, annual reports. The obligations imposed on the Lessee under this Section shall not be construed to impose any greater requirements on the Lessee than those which are imposed on the Lessee under applicable law.

(c) "Minority" as used herein shall be as defined in paragraph II (c) of Part of Schedule E.

(d) In the implementation of this Section the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(e) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

(f) Nothing in this Section shall grant or be deemed to grant to the Lessee the right to make any agreement or award for concessions or consumer services at the Facility.

Section 45. Right of Termination - Ownership and Control

(a) The Lessee represents, knowing that the Port Authority is relying on the accuracy of such representation, that it is a privately held corporation organized and existing under the laws of the State of New Jersey with 10,000 shares of common stock par value $0.01 per share, presently issued and outstanding, constituting all its issued and outstanding securities and that the following individuals are the owners of all its outstanding securities:

Name

M. Brian Maher
Basil Maher

The Lessee further represents that there are no other shares issued and outstanding, and that there are no other persons (which term shall include individuals, corporations, partnerships or other entities, hereinafter "Person" or "Persons") having a direct or indirect beneficial ownership of or in the Lessee.

(b) The Lessee recognizes the fact that a transfer of all of the securities in the Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or with respect to the identity of the parties in control of the

Lessee, is for practical purposes a transfer or disposition of the rights obtained by the Lessee through this Agreement. The Lessee further recognizes that because of the nature of the obligations of the Lessee hereunder, the qualifications and identity of the Lessee and its security holders are of particular concern to the Port Authority. The Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Lessee for the faithful performance of all obligations and covenants hereunder. Therefore, the Lessee agrees that, without the prior written approval of the Port Authority, there shall be no transfer by any Person owning securities in the Lessee (an "Owner", which term shall be deemed to include successor Owner(s) of such securities or any part thereof or interest therein) to any other Person except those individuals whose names are listed above in paragraph (a) of this Section; nor shall any Owner suffer any transfer to be made; nor shall there be or be suffered to be by the Lessee or by any Owner of securities therein, any other change in the ownership of such securities, or with respect to the identity of the Persons in control of the Lessee, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional new securities or classification of securities or otherwise, provided, however, prior Port Authority approval as aforesaid shall not be required for transfer of any securities in the Lessee to one or more (individually or in combination) of the following: (u) by will or the laws of inheritance and distribution to any immediate family member of the Owner, (v) to any immediate family member of such Owner, (w) to a corporation, partnership or limited liability company the sole shareholders, partners or members of which are Owner(s) and immediate family members of Owner(s), (x) to a trust for the exclusive benefit of one or more permitted transferees as provided in this paragraph (b), (y) to an employee stock ownership plan of the Lessee established under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") or any successor provision thereto or (z) to any charitable organization qualified under Section 501(c)(3) of the Code or any successor provision thereto (collectively, with M. Brian Maher and Basil Maher, the "Permitted Transferees"). It is understood, however, that, except to transferees permitted pursuant to clauses (u) to (z) of this paragraph (b) or as provided in paragraphs (c), (d) or (j), any further transfer or transfers by the aforementioned transferee or transferees shall be subject to the conditions set forth in paragraphs (b), (d) or (e) of this Section, as applicable. "Immediate family member" shall mean any parent, descendant of any parent (by birth or adoption) or any spouse of any descendant.

(c) Notwithstanding the prohibition contained in paragraph (b) of this Section, during the period from the date of this Agreement to the day immediately preceding the twelfth anniversary of such date, the prior written approval of the Port Authority shall not be required with respect to a transfer or series of transfers of securities of the Lessee in the aggregate, of up to twenty percent (20%) of such securities to any other Person(s) other than Permitted Transferees, provided that, prior to such transfer pursuant to this paragraph (c), the proposed transferee or transferees shall make the certification and disclosures numbered (1) through (7) as set forth in subparagraph (iii) of paragraph (d).

(d) (i) Notwithstanding the prohibition on transfer of securities of the Lessee contained in paragraph (b) of this Section, commencing on the fifth anniversary of the date of this Agreement, the Port Authority's approval for transfers required by paragraph (b) of this Section shall not be unreasonably withheld so long as such transfers comply with all of the conditions set forth in subparagraphs (ii) and (iii) of this paragraph.

(ii) All transferees of transfers pursuant to the foregoing subparagraph (d)(i) shall, at the time of transfer,

(1) be a major steamship carrier or major public stevedore; and

(2) have an existing tangible net worth as of the end of its most current completed fiscal year, determined from the financial statements referenced in subparagraph (3) below ("Net Worth") of at least $75 million, which amount shall be increased at the rate of two percent (2%) per annum, compounded annually, commencing on the sixth anniversary of this Agreement, and on each anniversary date thereafter throughout the term of this Agreement; and

(3) have had positive net income in the steamship and/or stevedoring business during the five (5) years immediately preceding the year in which the transfer(s) is or are to occur, as determined in accordance with accepted accounting practices in the country in which such transferee(s) has or have its or their principal office(s) and evidenced by financial statements with appropriate certifications by the auditors of the transferee(s) copies of which shall be made available to the Port Authority for its inspection; and

(4) comply with the provisions of subparagraph (iv); and

(5) not be an existing terminal operator at the Port of New York and New Jersey which (a) handled on average

twenty-five percent (25%) or more container volume at the Port of New York and New Jersey during each of the two (2) years immediately preceding each of such transfer or transfers or (b) would have under its control, as a result of such transfer, a total of forty-five percent (45%) or more of the total container terminal acreage (including, whether or not such transfer confers a controlling interest in the Lessee, the Premises under this Agreement) in the Port of New York and New Jersey; and

(6) make the certification and disclosures provided in the following subparagraph (iii).

(iii) The proposed transferee shall, with respect to itself and each officer that would constitute an "executive officer" pursuant to Rule 3(b)(7) of the Securities and Exchange Act of 1934, as amended or any successor thereto (whether or not the proposed transferee is actually subject to such rule), each director and each Affiliate of the proposed transferee, and each beneficial owner of a fifteen percent (15%) or more interest in the proposed transferee (a "15% Owner") (other than any 15% Owner that is a public company that does not actually control the proposed transferee) (the proposed transferee and any such officer, director, Affiliate (as hereinafter defined) or 15% Owner, being hereinafter referred to as "It") make the certification and disclosures numbered (1) through (7) below.

(1) disclose every name, trade name or abbreviated name or federal taxpayer identification number ever used by It;

(2) certify that currently It is not suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to integrity; and disclose whether, within the five (5) years preceding the date of the disclosure, It has been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to integrity;

(3) disclose whether within the five (5) years preceding the date of the disclosure It has had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on indictment or conviction;

(4) disclose whether within the five (5) years preceding the date of the disclosure It has had any business or professional license suspended or revoked or had any sanction imposed as a result of any judicial or administrative

proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;

(5) disclose whether within the twenty-five (25) years preceding the date of the disclosure It has ever had any sanction imposed as a result of a judicial or administrative proceeding related to material fraud (and within the preceding ten (10) years, with respect to fraud that is not material), extortion, bribery, bid rigging, embezzlement, material misrepresentation or material antitrust violation regardless of the dollar amount of the sanctions or the date of their imposition;

(6) disclose whether It is currently the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency; and

(7) disclose whether It has within the five (5) years preceding the date of the disclosure been indicted or convicted of any crime or material offense in any jurisdiction.

(iv) The parties hereto recognize that, pursuant to the Waterfront Commission Act and the Regulations promulgated by the Waterfront Commission with respect thereto, licensed stevedores, such as Lessee, are required to provide the Waterfront Commission with the name of any person or entity which shall acquire five percent (5%) or more of the stock of the licensee and that the Waterfront Commission has the right to revoke or suspend the stevedore's license if any such person or entity would have disqualified the licensee from receiving a license upon original application. Accordingly, as an additional requirement to obtain the reasonable consent of the Port Authority as provided in subparagraph (ii) above, the Lessee agrees, no less than sixty (60) days prior to the transfer, to: (x) provide the Waterfront Commission with the name(s) of the proposed transferee(s); (y) cause the proposed transferee(s) to file with the Waterfront Commission a *Personal Information Supplement to Application for Stevedore License* (or such other form as the Waterfront Commission may specify at that time); and (z) request the Waterfront Commission to indicate, in writing, that it does not anticipate that it would take action to revoke or suspend the Lessee's stevedore license as a result of the transfer.

(e) (i) In the event, as a result of a transfer or series of transfers pursuant to paragraph (c), paragraph (d) or paragraph (j) (but specifically excepting transfers to Permitted Transferees), a transferee or transferees has or have direct or indirect ownership of thirty percent (30%) or more of the securities of the Lessee, then the Terminal Guarantee Number as provided in Section 42 entitled Terminal Guarantee, shall be

increased from 775,000 Qualified Containers to 825,000 Qualified Containers with respect to all lease years following the latter of the Lease Year in which such event shall have occurred or the Lease Year in which the availability of the beneficial use of the approach channels to 50' MLW in the Kill van Kull and Newark Bay shall have occurred.

(ii) In the event, as a result of a transfer or series of transfers pursuant to paragraph (c) or paragraph (d), any Person (other than Permitted Transferees) has control of the Lessee, the Port Authority shall have the right to increase the security deposit up to three months' rent based on the full rental obligation under this Agreement.

(f) The Lessee agrees that no later than ninety (90) days before the date of closing of any transfer set forth in paragraph (d) above, it shall give prior written notice of such proposed transfer(s) to the Port Authority, furnish a complete statement, subscribed and sworn to by the President or other executive officer of the Lessee, setting forth all disclosures and certifications by each transferee specified in subparagraph (d) above. In addition, the Lessee shall promptly furnish all additional information in connection with such transfer as the Port Authority may reasonably request from time to time.

(g) The Lessee acknowledges that the Lessee's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Lessee with the provisions contained in this Section 45, in whole or in part, shall be and be deemed an event of default under Section 25 of this Agreement, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of said Section 25 hereof.

(h) The foregoing right of termination shall be in addition to all other rights of termination the Port Authority has under this Agreement and the failure of the Port Authority to exercise its right of termination under this Section at any time in which it may have such right shall not affect, waive or limit its right to exercise such right of termination at any subsequent time.

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

(j) (1) Paragraph (b) of this Section shall not apply and the approval of the Port Authority shall not be

required for any transfer of securities of the Lessee by way of a primary or secondary public offering. It is hereby expressly agreed that in the event the Lessee proposes to make an initial public offering of its securities, the Lessee, promptly and no later than twenty (20) days after the prospectus or documents or forms filed with the Securities and Exchange Commission or any successor or substitute body ("SEC") become available for public inspection, shall submit to the Port Authority true and complete copies of such prospectus and other such documents and forms filed with the SEC. The provisions of paragraph (e) shall apply with full force and effect to transfers made by the Lessee pursuant to this paragraph (j). It is understood and agreed that, subject to the further provisions of this paragraph (j), paragraph (b) of this Section and the Port Authority's right to terminate this Agreement and the letting hereunder as described in paragraph (g) of this Section shall not apply in the event the Lessee becomes a publicly owned entity (as defined in subparagraph (k)(2) below).

(2) In the event the Lessee shall at any time be or become a publicly owned entity, and any Person (other than (x) a Permitted Transferee, or (y) any successor owner otherwise permitted by this Section (collectively, an "Approved Owner") shall be or become a direct or indirect beneficial owner of fifteen percent (15%) of the securities of such entity unless (A) one or more Approved Owners shall control more than fifty percent (50%) of the voting power of the securities of the Lessee, (B) such fifteen percent (15%) holder shall itself be a publicly owned entity or (C) the Port Authority shall have given its written consent thereto, then upon the occurrence of any such event or at any time thereafter during the continuance thereof the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(k) (1) The term "security" shall include any stock, any bond which carries voting rights, or rights or options to subscribe to, purchase, convert or transfer into or otherwise acquire equity securities, or any other obligation of a corporation the holder of which has any voting rights including but not limited to the right to vote for the election of members of the board of directors of said corporation and shall include any security convertible into a voting security and any right, option or warrant to subscribe to or purchase a voting security.

(2) A "publicly owned entity" shall be and mean one that has any class of securities subject to the registration requirements of the Securities Exchange Act of 1934, or any successor or substitute therefor.

(3) "Affiliate" shall mean any Person that directly or indirectly through one or more intermediaries,

controls or is controlled by or is under control with the specified Person. The term "control" (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of existing securities, by contract or otherwise; provided that, in any event, any Person which owns fifteen percent (15%) or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or fifteen percent (15%) or more of the partnership or other ownership interests of any other person shall be deemed to control such corporation or such other person.

Section 46. Tax Election

(a) Attached hereto as Exhibit Y is a form of election pursuant to Section 142(b) of the Internal Revenue Code of 1986, as amended. The Lessee acknowledges that two counterparts of said form of election have been delivered to it by the Port Authority. Upon the execution of this Agreement by the Lessee and its delivery to the Port Authority, the Lessee shall execute the said two counterparts and deliver one fully executed counterpart to the Port Authority with its delivery of this Agreement, and the Lessee shall keep the second executed counterpart with its records for the balance of the entire term of the letting under this Agreement.

(b) The Lessee is not acquiring an ownership interest in the Premises defined in Section 1 of this Agreement. Capital expenditures in connection with the Premises have been, or are expected to be made, in whole or in part by the Port Authority from "exempt facility bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986) issued by the Port Authority from time to time (such capital expenditures are hereinafter called "the Property"). The Lessee hereby irrevocably elects not to claim for purposes of federal, state or local taxation of income any depreciation or investment credits, for which it may be eligible with respect to the Property. The Lessee further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under this Agreement, and as a condition of any permitted sale or assignment of the interest of the Lessee under this Agreement, every successor in interest shall furnish an executed irrevocable election in the form of the immediately preceding sentence to the Port Authority. The foregoing shall not grant or be deemed to grant to the Lessee the right to sell or assign, in any manner, its interest under this Agreement.

(c) In the event the Lessee records any documents in lieu of recording this Agreement, such documents shall incorporate the substance of paragraph (b) of this Section.

(d) It is understood that the election set forth in paragraph (b) of this Section shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the Premises leased to the Lessee pursuant to this Agreement which are installed by the Lessee in or on the Premises leased to the Lessee pursuant to this Agreement and which shall be deemed to be and remain the property of the Lessee.

Section 47. Late Charges

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time there for by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 25 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 Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 48. First Point of Rest Space

(a) The Lessee acknowledges and agrees, as a special inducement to the Port Authority to enter into this Agreement, that the Lessee shall make available a ship berth and upland area for the purpose of receiving and loading automobiles and other motor vehicles carried as waterborne cargo, as follows:

(i) Upon 48 hours' advance notice from any motor vehicle processor operating a motor vehicle processing facility located at the Elizabeth-Port Authority Marine Terminal, the Lessee shall make available Berth 52 as shown in diagonal hatching on Exhibit A-4 attached hereto and hereby made a part hereof and the open area upland of Berth 52 of approximately ten (10) acres as shown in diagonal cross hatching on Exhibit A-4 (hereinafter collectively called the "First Rest Space"), for berthing of vessels for the loading and unloading of automobiles and other motor vehicles and use as a first point of rest for such automobiles and other motor vehicles that are destined for dispatch or processing by such motor vehicle processor.

(ii) Motor vehicle processors using the First Rest Space, their employees, representatives and agents shall have the right of ingress and egress on and across the Premises between the First Rest Space and the city streets and/or Marine Terminal highways outside the Premises.

(iii) The Lessee agrees it will charge motor vehicle processors using the First Rest Space dockage and wharfage charges and that such charges shall be at no more than the rates as set forth in the Port Authority's tariff, as incorporated in FMC Schedule PA-10, as the same or any successor tariff may be amended from time to time.

(b) (i) The Lessee further acknowledges and agrees that in the event the Lessee fails to comply with the provisions of paragraph (a) of this Section 48 and after receipt of notice of non-compliance by the Lessee and failure of the Lessee to cure such non-compliance within ten (10) days of receipt of such notice, as the sole remedy of the Port Authority, the Port Authority shall have the right to separately terminate the letting hereunder with respect to the First Rest Space on five (5) days' advance written notice to the Lessee. In the event of termination pursuant hereto, the letting with respect to the First Rest Space shall cease and expire on the effective date of termination set forth in said notice with the same force and effect as if such date were the expiration date of this Agreement with respect thereto. Such termination shall not relieve the Lessee of any liabilities or obligations which shall

have accrued on or prior to the effective date of termination or which shall mature on such date.

(ii) The Lessee agrees that in the event of termination pursuant to the provisions of subparagraph (i) hereof, motor vehicle processors using the First Rest Space, their employees, representatives and agents shall have the right of ingress and egress on and across the Premises between the First Rest Space and the intersection of North Fleet Street and Aruba Street.

(c) Notwithstanding the foregoing provisions of this Section 48, it is agreed as follows:

(i) This Section 48 shall lapse and become null and void in the event that either: (x) no motor vehicle processing facility located at the Elizabeth-Port Authority Marine Terminal for a period of more than one (1) year; or (y) the First Place of Rest Space is not used by such a motor vehicle processor as a first place of rest for vehicles stevedored at Berth 52 for a period of more than one (1) year.

(ii) The right of any motor vehicle processor to use the First Place of Rest Space as provided in this Section 48 shall be subject to such motor vehicle processor entering into an agreement reasonably satisfactory to the Lessee which would specify commercially reasonable insurance and prompt payment of dockage and wharfage charges.

Section 49. Entire Agreement

The within Agreement consists of the following: Sections number 1 through 49, Schedules A, B and I, and Exhibits A, A-1, A-2, A-3, A-4, Y and I. It constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.



08PA00001997

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

ATTEST:

Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By

(Title) Asst. Exec. Director

(seal)

ATTEST:

Secretary

MAHER TERMINALS, INC.

By:

M. Brian Maher
Chairman and
Chief Executive Officer
(seal)

APPROVED:

| FORM | TERMS |
|---|---|
| | |

PDN



08PA00001998

SCHEDULE A

| LEASE YEAR BEGINNING | TIER 1 RENTAL RATE (356,001 TO 980,000) | TIER 2 RENTAL RATE (980,001 AND ABOVE) |
|---|---|---|
| Prior to October 1, 2008 | $ 0.00 | $ 0.00 |
| October 1, 2008 | $ 5.67 | $ 4.25 |
| October 1, 2009 | $12.67 | $ 9.25 |
| October 1, 2010 | $19.00 | $14.25 |
| October 1, 2011 | $19.00 | $14.25 |
| October 1, 2012 | $21.00 | $15.75 |
| October 1, 2013 | $21.00 | $15.75 |
| October 1, 2014 | $21.00 | $15.75 |
| October 1, 2015 | $23.00 | $17.25 |
| October 1, 2016 | $23.00 | $17.25 |
| October 1, 2017 | $23.00 | $17.25 |
| October 1, 2018 | $25.00 | $18.75 |
| October 1, 2019 | $25.00 | $18.75 |
| October 1, 2020 | $25.00 | $18.75 |
| October 1, 2021 | $27.00 | $20.25 |
| October 1, 2022 | $27.00 | $20.25 |
| October 1, 2023 | $27.00 | $20.25 |
| October 1, 2024 | $29.00 | $21.75 |
| October 1, 2025 | $29.00 | $21.75 |
| October 1, 2026 | $29.00 | $21.75 |
| October 1, 2027 | $31.00 | $23.25 |
| October 1, 2028 | $31.00 | $23.25 |
| October 1, 2029 | $31.00 | $23.25 |

SCHEDULE E

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

PART I. Affirmative Action Guidelines - Equal Employment Opportunity

I. The Port Authority and the Lessee hereby agree that the Lessee shall and that the Lessee shall require any Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E. The provisions set forth in this Part I are similar to the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

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

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

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

(1) Minority participation:

| | |
|---|---|
| -Skilled trades | 30% |
| -Laborers | 40% |

(2) Female participation:

| | |
|---|---|
| -Skilled trades | 6.9% |
| -Laborers | 6.9% |

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

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

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

(c) As used in these specifications:

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

(2) "Minority" includes:

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

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

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

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal

affiliations through membership and participation or community identification).

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

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

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

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

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

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

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to

each Phase of the construction project. The Contractor, shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the premises are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the premises.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

(6) Disseminate the Contractor's EEO Policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the Contractor's newspaper, annual report,

etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least every six months the Contractor's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-premises supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at the premises. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the premises and in other areas of a Contractor's work force.

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

(12) Conduct, at least every six months, an inventory and evaluation at least of all minority and female

personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

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

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

(j) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and

to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is underutilized).

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

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

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

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

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

(p) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish

different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(q) Without limiting any other obligation, term or provision under the Lease, the Contractor shall cooperate with all federal, state or local agencies established for the purpose of implementing affirmative action compliance programs and shall comply with all procedures and guidelines established or which may be established by the Port Authority.

PART II. MINORITY BUSINESS ENTERPRISES/WOMEN-OWNED BUSINESS ENTERPRISES

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself and shall require the general contractor or other construction supervisor and each of the Lessee's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the construction work pursuant to the provisions of this Schedule E. For purposes hereof, Minority Business Enterprise (MBE) shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, Women-owned Business Enterprise (WBE) shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by women and such ownership is real, substantial and continuing. A minority shall be as defined in paragraph 11(c) of Part I of this Schedule E. 'Meaningful participation' shall mean that at least twelve percent (12%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and that at least five percent (5%) of the total dollar value of the construction contracts (including subcontracts) are for the participation of Women-owned Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(a) Dividing the Work to be subcontracted into smaller portions where feasible.

(b) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of

solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBA and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

(c) Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.

(d) Utilizing the list of eligible MBEs and WBEs maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.

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

(f) Insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.

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

LCB

For the Port Authority

Initialed:

MBA

For the Lessee

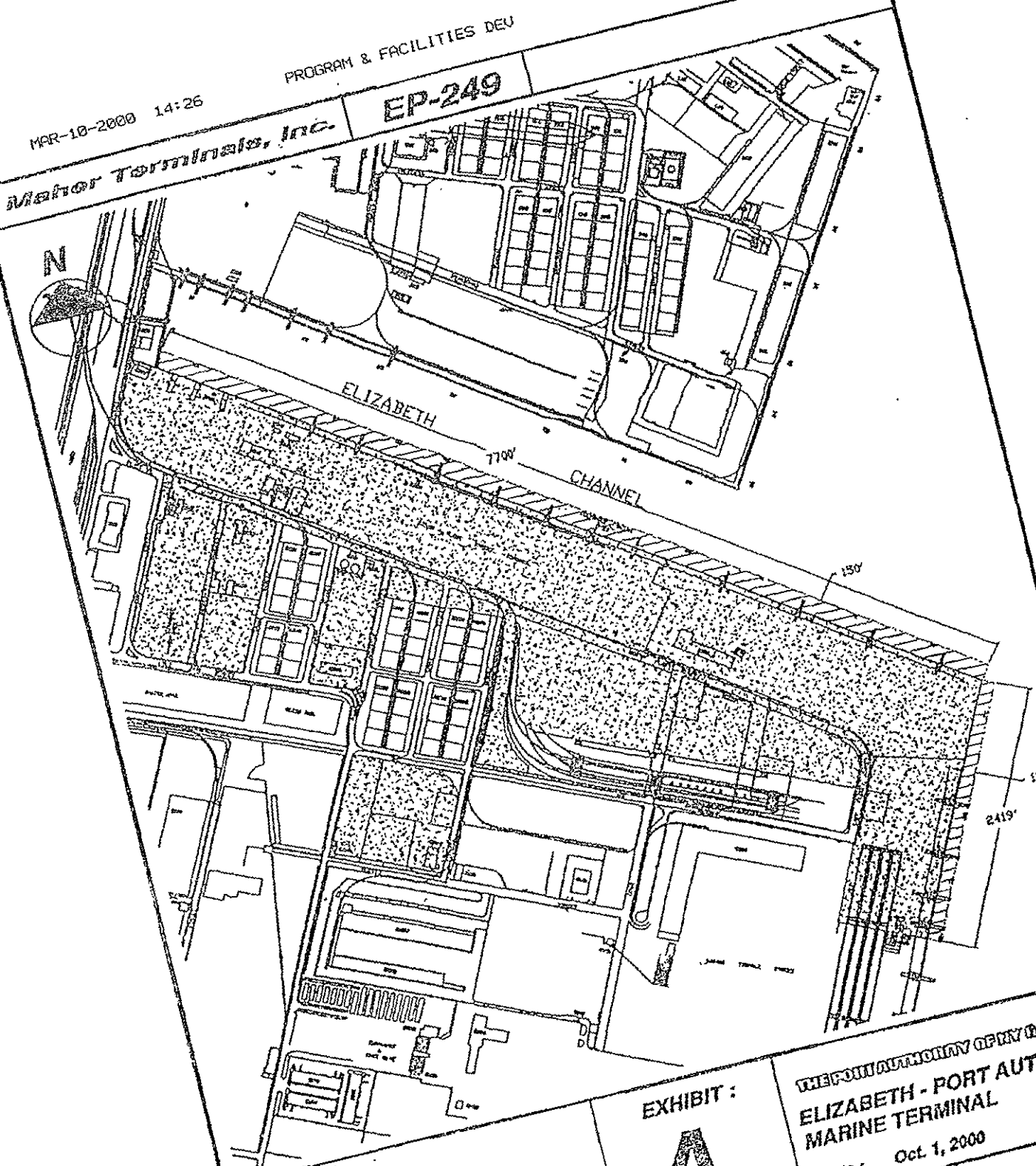
## SCHEDULE I

| | mo. pmt. | remain prin | % of total principal |
|---|---|---|---|
| 01-Oct-00 | 175,607.61 | 14,346,267.02 | 77.2118% |
| 01-Nov-00 | 175,607.61 | 14,286,382.05 | 76.8895% |
| 01-Dec-00 | 175,607.61 | 14,226,016.28 | 76.5646% |
| 01-Jan-01 | 175,607.61 | 14,165,165.82 | 76.2371% |
| 01-Feb-01 | 175,607.61 | 14,103,826.74 | 75.9070% |
| 01-Mar-01 | 175,607.61 | 14,041,995.09 | 75.5742% |
| 01-Apr-01 | 175,607.61 | 13,979,666.89 | 75.2387% |
| 01-May-01 | 175,607.61 | 13,916,838.12 | 74.9006% |
| 01-Jun-01 | 175,607.61 | 13,853,504.71 | 74.5597% |
| 01-Jul-01 | 175,607.61 | 13,789,662.59 | 74.2161% |
| 01-Aug-01 | 175,607.61 | 13,725,307.64 | 73.8698% |
| 01-Sep-01 | 175,607.61 | 13,660,435.71 | 73.5206% |
| 01-Oct-01 | 175,607.61 | 13,595,042.61 | 73.1687% |
| 01-Nov-01 | 175,607.61 | 13,529,124.12 | 72.8139% |
| 01-Dec-01 | 175,607.61 | 13,462,675.99 | 72.4563% |
| 01-Jan-02 | 175,607.61 | 13,395,693.93 | 72.0958% |
| 01-Feb-02 | 175,607.61 | 13,328,173.61 | 71.7324% |
| 01-Mar-02 | 175,607.61 | 13,260,110.67 | 71.3661% |
| 01-Apr-02 | 175,607.61 | 13,191,500.73 | 70.9968% |
| 01-May-02 | 175,607.61 | 13,122,339.34 | 70.6246% |
| 01-Jun-02 | 175,607.61 | 13,052,622.05 | 70.2494% |
| 01-Jul-02 | 175,607.61 | 12,982,344.34 | 69.8711% |
| 01-Aug-02 | 175,607.61 | 12,911,501.69 | 69.4899% |
| 01-Sep-02 | 175,607.61 | 12,840,089.51 | 69.1055% |
| 01-Oct-02 | 175,607.61 | 12,768,103.19 | 68.7181% |
| 01-Nov-02 | 175,607.61 | 12,695,538.07 | 68.3275% |
| 01-Dec-02 | 175,607.61 | 12,622,389.48 | 67.9339% |
| 01-Jan-03 | 175,607.61 | 12,548,652.67 | 67.5370% |
| 01-Feb-03 | 175,607.61 | 12,474,322.88 | 67.1370% |
| 01-Mar-03 | 175,607.61 | 12,399,395.32 | 66.7337% |
| 01-Apr-03 | 175,607.61 | 12,323,865.12 | 66.3272% |
| 01-May-03 | 175,607.61 | 12,247,727.42 | 65.9174% |
| 01-Jun-03 | 175,607.61 | 12,170,977.28 | 65.5044% |
| 01-Jul-03 | 175,607.61 | 12,093,609.75 | 65.0880% |
| 01-Aug-03 | 175,607.61 | 12,015,619.81 | 64.6682% |
| 01-Sep-03 | 175,607.61 | 11,937,002.42 | 64.2451% |
| 01-Oct-03 | 175,607.61 | 11,857,752.50 | 63.8186% |
| 01-Nov-03 | 175,607.61 | 11,777,864.91 | 63.3886% |
| 01-Dec-03 | 175,607.61 | 11,697,334.49 | 62.9552% |
| 01-Jan-04 | 175,607.61 | 11,616,156.03 | 62.5183% |
| 01-Feb-04 | 175,607.61 | 11,534,324.27 | 62.0779% |
| 01-Mar-04 | 175,607.61 | 11,451,833.91 | 61.6339% |
| 01-Apr-04 | 175,607.61 | 11,368,679.61 | 61.1864% |
| 01-May-04 | 175,607.61 | 11,284,856.00 | 60.7352% |
| 01-Jun-04 | 175,607.61 | 11,200,357.63 | 60.2805% |
| 01-Jul-04 | 175,607.61 | 11,115,179.04 | 59.8220% |
| 01-Aug-04 | 175,607.61 | 11,029,314.72 | 59.3599% |
| 01-Sep-04 | 175,607.61 | 10,942,759.09 | 58.8941% |
| 01-Oct-04 | 175,607.61 | 10,855,506.55 | 58.4245% |
| 01-Nov-04 | 175,607.61 | 10,767,551.45 | 57.9511% |

| | | | |
|---|---|---|---|
| 01-Jul-09 | 175,607.61 | 4,523,296.79 | 24.3444% |
| 01-Aug-09 | 175,607.61 | 4,384,261.78 | 23.5962% |
| 01-Sep-09 | 175,607.61 | 4,244,103.51 | 22.8418% |
| 01-Oct-09 | 175,607.61 | 4,102,812.85 | 22.0814% |
| 01-Nov-09 | 175,607.61 | 3,960,380.58 | 21.3148% |
| 01-Dec-09 | 175,607.61 | 3,816,797.42 | 20.5421% |
| 01-Jan-10 | 175,607.61 | 3,672,053.99 | 19.7630% |
| 01-Feb-10 | 175,607.61 | 3,526,140.87 | 18.9777% |
| 01-Mar-10 | 175,607.61 | 3,379,048.53 | 18.1861% |
| 01-Apr-10 | 175,607.61 | 3,230,767.38 | 17.3880% |
| 01-May-10 | 175,607.61 | 3,081,287.75 | 16.5835% |
| 01-Jun-10 | 175,607.61 | 2,930,599.88 | 15.7725% |
| 01-Jul-10 | 175,607.61 | 2,778,693.93 | 14.9550% |
| 01-Aug-10 | 175,607.61 | 2,625,560.01 | 14.1308% |
| 01-Sep-10 | 175,607.61 | 2,471,188.10 | 13.3000% |
| 01-Oct-10 | 175,607.61 | 2,315,568.15 | 12.4624% |
| 01-Nov-10 | 175,607.61 | 2,158,689.98 | 11.6181% |
| 01-Dec-10 | 175,607.61 | 2,000,543.35 | 10.7669% |
| 01-Jan-11 | 175,607.61 | 1,841,117.95 | 9.9089% |
| 01-Feb-11 | 175,607.61 | 1,680,403.36 | 9.0440% |
| 01-Mar-11 | 175,607.61 | 1,518,389.08 | 8.1720% |
| 01-Apr-11 | 175,607.61 | 1,355,064.54 | 7.2930% |
| 01-May-11 | 175,607.61 | 1,190,419.06 | 6.4069% |
| 01-Jun-11 | 175,607.61 | 1,024,441.90 | 5.5136% |
| 01-Jul-11 | 175,607.61 | 857,122.21 | 4.6130% |
| 01-Aug-11 | 175,607.61 | 688,449.05 | 3.7052% |
| 01-Sep-11 | 175,607.61 | 518,411.41 | 2.7901% |
| 01-Oct-11 | 175,607.61 | 346,998.17 | 1.8675% |
| 01-Nov-11 | 175,607.61 | 174,198.13 | 0.9375% |
| 01-Dec-11 | 175,607.61 | 0.00 | 0.0000% |

Maher Terminals, Inc.

EP-249




Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT : A

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Oct. 1, 2000



08PA00002011

(a) the open area and the enclosed spaces shown in stipple and diagonal cross hatching and the water area shown in diagonal hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", together with the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area, enclosed spaces, and water area, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called the "Initial Premises", and the water area shown in diagonal hatching being hereinafter sometimes called the "Berthing Area".

(b) the open area and the enclosed spaces shown in diagonal hatching and diagonal cross hatching, all as so shown on sketches hereto attached, hereby made a part hereof, and marked "Exhibit A-1", "Exhibit A-2" and "Exhibit A-3", together the buildings, structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located or constructed therein or thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called the "Added Premises". The parties agree that: (i) the Lessee shall not be responsible for the demolition of the warehouses and other structures currently on the Added Premises and (ii) the Added Premises shall be delivered to the Lessee in a straddle grade paved condition after completion of the Port Authority's construction program (including the removal of the rail tracks at the current ExpressRail) and shall become part of the premises under this Agreement in whole or in contiguous portions thereof effective upon ten (10) days' written notice given by the Port Authority to the Lessee setting forth a description of the location and configuration of the Added Premises or said portion thereof (any such notice being hereinafter called a "Tender Notice", the date any such Tender Notice is given being hereinafter called a "Tender Notice Date" and each date that the Added Premises or any portion thereof shall become a part of the premises under this Agreement being hereinafter called a "Tender Date").

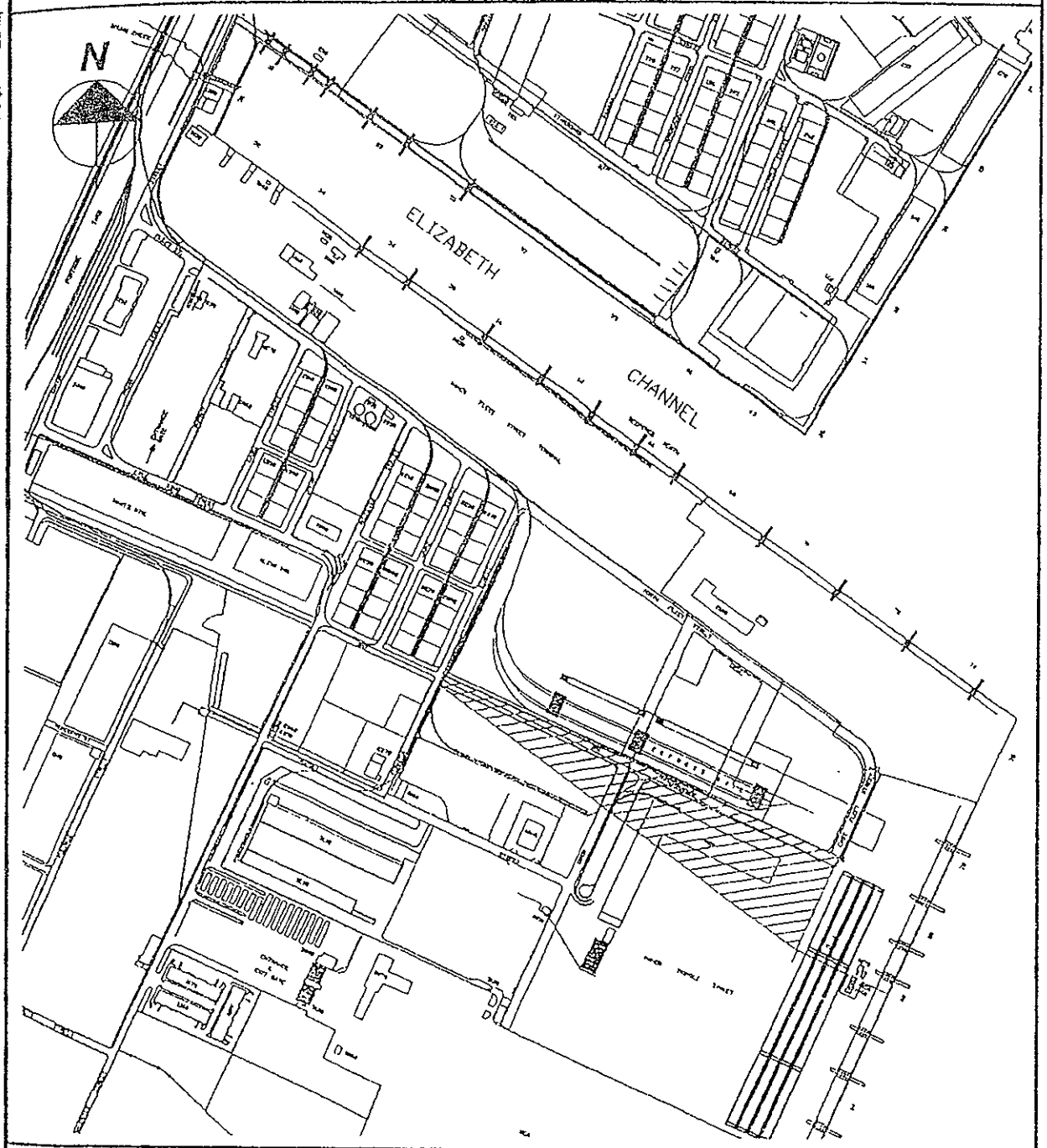
(c) The Initial Premises and the Added Premises, upon its or their respective addition to the leasehold, shall hereinafter in this Agreement be collectively called and shall constitute the "Premises". The parties agree that the Premises constitute non-residential property.

(d) Notwithstanding the foregoing, the parties hereto acknowledge and agree, in order to reconfigure the Premises as shown on Exhibit A, Exhibit A-1, Exhibit A-2 and Exhibit A-3, that it will be necessary for the Lessee to surrender portions of the Old Premises (the "Partial Surrender") and to lease other

~~X~~ 2176

(201) 216-2970 Geotech for Peter Dunlop

Maher Terminals, Inc. | EP-249




Initialed:

LCB

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

A-2

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Oct. 1, 2000

| | | | |
|---|---|---|---|
| 01-Dec-04 | 175,607.61 | 10,678,888.09 | 57.4739% |
| 01-Jan-05 | 175,607.61 | 10,589,510.73 | 56.9929% |
| 01-Feb-05 | 175,607.61 | 10,499,413.56 | 56.5080% |
| 01-Mar-05 | 175,607.61 | 10,408,590.76 | 56.0192% |
| 01-Apr-05 | 175,607.61 | 10,317,036.42 | 55.5264% |
| 01-May-05 | 175,607.61 | 10,224,744.63 | 55.0297% |
| 01-Jun-05 | 175,607.61 | 10,131,709.38 | 54.5290% |
| 01-Jul-05 | 175,607.61 | 10,037,924.66 | 54.0242% |
| 01-Aug-05 | 175,607.61 | 9,943,384.37 | 53.5154% |
| 01-Sep-05 | 175,607.61 | 9,848,082.39 | 53.0025% |
| 01-Oct-05 | 175,607.61 | 9,752,012.53 | 52.4855% |
| 01-Nov-05 | 175,607.61 | 9,655,168.56 | 51.9642% |
| 01-Dec-05 | 175,607.61 | 9,557,544.19 | 51.4388% |
| 01-Jan-06 | 175,607.61 | 9,459,133.10 | 50.9092% |
| 01-Feb-06 | 175,607.61 | 9,359,928.89 | 50.3753% |
| 01-Mar-06 | 175,607.61 | 9,259,925.13 | 49.8370% |
| 01-Apr-06 | 175,607.61 | 9,159,115.32 | 49.2945% |
| 01-May-06 | 175,607.61 | 9,057,492.93 | 48.7475% |
| 01-Jun-06 | 175,607.61 | 8,955,051.35 | 48.1962% |
| 01-Jul-06 | 175,607.61 | 8,851,783.93 | 47.6404% |
| 01-Aug-06 | 175,607.61 | 8,747,683.96 | 47.0801% |
| 01-Sep-06 | 175,607.61 | 8,642,744.69 | 46.5154% |
| 01-Oct-06 | 175,607.61 | 8,536,959.30 | 45.9460% |
| 01-Nov-06 | 175,607.61 | 8,430,320.91 | 45.3721% |
| 01-Dec-06 | 175,607.61 | 8,322,822.61 | 44.7935% |
| 01-Jan-07 | 175,607.61 | 8,214,457.40 | 44.2103% |
| 01-Feb-07 | 175,607.61 | 8,105,218.24 | 43.6224% |
| 01-Mar-07 | 175,607.61 | 7,995,098.04 | 43.0297% |
| 01-Apr-07 | 175,607.61 | 7,884,089.63 | 42.4323% |
| 01-May-07 | 175,607.61 | 7,772,185.81 | 41.8300% |
| 01-Jun-07 | 175,607.61 | 7,659,379.29 | 41.2229% |
| 01-Jul-07 | 175,607.61 | 7,545,662.75 | 40.6109% |
| 01-Aug-07 | 175,607.61 | 7,431,028.78 | 39.9939% |
| 01-Sep-07 | 175,607.61 | 7,315,469.94 | 39.3720% |
| 01-Oct-07 | 175,607.61 | 7,198,978.72 | 38.7450% |
| 01-Nov-07 | 175,607.61 | 7,081,547.52 | 38.1130% |
| 01-Dec-07 | 175,607.61 | 6,963,168.72 | 37.4759% |
| 01-Jan-08 | 175,607.61 | 6,843,834.62 | 36.8336% |
| 01-Feb-08 | 175,607.61 | 6,723,537.44 | 36.1862% |
| 01-Mar-08 | 175,607.61 | 6,602,269.37 | 35.5335% |
| 01-Apr-08 | 175,607.61 | 6,480,022.51 | 34.8756% |
| 01-May-08 | 175,607.61 | 6,356,788.90 | 34.2123% |
| 01-Jun-08 | 175,607.61 | 6,232,560.53 | 33.5437% |
| 01-Jul-08 | 175,607.61 | 6,107,329.31 | 32.8697% |
| 01-Aug-08 | 175,607.61 | 5,981,087.08 | 32.1903% |
| 01-Sep-08 | 175,607.61 | 5,853,825.63 | 31.5054% |
| 01-Oct-08 | 175,607.61 | 5,725,536.66 | 30.8149% |
| 01-Nov-08 | 175,607.61 | 5,596,211.84 | 30.1189% |
| 01-Dec-08 | 175,607.61 | 5,465,842.72 | 29.4172% |
| 01-Jan-09 | 175,607.61 | 5,334,420.83 | 28.7099% |
| 01-Feb-09 | 175,607.61 | 5,201,937.60 | 27.9969% |
| 01-Mar-09 | 175,607.61 | 5,068,384.40 | 27.2781% |
| 01-Apr-09 | 175,607.61 | 4,933,752.52 | 26.5535% |
| 01-May-09 | 175,607.61 | 4,798,033.21 | 25.8231% |
| 01-Jun-09 | 175,607.61 | 4,661,217.60 | 25.0867% |

| Maher Terminals, Inc. | EP-249 | |
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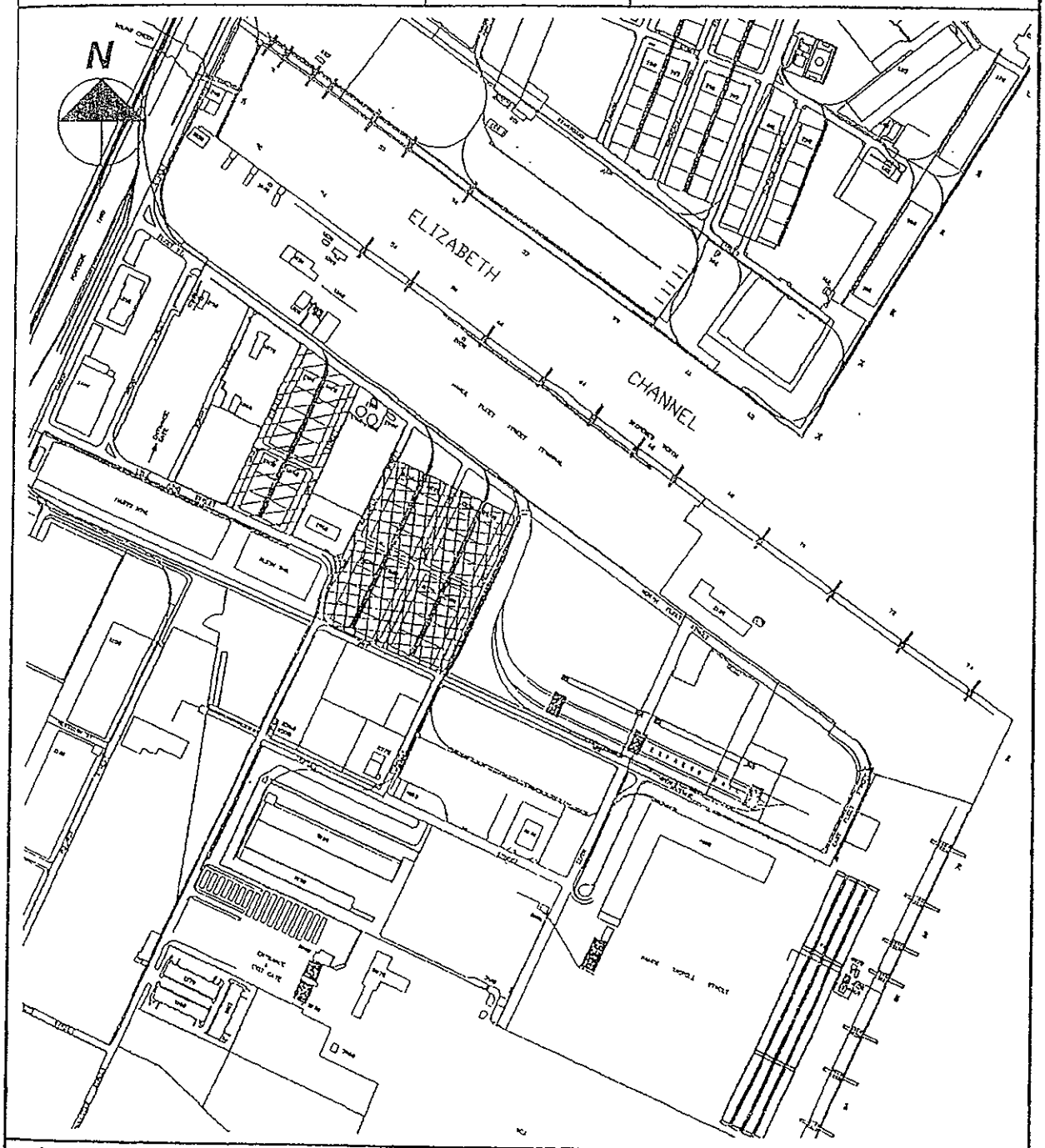
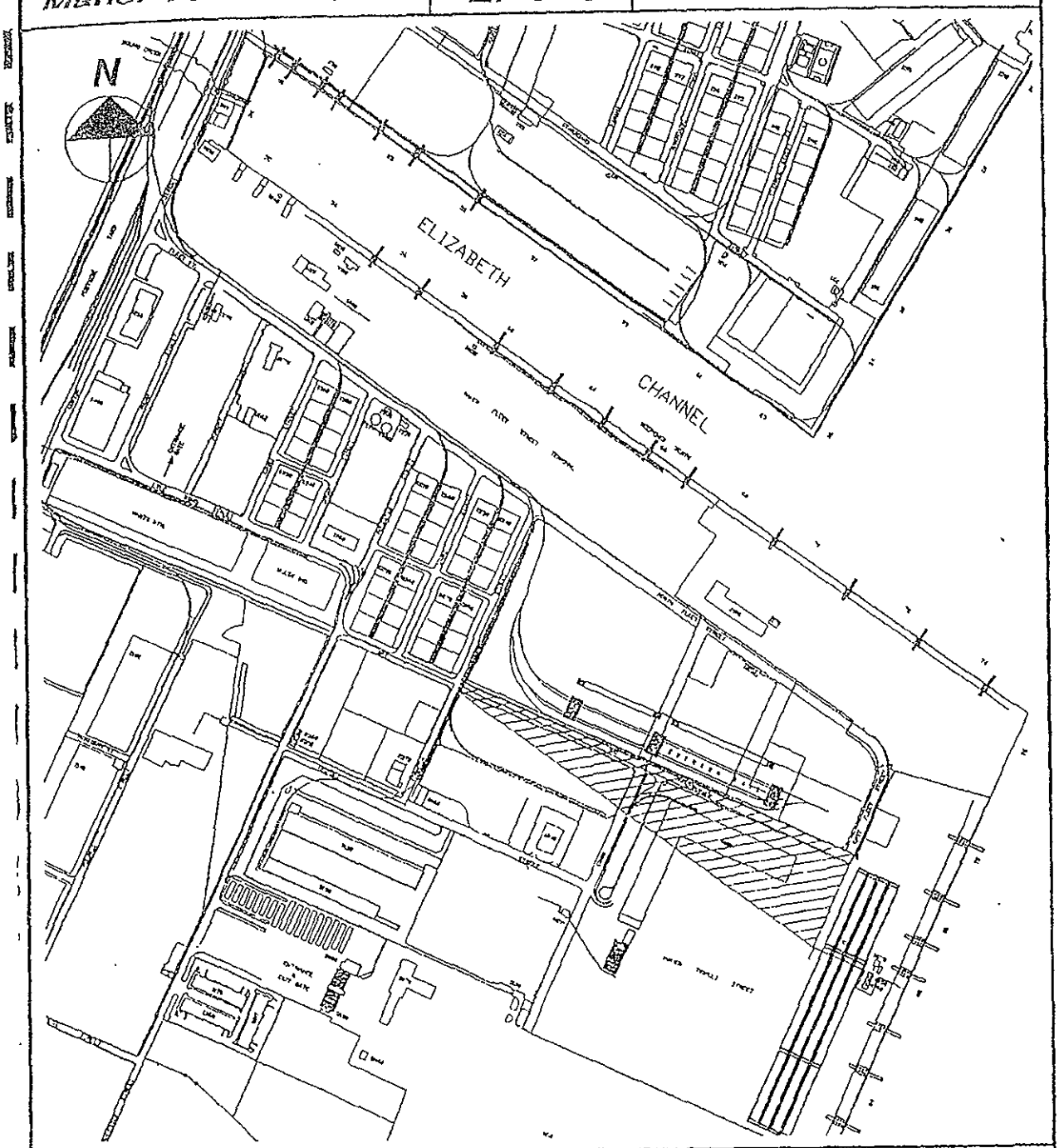



| Initialed: LCB<br>For the PORT AUTHORITY<br>For the Lessee | EXHIBIT : A-1 | THE PORT AUTHORITY OF NY & NJ<br>ELIZABETH - PORT AUTHORITY MARINE TERMINAL<br>Date : Oct. 1, 2000 |
|---|---|---|

08PA00002016

Maher Terminals, Inc. | EP-249




Initialed:

LCB

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

A-2

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Oct. 1, 2000

| Maher Terminals, Inc. | EP-249 | |
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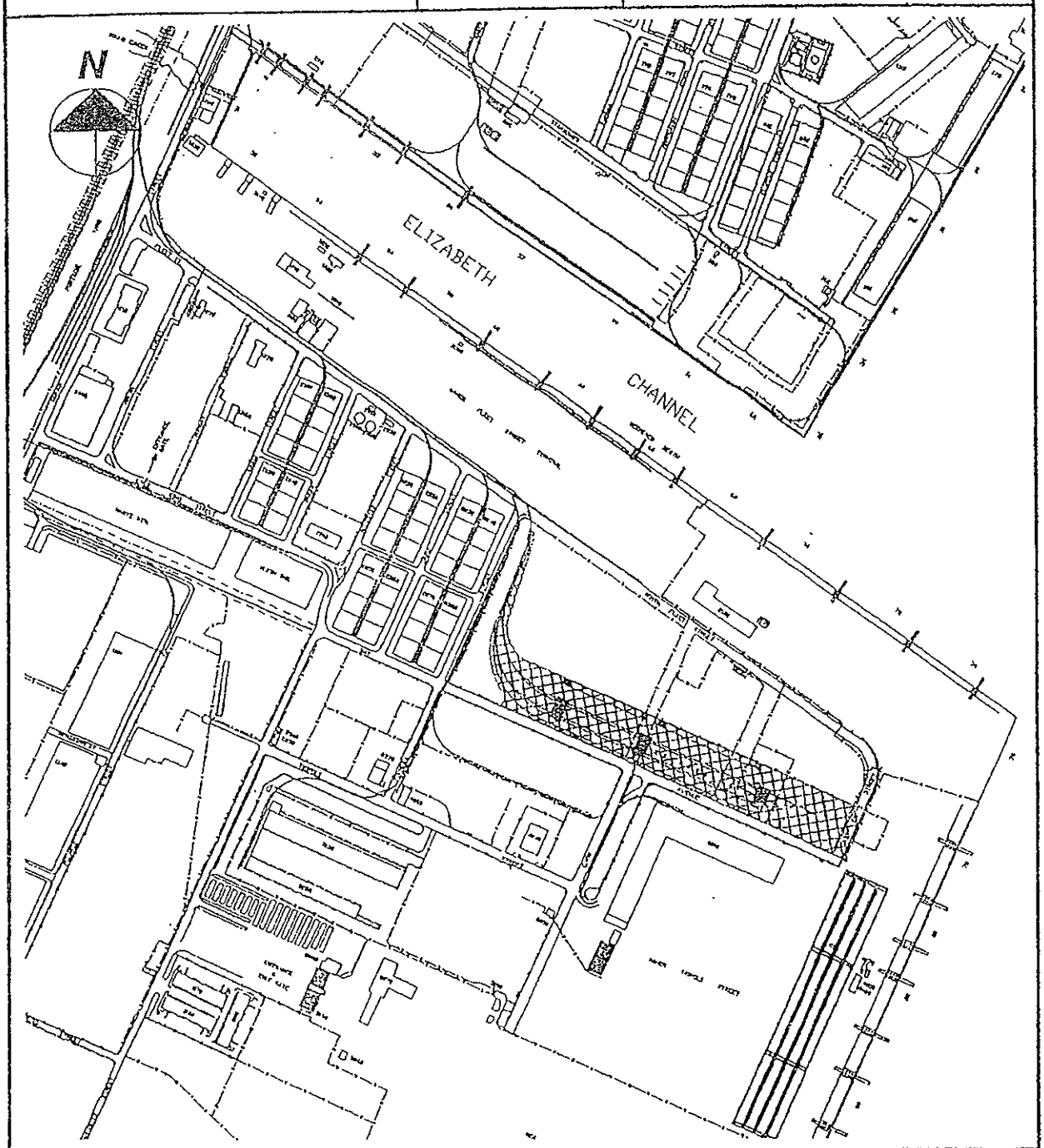
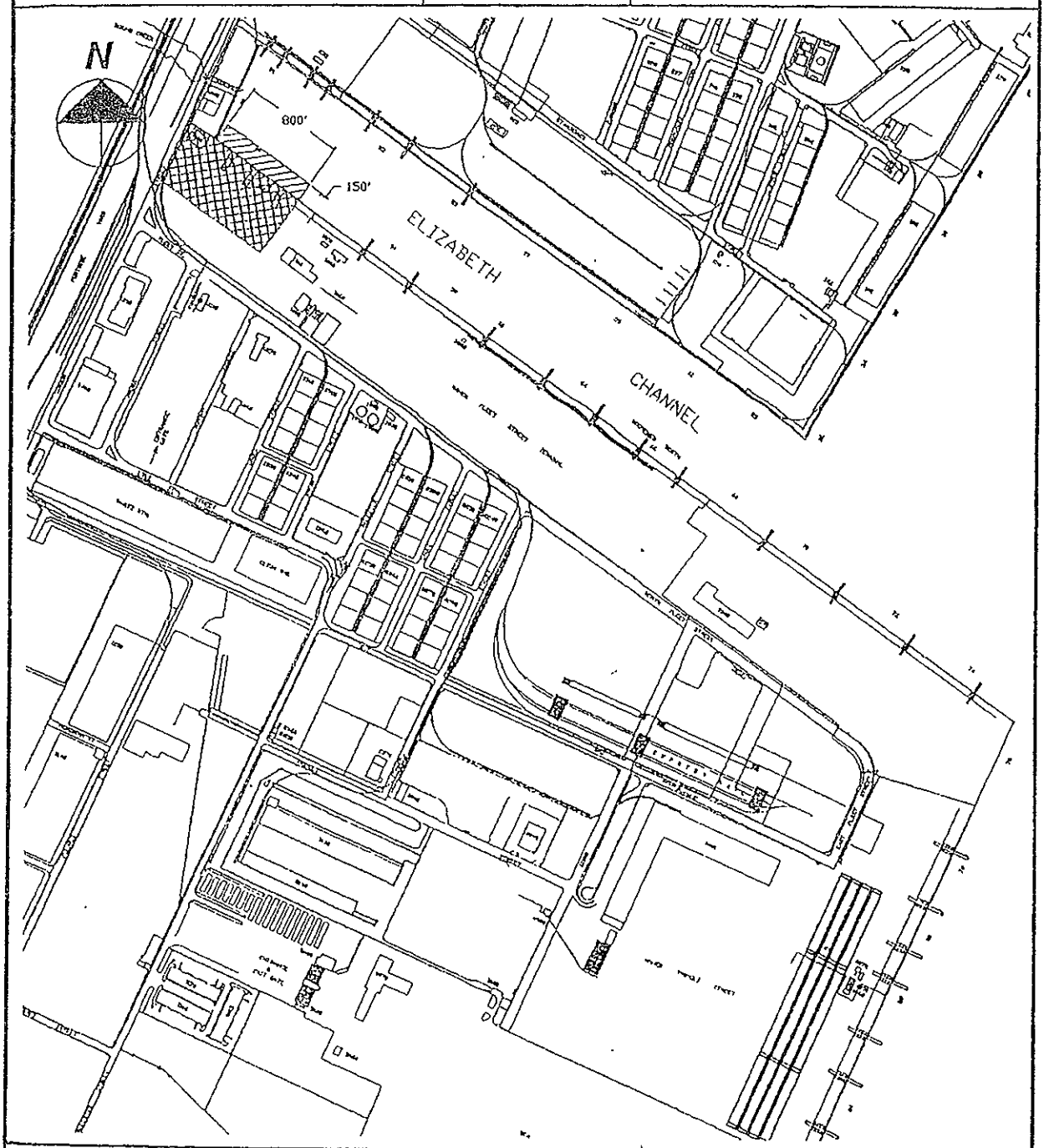



| Initialed: | EXHIBIT : | THE PORT AUTHORITY OF NY & NJ |
|---|---|---|
| LCB<br>For the PORT AUTHORITY<br>For the Lessee | A-3 | ELIZABETH - PORT AUTHORITY MARINE TERMINAL<br>Date : Oct. 1, 2000 |

08PA00002018

| Maher Terminals, Inc. | EP-249 | |
|---|---|---|




| Initialed: | EXHIBIT : | THE PORT AUTHORITY OF NY & NJ |
|---|---|---|
| LCB<br>For the PORT AUTHORITY<br>For the Lessee | A-4 | ELIZABETH - PORT AUTHORITY MARINE TERMINAL<br>Date : Oct. 1, 2000 |

08PA00002019

6. It is understood that the foregoing election shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the Leased Premises, installed by the Lessee in or on the Leased Premises pursuant to the Lease, and which are deemed to be and remain the property of the Lessee.

ATTEST:

Secretary
(Corporate Seal)

MAHER TERMINALS, INC.

By : M. Brian Maher
Chairman and Chief Executive Officer

Dated: 10/25/00

EXHIBIT I

to Lease No. EP-249

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

MAHER TERMINALS, INC.

*(The Lessee)*

THE PORT AUTHORITY OF NY & NJ

# ENVIRONMENTAL REPORT AND TEST RESULTS BAY AVENUE TERMINAL ELIZABETH PORT AUTHORITY MARINE TERMINAL

Volume 1 of 1

JANUARY 2000 (Summary Version)

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# REPORT

# SECTION 1.0

# INTRODUCTION

The purpose of this investigation was to establish subsurface conditions for a 74-acre site located at Elizabeth Port Authority Marine Terminal (EPAMT). The location of the site is shown on Figures 1 and 2. The program included drilling 15 soil borings and installing 7 wells at locations shown on Figure 3.

The work performed as part of this investigation was conducted in accordance with *Technical Requirements for Site Remediation* (TRSR) (N.J.A.C 7:26E), and the New Jersey Department of Environmental Protection's (NJDEP), *Field Sampling Procedures Manual, May 1992.*



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# SECTION 2.0

# FIELD ACTIVITIES

In order to characterize the site in regard to potential contaminants and to provide information about the geology and hydrogeology, a total of 15 soil borings were installed at the EPAMT site. The locations of the soil borings are presented in Figure 3. In general, the soil borings were advanced until groundwater was observed in order to evaluate the potential for the presence and migration of hazardous substances.

## 2.1 SOIL SAMPLING PROGRAM

The soil sampling investigation followed the requirements specified in N.J.A.C. 7:26E-3.6. At all boring locations the first 6 to 7 ft of soils were drilled and sampled using a hand auger in an attempt to limit any contact with underground utilities. Soil borings were completed using a 4 5/8 inch inside diameter hollow-stem auger. After penetration of surface features, continuous split-spoon soil samples were collected at 2-foot intervals using a 2-inch-diameter split-spoon. All soils (hand auger samples and split-spoon cores) were characterized by the on-site geologist and screened using an HNu photoionization detector. Additionally, HNu readings were recorded in the breathing zone of the on-site workers and headspace readings were recorded from soil samples collected from each discrete 2-foot sampling interval. All information was recorded on boring log forms or in bound field logbooks.

Thirty discrete soil samples and the corresponding Quality Assurance/Quality Control (QA/QC) samples were collected for contract laboratory analysis. For each boring, one soil sample was collected at a depth of 18 to 24 inches below the soil surface and a second sample was collected at a distance of 0 to 6 inches above the saturated zone. HNu readings of the headspace from each sampling interval were 0 parts per million (ppm). Field screening results along with the boring logs are provided as Appendix A. All soil samples were analyzed for total petroleum hydrocarbons (TPHC) and the complete list of priority pollutants with a forward library search (PP+40), including xylenes. Soil samples for volatile analysis were collected using methanol extraction methodology. In addition to collecting soil samples, trip blanks were submitted for laboratory analyses during the soil sampling task of this investigation. Field blanks and duplicate samples were not collected during the soil sampling phase of the investigation. All QA/QC procedures are detailed in Section 2.3 of this report.

Soil samples were transferred immediately to laboratory prepared sample containers, labeled, packed, and shipped for analysis in accordance with N.J.A.C. 7:26E 2.1. Soil samples were processed and labeled consistent with Section 2.3.3 of this document. Furthermore, sample Chain of Custody (COC) documentation was prepared for all samples collected as part of this investigation. Sample documentation and COCs were prepared consistent with procedures detailed

in Section 2.3.3. Each piece of sampling equipment was decontaminated prior to use at each new sample location and prior to sampling the respective soil strata. All sampling equipment was constructed of stainless steel. For additional information on equipment decontamination procedures, see Section 2.3.2. Upon completion of each boring location, all soils and derived waste generated were handled consistent with the site-specific Waste Management Plan detailed in the site-specific investigation work plan.

## 2.2 GROUNDWATER SAMPLING PROGRAM

The groundwater investigation was conducted as per N.J.A.C. 7:26E-3.7. The program included the installation of seven overburden on-site monitoring wells. The wells were installed in select boreholes created during the soil boring program. Approximate locations of these wells are shown on Figure 3. Craig Drilling, Inc. (a New Jersey-licensed well driller) installed the monitoring wells. The well driller obtained the required NJDEP well permits. The monitoring well construction logs are included in Appendix A.

### 2.2.1 Monitoring Well Installation

Well construction materials consisted of 2-inch-diameter, schedule 40 PVC well screens and riser pipe. The monitoring wells were constructed with 0.020-inch (20 slot) well screens and lengths were dependent on the location-specific geologic conditions. The well screens ranged in length from 9 to 10 ft. Groundwater was encountered during the drilling activities at 5.0 to 9.9 ft below ground surface. The annular space between the well screen and the formation was filled with filter pack to an elevation approximately 2 ft above the top of the screen. The remaining filter pack consisted of approximately 1 foot of finer sand on top of the filter pack. This finer filter pack was designed to act as a sand choke between the formation material and the well materials, and to limit the potential for grout to enter the well from above.

A bentonite seal was emplaced above the filter pack to prevent infiltration to the cement grout into the filter pack and well screen. The seal thickness was dependent on the stratigraphy at each location and ranged from 0.5 to 1.0 ft.

A cement-bentonite grout mixture was placed above the seal and extended to ground surface. All wells were completed with flush-mount construction casings. Cement pads were constructed around each well to provide drainage away from the wells. Protective PVC caps were placed on all PVC riser pipe. Locks were placed on the outside of the protective casings. Metal tags with the monitoring well identification number and the NJDEP well permit number were affixed to the manhole covers. A locking vacuum cap was affixed to each well. A concrete pad was constructed and a flush-mounted manhole cover was grouted in place to secure these locations

### 2.2.2 Well Development

Each monitoring well was developed in accordance with the TRSR. Monitoring well development was performed in order to meet the following objectives:

- Remove fine materials that may have accumulated in the openings of the well screen during installation and key the well screen and filter pack into the formation being monitored.
- Remove fine materials from the sides of the borehole that resulted from drilling procedures.
- Stabilize the fine materials that remained in the vicinity of the well to retard their movement into the well, increasing well yield.
- Provide an estimate of the well yield.

Monitoring well development was accomplished by overpumping the well using an appropriately sized pump. The pump was field decontaminated, and new dedicated polyethylene tubing was used for each individual discharge line. To ensure that fine materials were removed during development, the pump intake was raised and lowered across the entire length of the well screen. Additionally, the pump was turned off and on and pumped at different rates during development to cause a surge effect in order to remove additional fine materials.

During development, field measurements of temperature, pH, specific conductivity, and turbidity and at some locations, salinity were obtained at the beginning of development, during development and upon completion of development. Observations related to groundwater appearance were recorded.

The development procedures for the monitoring wells continued until the following goals were met or exceeded:

- Discharge became clear.
- Flow rate stabilized.
- At least five volumes of water were removed and the well pumped for a minimum of 4 hours.
- Turbidity readings were less than 50 nephelometric turbidity units (NTUs) as determined by a nephelometer.

### 2.2.3 Water Sampling Procedure Summary

Groundwater sampling was performed on 27 and 28 October 1999 (at least 2 weeks after development of the last well installed on-site). During the groundwater sampling program, all seven monitoring wells were purged and six of the wells sampled using low-flow protocol, including a field decontaminated pump equipped with new dedicated, polyethylene Teflon-lined discharge tubing. During purging, wells were pumped at a low rate (lower than recharge rate) so that the drawdown was kept to the lowest possible amount. Despite the use of water level measurements, taken to ensure that the water column was not purged to dryness, well MW-4 became dry and could not be sampled.

While monitoring wells were purged, water quality parameters including temperature, pH, specific conductivity stabilized (less then 10% variation). Turbidity, levels in wells MW-1, MW-8, and MW-14 were less than 50 NTUs. Turbidity levels in well Nos. MW-2, MW-7 and MW-13 had varying turbidity levels. Well MW- 2 varied between 869 and 236 with an overall decrease in turbidity as purging continued. Well MW-7 varied between 367 and 10 with irregular fluctuations in the turbidity value. Turbidity values for MW-7 were approximately 50 NTUs prior to sampling. Well MW-13 turbidity levels varied between 751 and 344 with irregular fluctuations. Purge rates for wells did not exceed the purge rates at which the monitoring wells were developed. During well purging, groundwater was monitored for the presence of volatile organic compounds (VOCs). Additional groundwater quality parameters including Eh (millivolts), salinity, and dissolved oxygen were obtained to provide additional water quality data. The groundwater sampling procedure employed during the sampling event is provided below.

1. Measure static water level in monitoring well using an electronic water level device to minimize disturbance to the water column.

2. Check for free product or sheen floating on water surface in well.

3. Position low-flow pump in the water column with the intake placed at a point between the middle and top of the screened interval.

4. Purge the well using a low-flow rate (<0.5 l/min) until indicator parameters (i.e., pH, conductivity, oxygen, etc.) have stabilized. (Note: Goal during purging is to limit drawdown to < 0.1 m).

5. Collect groundwater samples using same flow rates as established during purging.

6. Fill sample bottles directly from the pump discharge avoiding excessive agitation of sample Fill VOA sample vials first, then remaining sample bottles.

7. Pumps used for groundwater sampling will be decontaminated prior to use according to the procedures described herein. One sample shall be collected from each monitoring well. All samples are to be separate grab samples.

Each water sample was analyzed for TPHC, PP+40, VOCs + 15, total dissolved solids and total chlorides. Temperature, pH, and specific conductivity were measured in the field. COC and labeling procedures are detailed in Section 2.3.3.

## 2.3 QUALITY ASSURANCE AND QUALITY CONTROL

In order to generate analytical data of known and defensible standards, quality assurance (QA) and quality control (QC) protocols for sampling and laboratory analysis complied with requirements specified in N.J.A.C. 7:26E-2.1. This was conducted to ensure that samples obtained in the field were representative of the particular environment from which they were collected and were of satisfactory quality to meet the project objectives.

### 2.3.1 QA/QC Samples

#### *2.3.1.1 Field Blanks*

A field blank composite sample was taken during the groundwater sampling portion of the investigation. A field blank was conducted using two identical sets of cleaned sample containers. One set of containers was empty and served as the sample containers to be analyzed The second set of containers was filled with laboratory-demonstrated analyte-free water At the field location, the analyte-free water was poured over the clean sample equipment (pump) and placed in the empty sample containers for analysis. The field blank was handled, transported, and analyzed in the same manner as samples acquired that day. The field blank was performed at the rate of one per sampling day per type of sampling equipment, and packaged with its associated matrix. The field blank for groundwater was analyzed for all the same parameters as the samples collected that day.

#### *2.3.1.2 Trip Blanks*

Trip blanks are required only for aqueous sampling events for volatile organics and for soil samples collected with the methanol preservation method. Sample bottles for aqueous trip blanks were filled at the laboratory with laboratory-demonstrated analyte-free water. Sample bottles for trip blanks associated with the volatile soil samples collected using the methanol preservation method were filled and weighed at the laboratory with pesticide-grade methanol. The trip blanks traveled with the sample bottles and are not opened in the field. They are handled, transported, and analyzed along with other samples. For aqueous samples, one trip blank must be provided per shipment or 2 day sampling event. For soil samples collected using the methanol preservation method, one trip blank must accompany each sample shipment.

### 2.3.2 Equipment Decontamination

#### *2.3.2.1 Sampling Equipment Decontamination*

All sampling equipment, except heavy machinery and submersible pumps, was decontaminated according to the type of equipment.

Soil sampling equipment was decontaminated according to the following procedure:

1. Non-phosphate detergent plus tap water wash.
2. Tap water rinse.
3. Distilled/deionized water rinse.

Groundwater sampling equipment was decontaminated and packaged in the laboratory, and dedicated for exclusive use at one sample location only. The laboratory utilized the following decontamination procedure:

1. Non-phosphate detergent plus tap water wash.
2. Tap water rinse.
3. Distilled/deionized water rinse.
4. 10% nitric acid solution rinse.
5. Distilled/deionized water rinse.
6. Methanol (pesticide grade) rinse.*
7. Total air dry
8. Distilled/deionized water rinse.

* Methanol will be used in place of acetone since acetone is a target analyte.

All decontaminated sampling equipment will be stored and handled in a manner appropriate to prevent contamination. Information concerning the decontamination methodology, date, time, and personnel was recorded in the field logbook.

#### *2.3.2.2 Heavy Machinery Decontamination*

Prior to use on-site, heavy equipment was steam cleaned or manually washed. Parts prone to contact with contaminated materials required more frequent cleaning to prevent cross-contamination of environmental samples. For example, augers and split-spoon sampling devices were steam cleaned between sampling locations.

#### *2.3.2.3 Pump Decontamination*

The pump used for evacuation of water from monitoring wells prior to sample collection was decontaminated in order to eliminate the possibility of contamination introduced by pump insertion.

The pump was cleaned and flushed between use at each monitoring well. The outside of the pump was manually washed using non-phosphate detergent and water, followed by a potable (tap) water rinse. The pump was then flushed with 20 gallons of potable water pumped through the housing and hose. After completion of the flushing, the exterior housing was rinsed with distilled and deionized water. This procedure was conducted between uses. Rinsate from the pump decontamination was collected in drums for disposal. After each use, the hose was cut up into manageable-sized pieces and disposed of with other investigation-derived wastes.

#### *2.3.2.4 Monitor Well Casing and Screen Decontamination*

Before installation, well casings and screens were manually scrubbed in the field to remove foreign material. Casings and screens were also thoroughly steam cleaned to remove all traces of oil and grease which may have been present, especially at threaded joints. Casings were carefully handled and stored to prevent cross-contamination prior to installation.

### 2.3.3 Sample Documentation

During sampling, all activities were recorded in a logbook to provide an accurate record of the sampling event and the procedures followed Entries made by sampling personnel in the logbook included:

- Date/Time/Weather
- Sampler/Geologist/Soil Scientists' Names
- Sample Point Identification (including location, matrix, and sample depth)
- Sketch Showing the Sampling Point Location (including reference distances)
- Soil Profile
- Sample Size
- Sampling Equipment Used
- Field Measures (where appropriate)
- General Comments (e.g., odor, staining, etc.)

The field crew also labeled each sample container with the appropriate information necessary to identify the sample as listed below:

- Unique Sample Identification Number
- Date

- Time of Sampling
- Name
- Preservation
- Analyses
- Sampler's Initials

This information was then supplemented and cross referenced on a COC form which provided documentation of the handling of each sample from collection to laboratory acceptance.

A COC form containing the information listed below was completed by the field crew and signed by the sampler and all personnel handling the samples before the samples were relinquished to the laboratory. The COC form should contain the following information:

- Project Name
- Date
- Sampler's Initials
- Sample Identification Number
- Name/Description of Sample (Analytical Parameters)
- Preservation
- Number of Containers
- Holding Conditions and Locations
- Signature of all Handlers and Date and Time of Transfers
- Organization or Affiliation of all Handlers and Reason for Transfer

All samples were preserved at the time of collection and packaged in coolers of sufficient size to hold all containers, ice, and packing material to prevent breakage. Coolers were of suitable type and integrity to transport the samples.

At the laboratory, laboratory personnel recorded receipt of samples on the COC form. The original or a copy of the form was returned to the shipper. The COC record was checked by laboratory personnel against the information regarding the analysis requested. If any discrepancies were discovered, they were resolved with the person requesting the analysis and recorded to provide a permanent record of the event. A record of the information detailing the handling of a particular sample through each stage of analysis was provided by completing a laboratory chronicle form. This form typically provides the following information:

- Job Reference
- Sample Matrix
- Sample Number
- Date Sampled
- Date and Time Received by Laboratory
- Holding Conditions
- Analytical Parameter

- Extraction Date/Time and Extractor's Initials
- Analysis Date/Time and Analyst's Initials
- QA Batch Number, Date Reviewed, and Reviewer's Initials

### 2.3.4 Laboratory Analytical Quality Assurance Procedures

Analyses of samples were completed in accordance with NJDEP and U.S. Environmental Protection Agency (EPA) Methodologies.

The contract laboratory provided sample containers for the requested analyses appropriate for analysis of each matrix. The sample containers were of sufficient size to permit replicate analyses to be run from the sample matrix. All unused portions of samples will be archived by the laboratory until written notification from Port Authority regarding their disposition is received. The contract laboratory will also retain samples and sample extracts in a sample archive for future analyses if requested by Port Authority representatives.

Calibration and periodic inspection of laboratory instruments were performed in accordance with EPA and/or manufacturer's specifications. Reference standards and quality control (QC) samples (spikes, blanks, and duplicates) were used as necessary to determine the accuracy and precision of procedures, instruments, and operators. If QC sample analysis results indicate QC values outside the control limit range, sample analysis was suspended until the instrument was recalibrated. In general, the following QC requirements apply to all samples:

- Analysis of an appropriate blank with every set.
- Analysis of at least one standard at mid-range concentration (preferably an additional standard near the detection level).
- Annual analysis of external reference samples.
- Annual analysis of split or double blind samples.
- Determination of a detection limit for each method and parameter.
- Laboratories must keep records of the following information:

  - Date, title, analytical method name and reference
  - Time of analysis
  - Details of methods not specified in referenced procedures, and sample numbers
  - All raw data (measurements)
  - Calculations
  - Results
  - Equipment used, and instrumental parameters
  - Analyst signature or initials.

- QC data was reported with the analytical results.

The laboratory provided, as a final report, reduced-data deliverables in accordance with N.J.A.C 7:26E, Appendix A, Sections III and IV.

## 2.4 WASTE MANAGEMENT

Types of waste material generated during the site investigation included soil drilling cuttings, monitoring well development groundwater, decontamination rinsates, expendable materials, and personal protective equipment (e.g., gloves, towels, etc.).

Soil cuttings from borings and holes converted to monitoring wells were inspected for contamination by field observation (visual and odor) and instruments (HNu meter). When the material was not contaminated based on field observations, the facility environmental coordinator located an area on the work site to reuse the material as backfill. The material may be used on-site in areas outside the work area, providing the area has similar subsurface characteristics or results of the soil analysis are below the residential cleanup criteria. This determination will be the responsibility of the facility environmental coordinator. Material that could not be reused on-site was properly disposed off-site utilizing the Port Facility Call-in Disposal Contractor.

Prior to pumping water from a monitoring well, a sample was obtained using a clear bottom Teflon bailer. The water sample was inspected for contamination by observation (visual and odor), HNu measurements, and field tests (pH). Uncontaminated water was reapplied to the ground surface in a manner not to allow water to run off-site or over stained areas.

# SECTION 3.0

# SURVEYING

The final latitude, longitude and elevation to the nearest 0.01 ft of all installed borings and wells were recorded in North American Datum (NAD ) 27 format. Elevation was measured from the top of the well casing. This information is presented in Appendix B.

# SECTION 4.0

# RESULTS

## 4.1 SOIL SAMPLING RESULTS

The analytical results of the 30 soil samples and associated trip blanks collected by Port Authority personnel are contained in Tables 1 – 6.

- Table 1 summarizes the results of the Volatile Organic (VOA) analyses performed on the soil samples.
- Table 2 summarizes the results of the Base Neutral and Acid Extractables (BNA) analyses performed on the soil samples.
- Table 3 summarizes the results of the polychlorinated biphenols (PCB) analyses performed on the soil samples
- Table 4 summarizes the results of the pesticide analyses performed on the soil samples.
- Table 5 summarizes the results of the inorganic analyses performed on the soil samples.
- Table 6 summarizes the results of the total petroleum hydrocarbons (TPHC) analyses performed on the soil samples

## 4.2 GROUNDWATER SAMPLING RESULTS

The analytical results of the groundwater samples collected by the Port Authority personnel from the five on-site monitoring wells are summarized in Tables 7 -- 12.

- Table 7 summarizes the VOC analysis results for the groundwater samples
- Table 8 summarizes the BNA analysis results for the groundwater samples.
- Table 9 summarizes the PCB analysis results for the groundwater samples.
- Table 10 summarizes the pesticides analysis results for the groundwater samples
- Table 11 summarizes the priority pollutant metals analysis for the groundwater samples.
- Table 12 summarizes the TPHC analysis for the groundwater samples.



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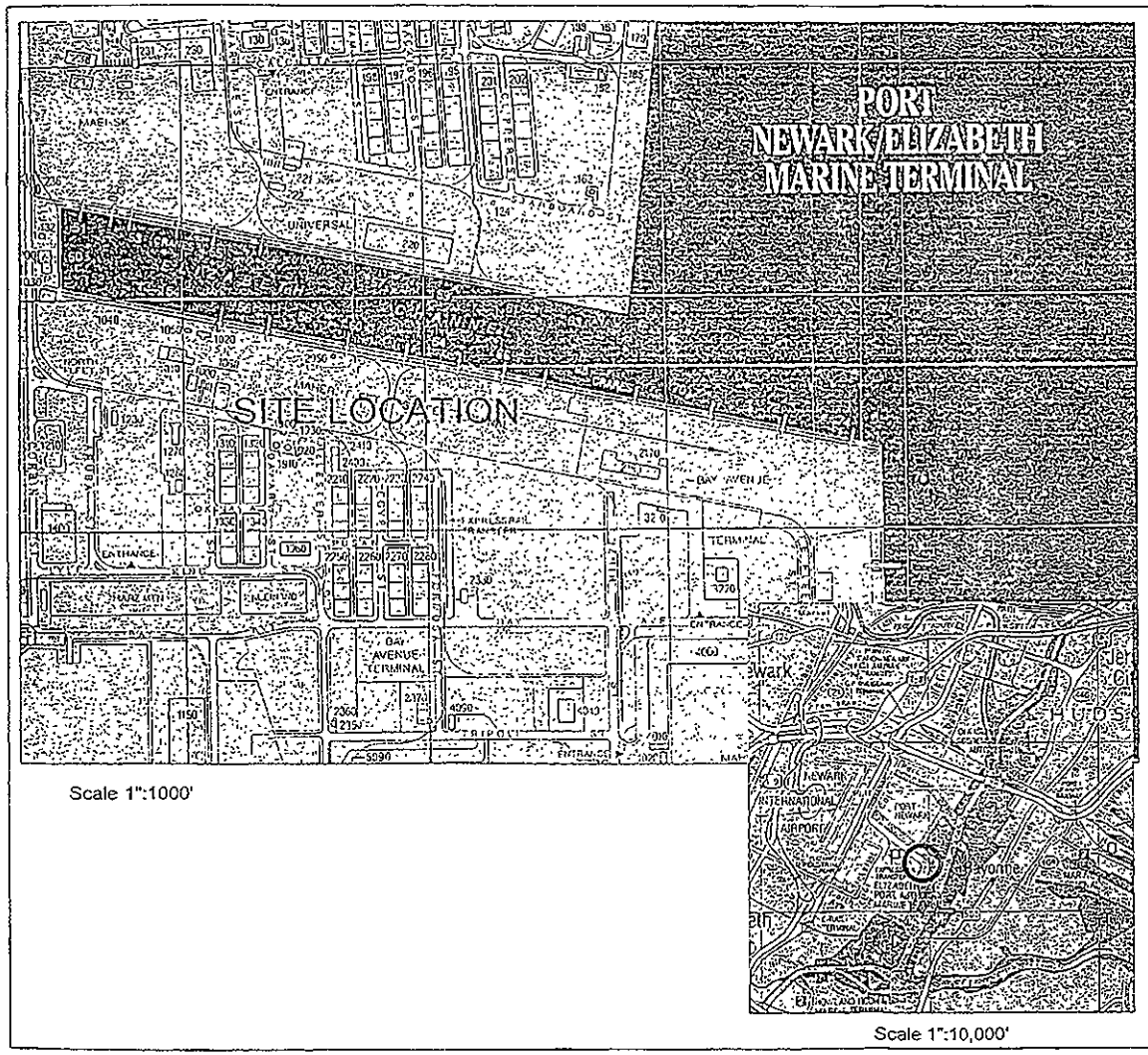
# FIGURES

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# Figure 1

Bay Avenue Terminal
Site Location Map

Source Map: Port Authority of New York and New Jersey Map of Port Facilities

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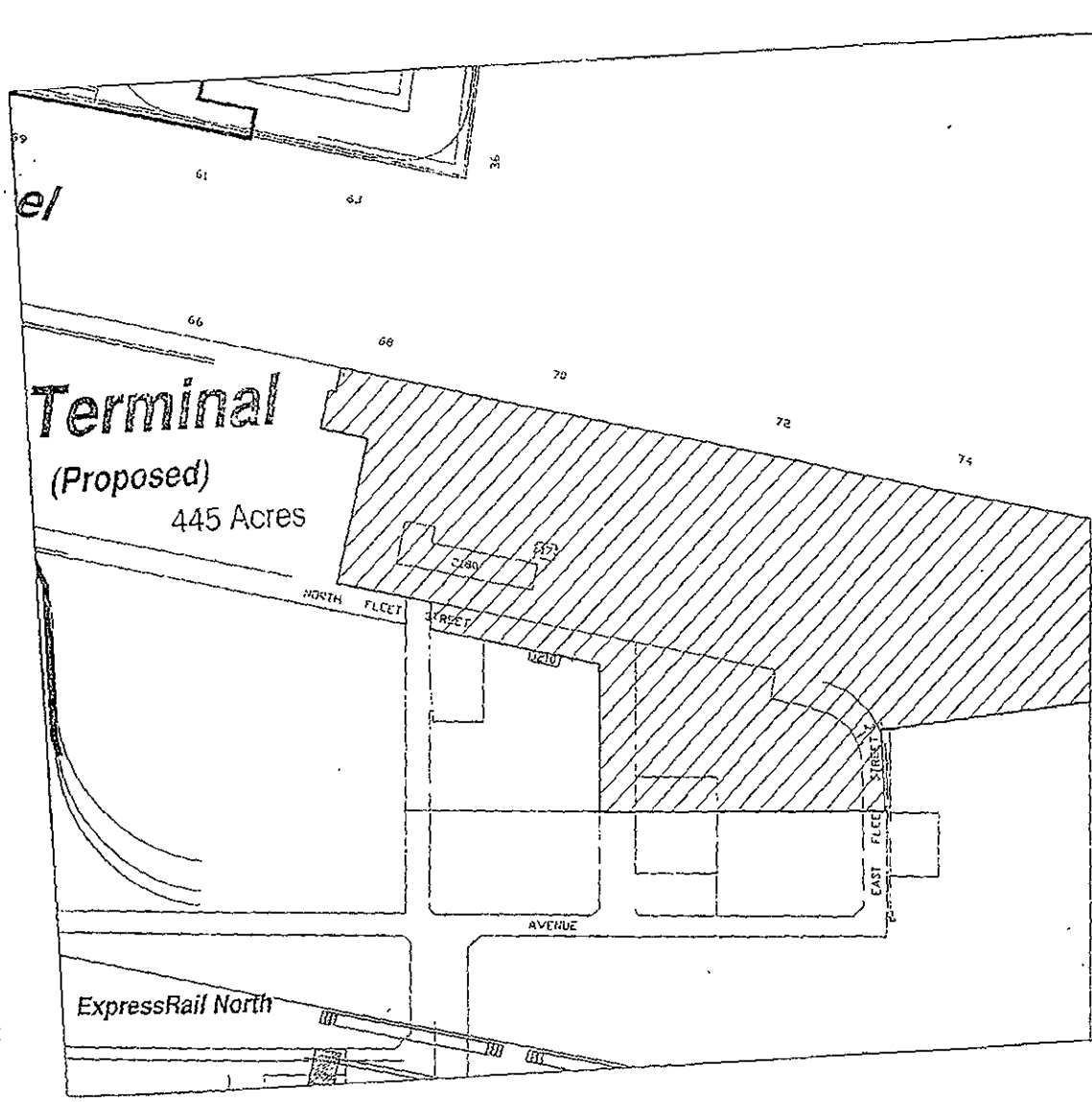


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Figure 2

Bay Avenue Terminal
Site Plan

Scale 1":400'

LEGEND

LIMITS OF BAY AVENUE TERMINAL (APPROX. 74-ACRES)

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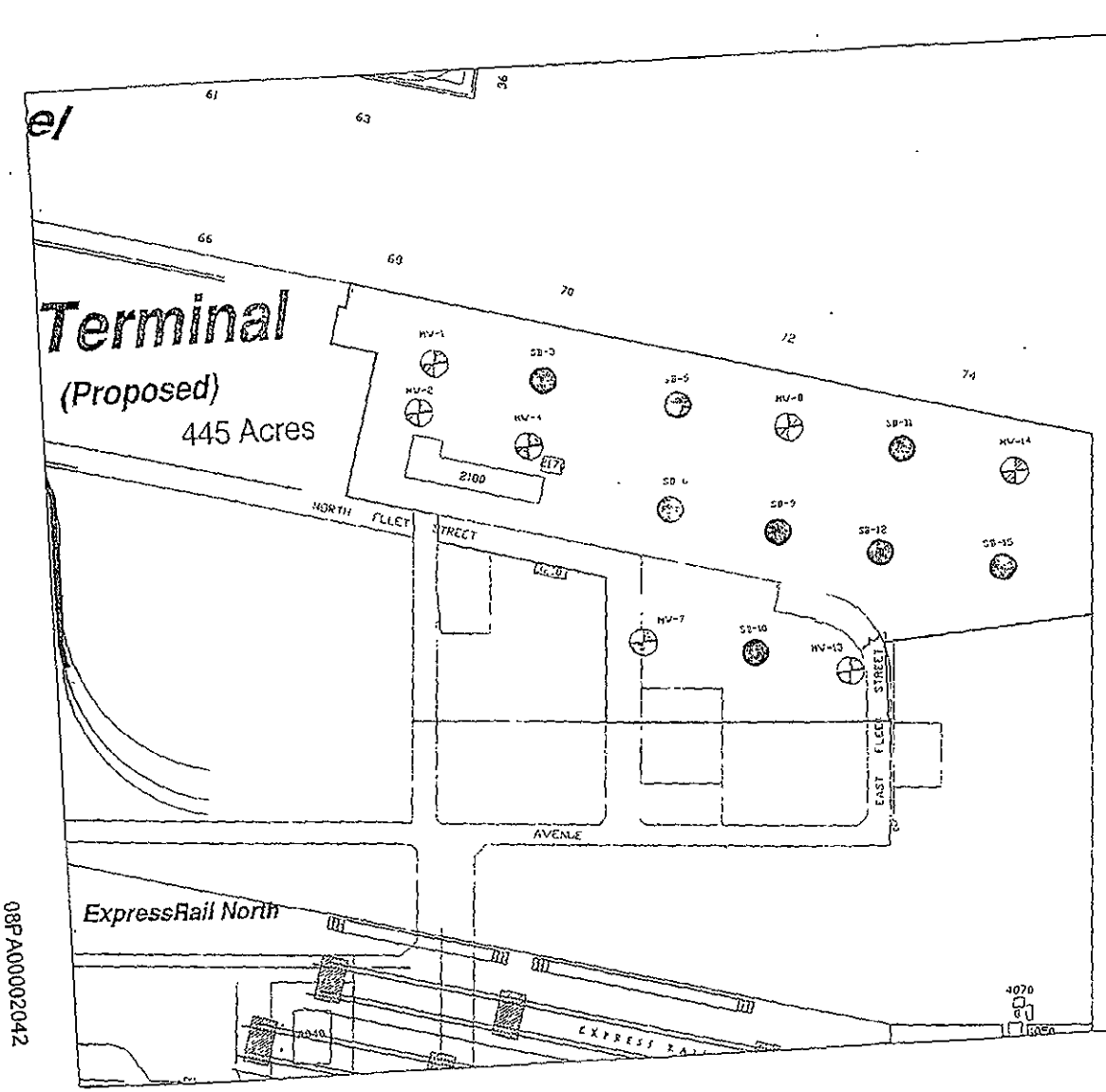


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Figure 3

Bay Avenue Terminal
Soil Boring and Monitoring
Well Location Plan

Legend:

Soil Boring Location

Monitoring Well Location

Scale 1":400'

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# TABLES

Table 1
Summary of Volatile Organics Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

| Client Sample ID / Sampling Depth (ft) / Lab Sample ID / Sampling Date / Units | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1,1,1-Trichloroethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,1,2,2-Tetrachloroethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,1,2-Trichloroethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,1-Dichloroethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,1-Dichloroethene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,2-Dichlorobenzene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,2-Dichloropropane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,3-Dichlorobenzene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 1,4-Dichlorobenzene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| 2-Chloroethylvinylether | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Benzene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Bromodichloromethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Bromoform | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Bromomethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Carbon tetrachloride | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Chlorobenzene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Chloroethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Chloroform | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Chloromethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Dibromochloromethane | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Ethylbenzene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Toluene | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Vinyl chloride | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Xylenes (total) | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

Notes:
[illegible]
[illegible]

08PA00002044

Table 1
Summary of Volatile Organics Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

(Continued)

| Client Sample ID | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Laboratory Sample ID | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Date Sampled | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Units | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | |
| 1,1,1-Trichloroethane | 452 | U | 442 | U | 1,290 | U | 332 | U | 318 | U | 270 | U | 260 | U | 262 | U | 457 | U | 456 | U | 244 | U | 230 | U | 278 | U | 252 | U | | |
| 1,1,2,2-Tetrachloroethane | 372 | U | 364 | U | 253 | U | 275 | U | 259 | U | 237 | U | 233 | U | 236 | U | 372 | U | 375 | U | 208 | U | 275 | U | 345 | U | 277 | U | | |
| 1,1,2-Trichloroethane | 283 | U | 278 | U | 210 | U | 232 | U | 214 | U | 210 | U | 196 | U | 207 | U | 233 | U | 235 | U | 214 | U | 230 | U | 276 | U | 257 | U | | |
| 1,1-Dichloroethane | 655 | U | 619 | U | 151 | U | 167 | U | 223 | U | 159 | U | 86 | U | 183 | U | 665 | U | 670 | U | 171 | U | 175 | U | 195 | U | 174 | U | | |
| 1,1-Dichloroethene | 324 | U | 351 | U | 127 | U | 69 | U | 196 | U | 213 | U | 139 | U | 196 | U | 359 | U | 362 | U | 220 | U | 225 | U | 250 | U | 227 | U | | |
| 1,2-Dichlorobenzene | 243 | U | 288 | U | 338 | U | 354 | U | 223 | U | 169 | U | 186 | U | 183 | U | 343 | U | 314 | U | 333 | U | 323 | U | 351 | U | 341 | U | | |
| 1,2-Dichloroethane | 226 | U | 221 | U | 256 | U | 237 | U | 318 | U | 270 | U | 267 | U | 282 | U | 224 | U | 228 | U | 244 | U | 250 | U | 276 | U | 252 | U | | |
| 1,2-Dichloropropane | 226 | U | 221 | U | 184 | U | 157 | U | 254 | U | 216 | U | 213 | U | 210 | U | 236 | U | 220 | U | 135 | U | 200 | U | 222 | U | 202 | U | | |
| 1,3-Dichlorobenzene | 160 | U | 156 | U | 182 | U | 125 | U | 97 | U | 175 | U | 172 | U | 170 | U | 160 | U | 161 | U | 161 | U | 174 | U | 169 | U | 164 | U | | |
| 1,4-Dichlorobenzene | 273 | U | 275 | U | 312 | U | 312 | U | 227 | U | 190 | U | 85 | U | 165 | U | 275 | U | 251 | U | 269 | U | 254 | U | 324 | U | 315 | U | | |
| 2-Chloroethylvinylether | 401 | U | 154 | U | 414 | U | 416 | U | 573 | U | 186 | U | 479 | U | 473 | U | 106 | U | 107 | U | 435 | U | 450 | U | 503 | U | 424 | U | | |
| 2-Chloroethyl Vinyl Ether | 217 | U | 220 | U | 264 | U | 264 | U | 628 | U | 253 | U | 184 | U | 253 | U | 229 | U | 241 | U | 262 | U | 272 | U | 235 | U | 261 | U | | |
| 2-Chloropropene | 331 | U | 317 | U | 319 | U | 316 | U | 630 | U | 325 | U | 310 | U | 298 | U | 325 | U | 348 | U | 307 | U | 326 | U | 322 | U | 313 | U | | |
| Benzene | 452 | U | 442 | U | 115 | U | 116 | U | 158 | U | 133 | U | 133 | U | 131 | U | 432 | U | 436 | U | 122 | U | 125 | U | 139 | U | 126 | U | | |
| Bromodichloromethane | 186 | U | 181 | U | 143 | U | 151 | U | 237 | U | 173 | U | 173 | U | 170 | U | 135 | U | 168 | U | 159 | U | 163 | U | 184 | U | 164 | U | | |
| Bromoform | 320 | U | 330 | U | 304 | U | 304 | U | 143 | U | 121 | U | 120 | U | 118 | U | 339 | U | 102 | U | 110 | U | 113 | U | 125 | U | 113 | U | | |
| Bromomethane | 397 | U | 339 | U | 136 | U | 120 | U | 191 | U | 167 | U | 160 | U | 167 | U | 339 | U | 402 | U | 146 | U | 150 | U | 167 | U | 151 | U | | |
| 2-Butanone | 753 | U | 747 | U | 173 | U | 114 | U | 535 | U | 203 | U | 200 | U | 196 | U | 753 | U | 755 | U | 183 | U | 188 | U | 209 | U | 188 | U | | |
| Carbon Tetrachloride | 327 | U | 351 | U | 231 | U | 253 | U | 235 | U | 242 | U | 239 | U | 233 | U | 315 | U | 362 | U | 220 | U | 206 | U | 250 | U | 227 | U | | |
| Chlorobenzene | 223 | U | 246 | U | 124 | U | 136 | U | 177 | U | 119 | U | 116 | U | 114 | U | 293 | U | 275 | U | 154 | U | 158 | U | 153 | U | 139 | U | | |
| Chloroform | 335 | U | 649 | U | 345 | U | 348 | U | 477 | U | 495 | U | 499 | U | 523 | U | 335 | U | 710 | U | 365 | U | 375 | U | 417 | U | 374 | U | | |
| Chloromethane | 452 | U | 447 | U | 173 | U | 174 | U | 233 | U | 205 | U | 200 | U | 196 | U | 437 | U | 456 | U | 142 | U | 188 | U | 200 | U | 189 | U | | |
| Dibromochloromethane | 432 | U | 420 | U | 253 | U | 271 | U | 403 | U | 432 | U | 426 | U | 414 | U | 232 | U | 216 | U | 320 | U | 409 | U | 445 | U | 403 | U | | |
| 1,2-Dibromoethane | 279 | U | 273 | U | 151 | U | 147 | U | 221 | U | 169 | U | 168 | U | 163 | U | 279 | U | 261 | U | 171 | U | 175 | U | 195 | U | 176 | U | | |
| 1,2-Dichlorobenzene | 747 | U | 728 | U | 472 | U | 475 | U | 622 | U | 253 | U | 245 | U | 231 | U | 745 | U | 756 | U | 206 | U | 213 | U | 378 | U | 317 | U | | |
| 1,3-Dichlorobenzene | 364 | U | 377 | U | 219 | U | 210 | U | 502 | U | 256 | U | 215 | U | 247 | U | 336 | U | 365 | U | 232 | U | 238 | U | 264 | U | 239 | U | | |
| 1,4-Dichlorobenzene | 232 | U | 209 | U | 253 | U | 215 | U | 355 | U | 297 | U | 232 | U | 232 | U | 232 | U | 232 | U | 226 | U | 275 | U | 266 | U | 277 | U | | |
| 1,4-Dichlorobutane | 279 | U | 272 | U | 173 | U | 174 | U | 233 | U | 233 | U | 210 | U | 194 | U | 279 | U | 261 | U | 133 | U | 166 | U | 200 | U | 189 | U | | |
| Dichlorodifluoromethane | 233 | U | 235 | U | 129 | U | 126 | U | 175 | U | 119 | U | 110 | U | 114 | U | 233 | U | 235 | U | 132 | U | 133 | U | 153 | U | 139 | U | | |
| Ethylene | 233 | U | 217 | U | 173 | U | 114 | U | 233 | U | 203 | U | 200 | U | 196 | U | 233 | U | 255 | U | 183 | U | 188 | U | 209 | U | 189 | U | | |
| Trichloroethane | 372 | U | 364 | U | 230 | U | 232 | U | 318 | U | 270 | U | 260 | U | 252 | U | 372 | U | 375 | U | 244 | U | 250 | U | 278 | U | 252 | U | | |
| Trichlorofluoromethane | 465 | U | 455 | U | 184 | U | 189 | U | 254 | U | 216 | U | 213 | U | 210 | U | 465 | U | 469 | U | 195 | U | 200 | U | 222 | U | 202 | U | | |
| Vinyl Chloride | 682 | U | 674 | U | 293 | U | 286 | U | 364 | U | 323 | U | 323 | U | 324 | U | 682 | U | 607 | U | 305 | U | 313 | U | 348 | U | 315 | U | | |
| Xylene (total) | 716 | U | 727 | U | 326 | U | 318 | U | 700 | U | 374 | U | 363 | U | 376 | U | 716 | U | 734 | U | 207 | U | 348 | U | 412 | U | 394 | U | | |

Notes:
U Not detected at the PQL
[illegible]

08PA00002045

[illegible]

Table 2
Summary of Base Neutral and Acid Extractable Compounds Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

| Client Sample ID: / Sampling Depth (ft): / Vertech Sample ID: / Sampling Date: / Units: | MW-1 / 1-2 / D783-8 / 9/22/99 / ppb | MW-1 / 6-7 / D783-9 / 9/22/99 / ppb | MW-2 / 1-2 / D783-11 / 9/22/99 / ppb | MW-2 / 4-6 / D783-2 / 9/22/99 / ppb | SB-3 / 1-2 / D764-1 / 9/25/99 / ppb | SB-3 / 6-7.5 / D764-2 / 9/25/99 / ppb | MW-4 / 1-2 / D783-3 / 9/22/99 / ppb | MW-4 / 3.5-4 / D783-4 / 9/22/99 / ppb | SB-5 / 1-2 / D764-3 / 9/25/99 / ppb | SB-5 / 4-5 / D764-4 / 9/25/99 / ppb | SB-6 / 1-2 / D783-12 / 9/22/99 / ppb | SB-6 / 4-4.5 / D783-13 / 9/22/99 / ppb | MW-7 / 1-2 / D631-4 / 9/24/99 / ppb | MW-7 / 5-5.5 / D631-5 / 9/24/99 / ppb | MW-8 / 1-2 / D784-9 / 9/25/99 / ppb | MW-8 / 9-10 / D784-10 / 9/25/99 / ppb |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1,2,4-Trichlorobenzene | 30.3 U | 31.4 U | 27.8 U | 29.6 U | 27.7 U | 23.3 U | 27.5 U | 37.1 U | 33.6 U | 29.3 U | 31.5 U | 31.2 U | 22.6 U | 26.7 U | 27.4 U | 27.2 U |
| 1,2-Dichlorobenzene | 27.3 U | 23.6 U | 33.5 U | 24.4 U | 27.2 U | 24.1 U | 32.0 U | 24.9 U | 27.5 U | 34.3 U | 26.4 U | 28.1 U | 17.9 U | 17.3 U | 31.8 U | 32.4 U |
| 1,3-Dichlorobenzene | 15.1 U | 15.3 U | 18.4 U | 13.6 U | 17.4 U | 15.4 U | 17.1 U | 16.8 U | 15.1 U | 18.4 U | 15.8 U | 15.6 U | 16.6 U | 16.0 U | 17.2 U | 17.5 U |
| 1,4-Dichlorobenzene | 32.3 U | 33.1 U | 30.9 U | 31.3 U | 29.8 U | 31.5 U | 29.5 U | 34.2 U | 32.6 U | 31.2 U | 31.6 U | 33.3 U | 10.2 U | 10.6 U | 29.4 U | 29.9 U |
| 2,4,5-Trichlorophenol | 24.7 U | 7.0 U | 50.4 U | 28.7 U | 56.4 U | 37.6 U | 35.9 U | 23.2 U | 25.3 U | 59.6 U | 25.7 U | 23.5 U | 50.0 U | 37.2 U | 55.6 U | 56.6 U |
| 2,4,6-Trichlorophenol | 27.2 U | 35 U | 40.2 U | 41.4 U | 35.5 U | 41.2 U | 38.4 U | 28.6 U | 27.4 U | 41.6 U | 28.7 U | 22.0 U | 40.6 U | 53.0 U | 35.3 U | 38.9 U |
| 2,4-Dichlorophenol | 15.1 U | 15.3 U | 52.9 U | 54.3 U | 51 U | 54.3 U | 50.6 U | 16.0 U | 15.3 U | 54.0 U | 15.6 U | 15.5 U | 51.5 U | 52.4 U | 50.4 U | 51.1 U |
| 2,4-Dimethylphenol | 29.0 U | 29.4 U | 35.0 U | 36.3 U | 33.0 U | 35.7 U | 33.6 U | 29.6 U | 30.3 U | 35.7 U | 29.1 U | 27.6 U | 35.3 U | 31.6 U | 33.3 U | 30.9 U |
| 2,4-Dinitrophenol | 41.9 U | 42.0 U | 1160 U | 1271 U | 1150 U | 1190 U | 1130 U | 44.4 U | 43.3 U | 1190 U | 43.5 U | 43.2 U | 88.2 U | 80.5 U | 1110 U | 1130 U |
| 2,4-Dinitrotoluene | 27.2 U | 27.5 U | 57.8 U | 57.4 U | 53.6 U | 57.4 U | 53.3 U | 28.2 U | 27.4 U | 50.9 U | 28.2 U | 28.0 U | 56.3 U | 55.7 U | 53.1 U | 54.0 U |
| 2,6-Dinitrotoluene | 27.6 U | 27.0 U | 43.9 U | 45.7 U | 47.3 U | 44.7 U | 41.9 U | 27.1 U | 26.3 U | 44.7 U | 27.6 U | 27.4 U | 44.3 U | 43.4 U | 41.8 U | 42.5 U |
| 2-Chloronaphthalene | 23.2 U | 24.4 U | 29.2 U | 26.0 U | 27.2 U | 27.7 U | 26.9 U | 24.6 U | 23.5 U | 29.7 U | 24.1 U | 20.9 U | 28.4 U | 27.7 U | 26.8 U | 27.4 U |
| 2-Chlorophenol | 34.4 U | 35.1 U | 30.7 U | 31.5 U | 29.7 U | 31.3 U | 29.7 U | 35.5 U | 34.9 U | 31.3 U | 35.0 U | 35.5 U | 31.0 U | 33.4 U | 29.2 U | 29.7 U |
| 2-Methylnaphthalene | 35.3 U | 37.1 U | 36.6 U | 39.7 U | 37.2 U | 31.3 U | 36.2 U | 37.5 U | 35.7 U | 39.3 U | 36.8 U | 35.4 U | 33.5 U | 35.2 U | 35.7 U | 37.3 U |
| 2-Methylphenol | 34.3 U | 36.8 U | 38.6 U | 39.7 U | 37.7 U | 37.3 U | 35.9 U | 36.4 U | 34.7 U | 35.3 U | 36.7 U | 35.4 U | 30.5 U | 35.2 U | 36.7 U | 37.3 U |
| 2-Nitroaniline | 56.1 U | 58.7 U | 57.5 U | 61.7 U | 57.4 U | 63.6 U | 56.0 U | 73.5 U | 77.3 U | 63.0 U | 57.9 U | 57.7 U | 70.0 U | 55.9 U | 56.6 U | 57.6 U |
| 2-Nitrophenol | 31.1 U | 27.7 U | 51.2 U | 53.7 U | 49.9 U | 53.7 U | 49.4 U | 27.1 U | 33.3 U | 52.7 U | 21.9 U | 21.7 U | 52.7 U | 51.7 U | 43.2 U | 50.1 U |
| 3,3'-Dichlorobenzidine | 26.1 U | 27.3 U | 86.6 U | 89.1 U | 83.5 U | 89.3 U | 87.8 U | 27.6 U | 30.1 U | 88.3 U | 27.1 U | 26.8 U | 87.4 U | 85.7 U | 87.4 U | 83.9 U |
| 3/4-Methylphenol | 35.4 U | 35.7 U | 17.5 U | 13.1 U | 17.5 U | 17.0 U | 17.4 U | 36.5 U | 36.7 U | 13.2 U | 37.0 U | 37.4 U | 13.3 U | 12.6 U | 17.2 U | 17.5 U |
| 3-Nitroaniline | 13.6 U | 14.5 U | 15.2 U | 15.6 U | 14.7 U | 17.5 U | 14.5 U | 14.7 U | 14.0 U | 15.1 U | 14.4 U | 14.2 U | 16.0 U | 21.5 U | 14.4 U | 14.7 U |
| 4,6-Dinitro-2-methylphenol | 21.8 U | 21.8 U | 29.7 U | 1032 U | 90.2 U | 1032 U | 55.5 U | 22.0 U | 21.0 U | 1020 U | 21.0 U | 21.4 U | 82.1 U | 80.5 U | 94.9 U | 90.6 U |
| 4-Bromophenyl phenyl ether | 77.6 U | 79.4 U | 56.0 U | 57.6 U | 54.6 U | 57.1 U | 53.5 U | 72.9 U | 58.1 U | 57.1 U | 59.0 U | 59.3 U | 56.5 U | 55.4 U | 53.3 U | 54.7 U |
| 4-Chloro-3-methylphenol | 32.0 U | 35 U | 63.1 U | 61.6 U | 51.6 U | 61.3 U | 57.4 U | 31.5 U | 33.3 U | 61.1 U | 33.5 U | 33.0 U | 69.7 U | 56.3 U | 57.2 U | 58.2 U |
| 4-Chloroaniline | 16.6 U | 17.5 U | 26.4 U | 26.1 U | 24.5 U | 26.4 U | 11.3 U | 13.4 U | 16.9 U | 25.5 U | 11.2 U | 11.1 U | 25.6 U | 25.1 U | 24.2 U | 24.6 U |
| 4-Chlorophenyl phenyl ether | 46.5 U | 48.0 U | 72.7 U | 54.3 U | 50.5 U | 53.0 U | 50.4 U | 45.2 U | 46.2 U | 53.0 U | 46.3 U | 47.0 U | 51.5 U | 52.2 U | 56.7 U | 51.1 U |
| 4-Nitroaniline | 16.6 U | 16.7 U | 81.8 U | 81.2 U | 76.6 U | 83.4 U | 74.7 U | 16.3 U | 16.1 U | 81.4 U | 16.6 U | 16.4 U | 82.6 U | 81.0 U | 77.9 U | 75.2 U |
| 4-Nitrophenol | 25.3 U | 21 U | 25.1 U | 27.5 U | 25 U | 24.6 U | 25.9 U | 33.4 U | 26.6 U | 25.5 U | 23.4 U | 22.7 U | 19.9 U | 19.5 U | 23.8 U | 24.1 U |
| Acenaphthene | 29.3 U | 33.7 U | 29.9 U | 41.1 U | 38.1 U | 40.7 U | 39.1 U | 31.9 U | 29.6 U | 40.7 U | 30.7 U | 32.2 U | 40.3 U | 31.5 U | 28.0 U | 30.6 U |
| Acenaphthylene | 23.3 U | 23.3 U | 34.0 U | 37.3 U | 34.7 U | 36.7 U | 34.1 U | 31.3 U | 29.5 U | 27.1 U | 36.5 U | 32.2 U | 36.4 U | 35.7 U | 34.3 U | 34.7 U |
| Anthracene | 27.7 U | 35.1 U | 11.1 U | 54.7 U | 51.3 U | 54.2 U | 57.6 U | 55.6 U | 11.0 U | 14.7 U | 54.5 U | 54.1 U | 23.7 U | 52.6 U | 50.6 U | 51.5 U |
| Benzo(a)anthracene | 54.6 U | 57.0 U | 61.9 U | 62.7 U | 59.7 U | 63.1 U | 59.7 U | 68.5 U | 65.3 U | 61.1 U | 67.7 U | 66.5 U | 67.6 U | 61.3 U | 58.9 U | 60.0 U |
| Benzo(a)pyrene | 72.5 U | 73.1 U | 69.4 U | 71.0 U | 67 U | 70.1 U | 67.5 U | 75.6 U | 73.0 U | 72.1 U | 56.6 U | 54.1 U | 70.2 U | 68.9 U | 66.7 U | 67.4 U |
| Benzo(b)fluoranthene | 55.5 U | 58.3 U | 75.0 U | 77.3 U | 75 U | 76.4 U | 71.7 U | 53.8 U | 57.1 U | 76.4 U | 57.6 U | 57.2 U | 73.7 U | 74.2 U | 71.4 U | 72.6 U |
| Benzo(g,h,i)perylene | 67.7 U | 71.9 U | 31.5 U | 37 U | 29.9 U | 75.0 U | 70.3 U | 73.7 U | 63.3 U | 70.0 U | 70.3 U | 69.7 U | 24.3 U | 72.0 U | 70.6 U | 71.2 U |
| Benzo(k)fluoranthene | 77.1 U | 77.9 U | 80.4 U | 83.7 U | 77.6 U | 81.0 U | 76.9 U | 71.7 U | 68.3 U | 81.0 U | 70.3 U | 69.7 U | 81.2 U | 79.8 U | 76.5 U | 77.9 U |
| Benzoic acid | 45.3 U | 47.6 U | 35.4 U | 36.4 U | 34.1 U | 35.1 U | 33.8 U | 40.5 U | 45.7 U | 36.1 U | 47.1 U | 40.7 U | 37.8 U | 33.3 U | 33.7 U | 34.3 U |
| Benzyl alcohol | 35.3 U | 40.7 U | 31.9 U | 22.6 U | 21.2 U | 22.4 U | 21.0 U | 40.6 U | 28.7 U | 27.4 U | 37.8 U | 35.4 U | 22.1 U | 21.7 U | 23.9 U | 21.7 U |
| bis(2-Chloroethoxy)methane | 20.3 U | 31.3 U | 29.8 U | 30.7 U | 23.2 U | 30.4 U | 28.5 U | 32.1 U | 30.6 U | 30.4 U | 31.5 U | 31.7 U | 30.1 U | 29.6 U | 29.4 U | 28.8 U |
| bis(2-Chloroethyl)ether | 33.1 U | 40.3 U | 35.8 U | 34.0 U | 32.0 U | 34.4 U | 32.3 U | 40.7 U | 30.8 U | 34.4 U | 29.9 U | 36.5 U | 34.1 U | 33.4 U | 32.1 U | 32.7 U |
| bis(2-Chloroisopropyl)ether | 77.6 U | 65.7 U | 45.7 U | 47.0 U | 44 U | 46.6 U | 43.7 U | 66.1 U | 67.7 U | 46.7 U | 65.1 U | 64.5 U | 45.4 U | 45.2 U | 47.5 U | 44.3 U |
| bis(2-Ethylhexyl)phthalate | 124 U | 130 U | 103 U | 106 U | 117 U | 30 B | 90.3 U | 132 U | 95 U | 243 B | 129 U | 129 U | 104 U | 102 U | 98.5 U | 100 U |
| Butylbenzylphthalate | [illegible] | 131 U | 12.5 U | 11.1 U | 67.3 U | 12.2 U | 69.6 U | 13.1 U | 12.6 U | 12.2 U | 17.1 U | 12.3 U | 31.4 U | 98.6 U | 86.1 U | 37.6 U |
| Chrysene | 63.0 U | 66.3 U | 63.0 U | 54.5 U | 60.6 U | 64.3 U | 60.3 U | 67.4 U | 64.3 U | 54.3 U | 66.2 U | 65.5 U | 63.7 U | 67.4 U | 60.0 U | 61.1 U |
| Dibenzo(a,h)anthracene | 37.6 U | 60.4 U | 105 U | 101 U | 101 U | 107 U | 100 U | 61.0 U | 58.1 U | 137 U | 50.8 U | 50.3 U | 10.6 U | 104 U | 99.9 U | 101 U |
| Dibenzofuran | 34.3 U | 35.3 U | 47.2 U | 43.5 U | 40.7 U | 43.1 U | 40.4 U | 35.4 U | 34.7 U | 42 U | 35.7 U | 35.4 U | 42.6 U | 41.8 U | 40.7 U | 40.9 U |
| Diethylphthalate | 85.8 U | 90.1 U | 90.4 U | 93.6 U | 87.2 U | 92.1 U | 84.4 U | 94.2 U | 86.2 U | 92.1 U | 82.3 U | 88.4 U | 91.3 U | 89.5 U | 85.0 U | 87.6 U |
| Dimethylphthalate | 56.6 U | 51.4 U | 53.7 U | 54.6 U | 51.4 U | 54.3 U | 50.9 U | 59.9 U | 57.1 U | 54.3 U | 58.8 U | 58.7 U | 50.6 U | 52.7 U | 50.7 U | 51.6 U |
| Di-n-butylphthalate | 107 U | 137 U | 85.1 U | 90.2 U | 85.0 U | 87.3 U | 84.2 U | 103 U | 103 U | 47.4 U | 105 U | 105 U | 89.0 U | 87.3 U | 83.9 U | 85.4 U |
| Di-n-octylphthalate | 74.7 U | 138 | 79.9 U | 93.6 U | 87.7 U | 32.7 U | 86.9 U | 79.2 U | 77.7 U | 92.7 U | 77.7 U | 77.0 U | 90.0 U | 93.0 U | 80.5 U | 83.0 U |
| Fluoranthene | 68.7 U | 72.1 U | 67.4 U | 53.4 U | 65.0 U | 33.7 U | 64.4 U | 77.0 U | 63.4 U | 64.7 U | 71.4 U | 70.7 U | 60.1 U | 65.8 U | 64.2 U | 65.3 U |
| Fluorene | 41.4 U | 43.5 U | 39.8 U | 41.0 U | 38.4 U | 40.6 U | 38.0 U | 43.9 U | 41.8 U | 40.6 U | 43.8 U | 42.5 U | 40.2 U | 39.4 U | 37.9 U | 38.5 U |
| Hexachlorobenzene | 53.9 U | 56.6 U | 62.7 U | 64.6 U | 60.5 U | 64.0 U | 60.0 U | 59.5 U | 54.9 U | 64.3 U | 57.7 U | 56.7 U | 63.3 U | 62.1 U | 59.7 U | 60.6 U |
| Hexachlorobutadiene | 43.4 U | 45.6 U | 36.4 U | 37.5 U | 35.1 U | 37.1 U | 34.8 U | 47.0 U | 43.5 U | 37.1 U | 47.7 U | 44.7 U | 36.8 U | 36.1 U | 34.7 U | 35.3 U |
| Hexachlorocyclopentadiene | 59.1 U | 61.7 U | 27.3 U | 28.1 U | 26.4 U | 27.9 U | 26.1 U | 72.1 U | 53.1 U | 27.9 U | 61.1 U | 60.5 U | 27.6 U | 27.1 U | 26.0 U | 26.5 U |
| Hexachloroethane | 40.4 U | 47.4 U | 46.0 U | 47.4 U | 44.1 U | 46.9 U | 44.0 U | 47.0 U | 45.8 U | 45.9 U | 42.6 U | 41.6 U | 46.5 U | 45.6 U | 43.8 U | 44.6 U |
| Indeno(1,2,3-cd)pyrene | 57.6 U | 60.4 U | 11.3 U | 11.5 U | 10.9 U | 11.5 U | 10.0 U | 61.0 U | 55.1 U | 11.5 U | 59.7 U | 59.3 U | 11.4 U | 11.2 U | 10.8 U | 11.0 U |
| Isophorone | 44.4 U | 48.6 U | 36.4 U | 37.5 U | 35.1 U | 37.1 U | 34.8 U | 47.1 U | 44.9 U | 37.1 U | 46.2 U | 45.8 U | 36.8 U | 36.1 U | 34.7 U | 35.3 U |
| Naphthalene | 26.3 U | 27.6 U | 27.4 U | 28.2 U | 26.5 U | 28.0 U | 26.2 U | 27.0 U | 26.5 U | 28.0 U | 27.3 U | 27.0 U | 27.7 U | 27.2 U | 26.1 U | 26.6 U |
| Nitrobenzene | 26.1 U | 27.6 U | 35.4 U | 35.4 U | 34.1 U | 36.1 U | 33.8 U | 27.8 U | 26.5 U | 36.1 U | 27.2 U | 27.0 U | 35.7 U | 35.0 U | 33.7 U | 34.3 U |
| N-Nitroso-di-n-propylamine | 81.6 U | 85.3 U | 40.5 U | 41.7 U | 35 U | 41.3 U | 38.7 U | 85.7 U | 82.7 U | 41.3 U | 85 U | 84.2 U | 40.9 U | 40.1 U | 38.6 U | 39.2 U |
| N-Nitrosodiphenylamine | 63.6 U | 66.8 U | 73.8 U | 76.0 U | 71.2 U | 75.3 U | 70.6 U | 67.4 U | 64.3 U | 75.3 U | 66.2 U | 65.5 U | 74.6 U | 73.1 U | 70.3 U | 71.5 U |
| Pentachlorophenol | 19.5 U | 20.5 U | 94.1 U | 95.3 U | 90.3 U | 96.0 U | 90.0 U | 22.7 U | 12.1 U | 96.0 U | 20.2 U | 20.1 U | 10.2 U | 95.7 U | 95.6 U | 91.2 U |
| Phenanthrene | 57.6 U | 62.4 U | 57.6 U | 59.3 U | 55.4 U | 58.5 U | 55.3 U | 61.0 U | 58.1 U | 59.0 U | 59.8 U | 59.3 U | 58.4 U | 57.3 U | 55.1 U | 56.0 U |
| Phenol | 43.4 U | 45.4 U | 23.6 U | 24.3 U | 22.7 U | 24.6 U | 22.5 U | 46.0 U | 43.3 U | 24.0 U | 45.7 U | 44.7 U | 23.8 U | 23.3 U | 22.4 U | 22.8 U |
| Pyrene | 69.7 U | 73.1 U | 63.6 U | 75.6 U | 81.5 U | 65.0 U | 60.9 U | 73.0 U | 70.4 U | 65.0 U | 77.4 U | 71.8 U | 64.4 U | 63.1 U | 60.7 U | 61.8 U |

Notes
U - Not detected at the PQL
B - Analyte found in the blank
ppb - parts per billion (micrograms per kilogram)

08PA00002046

Table 2
Summary of Base Neutral and Acid Extractable Compounds Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey
(Continued)

| Client Sample ID | SB-9 | | SB-5 | | SB-10 | | SB-10 | | SB-31 | | SB-11 | | SB-12 | | SB-12 | | MW-13 | | MW-13 | | MW-14 | | MW-14 | | SB-15 | | SB-15 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | 4.5-5.5 | | 1-2 | | 1-3 | | 5-5.5 | | 1-2 | | 8-9.5 | | 1-2 | | 5-6 | | 1-2 | | 4.5-6 | | 1-2 | | 5-6 | | 1-2 | | 4-4.5 | |
| Vertech Sample ID | D783-6 | | D783-4 | | I703-1 | | I703-2 | | D784-5 | | D784-6 | | D784-7 | | D784-8 | | D783-10 | | D783-11 | | I703-6 | | I703-7 | | I703-8 | | I703-9 | |
| Sampling Date | 3/22/99 | | 3/22/99 | | 3/23/99 | | 3/23/99 | | 3/25/99 | | 3/25/99 | | 3/25/99 | | 3/25/99 | | 3/22/99 | | 3/22/99 | | 3/24/99 | | 3/24/99 | | 3/24/99 | | 3/24/99 | |
| Units | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | |
| 1,2,4-Trichlorobenzene | 33.9 | U | 28.7 | U | 33.8 | U | 30.0 | U | 0.78 | U | 30.5 | U | 20.0 | U | 37.9 | U | 31.2 | U | 31.5 | U | 28.8 | U | 27.7 | U | 30.3 | U | 29.3 | U |
| 1,2-Dichlorobenzene | 27.8 | U | 25.9 | U | 15.1 | U | 16.7 | U | 0.33 | U | 35.4 | U | 33.5 | U | 32.4 | U | 25.1 | U | 20.4 | U | 17.1 | U | 17.5 | U | 19.5 | U | 17.6 | U |
| 1,3-Dichlorobenzene | 15.4 | U | 14.4 | U | 14.9 | U | 14.1 | U | 0.18 | U | 19.1 | U | 15.7 | U | 17.5 | U | 15.6 | U | 15.5 | U | 15.9 | U | 16.3 | U | 16.1 | U | 16.4 | U |
| 1,4-Dichlorobenzene | 23.0 | U | 20.7 | U | [illegible] | U | [illegible] | U | 0.20 | U | 17.7 | U | 31.2 | U | 35.0 | U | 37.3 | U | 33.6 | U | 5.76 | U | 10.0 | U | 11.1 | U | 13.1 | U |
| 2,4,5-Trichlorophenol | 25.2 | U | 35 | U | 52.0 | U | 38.0 | U | 1.12 | U | 61.3 | U | 59.9 | U | 56.7 | U | 25.5 | U | 25.7 | U | 56.4 | U | 56.4 | U | 61.3 | U | 32.6 | U |
| 2,4,6-Trichlorophenol | 27.7 | U | 46 | U | 45.7 | U | 45.7 | U | 0.39 | U | 45.6 | U | 43.6 | U | 39.6 | U | 20.9 | U | 26.2 | U | 40.2 | U | 34.8 | U | 42.2 | U | 41.0 | U |
| 2,4-Dichlorophenol | 15.4 | U | 14.4 | U | 33.5 | U | 33.5 | U | 1.12 | U | 56.1 | U | 33.5 | U | 51.3 | U | 15.6 | U | 11.0 | U | 52.9 | U | 5.1 | U | 55.5 | U | 54.8 | U |
| 2,4-Dimethylphenol | 265 | U | 255 | U | 35.3 | U | 35.3 | U | 0.37 | U | 17.6 | U | 35.3 | U | 23.4 | U | 20.3 | U | 20.1 | U | 35.0 | U | 33.8 | U | 35.7 | U | 35.7 | U |
| 2,4-Dinitrophenol | 427 | U | 358 | U | 1170 | U | 1170 | U | 1.14 | U | 1230 | U | 1170 | U | 1120 | U | 432 | U | 436 | U | 1160 | U | 1170 | U | 1170 | U | 1120 | U |
| 2,4-Dinitrotoluene | 27.7 | U | 25.6 | U | 55.3 | U | 55.3 | U | 0.55 | U | 51.5 | U | 50.9 | U | 54.1 | U | 25.0 | U | 26.5 | U | 55.5 | U | 53.8 | U | 56.5 | U | 56.9 | U |
| 2,6-Dinitrotoluene | 27.1 | U | 25.7 | U | 44.3 | U | 44.3 | U | 0.43 | U | 45.4 | U | 44.3 | U | 42.5 | U | 274 | U | 27.6 | U | 43.9 | U | 42.5 | U | 46.0 | U | 44.7 | U |
| 2-Chloronaphthalene | 23.7 | U | 27.6 | U | 21.4 | U | 21.4 | U | 0.28 | U | 20.4 | U | 20.4 | U | 27.3 | U | 23.3 | U | 24.1 | U | 28.2 | U | 27.7 | U | 29.5 | U | 28.7 | U |
| 2-Chlorophenol | 35.1 | U | 32.7 | U | 31.0 | U | 31.0 | U | 0.30 | U | 32.5 | U | 31.0 | U | 29.6 | U | 36.5 | U | 35.8 | U | 33.7 | U | 29.0 | U | 32.2 | U | 31.5 | U |
| 2-Methylnaphthalene | 30.6 | U | 33.5 | U | 33.2 | U | 33.9 | U | 0.37 | U | 45.8 | U | 30.9 | U | 37.4 | U | 36.4 | U | 36.8 | U | 33.5 | U | 37.7 | U | 40.4 | U | 39.3 | U |
| 2-Methylphenol | 33.0 | U | 32.6 | U | 33.2 | U | 33.9 | U | 0.33 | U | 40.8 | U | 38.9 | U | 37.4 | U | 37.4 | U | 45.7 | U | 36.6 | U | 37.2 | U | 40.4 | U | 39.5 | U |
| 2-Nitroaniline | 22.4 | U | 25.5 | U | 62.0 | U | 60.0 | U | 0.51 | U | 63.0 | U | 69.0 | U | 57.7 | U | 277 | U | 279 | U | 59.5 | U | 57.4 | U | 62.4 | U | 60.6 | U |
| 2-Nitrophenol | 21.5 | U | 25.0 | U | 52.2 | U | 7.2 | U | 2.31 | U | 54.8 | U | 52.2 | U | 53.1 | U | 217 | U | 219 | U | 51.7 | U | 49.9 | U | 54.2 | U | 52.7 | U |
| 3,3'-Dichlorobenzidine | 26.6 | U | 24.1 | U | 67.4 | U | 67.4 | U | 3.85 | U | 91.7 | U | 87.4 | U | 84.0 | U | 268 | U | 271 | U | 85.6 | U | 83.5 | U | 30.6 | U | 88.3 | U |
| 3&4-Methylphenols | 37.1 | U | 34.5 | U | 131 | U | 131 | U | 1.27 | U | 137 | U | 131 | U | 175 | U | 274 | U | 270 | U | 123 | U | 125 | U | 136 | U | 132 | U |
| 3-Nitroaniline | 14.4 | U | 13.5 | U | 153 | U | 153 | U | 1.44 | U | 161 | U | 143 | U | 147 | U | 142 | U | 144 | U | 152 | U | 146 | U | 159 | U | 155 | U |
| 4,6-Dinitro-2-methylphenol | 112 | U | 195 | U | 1010 | U | 1010 | U | 3.70 | U | 1007 | U | 1010 | U | 967 | U | 214 | U | 216 | U | 997 | U | 907 | U | 1050 | U | 1020 | U |
| 4-Bromophenyl phenyl ether | 58.7 | U | 54.6 | U | 56.5 | U | 56.5 | U | 0.55 | U | 51.3 | U | 46.5 | U | 54.3 | U | 59.3 | U | 35.8 | U | 59.0 | U | 54.0 | U | 58.7 | U | 57.1 | U |
| 4-Chloro-3-methylphenol | 327 | U | 304 | U | 60.7 | U | 60.7 | U | 2.50 | U | 63.6 | U | 60.7 | U | 58.3 | U | 333 | U | 333 | U | 60.1 | U | 50.6 | U | 61.0 | U | 61.2 | U |
| 4-Chloroaniline | 110 | U | 103 | U | 75.6 | U | 75.6 | U | 0.73 | U | 74.9 | U | 75.6 | U | 74.6 | U | 111 | U | 112 | U | 75.4 | U | 74.5 | U | 76.5 | U | 75.9 | U |
| 4-Chlorophenyl phenyl ether | 47.4 | U | 44.1 | U | 53.3 | U | 53.3 | U | 0.52 | U | 55.8 | U | 55.0 | U | 51.1 | U | 47.8 | U | 46.5 | U | 52.7 | U | 50.9 | U | 55.3 | U | 53.8 | U |
| 4-Nitroaniline | 103 | U | 151 | U | 82.5 | U | 82.5 | U | 2.80 | U | 85.7 | U | 82.6 | U | 79.3 | U | 164 | U | 165 | U | 81.8 | U | 79.9 | U | 59.8 | U | 83.4 | U |
| 4-Nitrophenol | 285 | U | 276 | U | 253 | U | 253 | U | 2.46 | U | 255 | U | 253 | U | 241 | U | 251 | U | 224 | U | 254 | U | 242 | U | 260 | U | 245 | U |
| Acenaphthene | 29.9 | U | 27.9 | U | 40.3 | U | 40.3 | U | 0.39 | U | 42.2 | U | 40.7 | U | 39.7 | U | 36.2 | U | 36.5 | U | 39.9 | U | 38.6 | U | 41.8 | U | 49.7 | U |
| Acenaphthylene | 29.5 | U | 27.4 | U | 35.4 | U | 35.4 | U | 0.35 | U | 30.1 | U | 36.4 | U | 34.9 | U | 30.2 | U | 30.5 | U | 36.0 | U | 34.7 | U | 37.8 | U | 35.7 | U |
| Anthracene | 52.6 | U | 49.8 | U | 51.7 | U | 51.7 | U | 0.51 | U | 56.3 | U | 53.7 | U | 51.5 | U | 54.1 | U | 54.6 | U | 53.1 | U | 51.3 | U | 55.7 | U | 54.7 | U |
| Benzo(a)anthracene | 65.9 | U | 61.3 | U | 67.5 | U | 62.5 | U | 0.61 | U | 65.6 | U | 62.5 | U | 60.0 | U | 116 | U | 67.2 | U | 64.9 | U | 59.7 | U | 64.9 | U | 63.1 | U |
| Benzo(a)pyrene | 53.6 | U | 47.8 | U | 70.2 | U | 70.2 | U | 0.63 | U | 73.7 | U | 70.2 | U | 67.4 | U | 54.3 | U | 54.6 | U | 69.6 | U | 67.1 | U | 73.0 | U | 78.9 | U |
| Benzo(b)fluoranthene | 56.7 | U | 52.7 | U | 75.7 | U | 75.7 | U | 0.74 | U | 79.4 | U | 75.7 | U | 72.7 | U | 57.2 | U | 57.8 | U | 75.0 | U | 72.3 | U | 78.6 | U | 76.4 | U |
| Benzo(g,h,i)perylene | 57.0 | J | 61.7 | U | 74.3 | U | 74.3 | U | 0.72 | U | 77.9 | U | 74.3 | U | 71.3 | U | 69.7 | U | 70.3 | U | 73.5 | U | 70.9 | U | 77.1 | U | 75.0 | U |
| Benzo(k)fluoranthene | 69.0 | U | 64.2 | U | 81.7 | U | 81.7 | U | 0.79 | U | 85.1 | U | 41.9 | U | 77.4 | U | 65.7 | U | 70.9 | U | 80.4 | U | 77.5 | U | 84.3 | U | 82.0 | U |
| Benzoic acid | 46.2 | U | 490 | U | 35.7 | J | 35.7 | U | 0.75 | U | 37.5 | U | 37.7 | U | 34.5 | U | 467 | U | 471 | U | 35.4 | U | 34.1 | U | 37.1 | U | 36.1 | U |
| Benzyl alcohol | 35.9 | U | 369 | U | 22.1 | U | 22.1 | U | 0.22 | U | 23.2 | U | 22.1 | U | 21.3 | U | 394 | U | 396 | U | 21.9 | U | 21.2 | U | 23.0 | U | 22.4 | U |
| bis(2-Chloroethoxy)methane | 34.9 | U | 33.7 | U | 30.1 | U | 30.1 | U | 0.29 | U | 31.5 | U | 30.1 | U | 29.9 | U | 31.7 | U | 31.5 | U | 29.8 | U | 29.7 | U | 31.2 | U | 33.4 | U |
| bis(2-Chloroethyl)ether | 33.1 | U | 36.4 | U | 34.5 | U | 34.5 | U | 0.33 | U | 35.7 | U | 34.5 | U | 33.7 | U | 39.5 | U | 33.8 | U | 33.8 | U | 32.6 | U | 35.4 | U | 34.4 | U |
| bis(2-Chloroisopropyl)ether | 63.9 | U | 59.4 | U | 46.1 | U | 46.1 | U | 0.45 | U | 48.4 | U | 46.5 | U | 44.3 | U | 64.5 | U | 65.1 | U | 45.7 | U | 44.1 | U | 47.9 | U | 46.6 | U |
| bis(2-Ethylhexyl)phthalate | 127 | U | 110 | J | 104 | U | 104 | U | 1.13 | B | 131 | B | 129 | U | 102 | U | 128 | U | 179 | U | 103 | U | 99.0 | U | 108 | U | 105 | U |
| Butyl benzyl phthalate | 125 | U | 119 | U | 91.4 | U | 91.4 | U | 0.89 | U | 95.0 | U | 91.4 | U | 87.7 | U | 129 | U | 130 | U | 90.5 | U | 87.0 | U | 94.0 | U | 92.2 | U |
| Chrysene | 64.9 | U | 60.4 | U | 63.7 | U | 63.7 | U | 0.62 | U | 66.7 | U | 63.7 | U | 61.1 | U | 64.5 | U | 66.2 | U | 63.0 | U | 60.8 | U | 66.1 | U | 64.3 | U |
| Dibenzo(a,h)anthracene | 58.7 | U | 54.6 | U | 106 | U | 106 | U | 1.03 | U | 111 | U | 106 | U | 102 | U | 55.3 | U | 59.6 | U | 105 | U | 101 | U | 110 | U | 107 | U |
| Dibenzofuran | 35.0 | U | 32.6 | U | 42.6 | U | 42.6 | U | 0.41 | U | 44.7 | U | 42.6 | U | 49.9 | U | 35.4 | U | 35.7 | U | 42.2 | U | 40.7 | U | 44.3 | U | 43.1 | U |
| Diethyl phthalate | 87.6 | U | 81.4 | U | 91.3 | U | 91.3 | U | 0.89 | U | 95.7 | U | 91.5 | U | 87.6 | U | 88.4 | U | 82.3 | U | 90.4 | U | 87.9 | U | 94.8 | U | 92.1 | U |
| Dimethyl phthalate | 57.7 | U | 51.6 | U | 53.8 | U | 53.8 | U | 0.52 | U | 56.4 | U | 53.8 | U | 51.8 | U | 58.7 | U | 58.8 | U | 53.2 | U | 51.4 | U | 55.9 | U | 54.3 | U |
| Di-n-butyl phthalate | 104 | U | 95.1 | U | 89.0 | U | 89.0 | U | 0.85 | U | 93.3 | U | 89.6 | U | 85.4 | U | 166 | U | 166 | U | 88.1 | U | 85.0 | U | 92.4 | U | 89.9 | U |
| Di-n-octyl phthalate | 76.2 | U | 70.9 | U | 91.8 | U | 91.8 | U | 0.89 | U | 96.7 | U | 93.8 | U | 85.1 | U | 77.0 | U | 77.7 | U | 90.0 | U | 87.7 | U | 95.5 | U | 97.7 | U |
| Fluoranthene | 70.0 | U | 65.1 | U | 68.1 | U | 68.1 | U | 0.66 | U | 71.4 | U | 69.1 | U | 65.4 | U | 78.7 | U | 71.6 | U | 67.4 | U | 65.9 | U | 70.7 | U | 79.7 | U |
| Fluorene | 42.2 | U | 39.3 | U | 40.2 | U | 40.2 | U | 0.39 | U | 42.1 | U | 40.2 | U | 38.6 | U | 42.6 | U | 43.5 | U | 39.6 | U | 38.4 | U | 41.7 | U | 40.6 | U |
| Hexachlorobenzene | 95.8 | U | 89.1 | U | 63.3 | U | 63.3 | U | 0.62 | U | 66.4 | U | 63.3 | U | 60.4 | U | 94.7 | U | 93.7 | U | 62.7 | U | 60.5 | U | 65.0 | U | 64.0 | U |
| Hexachlorobutadiene | 44.3 | U | 41.2 | U | 36.8 | U | 36.8 | U | 0.36 | U | 38.6 | U | 37.8 | U | 35.3 | U | 44.7 | U | 45.2 | U | 36.4 | U | 35.1 | U | 38.2 | U | 37.1 | U |
| Hexachlorocyclopentadiene | 299 | U | 278 | U | 27.6 | U | 27.6 | U | 0.27 | U | 28.2 | U | 27.6 | U | 26.5 | U | 605 | U | 611 | U | 27.3 | U | 26.4 | U | 28.7 | U | 27.2 | U |
| Hexachloroethane | 41.2 | U | 38.3 | U | 46.4 | U | 45.5 | U | 0.45 | U | 48.7 | U | 45.5 | U | 44.6 | U | 41.6 | U | 47.9 | U | 46.0 | U | 44.4 | U | 48.3 | U | 46.4 | U |
| Indeno(1,2,3-cd)pyrene | 58.7 | U | 54.6 | U | 114 | U | 114 | U | 1.11 | U | 120 | U | 114 | U | 110 | U | 59.3 | U | 59.8 | U | 112 | U | 109 | U | 119 | U | 115 | U |
| Isophorone | 45.3 | U | 42.2 | U | 36.8 | U | 36.8 | U | 0.36 | U | 38.6 | U | 36.8 | U | 35.3 | U | 45.3 | U | 46.2 | U | 36.4 | U | 35.1 | U | 38.2 | U | 37.1 | U |
| Naphthalene | 26.0 | U | 24.2 | U | 27.7 | U | 27.7 | U | 0.27 | U | 29.1 | U | 27.7 | U | 26.6 | U | 27.3 | U | 27.3 | U | 27.4 | U | 26.5 | U | 28.8 | U | 28.0 | U |
| Nitrobenzene | 26.8 | U | 24.9 | U | 35.7 | U | 35.7 | U | 0.35 | U | 37.6 | U | 35.7 | U | 34.3 | U | 27.0 | U | 27.3 | U | 35.4 | U | 34.1 | U | 37.1 | U | 36.1 | U |
| N-Nitroso-di-n-propylamine | 83.4 | U | 77.5 | U | 40.9 | U | 40.9 | U | 0.40 | U | 42.9 | U | 40.9 | U | 39.1 | U | 34.2 | U | 85.1 | U | 40.5 | U | 39.1 | U | 42.5 | U | 41.3 | U |
| N-Nitrosodiphenylamine | 64.9 | U | 60.4 | U | 74.6 | U | 74.6 | U | 0.72 | U | 78.7 | U | 74.5 | U | 71.5 | U | 65.5 | U | 65.2 | U | 73.6 | U | 71.7 | U | 77.5 | U | 35.3 | U |
| Pentachlorophenol | 199 | U | 185 | U | 95.1 | U | 95.1 | U | 0.92 | U | 99.7 | U | 95.1 | U | 91.3 | U | 291 | U | 293 | U | 94.1 | U | 91.8 | U | 99.6 | U | 96.0 | U |
| Phenanthrene | 58.7 | U | 54.6 | U | 59.4 | U | 59.4 | U | 0.57 | J | 61.7 | U | 59.4 | U | 55.1 | U | 59.3 | U | 59.8 | U | 57.8 | U | 55.6 | U | 60.7 | U | 59.6 | U |
| Phenol | 44.5 | U | 41.5 | U | 22.8 | U | 22.8 | U | 0.23 | J | 24.0 | U | 23.6 | U | 22.6 | U | 44.7 | U | 45.2 | U | 23.4 | U | 22.7 | U | 24.7 | U | 24.0 | U |
| Pyrene | 71.1 | U | 66.1 | U | 64.4 | U | 64.4 | U | 0.62 | J | 67.5 | U | 64.4 | U | 61.6 | U | 71.6 | U | 72.4 | U | 63.8 | U | 61.5 | U | 66.9 | U | 65.0 | U |

Notes
U - Not detected at the PQL
B - Analyte found in lab blank
ppb - parts per billion (micrograms per kilogram)

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Table 3
Summary of PCB Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

| Client Sample ID | MW-1 | MW-1 | MW-2 | MW-2 | SB-3 | SB-3 | MW-4 | MW-4 | SB-5 | SB-5 | SB-6 | SB-6 | MW-7 | MW-7 | MW-8 | MW-8 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | 1-2 | 6-7 | 1-2 | 4-5 | 1-2 | 6-7.5 | 1-2 | 3.5-4 | 1-2 | 8-9 | 1-2 | 4-4.5 | 1-2 | 5-5.5 | 1-2 | 8-9 |
| Ventech Sample ID | 13783-8 | 13783-9 | 13783-1 | 13783-2 | 13784-1 | 13784-2 | 13783-3 | 13783-4 | 13784-3 | 13784-4 | 13783-12 | 13783-13 | 17031-4 | 17031-5 | 13784-9 | 13784-10 |
| Sampling Date | 9/22/99 | 9/22/99 | 9/22/99 | 9/22/99 | 9/25/99 | 9/25/99 | 9/22/99 | 9/22/99 | 9/25/99 | 9/25/99 | 9/22/99 | 9/23/99 | 9/24/99 | 9/24/99 | 9/25/99 | 9/25/99 |
| Units | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb |
| PCB 1016 | 3.96 U | 4.12 U | 3.93 U | 4.04 U | 3.89 U | 4.08 U | 3.89 U | 4.04 U | 3.93 U | 3.97 U | 3.97 U | 3.97 U | 3.93 U | 3.97 U | 3.93 U | 3.86 U |
| PCB 1221 | 16.4 U | 17.5 U | 16.7 U | 17.2 U | 16.5 U | 17.4 U | 16.6 U | 17.2 U | 16.7 U | 16.9 U | 16.9 U | 16.9 U | 16.7 U | 16.9 U | 16.7 U | 16.4 U |
| PCB 1232 | 8.70 U | 9.30 U | 8.87 U | 9.11 U | 8.79 U | 9.21 U | 8.79 U | 9.13 U | 8.87 U | 8.96 U | 8.96 U | 8.96 U | 8.87 U | 8.96 U | 8.87 U | 8.70 U |
| PCB 1242 | 3.64 U | 3.89 U | 3.71 U | 3.82 U | 3.68 U | 3.86 U | 3.68 U | 3.82 U | 3.71 U | 3.75 U | 3.75 U | 3.75 U | 3.71 U | 3.75 U | 3.71 U | 3.64 U |
| PCB 1248 | 8.25 U | 8.82 U | 8.41 U | 8.66 U | 8.33 U | 8.74 U | 8.33 U | 8.66 U | 8.41 U | 8.49 U | 8.49 U | 8.49 U | 8.41 U | 8.49 U | 8.41 U | 8.25 U |
| PCB 1254 | 1.97 U | 2.05 U | 1.96 U | 2.01 U | 1.94 U | 2.03 U | 1.94 U | 2.01 U | 1.96 U | 1.97 U | 1.97 U | 1.97 U | 1.96 U | 1.97 U | 1.96 U | 1.92 U |
| PCB 1260 | 5.47 U | 5.84 U | 5.57 U | 5.74 U | 5.52 U | 5.79 U | 5.52 U | 5.74 U | 5.57 U | 5.63 U | 5.63 U | 5.63 U | 5.57 U | 5.63 U | 5.57 U | 5.47 U |

Notes:
U = Not detected at the PCL
ppb = parts per billion (micrograms per kilogram)

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Table 3
Summary of PCB Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey
(Continued)

| Client Sample ID | SB-9 | | SB-9 | | SB-10 | | SB-10 | | SB-11 | | SB-11 | | SB-12 | | SB-12 | | MW-13 | | MW-13 | | MW-14 | | MW-14 | | SB-15 | | SB-15 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | 4.5-5.5 | | 0.1-2 | | 1-2 | | 5-5.5 | | 0.1-2 | | 9-9.5 | | 0.1-2 | | 5-6 | | 0.1-2 | | 4.5-5 | | 0.1-2 | | 5-6.5 | | 0.1-2 | | 5-8.5 | |
| Ventech Sample ID | 13783-5 | | 13783-6 | | 17031-1 | | 17031-2 | | 13784-5 | | 13784-6 | | 13784-7 | | 13784-8 | | 13783-10 | | 13783-11 | | 17031-6 | | 17031-7 | | 17031-8 | | 17031-9 | |
| Sampling Date | 9/22/99 | | 9/22/99 | | 9/23/99 | | 9/23/99 | | 9/25/99 | | 9/25/99 | | 9/25/99 | | 9/25/99 | | 9/22/99 | | 9/22/99 | | 9/24/99 | | 9/24/99 | | 9/24/99 | | 9/24/99 | |
| Units | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | |
| PCB 1016 | 4.01 | U | 3.93 | U | 3.93 | U | 3.93 | U | 4.80 | U | 4.08 | U | 3.97 | U | 3.97 | U | 4.01 | U | 4.01 | U | 3.93 | U | 3.89 | U | 4.12 | U | 3.97 | U |
| PCB 1221 | 17.1 | U | 16.7 | U | 16.6 | U | 16.7 | U | 20.4 | U | 17.4 | U | 16.9 | U | 16.9 | U | 17.1 | U | 17.2 | U | 16.7 | U | 16.6 | U | 17.5 | U | 16.9 | U |
| PCB 1232 | 9.04 | U | 8.87 | U | 8.81 | U | 8.87 | U | 10.8 | U | 9.21 | U | 8.96 | U | 8.96 | U | 9.04 | U | 9.13 | U | 8.87 | U | 8.79 | U | 9.30 | U | 8.96 | U |
| PCB 1242 | 3.78 | U | 3.71 | U | 3.69 | U | 3.71 | U | 4.53 | U | 3.85 | U | 3.75 | U | 3.75 | U | 3.78 | U | 3.82 | U | 3.71 | U | 3.68 | U | 3.89 | U | 3.75 | U |
| PCB 1248 | 8.58 | U | 8.41 | U | 8.35 | U | 8.41 | U | 10.3 | U | 8.74 | U | 8.49 | U | 8.49 | U | 8.58 | U | 8.66 | U | 8.41 | U | 8.33 | U | 8.82 | U | 8.49 | U |
| PCB 1254 | 1.99 | U | 1.96 | U | 1.94 | U | 1.96 | U | 2.39 | U | 2.03 | U | 1.97 | U | 1.97 | U | 1.99 | U | 2.01 | U | 1.96 | U | 1.94 | U | 2.05 | U | 1.97 | U |
| PCB 1260 | 5.68 | U | 5.57 | U | 5.54 | U | 5.57 | U | 6.81 | U | 5.79 | U | 5.63 | U | 5.63 | U | 5.68 | U | 5.74 | U | 5.57 | U | 5.52 | U | 5.84 | U | 5.63 | U |

Notes:
U = Not detected at the PQL
ppb = parts per billion (micrograms per kilogram)



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Table 4
Summary of Pesticides Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

| Client Sample ID | MW-1S | MW-1 | MW-2 | MW-2 | SB-3 | SB-3 | MW-4 | MW-4 | SB-5 | SB-5 | SB-6 | SB-6 | SB-7 | SB-7 | MW-8 | MW-8 | MW-9 | MW-9 | MW-10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | 0.5-2.5 | 4-7 | 4-7 | 4-7 | 4-7 | 0.5-2.5 | 4-7 | 0.5-2.5 | 4-7 | 0.5-2.5 | 4-7 | 0.5-2.5 | 4-7 | 0.5-2.5 | 4-7 | 0.5-2.5 | 4-7 | 0.5-2.5 | 4-7 |
| Laboratory Sample ID | 137843-4 | 137843-5 | 137843-1 | 137843-2 | 137844-1 | 137844-2 | 137843-3 | 137843-6 | 137844-3 | 137844-4 | 137844-5 | 137844-6 | 137844-7 | 137844-8 | 137844-9 | 137844-10 | 137844-11 | 137844-12 | 137844-13 |
| Sampling Date | 8/31/99 | 8/30/99 | 8/30/99 | 8/31/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 | 8/30/99 |
| Units | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb | ppb |
| γ-BHC | 0.57 U | 0.58 U | 0.57 U | 0.57 U | 0.57 U | 0.59 U | 0.57 U | 0.59 U | 0.57 U | 0.59 U | 0.57 U | 0.59 U | 0.58 U | 0.58 U | 0.57 U | 0.59 U | 0.57 U | 0.59 U | 0.56 U |
| γ-BHC (Lindane) | 0.61 U | 0.63 U | 0.62 U | 0.64 U | 0.62 U | 0.65 U | 0.62 U | 0.64 U | 0.62 U | 0.63 U | 0.63 U | 0.63 U | 0.63 U | 0.63 U | 0.62 U | 0.62 U | 0.62 U | 0.62 U | 0.61 U |
| β-BHC | 1.83 U | 1.91 U | 1.85 U | 1.90 U | 1.83 U | 1.92 U | 1.83 U | 1.89 U | 1.85 U | 1.87 U | 1.87 U | 1.87 U | 1.87 U | 1.87 U | 1.85 U | 1.87 U | 1.85 U | 1.87 U | 1.82 U |
| Heptachlor | 0.76 U | 0.82 U | 0.78 U | 0.80 U | 0.77 U | 0.81 U | 0.77 U | 0.80 U | 0.78 U | 0.79 U | 0.79 U | 0.79 U | 0.79 U | 0.79 U | 0.78 U | 0.79 U | 0.78 U | 0.79 U | 0.76 U |
| δ-BHC | 1.39 U | 1.48 U | 1.41 U | 1.46 U | 1.43 U | 1.47 U | 1.46 U | 1.46 U | 1.41 U | 1.43 U | 1.43 U | 1.43 U | 1.43 U | 1.43 U | 1.41 U | 1.43 U | 1.41 U | 1.43 U | 1.39 U |
| Aldrin | 0.61 U | 0.65 U | 0.62 U | 0.64 U | 0.61 U | 0.65 U | 0.62 U | 0.64 U | 0.62 U | 0.63 U | 0.63 U | 0.63 U | 0.63 U | 0.63 U | 0.62 U | 0.63 U | 0.62 U | 0.63 U | 0.61 U |
| Heptachlor epoxide | 0.75 U | 0.81 U | 0.77 U | 0.79 U | 0.75 U | 0.80 U | 0.76 U | 0.79 U | 0.77 U | 0.78 U | 0.78 U | 0.78 U | 0.78 U | 0.78 U | 0.77 U | 0.78 U | 0.77 U | 0.78 U | 0.75 U |
| Endosulfan I | 0.52 U | 0.56 U | 0.53 U | 0.55 U | 0.53 U | 0.56 U | 0.53 U | 0.55 U | 0.53 U | 0.54 U | 0.54 U | 0.54 U | 0.54 U | 0.54 U | 0.53 U | 0.54 U | 0.53 U | 0.54 U | 0.52 U |
| p,p' DDE | 0.48 U | 0.51 U | 0.49 U | 0.50 U | 0.45 U | 0.51 U | 0.48 U | 0.50 U | 0.49 U | 0.49 U | 0.49 U | 0.49 U | 0.49 U | 0.49 U | 0.49 U | 0.49 U | 0.49 U | 0.49 U | 0.48 U |
| Dieldrin | 0.42 U | 0.45 U | 0.43 U | 0.44 U | 0.42 U | 0.44 U | 0.42 U | 0.44 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.42 U |
| Endrin | 0.72 U | 0.77 U | 0.74 U | 0.76 U | 0.73 U | 0.77 U | 0.73 U | 0.76 U | 0.74 U | 0.75 U | 0.75 U | 0.75 U | 0.75 U | 0.75 U | 0.74 U | 0.75 U | 0.74 U | 0.75 U | 0.73 U |
| p,p' DDD | 0.47 U | 0.52 U | 0.50 U | 0.51 U | 0.49 U | 0.52 U | 0.49 U | 0.51 U | 0.50 U | 0.50 U | 0.50 U | 0.50 U | 0.50 U | 0.50 U | 0.50 U | 0.50 U | 0.50 U | 0.50 U | 0.49 U |
| Endosulfan II | 0.47 U | 0.50 U | 0.48 U | 0.49 U | 0.47 U | 0.50 U | 0.47 U | 0.49 U | 0.48 U | 0.48 U | 0.48 U | 0.48 U | 0.48 U | 0.48 U | 0.48 U | 0.48 U | 0.48 U | 0.48 U | 0.47 U |
| p,p'-DDT | 1.71 U | 1.83 U | 1.75 U | 1.80 U | 1.73 U | 1.81 U | 1.73 U | 1.80 U | 1.75 U | 1.76 U | 1.76 U | 1.76 U | 1.76 U | 1.76 U | 1.75 U | 1.76 U | 1.75 U | 1.76 U | 1.71 U |
| Endrin aldehyde | 0.51 U | 0.55 U | 0.52 U | 0.54 U | 0.51 U | 0.54 U | 0.51 U | 0.54 U | 0.52 U | 0.52 U | 0.52 U | 0.52 U | 0.52 U | 0.52 U | 0.52 U | 0.52 U | 0.52 U | 0.52 U | 0.51 U |
| Endosulfan sulfate | 0.45 U | 0.48 U | 0.46 U | 0.47 U | 0.45 U | 0.48 U | 0.45 U | 0.47 U | 0.46 U | 0.46 U | 0.46 U | 0.46 U | 0.46 U | 0.46 U | 0.46 U | 0.46 U | 0.46 U | 0.46 U | 0.45 U |
| Methoxychlor | 0.54 U | 0.58 U | 0.55 U | 0.57 U | 0.55 U | 0.58 U | 0.55 U | 0.57 U | 0.55 U | 0.56 U | 0.56 U | 0.56 U | 0.56 U | 0.56 U | 0.55 U | 0.56 U | 0.55 U | 0.56 U | 0.54 U |
| Endrin ketone | 0.42 U | 0.47 U | 0.43 U | 0.44 U | 0.42 U | 0.44 U | 0.42 U | 0.44 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.43 U | 0.42 U |
| Chlordane | 3.28 U | 3.51 U | 3.35 U | 3.45 U | 3.32 U | 3.48 U | 3.32 U | 3.45 U | 3.36 U | 3.38 U | 3.38 U | 3.38 U | 3.38 U | 3.38 U | 3.35 U | 3.38 U | 3.35 U | 3.38 U | 3.28 U |
| Toxaphene | 18.9 U | 20.2 U | 19.3 U | 19.9 U | 19.1 U | 20.0 U | 19.1 U | 19.8 U | 19.3 U | 19.4 U | 19.4 U | 19.4 U | 19.4 U | 19.4 U | 19.3 U | 19.4 U | 19.3 U | 19.4 U | 18.9 U |
| Methoxychlor | 1.76 U | 1.91 U | 1.82 U | 1.87 U | 1.80 U | 1.89 U | 1.80 U | 1.87 U | 1.82 U | 1.84 U | 1.84 U | 1.84 U | 1.84 U | 1.84 U | 1.82 U | 1.84 U | 1.82 U | 1.84 U | 1.78 U |
| Mirex/Kepone | 0.37 U | 0.41 U | 0.38 U | 0.39 U | 0.38 U | 0.39 U | 0.38 U | 0.39 U | 0.38 U | 0.38 U | 0.38 U | 0.38 U | 0.38 U | 0.38 U | 0.38 U | 0.38 U | 0.38 U | 0.38 U | 0.37 U |

Note:
U - Not detected at the PQL
mg/kg - milligrams per kilogram

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Table 4
Summary of Pesticides Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey
(Continued)

| Client Sample ID | SB-8 | | SB-9 | | SB-10 | | SB-11 | | SB-11 | | SB-31 | | SB-32 | | SB-32 | | SB-33 | | SB-33 | | SB-34 | | SB-34 | | SB-35 | | SB-35 | | SB-36 | | SB-36 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | 4-5.5 | | 1.2 | | 1.2 | | 0.5-1 | | 1.2 | | 0.5-1 | | 0.5-1 | | 1.2 | | 0.5-1 | | 1.2 | | 0.5-1 | | 1.2 | | 0.5-1 | | 1.2 | | 0.5-1 | | 1.2 | |
| Vertech Sample ID | 03763-5 | | 03763-6 | | 03931-1 | | 03931-2 | | 03764-5 | | 03764-6 | | 03764-7 | | 03764-8 | | 03764-9 | | 03764-10 | | 03764-11 | | 03764-12 | | 03931-3 | | 03931-4 | | 03931-5 | | 03931-6 | |
| Sampling Date | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | | 8/23/99 | |
| Units | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | | ppb | |
| a-BHC | 0.56 | U | 0.57 | U | 0.57 | U | 0.57 | U | 0.70 | U | 0.59 | U | 0.59 | U | 0.58 | U | 0.55 | U | 0.53 | U | 0.57 | U | 0.57 | U | 0.56 | U | 0.57 | U | 0.56 | U | 0.59 | U |
| b-BHC (Lindane) | 0.64 | U | 0.62 | U | 0.62 | U | 0.62 | U | 0.76 | U | 0.65 | U | 0.63 | U | 0.63 | U | 0.64 | U | 0.64 | U | 0.62 | U | 0.62 | U | 0.65 | U | 0.62 | U | 0.65 | U | 0.63 | U |
| d-BHC | 1.83 | U | 1.85 | U | 1.85 | U | 1.85 | U | 2.26 | U | 1.90 | U | 1.87 | U | 1.87 | U | 1.89 | U | 1.90 | U | 1.85 | U | 1.85 | U | 1.94 | U | 1.87 | U | 1.94 | U | 1.87 | U |
| Heptachlor | 0.73 | U | 0.74 | U | 0.77 | U | 0.74 | U | 0.95 | U | 0.81 | U | 0.79 | U | 0.78 | U | 0.79 | U | 0.79 | U | 0.78 | U | 0.77 | U | 0.82 | U | 0.79 | U | 0.82 | U | 0.79 | U |
| g-BHC | 1.44 | U | 1.41 | U | 1.40 | U | 1.41 | U | 1.73 | U | 1.47 | U | 1.43 | U | 1.43 | U | 1.44 | U | 1.46 | U | 1.41 | U | 1.40 | U | 1.48 | U | 1.43 | U | 1.48 | U | 1.43 | U |
| Aldrin | 0.64 | U | 0.63 | U | 0.62 | U | 0.62 | U | 0.76 | U | 0.65 | U | 0.63 | U | 0.63 | U | 0.64 | U | 0.64 | U | 0.62 | U | 0.62 | U | 0.65 | U | 0.63 | U | 0.65 | U | 0.63 | U |
| Heptachlor epoxide | 0.79 | U | 0.77 | U | 0.76 | U | 0.77 | U | 0.94 | U | 0.80 | U | 0.78 | U | 0.78 | U | 0.79 | U | 0.79 | U | 0.75 | U | 0.76 | U | 0.81 | U | 0.78 | U | 0.81 | U | 0.78 | U |
| a-Endosulfan I | 0.54 | U | 0.53 | U | 0.53 | U | 0.53 | U | 0.65 | U | 0.55 | U | 0.54 | U | 0.54 | U | 0.54 | U | 0.54 | U | 0.53 | U | 0.53 | U | 0.56 | U | 0.54 | U | 0.56 | U | 0.54 | U |
| p,p' DDE | 0.50 | U | 0.49 | U | 0.49 | U | 0.49 | U | 0.60 | U | 0.51 | U | 0.49 | U | 1.74 | | 0.50 | U | 0.50 | U | 0.49 | U | 0.49 | U | 0.51 | U | 0.49 | U | 0.51 | U | 0.49 | U |
| Dieldrin | 0.43 | U | 0.43 | U | 0.42 | U | 0.43 | U | 0.52 | U | 0.44 | U | 0.43 | U | 0.43 | U | 0.43 | U | 0.44 | U | 0.42 | U | 0.42 | U | 0.45 | U | 0.43 | U | 0.45 | U | 0.43 | U |
| Endrin | 0.75 | U | 0.74 | U | 0.73 | U | 0.74 | U | 0.91 | U | 0.77 | U | 0.75 | U | 0.75 | U | 0.75 | U | 0.76 | U | 0.74 | U | 0.73 | U | 0.77 | U | 0.75 | U | 0.77 | U | 0.75 | U |
| p,p' DDD | 0.51 | U | 0.50 | U | 0.49 | U | 0.50 | U | 0.61 | U | 0.52 | U | 0.50 | U | 0.50 | U | 0.50 | U | 0.51 | U | 0.50 | U | 0.49 | U | 0.52 | U | 0.50 | U | 0.52 | U | 0.50 | U |
| Endosulfan II | 0.49 | U | 0.48 | U | 0.47 | U | 0.48 | U | 0.58 | U | 0.50 | U | 0.48 | U | 0.48 | U | 0.49 | U | 0.49 | U | 0.48 | U | 0.47 | U | 0.50 | U | 0.48 | U | 0.50 | U | 0.48 | U |
| p,p' DDT | 1.78 | U | 1.75 | U | 1.73 | U | 1.75 | U | 2.13 | U | 1.81 | U | 1.76 | U | 7.03 | | 1.78 | U | 1.80 | U | 1.75 | U | 1.73 | U | 1.83 | U | 1.76 | U | 1.83 | U | 1.76 | U |
| Endrin aldehyde | 0.53 | U | 0.52 | U | 0.51 | U | 0.52 | U | 0.62 | U | 0.54 | U | 0.52 | U | 0.52 | U | 0.53 | U | 0.54 | U | 0.52 | U | 0.51 | U | 0.55 | U | 0.52 | U | 0.55 | U | 0.52 | U |
| Endosulfan sulfate | 0.47 | U | 0.46 | U | 0.45 | U | 0.46 | U | 0.56 | U | 0.48 | U | 0.46 | U | 0.45 | U | 0.47 | U | 0.47 | U | 0.45 | U | 0.45 | U | 0.48 | U | 0.46 | U | 0.48 | U | 0.46 | U |
| Alpha Chlordane | 0.56 | U | 0.55 | U | 0.55 | U | 1.55 | U | 0.67 | U | 0.57 | U | 0.56 | U | 0.56 | U | 0.56 | U | 0.57 | U | 0.55 | U | 0.55 | U | 0.59 | U | 0.56 | U | 0.59 | U | 0.56 | U |
| Gamma Chlordane | 0.43 | U | 0.43 | U | 0.42 | U | 0.43 | U | 0.52 | U | 0.44 | U | 0.43 | U | 0.43 | U | 0.43 | U | 0.44 | U | 0.43 | U | 0.42 | U | 0.45 | U | 0.43 | U | 0.45 | U | 0.43 | U |
| Chlordane | 3.41 | U | 3.35 | U | 3.33 | U | 3.35 | U | 4.09 | U | 3.48 | U | 3.38 | U | 3.38 | U | 3.41 | U | 3.45 | U | 3.35 | U | 3.33 | U | 3.51 | U | 3.38 | U | 3.51 | U | 3.38 | U |
| Toxaphene | 19.6 | U | 19.2 | U | 19.1 | U | 19.2 | U | 23.5 | U | 20.0 | U | 19.4 | U | 19.4 | U | 19.6 | U | 19.8 | U | 19.2 | U | 19.1 | U | 20.2 | U | 19.4 | U | 20.2 | U | 19.4 | U |
| Methoxychlor | 1.65 | U | 1.62 | U | 1.60 | U | 1.62 | U | 2.22 | U | 1.73 | U | 1.64 | U | 1.64 | U | 1.65 | U | 1.67 | U | 1.62 | U | 1.60 | U | 1.91 | U | 1.64 | U | 1.91 | U | 1.64 | U |
| Methoxychlor | 0.56 | U | 0.56 | U | 0.55 | U | 0.55 | U | 0.67 | U | 0.57 | U | 0.55 | U | 0.55 | U | 0.56 | U | 0.56 | U | 0.55 | U | 0.55 | U | 0.61 | U | 0.59 | U | 0.61 | U | 0.59 | U |

Notes
U - Not detected at the PQL
mg/kg - milligrams per kilogram

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Table 5
Summary of Inorganic Compounds Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

| Client Sample ID | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Vertech Sample ID | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Sampling Date | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Units | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg |
| Aluminum | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Arsenic | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Beryllium | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Cadmium | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Chromium | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Copper | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Iron | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Mercury | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Nickel | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Selenium | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Silver | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Thallium | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Zinc | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Cyanide | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Percent Solids | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

Notes:

U - Not detected at the PQL
J - Analyte detected below PQL and/or estimated concentration
mg/kg - milligrams per kilogram

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Table 5
Summary of Inorganic Compounds Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey
(Continued)

| Client Sample ID | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Lab Sample ID | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Sampling Date | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Units | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg |
| | | | | | | | | | | | | | | | |
| Aluminum | [illegible] | [illegible] | 217 | 237 | 214 | 236 | 174 | 100 | 149 | 169 | 217 | 546 | 240 | 164 | |
| Arsenic | 5.55 | 1.77 | 1.03 | 0.5 U | 0.53 U | 1.85 | 1.21 | 0.52 U | 0.53 U | 0.21 | 0.32 | 0.67 | 0.21 | 0.84 | |
| Barium | 0.31 J | 0.21 U | 0.21 J | 0.21 | 0.29 J | 0.27 U | 0.21 U | 0.21 U | 0.11 J | 0.21 | 0.21 U | 0.10 J | 0.11 J | 0.10 J | |
| Beryllium | 0.64 | 0.21 J | 0.44 | 0.50 | 0.60 | 0.43 | 0.37 | 0.21 J | 0.21 J | 0.21 J | 0.47 | 0.51 | 0.41 | 0.31 | |
| Cadmium | 0.74 | 1.56 | 3.71 | 1.13 | 10.3 | 10.1 | 4.31 | 4.10 | 1.71 | 1.71 | 5.19 | 2.42 | 1.18 | 3.45 | |
| Calcium | 4.75 | 2.64 | 2.87 | 0.69 | 0.66 | 0.64 | 0.87 | 0.03 | 0.41 | 0.53 | 10.7 | 7.31 | 7.90 | 5.99 | |
| Chromium | 3.18 | 1.40 | 1.93 | 1.74 | 4.24 | 4.33 | 3.49 | 2.71 | 1.53 | 1.50 | 2.81 | 2.58 | 3.42 | 2.63 | |
| Cobalt | 0.0063 J | 0.0091 U | 0.0050 J | 0.0014 | 0.017 | 0.0072 | 0.024 | 0.015 | 0.0025 J | 0.0040 J | 0.0028 | 0.0052 J | 0.0012 | 0.0014 J | |
| Copper | 0.82 | 5.41 | 7.24 | 0.57 | 15.5 | 11.3 | 9.65 | 4.97 | 1.51 | 4.48 | 10.4 | 13.0 | 21.1 | 12.4 | |
| Iron | 0.42 | 0.21 J | 0.82 | 0.62 | 2.69 | 2.72 | 1.56 | 2.54 | 0.32 J | 0.42 | 0.31 U | 0.21 U | 0.33 U | 0.21 U | |
| Lead | 0.85 J | 0.53 J | 0.62 U | 0.62 U | 1.32 U | 0.65 U | 0.65 U | 0.64 U | 0.65 U | 0.66 U | 0.21 J | 0.10 J | 0.67 U | 0.64 U | |
| Magnesium | 0.43 J | 0.83 U | 0.62 U | 0.62 U | 1.32 U | 0.65 U | 5.40 J | 3.39 | 0.65 U | 0.66 U | 0.63 U | 0.62 U | 0.67 U | 0.62 J | |
| Manganese | 19 U | 1.50 U | 1.54 J | 1.54 U | 1.50 U | 1.63 U | 1.63 U | 1.58 U | 1.53 U | 1.61 U | 1.50 U | 1.54 U | 1.63 U | 1.61 U | |
| Mercury | 0.29 U | 0.38 J | 0.23 U | 0.24 U | 0.24 U | 0.21 U | 0.22 U | 0.20 U | 0.21 U | 0.24 U | 0.23 U | 0.23 U | 0.22 U | 0.23 U | |
| % Solids | 54.1 | 93.0 | 90.8 | 90.4 | 38.7 | 60.9 | 53.3 | 52.4 | 94.3 | 93.5 | 99.0 | 99.0 | 91.7 | 92.4 | |

Notes

U [illegible]

J [illegible]

mg/kg = milligrams per kilogram



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Table 6
Summary of Total Petroleum Hydrocarbons Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

| Sample ID | MW-1 | MW-2 | MW-3 | MW-4 | SB-3 | SB-4 | MW-5 | MW-6 | SB-5 | SB-6 | SB-7 | SB-8 | MW-7 | MW-8 | MW-9 | MW-10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Protocol Sample ID | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Sampling Date | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Units | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Total Petroleum Hydrocarbons | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

Notes:
J - Analyte detected below PQL and/or estimated concentration
mg/kg - milligrams per kilogram

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Table 6
Summary of Total Petroleum Hydrocarbons Soil Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey
(Continued)

| Client Sample ID | SB-8 | SB-9 | SB-10 | SB-10 | SB-11 | SB-11 | SB-12 | SB-12 | SB-13 | SB-13 | SB-14 | SB-14 | SB-15 | SB-15 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sampling Depth (ft) | 4.5-5.5 | 1-2 | 1-2 | 5-5.5 | 1-2 | 9-9.5 | 1-2 | 5-6 | 1-2 | 4.5-5 | 1-2 | 5-5 | 1-2 | 4.5-5 |
| Vertech Sample ID | 13763-5 | 13763-6 | 17031-1 | 17031-2 | 13764-1 | 13764-4 | 13764-7 | 13764-8 | 13763-10 | 13763-11 | 17031-6 | 17031-7 | 17031-8 | 17031-9 |
| Sampling Date | 3/22/99 | 3/22/99 | 3/21/99 | 3/23/99 | 3/22/99 | 3/22/99 | 3/22/99 | 3/22/99 | 3/22/99 | 3/22/99 | 3/24/99 | 3/24/99 | 3/24/99 | 3/24/99 |
| Units | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg | mg/kg |
| Total Red Pet. Hydrocarbons | 48.2 | 24.2 | 145 | 21.0 | 23.3 | 465 | 505 | 55.7 | 43.4 | 25.9 | 170 | 30.5 | 47.7 | 6.53 |

Notes:
1. Analyte detected below PQL in bar at shaded concentration
mg/kg - milligrams per kilogram

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Table 7

Summary of Volatile Organics Groundwater Sampling Results

*Bay Avenue Terminal*

Port Elizabeth

*Elizabeth, New Jersey*

| Client Sample ID: | MW-13 | | MW-7 | | MW-2 | | MW-1 | | MW-14 | | MW-6 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Veritech Sample ID: | 17030-1 | | 17030-2 | | 17030-3 | | 17030-6 | | 17030-7 | | 17030-8 | |
| Sampling Date: | 10/27/09 | | 10/27/09 | | 10/27/09 | | 10/28/09 | | 10/28/09 | | 10/28/09 | |
| Units: | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | |
| 1,1,1-Trichloroethane | 0.31 | U | 0.31 | U | 0.31 | U | 0.31 | U | 0.31 | U | 0.31 | U |
| 1,1,2,2-Tetrachloroethane | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U |
| 1,1,2-Trichloroethane | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U |
| 1,1-Dichloroethane | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U |
| 1,1-Dichloroethene | 0.48 | U | 0.48 | U | 0.48 | U | 0.48 | U | 0.48 | U | 0.48 | U |
| 1,2-Dichlorobenzene | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U |
| 1,2-Dichloroethane | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U |
| 1,2-Dichloropropane | 0.12 | U | 0.12 | U | 0.12 | U | 0.12 | U | 0.12 | U | 0.12 | U |
| 1,3-Dichlorobenzene | 0.11 | U | 0.11 | U | 0.11 | U | 0.11 | U | 0.11 | U | 0.11 | U |
| 1,4-Dichlorobenzene | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U |
| 2-Chloroethylvinylether | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U |
| 2-Chloronaphthalene | 1.76 | U | 1.76 | U | 1.07 | U | 1.76 | U | 1.76 | U | 1.94 | U |
| 2-Chlorophenol | 1.22 | U | 1.22 | U | 1.03 | U | 1.22 | U | 1.22 | U | 1.34 | U |
| Benzene | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U | 0.14 | U |
| Bromodichloromethane | 0.12 | U | 0.12 | U | 0.12 | U | 0.12 | U | 0.12 | U | 0.12 | U |
| Bromoform | 0.20 | U | 0.20 | U | 0.20 | U | 0.20 | U | 0.20 | U | 0.20 | U |
| Bromomethane | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U | 0.37 | U |
| c-1,3-Dichloropropene | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U | 0.19 | U |
| Carbon Tetrachloride | 0.34 | U | 0.34 | U | 0.34 | U | 0.34 | U | 0.34 | U | 0.34 | U |
| Chlorobenzene | 0.21 | U | 0.21 | U | 0.21 | U | 0.21 | U | 0.21 | U | 0.21 | U |
| Chloroethane | 0.25 | U | 0.25 | U | 0.25 | U | 0.25 | U | 0.25 | U | 0.25 | U |
| Chloroform | 0.26 | U | 0.26 | U | 0.26 | U | 0.26 | U | 0.26 | U | 0.26 | U |
| Chloromethane | 0.38 | U | 0.38 | U | 0.38 | U | 0.38 | U | 0.38 | U | 0.38 | U |
| Dibromochloromethane | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U |
| Dichloromethane | 0.30 | U | 0.30 | U | 0.30 | U | 0.30 | U | 0.30 | U | 0.30 | U |
| Diethylchlorolate | 2.51 | U | 2.51 | U | 2.58 | U | 2.51 | U | 2.51 | U | 2.77 | U |
| Ethylbenzene | 0.21 | U | 0.21 | U | 0.21 | U | 0.21 | U | 0.21 | U | 0.21 | U |
| c-1,2-Dichloroethene | 0.28 | U | 0.28 | U | 0.28 | U | 0.28 | U | 0.28 | U | 0.28 | U |
| t-1,3-Dichloropropene | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U |
| Tetrachloroethene | 0.28 | U | 0.28 | U | 0.28 | U | 0.28 | U | 0.28 | U | 0.28 | U |
| Toluene | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U |
| Trichloroethene | 0.27 | U | 0.27 | U | 0.27 | U | 0.27 | U | 0.27 | U | 0.27 | U |
| Trichlorofluoromethane | 0.32 | U | 0.32 | U | 0.32 | U | 0.32 | U | 0.32 | U | 0.32 | U |
| Vinyl Chloride | 0.41 | U | 0.41 | U | 0.41 | U | 0.41 | U | 0.41 | U | 0.41 | U |
| Xylenes(Total) | 0.72 | U | 0.72 | U | 0.72 | U | 0.72 | U | 0.72 | U | 0.72 | U |

Notes

U - Not detected at the PQL

ug/L - micrograms per liter (parts per billion)

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Table 8
Summary of Base Neutral and Acid Extractable
Compounds Groundwater Sampling Results
Bay Avenue Terminal
Port Elizabeth
Elizabeth, New Jersey

| Client Sample ID: | MW-13 | | MW-2 | | MW-2 | | MW-1 | | MW-14 | | MW-6 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Vertech Sample ID: | 17030-1 | | 17030-2 | | 17030-3 | | 17030-4 | | 17030-7 | | 17030-5 | |
| Sampling Date: | 10/27/99 | | 10/27/99 | | 10/27/99 | | 10/27/99 | | 10/28/99 | | 10/28/99 | |
| Units: | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | |
| 1,2,4 Trichlorobenzene | 0.54 | U | 0.54 | U | 1.07 | U | 0.54 | U | 0.54 | U | 0.60 | U |
| 1,2-Dichlorobenzene | 1.51 | U | 1.51 | U | 1.17 | U | 1.51 | U | 1.51 | U | 1.66 | U |
| 1,3 Dichlorobenzene | 1.50 | U | 1.50 | U | 1.21 | U | 1.50 | U | 1.50 | U | 1.65 | U |
| 1,4-Dichlorobenzene | 1.48 | U | 1.48 | U | 1.18 | U | 1.48 | U | 1.48 | U | 1.63 | U |
| 2,4,5-Trichlorophenol | 1.68 | U | 1.68 | U | 0.92 | U | 1.68 | U | 1.68 | U | 1.85 | U |
| 2,4,6-Trichlorophenol | 1.51 | U | 1.51 | U | 0.85 | U | 1.51 | U | 1.51 | U | 1.66 | U |
| 2,4 Dichlorophenol | 1.49 | U | 1.49 | U | 1.08 | U | 1.49 | U | 1.49 | U | 1.64 | U |
| 2,4-Dimethylphenol | 1.92 | U | 1.92 | U | 1.08 | U | 1.92 | U | 1.92 | U | 2.12 | U |
| 2,4-Dinitrophenol | 9.62 | U | 9.62 | U | 4.64 | U | 9.62 | U | 9.62 | U | 10.6 | U |
| 2,4-Dinitrotoluene | 1.94 | U | 1.94 | U | 1.02 | U | 1.94 | U | 1.94 | U | 2.14 | U |
| 2,6 Dinitrotoluene | 1.85 | U | 1.85 | U | 0.84 | U | 1.85 | U | 1.85 | U | 2.04 | U |
| 2-Chloronaphthalene | 1.76 | U | 1.76 | U | 1.07 | U | 1.76 | U | 1.76 | U | 1.94 | U |
| 2 Chlorophenol | 1.22 | U | 1.22 | U | 1.03 | U | 1.22 | U | 1.22 | U | 1.34 | U |
| 2 Methylnaphthalene | 1.85 | U | 1.85 | U | 0.66 | U | 1.85 | U | 1.85 | U | 2.04 | U |
| 2 Methylphenol | 1.70 | U | 1.70 | U | 1.24 | U | 1.70 | U | 1.70 | U | 1.87 | U |
| 2 Nitroaniline | 2.24 | U | 2.24 | U | 1.12 | U | 2.24 | U | 2.24 | U | 2.47 | U |
| 2 Nitrophenol | 1.55 | U | 1.55 | U | 1.43 | U | 1.55 | U | 1.55 | U | 1.70 | U |
| 3,3'-Dichlorobenzidine | 2.56 | U | 2.56 | U | 0.68 | U | 2.56 | U | 2.56 | U | 2.81 | U |
| 3,4 Methylphenol | 1.55 | U | 1.55 | U | 2.16 | U | 1.55 | U | 1.55 | U | 1.71 | U |
| 3-Nitroaniline | 1.55 | U | 1.55 | U | 0.69 | U | 1.55 | U | 1.55 | U | 1.71 | U |
| 4,6-Dinitro 2 methylphenol | 10.2 | U | 10.2 | U | 2.54 | U | 10.2 | U | 10.2 | U | 11.2 | U |
| 4 Bromodiphenyl-phenylether | 2.03 | U | 2.03 | U | 0.50 | U | 2.03 | U | 2.03 | U | 2.23 | U |
| 4 Chloro 3-methylphenol | 1.53 | U | 1.53 | U | 1.03 | U | 1.53 | U | 1.53 | U | 1.68 | U |
| 4 Chloroaniline | 1.45 | U | 1.45 | U | 0.70 | U | 1.45 | U | 1.45 | U | 1.60 | U |
| 4 Chlorophenyl-phenyl ether | 2.13 | U | 2.13 | U | 0.68 | U | 2.13 | U | 2.13 | U | 2.34 | U |
| 4-Nitroaniline | 1.43 | U | 1.43 | U | 0.85 | U | 1.43 | U | 1.43 | U | 1.57 | U |
| 4 Nitrophenol | 5.00 | U | 5.00 | U | 1.91 | U | 3.00 | U | 5.00 | U | 5.50 | U |
| Acenaphthene | 1.78 | U | 1.78 | U | 0.96 | U | 0.40 | J | 1.78 | U | 1.95 | U |
| Acenaphthylene | 2.25 | U | 2.25 | U | 1.00 | U | 2.25 | U | 2.25 | U | 2.48 | U |
| Anthracene | 1.78 | U | 1.78 | U | 0.71 | U | 1.78 | U | 1.78 | U | 1.95 | U |
| Benzo(a)anthracene | 1.87 | U | 1.87 | U | 0.62 | U | 1.87 | U | 1.87 | U | 2.06 | U |
| Benzo(a)pyrene | 1.91 | U | 1.91 | U | 0.81 | U | 1.91 | U | 1.91 | U | 2.10 | U |
| Benzo(b)fluoranthene | 1.80 | U | 1.80 | U | 2.52 | U | 1.80 | U | 1.80 | U | 1.98 | U |
| Benzo(g,h,i)perylene | 2.34 | U | 2.34 | U | 0.65 | U | 2.34 | U | 2.34 | U | 2.58 | U |
| Benzo(k)fluoranthene | 2.10 | U | 2.10 | U | 2.00 | U | 2.10 | U | 2.10 | U | 2.31 | U |
| Benzoic acid | 10.3 | U | 10.3 | U | 2.49 | U | 10.3 | U | 10.3 | U | 11.3 | U |
| Benzyl alcohol | 1.38 | U | 1.38 | U | 1.54 | U | 1.38 | U | 1.38 | U | 1.51 | U |
| bis(2-Chloroethoxy)methane | 2.10 | U | 2.10 | U | 0.61 | U | 2.10 | U | 2.10 | U | 2.31 | U |
| bis(2-Chloroethyl)ether | 1.53 | U | 1.53 | U | 0.57 | U | 1.53 | U | 1.53 | U | 1.69 | U |
| bis(2 Chloroisopropyl)ether | 0.86 | U | 0.86 | U | 0.87 | U | 0.86 | U | 0.86 | U | 0.95 | U |
| bis(2 Ethylhexyl)phthalate | 0.93 | U | 1.20 | B | 1.05 | U | 0.93 | U | 0.93 | U | 1.02 | U |
| Butylbenzylphthalate | 3.43 | U | 3.43 | U | 2.90 | U | 3.43 | U | 3.43 | U | 3.77 | U |
| Chrysene | 2.16 | U | 2.16 | U | 1.09 | U | 2.16 | U | 2.16 | U | 2.37 | U |
| Dibenzo(a,h)anthracene | 2.13 | U | 2.13 | U | 0.69 | U | 2.13 | U | 2.13 | U | 2.34 | U |
| Dibenzofuran | 2.10 | U | 2.10 | U | 0.67 | U | 2.10 | U | 2.10 | U | 2.31 | U |
| Dibromochloromethane | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U | 0.18 | U | 0.19 | U |
| Diethylphthalate | 2.51 | U | 2.51 | U | 2.58 | U | 2.51 | U | 2.51 | U | 2.77 | U |
| Dimethylphthalate | 3.98 | U | 3.98 | U | 3.55 | U | 3.98 | U | 3.98 | U | 4.38 | U |
| Di-n-butylphthalate | 2.38 | U | 2.38 | U | 2.50 | U | 2.38 | U | 2.38 | U | 2.62 | U |
| Di-n-octylphthalate | 2.87 | U | 2.87 | U | 0.84 | U | 2.87 | U | 2.87 | U | 3.16 | U |
| Fluoranthene | 2.22 | U | 2.22 | U | 0.85 | U | 2.22 | U | 2.22 | U | 2.44 | U |
| Fluorene | 2.16 | U | 2.16 | U | 0.84 | U | 2.16 | U | 2.16 | U | 2.38 | U |
| Hexachlorobenzene | 2.27 | U | 2.27 | U | 0.82 | U | 2.27 | U | 2.27 | U | 2.50 | U |
| Hexachlorobutadiene | 10.0 | U | 10.0 | U | 1.63 | U | 10.0 | U | 10.0 | U | 11.0 | U |
| Hexachlorocyclopentadiene | 4.66 | U | 4.66 | U | 2.16 | U | 4.66 | U | 4.66 | U | 5.13 | U |
| Hexachloroethane | 1.87 | U | 1.87 | U | 1.83 | U | 1.87 | U | 1.87 | U | 2.06 | U |
| Indeno(1,2,3-cd)pyrene | 2.12 | U | 2.12 | U | 0.67 | U | 2.12 | U | 2.12 | U | 2.33 | U |
| Isophorone | 1.88 | U | 1.88 | U | 0.94 | U | 1.88 | U | 1.88 | U | 2.07 | U |
| Naphthalene | 1.78 | U | 1.78 | U | 1.04 | U | 1.78 | U | 1.78 | U | 1.96 | U |
| Nitrobenzene | 1.74 | U | 1.74 | U | 1.20 | U | 1.74 | U | 1.74 | U | 1.91 | U |
| N-Nitrosodi-n-propylamine | 1.84 | U | 1.84 | U | 1.03 | U | 1.84 | U | 1.84 | U | 2.03 | U |
| N-nitrosodiphenylamine | 1.95 | U | 1.95 | U | 0.57 | U | 1.95 | U | 1.95 | U | 2.15 | U |
| Pentachlorophenol | 50.0 | U | 50.0 | U | 2.24 | U | 50.0 | U | 50.0 | U | 55.0 | U |
| Phenanthrene | 1.98 | U | 1.98 | U | 0.64 | U | 0.33 | J | 1.98 | U | 2.18 | U |
| Phenol | 1.53 | U | 1.53 | U | 0.32 | U | 1.53 | U | 1.53 | U | 1.69 | U |
| Pyrene | 2.00 | U | 2.00 | U | 0.65 | U | 2.00 | U | 2.00 | U | 2.20 | U |

Notes
U - Not detected at the POL
ug/L - micrograms per liter (parts per billion)

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# Table 9
## Summary of PCB Groundwater Sampling Results
## Bay Avenue Terminal
## Port Elizabeth
## Elizabeth, New Jersey

| Client Sample ID: | MW-13 | | MW-7 | | MW-2 | | MW-1 | | MW-14 | | MW-8 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Vortech Sample ID: | I7030-1 | | I7030-2 | | I7030-3 | | I7030-5 | | I7030-7 | | I7030-8 | |
| Sampling Date: | 10/27/99 | | 10/27/99 | | 10/27/99 | | 10/28/99 | | 10/28/99 | | 10/28/99 | |
| Units: | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | |
| PCB 1016 | 0.080 | U | 0.080 | U | 0.080 | U | 0.080 | U | 0.080 | U | 0.080 | U |
| PCB 1221 | 0.030 | U | 0.030 | U | 0.030 | U | 0.030 | U | 0.030 | U | 0.030 | U |
| PCB 1232 | 0.11 | U | 0.11 | U | 0.11 | U | 0.11 | U | 0.11 | U | 0.11 | U |
| PCB 1242 | 0.020 | U | 0.020 | U | 0.020 | U | 0.020 | U | 0.020 | U | 0.020 | U |
| PCB 1248 | 0.090 | U | 0.090 | U | 0.090 | U | 0.090 | U | 0.090 | U | 0.090 | U |
| PCB 1254 | 0.040 | U | 0.040 | U | 0.040 | U | 0.040 | U | 0.040 | U | 0.040 | U |
| PCB 1260 | 0.080 | U | 0.080 | U | 0.080 | U | 0.080 | U | 0.080 | U | 0.080 | U |

Notes:
U - Not detected at the PQL
ug/L - micrograms per liter (parts per billion)

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# Table 10
## Summary of Pesticides Groundwater Sampling Results
## Bay Avenue Terminal
## Port Elizabeth
## Elizabeth, New Jersey

| Client Sample ID: | MW-13 | | MW-1 | | MW-2 | | MW-11 | | MW-14 | | MW-6 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Vertech Sample ID: | I7030-1 | | I7030-2 | | I7030-3 | | I7030-6 | | I7030-7 | | I7030-8 | |
| Sampling Date: | 10/27/99 | | 10/27/99 | | 10/27/99 | | 10/28/99 | | 10/28/99 | | 10/28/99 | |
| Units: | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | | ug/L | |
| | | | | | | | | | | | | |
| a-BHC | 0.016 | U | 0.016 | U | 0.016 | U | 0.016 | U | 0.016 | U | 0.016 | U |
| g-BHC (Lindane) | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| b-BHC | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| Heptachlor | 0.022 | U | 0.022 | U | 0.022 | U | 0.022 | U | 0.022 | U | 0.022 | U |
| d-BHC | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U |
| Aldrin | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| Heptachlor epoxide | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| Endosulfan I | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| 4,4'-DDE | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U |
| Dieldrin | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| Endrin | 0.017 | U | 0.017 | U | 0.017 | U | 0.017 | U | 0.017 | U | 0.017 | U |
| 4,4'-DDD | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| Endosulfan II | 0.017 | U | 0.017 | U | 0.017 | U | 0.017 | U | 0.017 | U | 0.017 | U |
| 4,4'-DDT | 0.0050 | U | 0.0050 | U | 0.0050 | U | 0.0050 | U | 0.0050 | U | 0.0050 | U |
| Endrin aldehyde | 0.0050 | U | 0.0050 | U | 0.0050 | U | 0.0050 | U | 0.0050 | U | 0.0050 | U |
| Endosulfan sulfate | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U | 0.015 | U |
| alpha-Chlordane | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U |
| gamma-Chlordane | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U | 0.012 | U |
| Chlordane | 0.030 | U | 0.030 | U | 0.030 | U | 0.030 | U | 0.030 | U | 0.030 | U |
| Toxaphene | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U | 0.16 | U |
| Methoxychlor | 0.0060 | U | 0.0060 | U | 0.0060 | U | 0.0060 | U | 0.0060 | U | 0.0060 | U |
| Endrin ketone | 0.020 | U | 0.020 | U | 0.020 | U | 0.020 | U | 0.020 | U | 0.020 | U |

Notes:
U - Not detected at the PQL
ug/L - micrograms per liter (parts per billion)

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# Summary of Inorganic Compounds Groundwater Sampling Results
## Bay Avenue Terminal
## Port Elizabeth
## Elizabeth, New Jersey

| Client Sample ID: | MW-13 | | MW-7 | | MW-2 | | MW-1 | | MW-14 | | MW-8 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Vertech Sample ID: | 17030-1 | | 17030-2 | | 17030-3 | | 17030-6 | | 17030-7 | | 17030-8 | |
| Sampling Date: | 10/27/99 | | 10/27/99 | | 10/27/99 | | 10/28/99 | | 10/28/99 | | 10/28/99 | |
| Units: | mg/L | | mg/L | | mg/L | | mg/L | | mg/L | | mg/L | |
| Antimony | 0.011 | U | 0.032 | | 0.011 | U | 0.011 | U | 0.0080 | J | 0.0030 | J |
| Arsenic | 0.049 | | 0.079 | | 0.011 | | 0.036 | | 0.019 | | 0.075 | |
| Beryllium | 0.0010 | J | 0.0022 | U | 0.0022 | U | 0.0022 | U | 0.0022 | U | 0.0010 | J |
| Cadmium | 0.0020 | J | 0.013 | | 0.0033 | U | 0.0020 | J | 0.0010 | J | 0.0020 | J |
| Chromium | 0.029 | | 0.012 | | 0.0080 | | 0.0056 | U | 0.0020 | J | 0.014 | |
| Copper | 0.029 | | 0.065 | | 0.016 | | 0.011 | U | 0.0090 | J | 0.015 | |
| Lead | 0.030 | | 0.019 | | 0.0050 | | 0.0022 | U | 0.0030 | | 0.012 | |
| Mercury | 0.00035 | | 0.000075 | | 0.000050 | | 0.00014 | | 0.000046 | J | 0.00016 | |
| Nickel | 0.014 | | 0.0080 | J | 0.0070 | J | 0.0020 | J | 0.0060 | J | 0.017 | |
| Selenium | 0.0056 | U | 0.0056 | U | 0.0056 | U | 0.0056 | U | 0.0056 | U | 0.0056 | U |
| Silver | 0.0020 | J | 0.0090 | | 0.0050 | J | 0.0030 | J | 0.0040 | J | 0.0010 | J |
| Thallium | 0.060 | U | 0.060 | U | 0.060 | U | 0.060 | U | 0.036 | J | 0.060 | U |
| Zinc | 0.10 | | 0.051 | | 0.053 | | 0.032 | | 0.029 | | 0.062 | |
| Chloride | 923 | | 8050 | | 616 | | 1900 | | 1560 | | 1550 | |
| Cyanide | 0.0060 | U | 0.0060 | U | 0.0060 | U | 0.0060 | U | 0.0060 | U | 0.0060 | U |
| Total Suspended Solids (in mg/L) | 233 | | 213 | | 172 | | 30.0 | | 43.0 | | 143 | |

Notes.
U - Not detected at the PQL
J - Analyte detected below PQL and/or estimated concentration
mg/L - milligrams per Liter

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Table 12
Summary of Total Petroleum Hydrocarbons Groundwater Sampling Results
*Bay Avenue Terminal*
Port Elizabeth
Elizabeth, New Jersey

| Client Sample ID: | MW-13 | MW-7 | MW-2 | MW-1 | MW-14 | MW-8 |
|---|---|---|---|---|---|---|
| Veritech Sample ID: | I7030-1 | I7030-2 | I7030-3 | I7030-6 | I7030-7 | I7030-8 |
| Sampling Date: | 10/27/99 | 10/27/99 | 10/27/99 | 10/28/99 | 10/28/99 | 10/28/99 |
| Units: | mg/L | mg/L | mg/L | mg/L | mg/L | mg/L |
| | | | | | | |
| Total Rec Petr. Hydrocarbons | 0.66 | 0.44 | 0.91 | 0.92 | 1.32 | 1.06 |

Notes:
mg/L - micrograms per liter

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# APPENDICES

# THE PORT AUTHORITY OF N.Y. & N.J.

MATERIALS ENGINEERING DIVISION
LOW FLOW WELL MONITORING DATA SHEET

| | |
|---|---|
| PROJECT: PN- BAY AVENUE | JOB NO: CP08-381.030 |
| WELL DESIGNATION: MW-1 | DATE: 10/28/99 |
| | CASING DIAMETER: 2" Inch |

STATIC WATER LEVEL

| | TIME | DISTANCE FROM TOP OF PIPE TO: WATER (FEET) | PRODUCT (FEET) |
|---|---|---|---|
| PRE-PURGE: | 0911 | 8.09' | — |
| POST PURGE: | 1135 | 8.11' | — |

| | | |
|---|---|---|
| DEPTH OF WELL | 14.96 | FEET |
| DEPTH TO WATER | 8.09 | FEET |
| DEPTH OF WATER COLUMN | 6.87 | FEET |

WELL PURGE:

| TIME | pH (SU) | TEMP (C) | CONDUCTIVITY ~~(µmohs/cm)~~ | SALINITY (0/00) | TURBIDITY | DISS. O2 (mg/l) |
|---|---|---|---|---|---|---|
| 0937 | 7.01 | 20.5 | 6.59 ms/cm | 0.34% | 10 | 0.83 |
| 0947 | 7.13 | 20.6 | 6.50 ms/cm | 0.34% | 10 | 0.76 |
| 0958 | 7.19 | 21.2 | 6.05 ms/cm | 0.32% | 10 | 0.39 |
| 1002 | 7.20 | 21.0 | 6.00 ms/cm | 0.31% | 0 | 0.28 |
| 1018 | 7.19 | 21.2 | 5.78 ms/cm | 0.31% | 0 | 0.30 |
| 1030 | 7.20 | 21.2 | 5.75 ms/cm | 0.31% | 0 | 0.24 |
| 1040 | 7.21 | 21.3 | 5.94 ms/cm | 0.31% | 0 | 0.25 |
| 1050 | 7.22 | 20.7 | 6.04 ms/cm | 0.32% | 0 | 0.25 |
| 1100 | 7.22 | 21.6 | 6.00 ms/cm | 0.31% | 0 | 0.15 |

SAMPLED BY: BRADLEY K. GUNN, HCI Bradley K. Gunn 10/28/99

COMMENTS: PID = 0.0
SAMPLING BEGAN @ 1105
FB-2 collected @ 0850

# THE PORT AUTHORITY OF N.Y. & N.J.

MATERIALS ENGINEERING DIVISION
LOW FLOW WELL MONITORING DATA SHEET

| | |
|---|---|
| PROJECT: PN- BAY AVENUE | JOB NO: CP08-381.030 |
| WELL DESIGNATION: MW-2 | DATE: 10/27/99 |
| | CASING DIAMETER: 2" inch |

STATIC WATER LEVEL

| | TIME | DISTANCE FROM TOP OF PIPE TO: WATER (FEET) | PRODUCT (FEET) |
|---|---|---|---|
| PRE-PURGE: | 1525 | 7.21 | — |
| POST PURGE: | 1710 | 7.50 | — |

| | | |
|---|---|---|
| DEPTH OF WELL | 12.99 | FEET |
| DEPTH TO WATER | 7.21 | FEET |
| DEPTH OF WATER COLUMN | 5.78 | FEET |

WELL PURGE:

| TIME | pH (SU) | TEMP (C) | CONDUCTIVITY ~~(umhos/cm)~~ | SALINITY (0/00) | TURBIDITY | DISS. O2 (mg/l) |
|---|---|---|---|---|---|---|
| 1512 | 7.18 | 19.5 | 3.40mskm | 0.18% | 441 | 0.41 |
| 1517 | 7.32 | 19.9 | 3.39mskm | 0.17% | 869 | 0.45 |
| 1557 | 7.39 | 19.5 | 3.40mskm | 0.17% | 680 | 0.41 |
| 1607 | 7.41 | 20.3 | 3.35mskm | 0.16% | 523 | 0.91 |
| 1617 | 7.41 | 20.1 | 3.28mskm | 0.16% | 510 | 0.67 |
| 1627 | 7.42 | 20.4 | 3.36mskm | 0.16% | 482 | 0.38 |
| 1637 | 7.46 | 19.7 | 3.29mskm | 0.16% | 236 | 0.70 |
| 1647 | 7.45 | 20.3 | 3.26mskm | 0.16% | 390 | 0.88 |

SAMPLED BY: BRADLEY K. GUNN, HCI Bradley K. Gunn 10/27/99

COMMENTS: PID = 0.0
SAMPLING BEGAN @ 1648
DUPLICATE SAMPLE COLLECTED

# THE PORT AUTHORITY OF N.Y. & N.J.

MATERIALS ENGINEERING DIVISION
LOW FLOW WELL MONITORING DATA SHEET

| | |
|---|---|
| PROJECT: PN- BAY AVENUE | JOB NO: CP08-381.030 |
| WELL DESIGNATION: MW-1 | DATE: 10/27/99 |
| | CASING DIAMETER: 2" Inch |

STATIC WATER LEVEL

| | | DISTANCE FROM TOP OF PIPE TO: | |
|---|---|---|---|
| | TIME | WATER (FEET) | PRODUCT (FEET) |
| PRE-PURGE: | 1432 | 4.31 | — |
| POST PURGE: | | | |

| | | |
|---|---|---|
| DEPTH OF WELL | 11.30 | FEET |
| DEPTH TO WATER | 4.81 | FEET |
| DEPTH OF WATER COLUMN | 6.49 | FEET |

WELL PURGE:

| TIME | pH (SU) | TEMP (C) | CONDUCTIVITY. (umohs/cm) | SALINITY (0/00) | TURBIDITY | DISS. O2 (mg/l) |
|---|---|---|---|---|---|---|
| 1450 | 7.26 | 20.3 | 1.23 ~~0.04 mS/cm~~ | 0.39% | 999 | |

SAMPLED BY: BRADLEY K GUNN, NCJ [signature] 10/27/99

COMMENTS: PID = 0.3
POOR RECHARGE - WELL WENT DRY - COULD NOT SAMPLE

# THE PORT AUTHORITY OF N.Y. & N.J.

MATERIALS ENGINEERING DIVISION
LOW FLOW WELL MONITORING DATA SHEET

| | |
|---|---|
| PROJECT: PN- BAY AVENUE | JOB NO: CP08-381.030 |
| WELL DESIGNATION: MN-7 | DATE: 10/22/08 |
| | CASING DIAMETER: 2" Inch |

STATIC WATER LEVEL

| | TIME | DISTANCE FROM TOP OF PIPE TO: WATER (FEET) | PRODUCT (FEET) |
|---|---|---|---|
| PRE-PURGE: | 1035 | 6.11' | — |
| POST PURGE: | 1302 | 10.98' | — |

| | | |
|---|---|---|
| DEPTH OF WELL | 12.82' | FEET |
| DEPTH TO WATER | 6.11' | FEET |
| DEPTH OF WATER COLUMN | 6.71' x .163 = .173 gal | FEET |

WELL PURGE:

| TIME | pH (SU) | TEMP (C) | CONDUCTIVITY ~~(umhos/cm)~~ | SALINITY (0/00) | TURBIDITY | DISS. O2 (mg/l) |
|---|---|---|---|---|---|---|
| 1049 | 7.23 | 19.1 | 15.5 mslm | 0.76% | 207 | 0.45 |
| 1054 | 7.29 | 19.4 | 15.8 mslm | 0.77% | 219 | 0.23 |
| 1059 | 7.31 | 18.7 | 15.9 mslm | 0.77% | 198 | 0.24 |
| 1105 | 7.30 | 18.1 | 16.0 mslm | 0.74% | 197 | 0.36 |
| 1110 | 7.31 | 18.2 | 16.2 mslm | 0.75% | 215 | 0.35 |
| 1116 | 7.32 | 19.3 | 16.6 mslm | 0.78% | 140 | 0.30 |
| 1126 | 7.32 | 18.4 | 17.5 mslm | 1.03% | 142 | 0.38 |
| 1136 | 7.32 | 18.3 | 17.3 mslm | 1.08% | 31 | 0.32 |
| 1146 | 7.33 | 18.1 | 18.3 mslm | 1.11% | 10 | 0.35 |
| 1156 | 7.16 | 18.5 | 20.3 mslm | 1.20% | 10 | 0.52 |
| 1206 | 7.23 | 18.9 | 20.5 mslm | 1.22% | 36 | 0.31 |
| 1216 | 7.32 | 19.3 | 21.3 mslm | 1.25% | 53 | 0.24 |
| 1226 | 7.34 | 19.3 | 22.1 mslm | 1.33% | 37 | 0.20 |
| 1236 | 7.33 | 19.2 | 22.7 mslm | 1.37% | 178 | 0.37 |
| 1246 | 7.33 | 19.3 | 23.4 mslm | 1.41% | 85 | 0.23 |
| 1256 | 7.35 | 19.1 | 23.7 mslm | 1.41% | 45 | 0.76 |
| 1306 | 7.34 | 18.6 | 23.9 mslm | 1.45% | 51 | 0.33 |
| | | | | | | |
| | | | | | | |
| | | | | | | |

SAMPLED BY: BRADBURN NCI [signature] 10/22/08

COMMENTS: PID 0.0 Contaminated Water stored in 55 gal drum or used to make 10 well volumes prior to sampling event. The possibility of cross contamination will ~~exist~~ exist if pump back over water to sampling. Flow rate = 3.100 L/min
Sampling began @ 1306

# THE PORT AUTHORITY OF N.Y. & N.J.

MATERIALS ENGINEERING DIVISION
LOW FLOW WELL MONITORING DATA SHEET

| | | | |
|---|---|---|---|
| PROJECT: | PN- BAY AVENUE | JOB NO: | CP08-381.030 |
| WELL DESIGNATION: | MW-8 | DATE: | 10/2-/09 |
| | | CASING DIAMETER: | 2" Inch |

STATIC WATER LEVEL

| | | DISTANCE FROM TOP OF PIPE TO: | |
|---|---|---|---|
| | TIME | WATER (FEET) | PRODUCT (FEET) |
| PRE-PURGE: | 1500 | 9.32' | — |
| POST PURGE: | 1644 | 9.35' | — |

| | | |
|---|---|---|
| DEPTH OF WELL | 15.73' | FEET |
| DEPTH TO WATER | 9.32' | FEET |
| DEPTH OF WATER COLUMN | 6.41' | FEET |

WELL PURGE:

| TIME | pH (SU) | TEMP (C) | CONDUCTIVITY (~~umohs/cm~~) | SALINITY (0/00) | TURBIDITY | DISS. O2 (mg/l) |
|---|---|---|---|---|---|---|
| 1530 | 7.13 | 20.1 | 4.67 ms/cm | 0.24% | 306 | 0.45 |
| 1542 | 7.32 | 20.3 | 4.67 ms/cm | 0.24% | 262 | 0.29 |
| 1551 | 7.37 | 20.5 | 4.66 ms/cm | 0.24% | 70 | 0.26 |
| 1600 | 7.40 | 20.3 | 4.67 ms/cm | 0.24% | 54 | 0.30 |
| 1610 | 7.41 | 20.4 | 4.64 ms/cm | 0.24% | 0 | 0.33 |
| 1620 | 7.43 | 20.3 | 4.63 ms/cm | 0.24% | 0 | 0.35 |
| 1630 | 7.44 | 20.4 | 4.62 ms/cm | 0.23% | 0 | 0.34 |

SAMPLED BY: Bradley K. Green, H.I. Bradley K. Green 10/2/09

COMMENTS: PID: 0.4
SAMPLING BEGAN: @ 1635

08PA00002067

# THE PORT AUTHORITY OF N.Y. & N.J.

MATERIALS ENGINEERING DIVISION
LOW FLOW WELL MONITORING DATA SHEET

| | |
|---|---|
| PROJECT: PN- BAY AVENUE | JOB NO: CP08-381.030 |
| WELL DESIGNATION: MW-13 | DATE: 10/27/99 |
| | CASING DIAMETER: 2" Inch |

STATIC WATER LEVEL

| | | DISTANCE FROM TOP OF PIPE TO: | |
|---|---|---|---|
| | TIME | WATER (FEET) | PRODUCT (FEET) |
| PRE-PURGE: | 0858 | 5.54' | — |
| POST PURGE: | 0959 | 5.59' | — |

| | | |
|---|---|---|
| DEPTH OF WELL | 12.60' | FEET |
| DEPTH TO WATER | 5.54' | FEET |
| DEPTH OF WATER COLUMN | 7.06 | FEET |

WELL PURGE:

| TIME | pH (SU) | TEMP (C) | CONDUCTIVITY ~~(umhos/cm)~~ | SALINITY (0/00) | TURBIDITY | DISS. O2 (mg/l) |
|---|---|---|---|---|---|---|
| 0914 | 7.00 | 18.4 | 4.27 ms/cm | 0.21% | 751 | 0.74 |
| 0920 | 7.06 | 18.6 | 3.88 ms/cm | 0.19% | 385 | 0.52 |
| 0925 | 7.10 | 19.4 | 3.44 ms/cm | 0.17% | 469 | 0.28 |
| 0930 | 7.13 | 19.0 | 3.44 ms/cm | 0.17% | 543 | 0.33 |
| 0935 | 7.14 | 19.5 | 3.42 ms/cm | 0.17% | 344 | 0.26 |
| 0941 | 7.16 | 19.6 | 3.42 ms/cm | 0.17% | 418 | 0.21 |
| | | | | | | |
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| | | | | | | |

SAMPLED BY: BRADLEY K. GUNN Bradley K. Gunn, HLI 10/27/99

COMMENTS: PID = 0.0
SAMPLING BEGAN @ 0944

08PA00002068

# THE PORT AUTHORITY OF N.Y. & N.J.

MATERIALS ENGINEERING DIVISION

LOW FLOW WELL MONITORING DATA SHEET

| | |
|---|---|
| PROJECT: PN- BAY AVENUE | JOB NO: CP08-381.030 |
| WELL DESIGNATION: MW-14 | DATE: 8/28/99 |
| | CASING DIAMETER: 2" Inch |

STATIC WATER LEVEL

| | TIME | DISTANCE FROM TOP OF PIPE TO: WATER (FEET) | PRODUCT (FEET) |
|---|---|---|---|
| PRE-PURGE: | 1235 | 9.29' | — |
| POST PURGE: | 1418 | 9.05' | — |

| | | |
|---|---|---|
| DEPTH OF WELL | 16.95 | FEET |
| DEPTH TO WATER | 9.29 | FEET |
| DEPTH OF WATER COLUMN | 7.66 | FEET |

WELL PURGE:

| TIME | pH (SU) | TEMP (C) | CONDUCTIVITY (~~umohs/cm~~) | SALINITY (0/00) | TURBIDITY | DISS. O2 (mg/l) |
|---|---|---|---|---|---|---|
| 1258 | 7.30 | 18.8 | 5.30 ms/cm | 0.31% | 0 | 0.68 |
| 1308 | 7.38 | 18.8 | 5.31 ms/cm | 0.28% | 0 | 0.35 |
| 1319 | 7.41 | 19.1 | 5.31 ms/cm | 0.27% | 0 | 0.31 |
| 1329 | 7.44 | 18.9 | 5.49 ms/cm | 0.28% | 0 | 0.12 |
| 1339 | 7.44 | 18.8 | 5.42 ms/cm | 0.28% | 0 | 0.32 |
| 1350 | 7.45 | 18.7 | 5.37 ms/cm | 0.28% | 0 | 0.32 |
| 1400 | 7.45 | 19.1 | 5.32 ms/cm | 0.27% | 0 | 0.26 |

SAMPLED BY: BRADLEY K. GUNN, HCI [signature] 10/20/99

COMMENTS: PID = 0.4

SAMPLING BEGAN @ 1404

08PA00002069

PA 547
6-00

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 4

| PROJECT | NAME OF CONTRACTOR | BORING NO. | SURFACE ELEV. |
|---|---|---|---|
| P.E. BAY AVE TERMINAL | CRAIG | MW-1 | |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | CONTRACT NO. 426-99-006 | DATE 9-23-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | "A" MW |
| HAMMER (Safety) 140 # FALL 30" | HAMMER # FALL | |
| DRILLER: S. BURNS | | |
| INSPECTOR: M. OUDEH | | |

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/23 | AM | 7.6' | Found in S#4 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS ____ LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| H.S. | 0 | | | | ASPHALT PAVEMENT 0.5' |
| | | Hand | Full | | CRUSHED ROCK |
| Augers | | Auger | | 1 | Fill br m-f Sand, tr. gravel, tr. silt |
| | | | | 2 | Same |
| | 5 | | | 3 | Same |
| | | 11-11 | 21" | | Same |
| | | 10-10 | | 4 | |
| | | 10-6 | 20" | | Same |
| | | 5-6 | | 5 | |
| | 10 | 3-1 | 20" | 6 A | Fill br-grey c-f Sand 11.8' |
| | | 3-2 | | B | Misc. fill red tr. silty clay, tr fine sand |
| | | 2-1 | 13" | 7 | Same |
| | | 1-1 | | | |
| | 15 | 1-1-1 | 15" | 8 | Misc. Fill grey clayey silt some fine sand 15.5' |
| | | | | | Bottom of Boring |
| | | | | | NOTE: All samples were screened for VOC's with |
| | 20 | | | | A PID. S#1 (1'-2') and S#4 (6'-7') were |
| | | | | | saved, The remaining samples were discarded |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002070

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS



PROJECT: PE BAY AVE TERMINAL

BORING No.: MW-1 | DATE: 9-23-99

FIELD READINGS BY: M. OUDEH | PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| | 2 | — | 0 | 0 | |
| | 3 | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |
| | 6A | — | 0 | 0 | |
| | 6B | — | 0 | 0 | |
| | 7 | — | 0 | 0 | |
| | 8 | — | | | |

# PORT AUTHORITY OF NY & NJ
## Engineering Department - Materials Division

*Well Installation Report*

Sheet 3 of 4

| | | | | |
|---|---|---|---|---|
| PROJECT: P.E. BAY AVE TERMINAL | | | | CONTRACT NO.: 426-99-0060 |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | | | CONTRACTOR: CRAIG |
| WELL NO.: MW-1 | WELL TYPE: "A" MONITOR | INSPECTOR: M. OUDEH | DRILLER: S. BURNS | DATE: 9-23-99 |

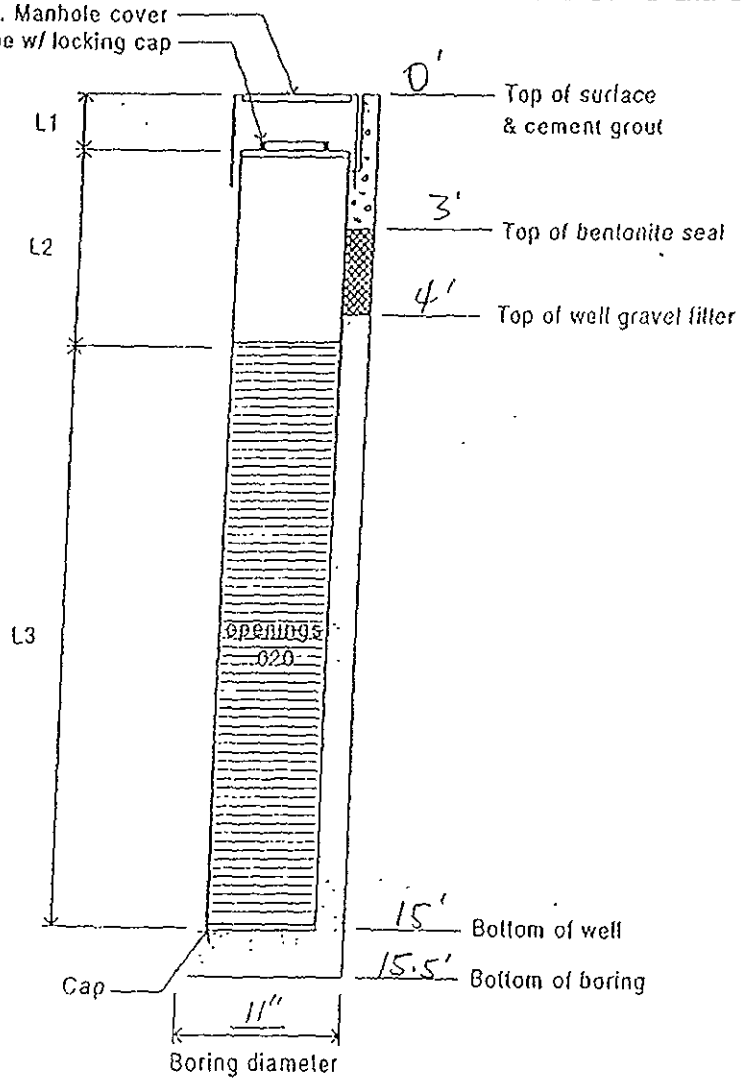
*Well Development Report* (NOTE: WATER LEVEL READINGS FROM TOP OF PVC)

| | | | |
|---|---|---|---|
| DATE: 9/23/99 | WATER LEVEL BEFORE: 8.0' | WATER LEVEL AFTER: 7.9' | TAKEN: 60 MINUTES AFTER |

L1 = 0.3'

L2 = 4.7'

L3 = 10'




REMARKS: Backfilled 15' to 15.5' with bentonite

08PA00002072

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 4 of 4

JECT: DE BAY AVE TERminal

ATION: Laid out in the field as per drawing. | DATE: 9/23/99

ING No: MW-1 | TOTAL No. OF SAMPLES: 2

ATURE OF ALL
NT AT SAMPLING

| | | |
|---|---|---|
| QUISHED | DATE 9/23/99 | RECEIVED |
| GN) | TIME | BY (SIGN) |
| QUISHED | DATE | RECEIVED |
| GN) | TIME | BY (SIGN) |
| QUISHED | DATE | RECEIVED |
| GN) | TIME | BY LAB |

RKS: 1'-2' Vial # NJ8260091799-2
6'-7' ——— 5

Samples taken in 2 one pt. Jars & 2 4 oz Jars

TOTAL P.01

08PA00002073

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 4

| | | | |
|---|---|---|---|
| PROJECT: P.E. Bay Ave Terminal | NAME OF CONTRACTOR: CRAIG | BORING NO.: MW-2 | SURFACE ELEV.: |
| LOCATION: AID OUT IN THE FIELD AS PER DRAWING | | CONTRACT NO.: 426-99-006 | DATE: 9-22-99 |

| | | |
|---|---|---|
| SPOON: 2 O.D. 1 3/8 I.D. | CASING SIZE: H.S. Augers | HOLE TYPE: 4" Nantor |
| HAMMER (SAFETY) 140 # FALL 30. | HAMMER # FALL | |
| DRILLER: S. BURNS | | |
| INSPECTOR: M. OUDEIT | | |

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/22 | 9:20 Am | 5.9' | Found in S#3 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | REC.[1] COV'D | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS LINE LOCATES CHANGE OF PROFILE | |
|---|---|---|---|---|---|---|
| H.S. Augers | 0 | | | | ASPHALT PAVEMENT | 0.5 |
| | | HAND AUGER | FULL | | CRUSHED ROCK | 1.0 |
| | | | | 1 | Fill br. m-f Sand, tr. gravel, tr. silt | |
| | | | | 2 | Misc. fill br. c-f Sand, little brick, tr gravel, tr. silt | |
| | 5 | | | 3A | Same | 5.2' |
| | | | | 3B | Misc. fill red-br silty clay | |
| | | 4-8 | 20" | 4 | Misc. fill red-br silty clay, little m-f Sand, tr. gravel | |
| | | 9-7 | | | | |
| | | 4-5 | 19" | 5 | fill br. m-f Sand, tr. gravel, tr. silt | |
| | | 5-7 | | | | 10.0' |
| | 10 | | | | | |
| | | WOH/12" | 6" | 6A | Misc. fill red-br silty clay, tr. fine Sand | 11.0' |
| | | 2-1 | | 6B | Misc. fill gray-br. Clayey silt, tr. fine sand | |
| | | WOH | 24" | 7 | Same | |
| | | | | | | 14.0' |
| | | | | | Bottom of Boring | |
| | 15 | | | | NOTE: All the samples were screened for VOC's with a PID. S#1 (1'-2') and #3a (4'-5') were saved and the remaining were discarded. | |
| | 20 | | | | | |
| | 25 | | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002074

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS



PROJECT: PE BAY AVE TERMINAL
BORING No. MW-2 DATE: 9-22-99
FIELD READINGS BY: M. OUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | – | 0 | 0 | |
| | 2 | – | 0 | 0 | |
| | 3A | – | 0 | 0 | |
| | 3B | – | 0 | 0 | |
| | 4 | – | 0 | 0 | |
| | 5 | – | 0 | 0 | |
| | 6A | – | 0 | 0 | |
| | 6B | – | 0 | 0 | |
| | 7 | – | 0 | 0 | |

PORT AUTHORITY OF NY & NJ
Engineering Department - Materials Division

Well Installation Report

Sheet 3 of 4

| | | | | |
|---|---|---|---|---|
| PROJECT: PE BAY AVE TERMINAL | | | | CONTRACT NO. 426-99-006 |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | | | CONTRACTOR: CRAIG |
| WELL NO. MW-2 | WELL TYPE: TYPE "A" MONITOR | INSPECTOR: M. OUDEH | DRILLER: S. BURNS | DATE: 9-22-99 |

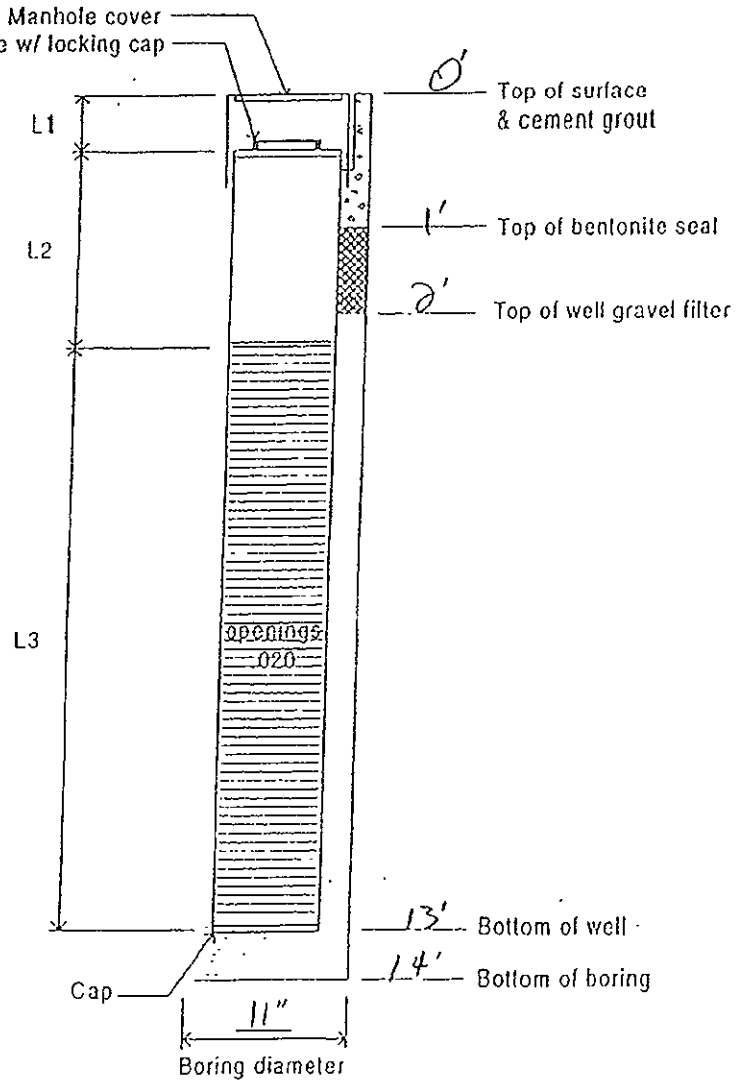
Well Development Report (NOTE: WATER LEVEL READINGS FROM TOP OF PVC)

| | | | |
|---|---|---|---|
| 9/22/99 | WATER LEVEL BEFORE 5.1' | WATER LEVEL AFTER 5.8' | TAKEN 60 MINUTES AFTER |

L1 = 0.3'

L2 = 2.7'

L3 = 10'




Remarks: Backfilled 13' to 14' with bentonite

08PA00002076

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD



PROJECT: P.E. Bay Ave Terminal

LOCATION: Laid out in the field as per drawing | DATE: 9-22-99

BORING No: MW-2 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9-22-99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: 2 samples taken in 2 one pt. Jars
and 2 4 oz Jars for VOA's
Also 2 Vials with methanol taken
1'-2' # NJ8260091799.21
4'-5' # NJ8260091799.23

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| | | | |
|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: SB-3 | SURFACE ELEV. |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | CONTRACT NO.: 426-99-006 | DATE: 9-25-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | |

| HAMMER (SAFETY) | HAMMER |
|---|---|
| 140 # FALL 30" | # FALL |

DRILLER: S. BURNS

INSPECTOR: M. OUDEH

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/25/99 | Am | 8.0' | Found in S#4 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | REC. COV'D | SAMP. NO. | SAMPLE DESCRIPTION AND REMARKS (LINE LOCATES CHANGE OF PROFILE) |
|---|---|---|---|---|---|
| H.S. | 0 | | | | ASPHALT PAVEMENT 0.5' |
| | | | | | CRUSHED ROCK 1.0' |
| Augers | | HAND Auger | Full | 1 | Misc. Fill br. c-f Sand, Some cobbles, tr. Silt |
| | | | | 2 A | |
| | | | | B | Fill br. m-f sand, tr. gravel, tr. silt |
| | 5 | | | 3 | Same |
| | | 14-16 | 16" | 4 | Same |
| | | 14-16 | | | 8.0' |
| | 10 | | | | Bottom of Boring |
| | | | | | NOTE: All Samples were screened for VOC's with a PID. S#1 (1'-2') and S#4 (6'-7.5') were saved and the remaining were discarded. |
| | 15 | | | | |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002078

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT

MATERIALS ENGINEERING DIVISION

*PID READINGS*

Sheet 2 of 3

PROJECT: PE BAY AVE. TERMINAL

BORING No. SB-3 DATE: 9/25/99

FIELD READINGS BY: M. OUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | – | 0 | 0 | |
| | 2A | – | 0 | 0 | |
| | 2B | – | 0 | 0 | |
| | 3 | – | 0 | 0 | |
| | 4 | – | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: P.E. BAY AVE. TERMINAL

LOCATION: Laid out in the field as per drawing | DATE: 9/25/99

BORING No: SB-3 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING: [signature]

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) [signature] | DATE 9/25/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: 2 samples taken in 2 one pt. JARS and 2 4 oz JARS for VOA's

Sample #1 (1'-2') Vial # NJ8260092499-17
Sample # (6'-7.5') Vial # ———— 18

08PA00002080

PA 547
6-00

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 4

| | | | |
|---|---|---|---|
| PROJECT: NJ Bay Ave Terminal | NAME OF CONTRACTOR: Craig | BORING NO.: MW-4 | SURFACE ELEV. |
| LOCATION: Laid out in the field as per drawing | | CONTRACT NO.: 426-99-006 | DATE: 9-22-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | "A" Monitor |

| HAMMER (safety) | HAMMER |
|---|---|
| 140 # FALL 30" | # FALL " |

DRILLER: S. Burns

INSPECTOR: M. Oudeh

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/22 | Am | 5.0' | found in S#3 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS — LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| H.S. | 0 | | | | Asphalt 0.5' |
| | | | | | Crushed Rock 1.0' |
| Augers | | hand | full | 1 | fill br. c-f sand, tr. gravel, tr. silt |
| | | auger | | 2 A | Misc fill br. c-f sand, little brick, little gravel, tr. silt 4.7' |
| | | | | B | Misc. fill red-br. silty clay, tr. fine sand |
| | 5 | | | 3 A | Same |
| | | | | B | fill br-grey m-f sand, tr. gravel, tr. silt 5.9' |
| | | 2-3 | 20" | | Same 6.8' |
| | | 3-2 | | 4 | Misc. fill red-br silty clay |
| | | 3-3 | 22" | 5 | Misc. fill red-br. clayey silt, little fine sand |
| | 10 | 3-3 | | | |
| | | 1-1 | 21" | 6 | Misc. fill red-br clayey silt, some m-f sand, tr. gravel |
| | | 2-3 | | | 12.0' |
| | | | | | Bottom of Boring |
| | 15 | | | | NOTE: All samples were screened for VOC's with a PID. S#1 (1'-2') and S#2A 3.5'-4' were saved and the remaining were discarded. |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002081

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT

MATERIALS ENGINEERING DIVISION

*PID READINGS*

Sheet 2 of 4

PROJECT: P.E. BAY AVE TERMINAL

BORING No. MW-4 DATE: 9/22/99

FIELD READINGS BY: M. DUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| PM | 2A | — | 0 | 0 | |
| | 2B | — | 0 | 0 | |
| | 3A | — | 0 | 0 | |
| | 3B | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |
| | 6 | — | 0 | 0 | |

# PORT AUTHORITY OF NY & NJ

## Engineering Department - Materials Division

### Well Installation Report

Sheet 3 of 4

| PROJECT | CONTRACT NO. |
|---|---|
| PE BAY AVE TERMINAL | 426-99-006 |
| LOCATION | CONTRACTOR |
| LAID OUT IN THE FIELD AS PER DRAWING | CRAIG |

| WELL NO. | WELL TYPE | INSPECTOR | DRILLER | DATE |
|---|---|---|---|---|
| MW-4 | "A" MONITOR | M. OUDEH | S. BURNS | 9/22/99 |

### Well Development Report

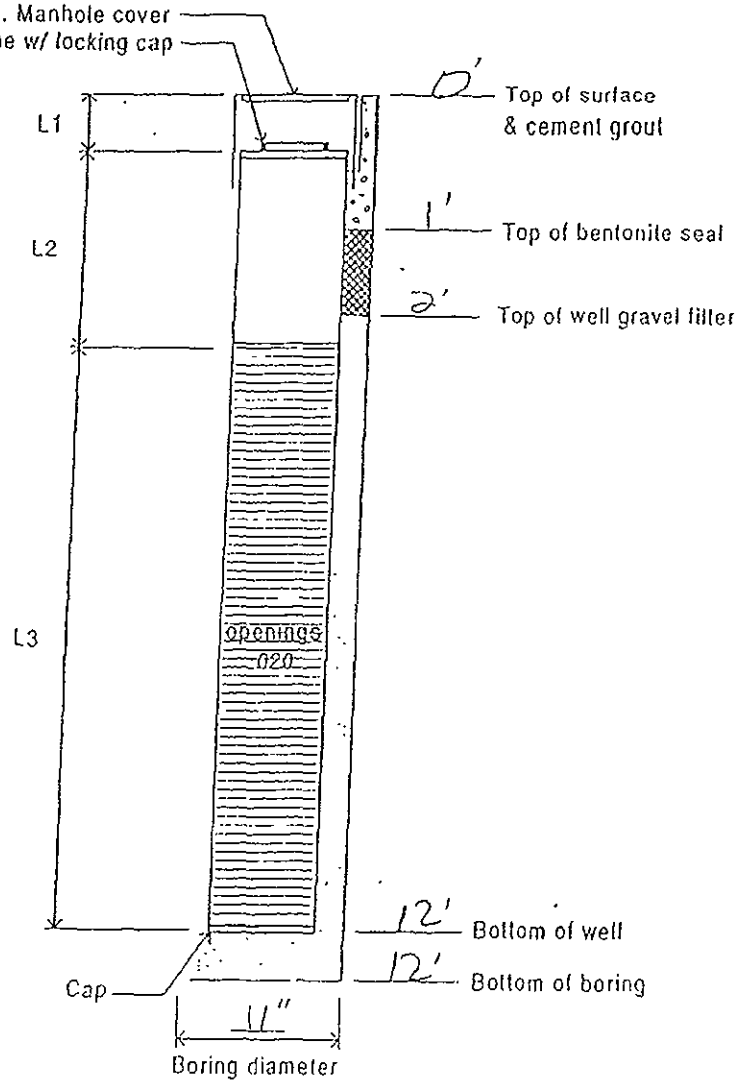
(NOTE: WATER LEVEL READINGS FROM TOP OF PVC)

| DATE | WATER LEVEL BEFORE | WATER LEVEL AFTER | TAKEN | MINUTES AFTER |
|---|---|---|---|---|
| 9/22/99 | 4.9' | 5.1' | 60 | |

L1 = 0.3'

L2 = 2.7'

L3 = 9.0'




REMARKS

08PA00002083

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD



PROJECT: P.E. Bay Ave Terminal

LOCATION: Laid out in the field as per drawing | DATE: 9-22-99

BORING No: MW-4 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9/22/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: Two Samples taken in Two one pt. JARS and Two 4 oz JARS for VOA's

ALSO:

Sample 1'-2' Vial # NJ826 0091799-20

3.5'-4' Vial # ——— -22

08PA00002084

A 547
-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| | | | |
|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: SB-5 | SURFACE ELEV. |
| LOCATION: Laid out in the field as per drawing | | CONTRACT NO.: 426-99-006 | DATE: 9-25-99 |

SPOON: 2 "O.D. 1 3/8 "I.D.
CASING SIZE: 4 1/4 Hs. Augers
HOLE TYPE:
HAMMER (Safety): 140 # FALL 30"
HAMMER: # FALL
DRILLER: S. BURNS
INSPECTOR: M. Oudeh

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/25 | AM | 9.6' | found in S#5 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS (LINE LOCATES CHANGE OF PROFILE) |
|---|---|---|---|---|---|
| 4 | 0 | HAND | | | ASPHALT PAVEMENT 0.4' |
| | | | | | CRUSHED ROCK 1.0 |
| Augers | | AUGER | Full | 1 | Fill br. m-f Sand, tr. gravel, tr. Silt |
| | | | | 2 | Same |
| | 5 | | | 3 | Same |
| | | 9-9 | 20" | 4 | Same |
| | | 10-22 | | | |
| | | 23-30 | 19" | 5 | Same |
| | | 26-54 | | | |
| | 10 | | | | 10.0' Bottom of Boring |
| | | | | | NOTE: All samples were screened for VOCs with a PID. S#1 (1'-2') and S#5 (8'-9') were saved and the remaining were discarded |
| | 15 | | | | |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002085

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS

Sheet 2 of 3

PROJECT: P.E. BAY AVE. TERMINAL
BORING No. SB-5 DATE: 9/25/99
FIELD READINGS BY: M. OUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1. | — | 0 | 0 | |
| | 2 | — | 0 | 0. | |
| | 3 | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: P.E. BAY AVE. TERMINAL

LOCATION: Laid out in the field as per drawing | DATE: 9/25/99

BORING No: SB-5 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9/25/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: 2 Samples taken in 2 one pt. JARs & 2 4 oz JARs for VOA's

Vial # NJ8260092499-11 Sample 1'-2'

Vial # NJ8260092499-10 Sample 8'-9'

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A 547
-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| | | | |
|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: SB-6 | SURFACE ELEV. |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | CONTRACT NO.: 426-99-006 | DATE: 9-23-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | II |

| HAMMER (SAFETY) | HAMMER |
|---|---|
| 140 # FALL 30" | # FALL " |

DRILLER: S. BURNS

INSPECTOR: M. OUDEH

| GROUND WATER LEVEL | | | |
|---|---|---|---|
| Date | Time | Depth | Remarks |
| 9/23 | AM | 5.0' | Found in S#3B |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| | 0 | | | | ASPHALT PAVEMENT 0.5' |
| H.S. | | | | | CRUSHED ROCK 1.0' |
| Augers | | Hand Auger | Full | 1 | fill br. M-F sand, tr. gravel, tr. silt |
| | | | | 2 | same |
| | | | | 3 A | same 4.4' |
| | 5 | | | 3 B | Misc. fill grey clayey silt, little fine sand, tr. gravel |
| | | 6-9 6-5 | 18" | 4 | fill br. m-f sand, little silt, tr. gravel |
| | | 3-2 2-2 | 20" | 5 | SAME |
| | 10 | | | | 10.0' Bottom of Boring |
| | | | | | NOTE: All the samples were screened for VOCs with a PID. S#1 (1'-2') and S#3A (4'-4.5') were saved and the remaining were discarded. |
| | 15 | | | | |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002088

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS



PROJECT: P.E. BAY AVE. TERMINAL

BORING No. SB-6 | DATE: 9-23-99

FIELD READINGS BY: M. OUDEH | PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| | 2 | — | 0 | 0 | |
| | 3A | — | 0 | 0 | |
| | 3B | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: P.E. BAY AVE. TERMINAL

LOCATION: Laid out in the field as per drawing | DATE: 9/23/99

BORING No: SB-6 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING [signature]

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) [signature] | DATE 9/23/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: Vial # NJ8260091799-1 Sample #1 1'-2'
——— 4 Sample #3 4'-4.5'
2 samples taken in 2 one pt. JARS & 2 4-oz-JARS

08PA00002090

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 4

| | | | |
|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: MW-7 | SURFACE ELEV.: |
| LOCATION: Laid out in the field as per drawing | | CONTRACT NO.: 426-99-006 | DATE: 9-24-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | "A" Monitor |

HAMMER (SAFETY) 140 # FALL 30" — HAMMER # FALL "

DRILLER: S. BURNS

INSPECTOR: M. OUDEH

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/24 | AM | 6.0' | Found in S-#3 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D [1] | SAMP. NO. [2] | SAMPLE DESCRIPTION AND REMARKS (LINE LOCATES CHANGE OF PROFILE) [3] |
|---|---|---|---|---|---|
| H.S. | 0 | HAND | FULL | | ASPHALT PAVEMENT 0.5' |
| | | | | | CRUSHED ROCK 1.0' |
| Augers | | AUGER | | 1 | Fill br. m-f Sand, tr. gravel, tr. Silt |
| | | | | 2 | Same |
| | 5 | | | 3 A | Same |
| | | | | B | Misc. fill red-br silty clay, tr. fine sand 5.7' |
| | | 2-2 | 19" | 4 | Misc. fill red-br clayey silt, little fine sand |
| | | 2-2 | | | |
| | | 2-1 | 18" | 5 | Same |
| | 10 | 2-2 | | | |
| | | WOH/18" | 20" | 6 | Same |
| | | 1 | | | |
| | | 1-2- | 14" | 7 | Misc. fill red-br clayey silt, some fine sand 13.5' |
| | | 3 | | | |
| | 15 | | | | Bottom of Boring |
| | | | | | NOTE: All samples were screened for VOC's with a PID. S#1 (1'-2') & S#3 (5'-5.5') were saved and the remaining were discarded. |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002091

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS



PROJECT: P.E. Bay Ave. Terminal
BORING No. MW-7
DATE: 9/24/99
FIELD READINGS BY: M. Qudeh
PID Model: Mini RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| | 2 | — | 0 | 0 | |
| | 3A | — | 0 | 0 | |
| | 3B | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |
| | 6 | — | 0 | 0 | |
| | 7 | — | 0 | 0 | |

PORT AUTHORITY OF NY & NJ
Engineering Department - Materials Division

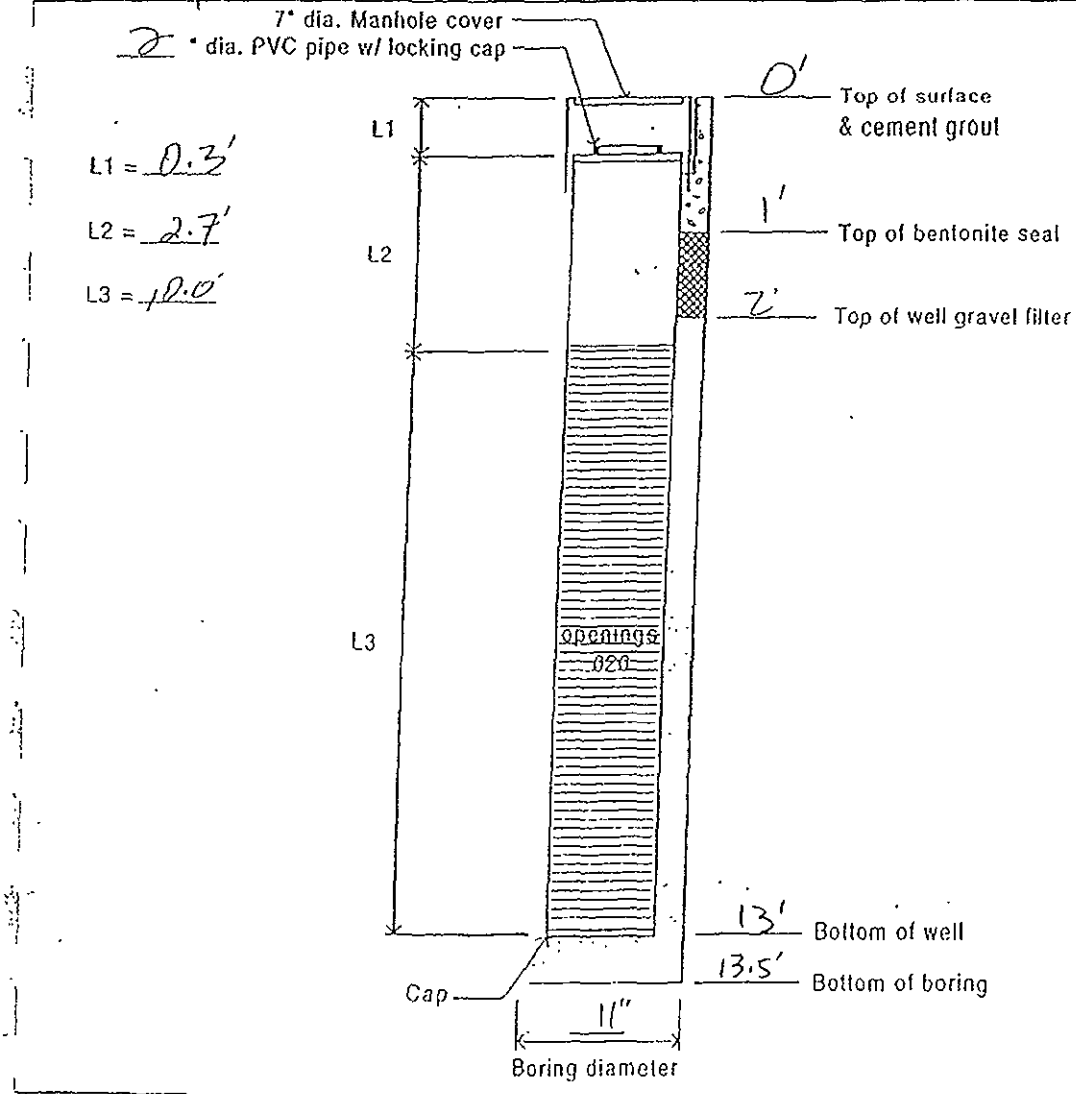
Well Installation Report

Sheet 3 of 4

| | | | | |
|---|---|---|---|---|
| PROJECT: PE BAY AVE. TERMINAL | | | | CONTRACT NO. 1126-99-006 |
| LOCATION: Laid out in the field as per drawing | | | | CONTRACTOR: Craig |
| WELL NO. MW-7 | WELL TYPE "A" Monitor | INSPECTOR M. OUDEH | DRILLER S. BURNS | DATE 9/24/99 |

Well Development Report (NOTE: WATER LEVEL READINGS FROM TOP OF PVC)

| | | | |
|---|---|---|---|
| DATE 9/24/99 | WATER LEVEL BEFORE 0.1 | WATER LEVEL AFTER 0.2' | TAKEN 60 MINUTES AFTER |




REMARKS: Backfilled 13'-13.5' with bentonite

08PA00002093

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 4 of 4

PROJECT: P.E. BAY AOE. TERMINAL

LOCATION: Laid out in the field as per drawing | DATE: 9/24/99

BORING No: MW-7 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9/24/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: Vial # NJ826009 1799-12 Sample 1'-2'
8 Sample 5'-5.5'

2 samples taken in 2 one pt. JARS & 2 4oz JARS for VOA's

08PA00002094

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 4

| | | | |
|---|---|---|---|
| PROJECT: P.E. Bay Ave. Terminal | NAME OF CONTRACTOR: Craig | BORING NO.: MW-8 | SURFACE ELEV.: |
| LOCATION: Laid out in the field as per drawing | | CONTRACT NO.: 426-99.006 | DATE: 9-25-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2 "O.D. 1 3/8 "I.D. | H.S. Augers | "A" Monitor |

| HAMMER (Safety) | HAMMER |
|---|---|
| 140 # FALL 30 " | # FALL " |

DRILLER: S. Burns

INSPECTOR: M. Oudek

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/25 | AM | 9.5' | Found in S#5 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D [1] | SAMP. NO. [2] | SAMPLE DESCRIPTION AND REMARKS — LINE LOCATES CHANGE OF PROFILE [3] | |
|---|---|---|---|---|---|---|
| | 0 | | | | Asphalt Pavement | 0.5' |
| H.S. | | Hand | Full | | Crushed Rock | 1.0' |
| Auger | | Auger | | 1 | Fill br. m-f sand, tr. gravel, tr. silt | |
| | | | | 2 | Same | |
| | 5 | | | 3 | Same | |
| | | 9-12 | 20" | 4 | Same | |
| | | 12-15 | | | | |
| | | 11-13 | 19" | 5 | Same | |
| | | 18-21 | | | | |
| | 10 | 9-17 | 19" | 6 | Fill br-grey m-f sand, tr. gravel, tr. silt | |
| | | 13-13 | | | | |
| | | 8-6 | 18" | 7 | Same | |
| | | 6-6 | | | | |
| | 15 | 2-2 | 18" | 8 | Same | |
| | | 3-3 | | | | |
| | | | | | | 16.5' |
| | | | | | Bottom of Boring | |
| | 20 | | | | NOTE: All samples were screened for VOC's with a PID. S#1 (1'-2') and S#3 (8'-9') were saved and the remaining were discarded. | |
| | 25 | | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002095

# THE PORT AUTHORITY OF N.Y & N.J.

## ENGINEERING DEPARTMENT

### MATERIALS ENGINEERING DIVISION

### PID READINGS



PROJECT: P.E. BAY AVE TERMINAL

BORING No. MW-8 DATE: 9/25/99

FIELD READINGS BY: M. OUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| | 2 | — | 0 | 0 | |
| | 3 | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |
| | 6 | — | 0 | 0 | |
| | 7 | — | 0 | 0 | |
| | 8 | — | 0 | 0 | |

PORT AUTHORITY OF NY & NJ
Engineering Department - Materials Division

Well Installation Report

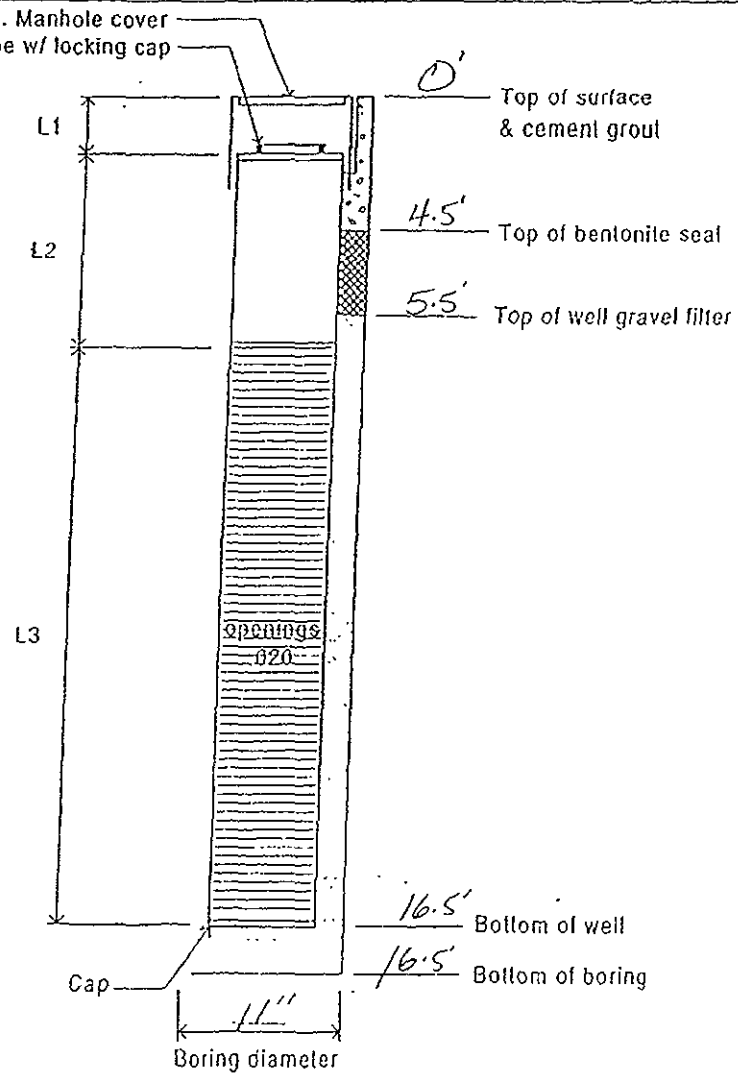
Sheet 3 of 4

| | | | | |
|---|---|---|---|---|
| PROJECT: PE BAY AVE TERMINAL | | | | CONTRACT NO. 426-99-006 |
| LOCATION: Laid out in the field as per drawing | | | | CONTRACTOR: CRAIG |
| WELL NO. MW-B | WELL TYPE "A" Monitor | INSPECTOR M. ADEH | DRILLER S. BURNS | DATE 9/25/99 |

Well Development Report (NOTE: WATER LEVEL READINGS FROM TOP OF PVC)

| | | | |
|---|---|---|---|
| DATE 9/25/99 | WATER LEVEL BEFORE 9.1' | WATER LEVEL AFTER 9.2' | TAKEN 60 MINUTES AFTER |

L1 = 0.3'
L2 = 6.2'
L3 = 10.0'




REMARKS:

08PA00002097

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 4 of 4

PROJECT: P.B. BAY AVE. TERMINAL

LOCATION: Laid out in the field as per drawing | DATE: 9/25/99

BORING No: MW-8 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9/25/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: 2 samples taken in 2 one pt. JARS & 2 4 oz JARS for VOAs

Sample 1'-2' Vial # NJ8260092199-4

Sample 8'-9' Vial # ——— 5

08PA00002098

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| PROJECT | NAME OF CONTRACTOR | BORING NO. | SURFACE ELEV. |
|---|---|---|---|
| PE BAY AVE TERMINAL | CRAIG | SB-9 | |
| **LOCATION** | | **CONTRACT NO.** | **DATE** |
| LAID OUT IN THE FIELD AS PER DRAWING | | 426-99-006 | 9-22-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | II |

| HAMMER (SAFETY) | HAMMER |
|---|---|
| 140 # FALL 30" | # FALL " |

DRILLER: S. BURNS

INSPECTOR: M. OUDEH

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/22 | Pm | 5.9' | found in S#3 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D | SAMP. NO. | SAMPLE DESCRIPTION AND REMARKS — LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| H.S. | 0 | | | | ASPHALT 0.5' |
| | | | | | CRUSHED ROCK 1.0' |
| Augers | | Hand | Full | 1 | Fill br c-f sand, tr. gravel, tr. silt |
| | | Auger | | 2 | Same |
| | 5 | | | 3 | Same |
| | | 4-3 | 18" | 4 | Fill br-gray c-f sand little silt, tr. gravel |
| | | 3-4 | | | |
| | | 4-4 | 18" | 5 | Same |
| | 10 | 3-3 | | | |
| | | | | | Bottom of Boring 10.0' |
| | | | | | NOTE: All samples were screened for VOCs with a PID S#1 (1'-2') and S#3 (4.5'-5.5') were saved and the remaining were discarded. |
| | 15 | | | | |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002099

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS

Sheet 2 of 3

PROJECT: P.E. BAY AVE TERMINAL

BORING No. SB-9 | DATE: 9-22-99

FIELD READINGS BY: M. OUDEH | PID Model: Mini RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| Pm | 1 | – | 0 | 0 | |
| | 2 | – | 0 | 0 | |
| | 3 | – | 0 | 0 | |
| | 4 | – | 0 | 0 | |
| | 5 | ✓ | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: PE Bay Ave Terminal

LOCATION: Laid out in the field as per drawing | DATE: 9/22/99

BORING No: SB-9 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING: [signature]

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) [signature] | DATE 9/22/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: 2 Samples taken in 2 one pt. JARS & 2 4 oz JARS for VOA's.

Also:

5'(1'-2') Vial # NJ8260091799-3

2(4.5'-5.5') Vial # ——— -19

08PA00002101

PA 547
5-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| PROJECT | NAME OF CONTRACTOR | BORING NO. | SURFACE ELEV. |
|---|---|---|---|
| PE BAY AVE. TERMINAL | CRAIG | SB-10 | |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | CONTRACT NO. 426-99-006 | DATE 9-23-99 |

SPOON: 2" O.D. 1 3/8" I.D.
CASING SIZE: H.S. Augers
HOLE TYPE: II
HAMMER (SAFETY) 140 # FALL 30"
HAMMER # FALL
DRILLER: S. BURNS
INSPECTOR: M. OUDEH

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/23/99 | 11:30 AM | 5.9' | found in S#3 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D | SAMP. NO. | SAMPLE DESCRIPTION AND REMARKS — LINE LOCATES CHANGE OF PROFILE | |
|---|---|---|---|---|---|---|
| H.S. Augers | 0 | Hand Auger | Full | | ASPHALT PAVEMENT | 0.4 |
| | | | | | CRUSHED ROCK | 1.0' |
| | | | | 1 | Fill br. m-f sand, tr. gravel, tr. silt | |
| | | | | 2 | Same | |
| | 5 | | | 3 | Same | |
| | | 4-6 / 7-4 | 16" | 4 | Fill br-grey m-f sand, tr. gravel, tr. silt | |
| | | 2-1 / 2-2 | 18" | 5 A | Same | 9.0 |
| | 10 | | | 5 B | Misc. fill red-br silty clay, tr. fine sand | 10.0 |
| | | | | | Bottom of Boring | |
| | 15 | | | | NOTE: All samples were screened for VOCs with a PID. S#1 (1'-2') and S#3 (5'-5.5') were saved and the remaining were discarded. | |
| | 20 | | | | | |
| | 25 | | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002102

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS



PROJECT: PE BAY AVE. TERMINAL
BORING No. SB-10 DATE: 9-23-99
FIELD READINGS BY: M. OUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| | 2 | — | 0 | 0 | |
| | 3 | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5A | — | 0 | 0 | |
| | 5B | — | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: P.F. Bay Ave Terminal

LOCATION: Laydown in the field as per drawing | DATE: 9/23/99

BORING No: SB-10 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| RELINQUISHED BY (SIGN) | DATE / TIME | RECEIVED BY (SIGN) |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE / TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE / TIME | RECEIVED BY LAB |

REMARKS: Sample #1 (1'-2') Vial # NJ826009179 9-16
Sample #3 (5'-5.5') ——— 13

2 Samples taken in 2 one pt. JARS & 2 4 oz JARS.

08PA00002104

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| | | | |
|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: SB-11 | SURFACE ELEV. |
| LOCATION: Laid out in the field as per drawing | | CONTRACT NO.: 426-99-006 | DATE: 9-25-99 |
| SPOON: 2" O.D. 1 3/8" I.D. | CASING SIZE: H.S. Augers | HOLE TYPE | |
| HAMMER (SAFETY): 140 # FALL 30" | HAMMER: # FALL " | | |
| DRILLER: S. BURNS | | | |
| INSPECTOR: M. OUDEH | | | |

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/25/99 | Am | 9.9' | Found in S#5 |
| | | | |
| | | | |

| CASING BLOWS/FT.[1] | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS — LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| H.S. | 0 | HAND | FULL | | ASPHALT PAVEMENT 0.5' |
| | | | | | CRUSHED ROCK 1.0' |
| AUGERS | | AUGER | | 1 | Fill br. m.f Sand, tr. gravel, tr. silt |
| | | | | 2 | Same |
| | 5 | | | 3 | Same |
| | | 5-8 | 18" | 4 | Same |
| | | 9-8 | | | |
| | | 10-9 | 20" | 5 | Same |
| | 10 | 6-13 | | | 10.0 Bottom of Boring |
| | | | | | Note: all the samples were screened for VOC's with a PID. Sample #1 (1'-2') and #5 (9'-9.5') were saved and the remaining were discarded. |
| | 15 | | | | |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002105

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS



PROJECT: P.C Bay Auto Terminal

BORING No. SB-11 DATE: 9/25/99

FIELD READINGS BY: M Dudeh PID Model: Mini RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| Am | 1 | – | 0 | 0 | |
| | 2 | – | 0 | 0 | |
| | 3 | – | 0 | 0 | |
| | 4 | – | 0 | 0 | |
| | 5 | – | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: PE Bay Aug. Terminal

LOCATION: Laid out in the field as per drawing | DATE: 9/25/99

BORING No: SB-11 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9/25/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: 2 Samples taken in 2 one qt. Jars & 2 4 oz Jars for Vocs

Vial # NJ 8260092499-6 Sample 1'-2'

Vial # ——— 12 Sample 9'-9.5'

08PA00002107

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| | | | |
|---|---|---|---|
| PROJECT: Pt. Bay Ave. Terminal | NAME OF CONTRACTOR: CRAIG | BORING NO.: SB-12 | SURFACE ELEV. |
| LOCATION: Laid out in the field as per drawing | | CONTRACT NO.: 426-99-006 | DATE: 9-25-99 |

SPOON: 2" O.D. 1 3/8" I.D. | CASING SIZE: HS Aug. | HOLE TYPE:
HAMMER: (Safety) 140 # FALL 30" | HAMMER: # FALL
DRILLER: S. Burns
INSPECTOR: M. Oudeh

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/25 | Pm | 10.5' | found in S#4 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| HS Augers | 0 | Hand Auger | full | | Asphalt Pavement 0.4' |
| | | | | | Crushed Rock 1.0' |
| | | | | 1 | Misc. fill br. c-f Sand, some cobbles, tr. silt, tr. gravel |
| | | | | 2 | Same |
| | 5 | | | 3 | Fill br. m-f Sand, tr. gravel, tr. silt |
| | | | | 4 | Same 7.0' |
| | | | | | Bottom of boring |
| | 10 | | | | Note: all samples were screened for VOCs with a PID. S#1 (1'-2') & S#3 (5'-6') were saved & the remaining were discarded. |
| | 15 | | | | |
| | 20 | | | | |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002108

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS

Sheet 2 of 3

PROJECT: P.E. Bay Ave. Terminal
BORING No. SB-12 DATE: 9-25-99
FIELD READINGS BY: M. Ouden PID Model: Mini RAE.

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| PM | 1. | – | 0 | 0 | |
| | 2 | – | 0 | 0. | |
| | 3 | – | 0 | 0 | |
| | 4 | – | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: P.E. Bay Ave. Terminal

LOCATION: Laid out in the field as per drawing | DATE: 9/25/99

BORING No: SB-12 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9/25/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: 2 samples taken in 2 one pt. JARS & 2 4oz JARS for VOA'S.

Sample #1 (1'-2') Vial # NJ8260092499-1

Sample # 3 (5'6') ——— 9

08PA00002110

A 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 4

| | | | |
|---|---|---|---|
| PROJECT: PE. BAY AVE. TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: MW-13 | SURFACE ELEV.: |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | CONTRACT NO.: 426-99-006 | DATE: 9-23-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | "A" M.W. |

| HAMMER (SAFETY) | HAMMER |
|---|---|
| 140 # FALL 30" | # FALL |

DRILLER: S. BURNS

INSPECTOR: M. OUDEH

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/23 | PM | 5.5' | Found in S#3 |

| CASING BLOWS/FT. | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| H.S. | 0 | | | | ASPHALT PAVEMENT 0.5' |
| | | | | | CRUSHED ROCK 1.0' |
| AUGERS | | HAND AUGER | FULL | 1 | Fill br. m-f Sand, tr. gravel, tr. silt (NOTE: MATERIAL IS Moist) |
| | | | | 2 | Fill br. m-f Sand, tr. gravel, tr. silt |
| | 5 | | | 3 | Same |
| | | 6-10 | | | |
| | | 9-8 | 19" | 4 | Same |
| | | 5-6 | 19" | 5 | Fill br - grey m-f Sand, tr. gravel, tr. silt |
| | 10 | 4-3 | | | |
| | | 1-2 | 24" | 6 A | SAME 10.2' |
| | | 1-3 | | 6 B | Misc Fill red-br silty clay, tr. fine Sand |
| | | WOH | 15" | 7 | SAME |
| | | | | | 14.0' |
| | 15 | | | | Bottom of Boring |
| | | | | | NOTE: All samples were screened for VOC's |
| | | | | | With a PID. S#1 (1'-2') and |
| | | | | | S#3 (4.5'-5') were saved and |
| | 20 | | | | the remaining were discarded. |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002111

# THE PORT AUTHORITY OF N.Y & N.J.

## ENGINEERING DEPARTMENT

### MATERIALS ENGINEERING DIVISION

### PID READINGS



PROJECT: P.E. BAY AVE. TERMINAL

BORING No. MW-13 | DATE: 9-23-99

FIELD READINGS BY: M. OUDEH | PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| PM | 1 | – | 0 | 0 | |
| | 2 | – | 0 | 0 | |
| | 3 | – | 0 | 0 | |
| | 4 | – | 0 | 0 | |
| | 5 | – | 0 | 0 | |
| | 6 | – | 0 | 0 | |
| | 6A | – | 0 | 0 | |
| | 7 | – | 0 | 0 | |

PORT AUTHORITY OF NY & NJ
Engineering Department - Materials Division

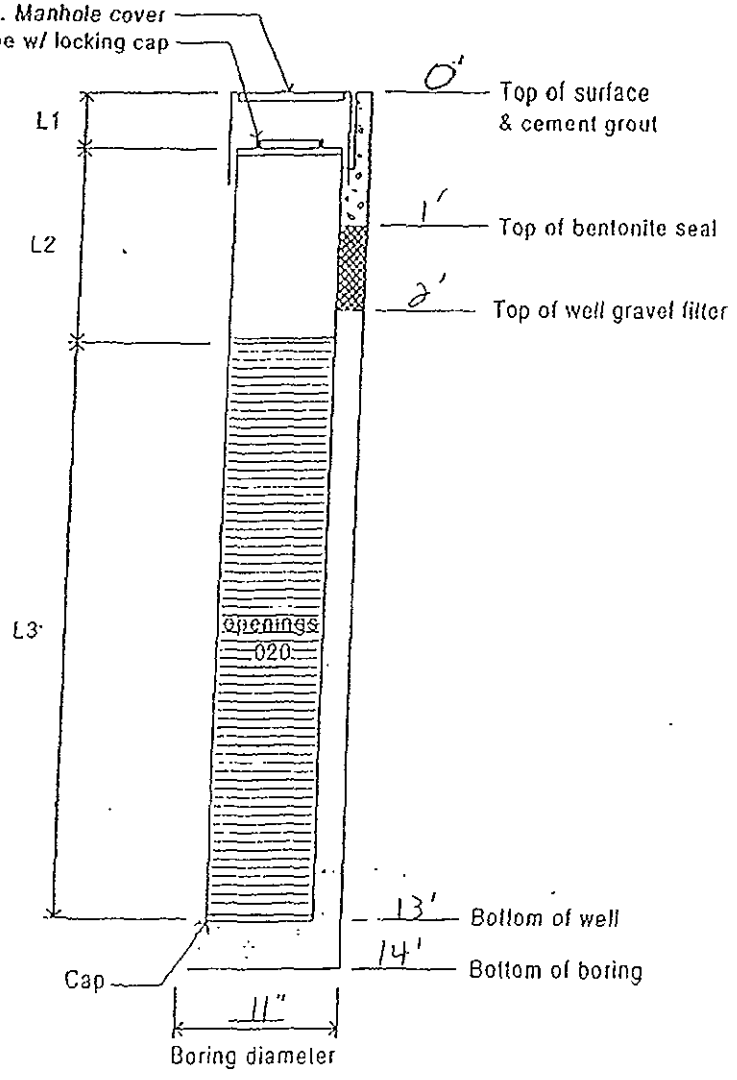
Well Installation Report

Sheet 3 of 4

| | | | | |
|---|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | | | | CONTRACT NO. #26-99-006 |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | | | CONTRACTOR: CRAIG |
| WELL NO. MW-13 | WELL TYPE "A" MONITOR | INSPECTOR M. OUDEH | DRILLER S. BURNS | DATE 9-23-99 |

Well Development Report (NOTE: WATER LEVEL READINGS FROM TOP OF PVC)

| | | | |
|---|---|---|---|
| DATE 9/23/99 | WATER LEVEL BEFORE 5.8' | WATER LEVEL AFTER 5.9' | TAKEN 60 MINUTES AFTER |




Back filled 13' to 14' with bentonite

08PA00002113

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 4 of 4

PROJECT: Pt. Bay Ave. Terminal

LOCATION: laid out in the field as per drawing | DATE: 9/23/99

BORING No: MW-13 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) | DATE 9/23/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: Vial # NJ 8260091799-15 Sample #1 (1'-2')

" 14 Sample #3 (4.5'-5')

2 Samples taken in 2 one qt. JARS & 2 4oz JARS.

08PA00002114

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 1

| | | | |
|---|---|---|---|
| PROJECT: P.E. BAY AVE TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: MW-14 | SURFACE ELEV. |
| LOCATION: Laid out in the field as per drawing | | CONTRACT NO.: H26-99-006 | DATE: 9-24-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | "A" M.W. |

HAMMER (SAFETY) 140 # FALL 30" HAMMER # FALL "

DRILLER: S. BURNS

INSPECTOR: M. OUDEH

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/24/99 | AM | 9.7' | Found in S#5 |

| CASING BLOWS/FT.[2] | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | [3]SAMPLE DESCRIPTION AND REMARKS — LINE LOCATES CHANGE OF PROFILE |
|---|---|---|---|---|---|
| H.S. Augers | 0 | Hand Auger | Full | | ASPHALT PAVEMENT 0.5' |
| | | | | | CRUSHED ROCK 1.0' |
| | | | | 1 | Fill br. m-f Sand, tr. gravel, tr. silt |
| | | | | 2 | Same |
| | 5 | | | 3 | Fill br. c-f Sand, some gravel, tr. silt |
| | | 8-9 12-14 | 18" | 4 | Same |
| | | 15-15 21-19 | 20" | 5 | Same |
| | 10 | 8-9 9-9 | 17" | 6 | Same |
| | | 5-5 6-6 | 18" | 7 | Fill br-grey c-f Sand, tr. gravel, tr. silt |
| | 15 | 3-3 5-6 | 20" | 8 | Fill br-grey m-f Sand, tr. gravel, tr. silt |
| | | 4-5 6 | 16" | 9 | SAME |
| | | | | | 17.5' Bottom of Boring |
| | 20 | | | | NOTE: All the samples were screened for VOC's with a PID. S#1 (1'-2') & S#5 (8'-9') were saved and the remaining were discarded |
| | 25 | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

08PA00002115

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
PID READINGS

Sheet 2 of 4

PROJECT: P.E. BAY AVE TERMINAL

BORING No. MW-14 DATE: 9/24/99

FIELD READINGS BY: M. OUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| | 2 | — | 0 | 0 | |
| | 3 | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |
| | 6 | — | 0 | 0 | |
| | 7 | — | 0 | 0 | |
| | 8 | — | 0 | 0 | |
| | 9 | — | 0 | 0 | |

## PORT AUTHORITY OF NY & NJ
### Engineering Department - Materials Division

**Well Installation Report** Sheet 2 of 4

| | | | | |
|---|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | | | | CONTRACT NO. 426-99.006 |
| LOCATION: Laid out in the field as per drawing | | | | CONTRACTOR CRAIG |
| WELL NO. MW-14 | WELL TYPE "A" MONITOR | INSPECTOR M. OUDEH | DRILLER S. BURNS | DATE 9/24/99 |

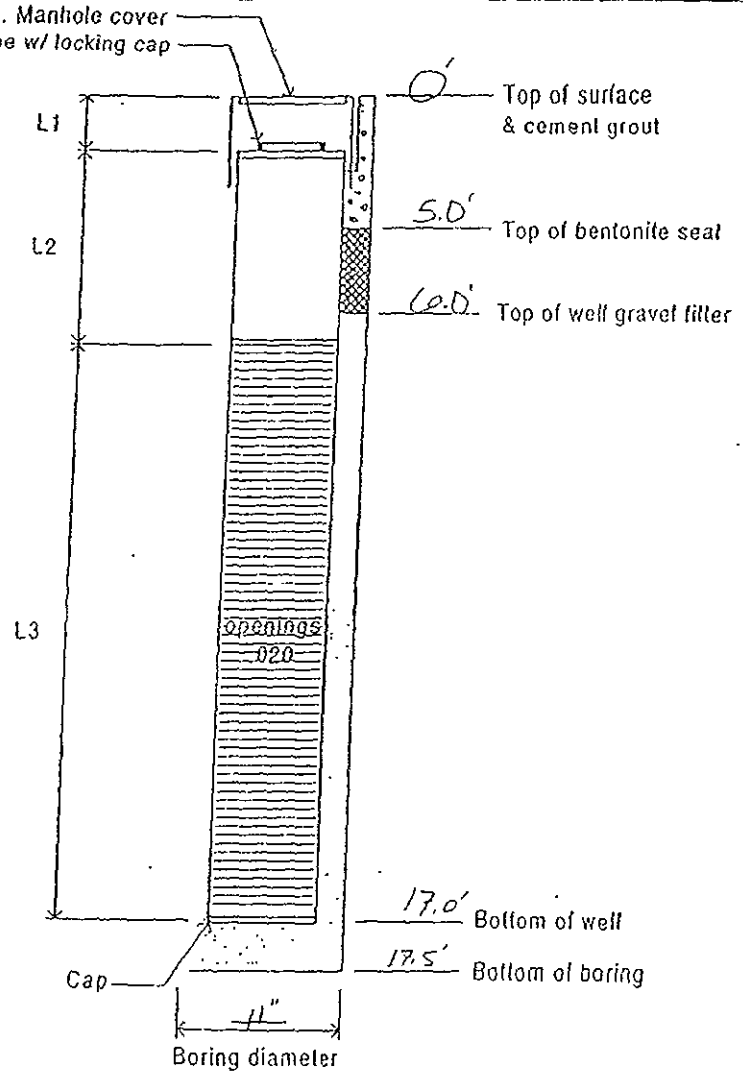
**Well Development Report** (NOTE: WATER LEVEL READINGS FROM TOP OF PVC)

| | | | |
|---|---|---|---|
| DATE 9/24/99 | WATER LEVEL BEFORE 9.5' | WATER LEVEL AFTER 9.5' | TAKEN 60 MINUTES AFTER |

L1 = 0.3'

L2 = 6.7'

L3 = 10.0'




REMARKS: Backfilled 17'-17.5' with bentonite

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 4 of 4

PROJECT: P.E. Bay Ave. Terminal

LOCATION: Laid out in the field as per drawing | DATE: 9-24-99

BORING No: MW-14 | TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING [signature]

| | | |
|---|---|---|
| RELINQUISHED [signature] | DATE 9/24/99 | RECEIVED |
| BY (SIGN) | TIME | BY (SIGN) |
| RELINQUISHED | DATE | RECEIVED |
| BY (SIGN) | TIME | BY (SIGN) |
| RELINQUISHED | DATE | RECEIVED |
| BY (SIGN) | TIME | BY LAB |

REMARKS: Vial # NJ8260091799-11 Sample 1'-2'

——— 9 Sample 8'-9'

2 samples taken in 2 one pt. JARS & 2 4 oz JARS for VOA's

08PA00002118

PA 547
6-90

# THE PORT AUTHORITY OF NY & NJ

Engineering Department
Construction Division
Materials Engineering Section

## BORING REPORT

SHEET 1 OF 3

| | | | |
|---|---|---|---|
| PROJECT: P.E. BAY AVE. TERMINAL | NAME OF CONTRACTOR: CRAIG | BORING NO.: SB-15 | SURFACE ELEV. |
| LOCATION: LAID OUT IN THE FIELD AS PER DRAWING | | CONTRACT NO.: 426-99-006 | DATE: 9-24-99 |

| SPOON | CASING SIZE | HOLE TYPE |
|---|---|---|
| 2" O.D. 1 3/8" I.D. | H.S. Augers | |

| HAMMER (SAFETY) | HAMMER |
|---|---|
| 140 # FALL 30" | # FALL |

DRILLER: S. BURNS

INSPECTOR: M. DUDEH

GROUND WATER LEVEL

| Date | Time | Depth | Remarks |
|---|---|---|---|
| 9/24 | AM | 9.1' | Found in S#5 |

| CASING BLOWS/FT.[1] | DEPTH | SPOON BLOWS/6" | RE-COV'D[1] | SAMP.[2] NO. | *SAMPLE DESCRIPTION AND REMARKS LINE LOCATES CHANGE OF PROFILE | |
|---|---|---|---|---|---|---|
| H.S. | 0 | HAND | Full | | ASPHALT PAVEMENT | 0.5' |
| | | | | | CRUSHED ROCK | 1.0' |
| | | AUGER | | 1 | Fill br. m-f sand, tr. gravel, tr. silt | |
| | | | | 2 | Same | |
| | 5 | | | 3 | Same | |
| | | 9-11 | 19" | 4 | Same | |
| | | 14-14 | | | | |
| | | 13-13 | 19" | 5 | Same | |
| | 10 | 13-14 | | | | 10.0' |
| | | | | | Bottom of Boring | |
| | 15 | | | | Notes: All samples were screened for VOC's with a PID. S#1 (1'-2') & S#5 (8'-8.5') were saved and the remaining were discarded. | |
| | 20 | | | | | |
| | 25 | | | | | |

NOTES: 1 — Length recovered; 0" — Loss of Sample, T — Trap used
2 — U = undisturbed; A = auger; OER = open end rod; V = vane
3 — Log depth of change in color of wash water, loss of water, artesian water, sand heave in casing, etc.

# THE PORT AUTHORITY OF N.Y & N.J.

## ENGINEERING DEPARTMENT
### MATERIALS ENGINEERING DIVISION
### PID READINGS



PROJECT: P.E. BAY AVE. TERMINAL

BORING No. SB-15 DATE: 9/24/99

FIELD READINGS BY: M. OUDEH PID Model: MINI RAE

| TIME | SAMPLE No. | IN-SITU Split Spoon Reading | HEAD-Space Reading | BREATHING Zone Reading | REMARKS |
|---|---|---|---|---|---|
| AM | 1 | — | 0 | 0 | |
| | 2 | — | 0 | 0 | |
| | 3 | — | 0 | 0 | |
| | 4 | — | 0 | 0 | |
| | 5 | — | 0 | 0 | |

# THE PORT AUTHORITY OF N.Y & N.J.

ENGINEERING DEPARTMENT
MATERIALS ENGINEERING DIVISION
CHAIN OF CUSTODY RECORD

Sheet 3 of 3

PROJECT: P.B. Bay Ave. Terminal

LOCATION: Laid out in the field as per dwg. DATE: 9/24/99

BORING No: SB-15 TOTAL No. OF SAMPLES: 2

SIGNATURE OF ALL PRESENT AT SAMPLING: [signature]

| | | |
|---|---|---|
| RELINQUISHED BY (SIGN) [signature] | DATE 9/24/99 TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY (SIGN) |
| RELINQUISHED BY (SIGN) | DATE TIME | RECEIVED BY LAB |

REMARKS: Vial # NJ8260091799-7 Sample 0'-2'
10 Sample 8'-8.5'

2 samples taken in 2 one pt. JARS & 2 4 oz JARS for VOA's

08PA00002121

# THE PORT AUTHORITY
## OF NEW YORK AND NEW JERSEY
*CENTRAL SURVEY GROUP J.S.T.C. 3RD FLOOR*

**BOREHOLE REPORT**

E.P.A.M.T.
CP8-381.030
BAY AVENUE TERMINAL

| BORING OR WELL | N J STATE PLANE '27 NORTHING | N J STATE PLANE '27 EASTING | E.P.A.M.T. LOCAL GRID "E" STATION | E.P.A.M.T. LOCAL GRID "F" OFFSET | ELEVATIONS ELEV 300.00' = N.G.V.D. '29 + 2.653' RIM | PVC | GRADE |
|---|---|---|---|---|---|---|---|
| MW 1 | 671,903.20 | 2,144,391.86 | 63+49.89 | 7+56.03 | 308.53 | 306.24 | 306.50 |
| MW 2 | 671,777.17 | 2,144,274.47 | 63+37.38 | 9+27.81 | 309.41 | 309.16 | 309.40 |
| SB 3 | 671,480.78 | 2,144,501.21 | 64+74.22 | 7+36.16 | 306.38 | | 306.40 |
| MW 4 | 671,763.40 | 2,144,414.45 | 64+55.09 | 8+50.83 | 308.94 | 308.62 | 308.90 |
| SB 5 | 671,825.48 | 2,144,753.91 | 66+80.75 | 5+89.75 | 307.98 | | 308.00 |
| SB 6 | 671,239.95 | 2,144,548.66 | 68+87.69 | 11+74.68 | 308.61 | | 308.60 |
| MW 7 | 670,809.37 | 2,144,299.03 | 69+62.94 | 16+66.66 | 308.51 | 308.14 | 308.50 |
| MW 8 | 671,520.51 | 2,145,117.96 | 71+55.56 | 5+99.31 | 308.19 | 307.87 | 308.20 |
| SB 9 | 670,906.11 | 2,145,002.59 | 74+50.63 | 11+50.42 | 308.51 | | 308.50 |
| SB 10 | 670,678.39 | 2,144,717.59 | 73+71.21 | 15+06.47 | 309.16 | | 309.20 |
| SB 11 | 671,144.16 | 2,145,619.18 | 77+82.00 | 5+78.55 | 308.04 | | 308.00 |
| SB 12 | 670,725.69 | 2,145,321.26 | 78+12.04 | 10+91.35 | 309.71 | | 309.70 |
| MW 13 | 670,450.30 | 2,145,039.71 | 77+65.18 | 14+82.39 | 308.83 | 308.46 | 308.80 |
| MW 14 | 670,801.43 | 2,145,915.16 | 82+27.42 | 8+60.17 | 308.15 | 307.85 | 308.20 |
| SB 15 | 670,437.68 | 2,145,675.96 | 82+68.94 | 10+93.54 | 308.19 | | 308.20 |

WTC-OL 082698

(Port Authority Acknowledgment)

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On the 22 day of Nov, 2000, before me personally came Lillian C. Borrone to me known, who, being by me duly sworn, did depose and say that she resides in Avon, New Jersey; that she is the Asst. Exec. Director of The Port Authority of New York and New Jersey, one of the corporations described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Commissioners of said corporation; and that she signed her name thereto by like order.

KAREN E. EASTMAN
Notary Public, State of New York
No. 01EA4766314
Qualified in New York County
Commission Expires Feb. 28, 2001

Karen E. Eastman

STATE OF New Jersey
COUNTY OF Hudson } ss.

Barbara J. Wurz
Notary Public, State of New Jersey
Registered in Essex County
My Commission Expires July 25, 2001

On the 25th day of Oct. in the year 2000, before me, the undersigned, a Notary Public in and for said state, personally appeared M. Brian Maher, 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.

Barbara J. Wurz
(notarial seal and stamp)

PDN - Maher New Lease Final

# Exhibit C

1 BEFORE THE

2 FEDERAL MARITIME COMMISSION

3 - - - - - - - - - - - - - - - - - - x

4 APM TERMINALS NORTH AMERICA, INC. :

5 Complainant :

6 v. : Docket No. 07-01

7 THE PORT AUTHORITY OF NEW YORK :

8 AND NEW JERSEY, :

9 Respondent and :

10 Third-Party Complainant :

11 - - - - - - - - - - - - - - - - - - X

12 (Caption continued on Page Two)

13

14 Videotaped Deposition of M. BRIAN MAHER

15 Newark, New Jersey

16 Monday, June 9, 2008, 9:37 a.m.

17

18 Job No.: 1-129549

19 Pages 1 through 313

20 Reported by: Debra A. Whitehead

21

22

1 (Caption continued from Page 1)
2 - - - - - - - - - - - - - - - - - - X
3 v.
4 MAHER TERMINALS, LLC
5 Third-Party Respondent and
6 Counter-Complainant
7 - - - - - - - - - - - - - - - - - - X
8 Videotaped Deposition of M. BRIAN MAHER, held
9 at the offices of:
10
11 WINSTON & STRAWN LLP
12 One Riverfront Plaza
13 Newark, New Jersey 07102
14 (973) 621-2230
15
16
17 Pursuant to Notice, before Debra A. Whitehead, an
18 Approved Reporter of the United States District Court
19 and Notary Public of the State of New Jersey.
20
21
22

1 A P P E A R A N C E S

2

3 ON BEHALF OF COMPLAINANT:

4 MARC J. FINK, ESQUIRE

5 SHER & BLACKWELL LLP

6 1850 M Street, Northwest

7 Suite 900

8 Washington, D.C. 20036

9 (202) 463-2500

10

11

12 ON BEHALF OF RESPONDENT AND THIRD-PARTY

13 COMPLAINANT:

14 DONALD F. BURKE, ESQUIRE

15 THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

16 255 Park Avenue South

17 13th Floor

18 New York, New York 10003

19 (212) 216-6370

20

21

22

1 A P P E A R A N C E S C O N T I N U E D

2

3 ON BEHALF OF THIRD-PARTY RESPONDENT,

4 COUNTER-COMPLAINANT, AND THE WITNESS:

5 LAWRENCE I. KIERN, ESQ.

6 WINSTON & STRAWN LLP

7 1700 K Street, Northwest

8 Washington, D.C. 20006-3817

9 (202) 282-5000

10

11

12 ALSO PRESENT:

13 David Lane, Video Specialist

14

15

16

17

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22

1 videographer. So the -- you need to answer in the
2 affirmative or in the negative, rather than nodding
3 your head or -- or some other gesture. Okay?
4 A Okay.
5 Q Let me -- let me start with what has been
6 marked with -- by the court reporter as Exhibit 162,
7 which your counsel handed to me this morning, which is
8 your current business card.
9 (Maher Deposition Exhibit 162 marked for
10 identification, to be retained by counsel.)
11 BY MR. FINK:
12 Q Let me hand you Exhibit 162 and ask you if
13 you can identify that, please.
14 A Yes.
15 Q And what -- what is your occupation today?
16 A I'm -- I'm retired from Maher Terminals,
17 and I am, through Essex Equity Management, I am
18 managing my affairs.
19 Q Okay. Congratulations.
20 A Thank you.
21 Q Prior -- when did that occur?
22 A Well, the -- I retired from Maher

1 Terminals -- I think at the end of October of 2007 was
2 the final date.
3 Q And when you retired from Maher Terminals,
4 what was your position with Maher Terminals?
5 A I was chairman and chief executive officer.
6 Q And how long were you in that position?
7 A I was chief -- I was chief executive for 20
8 years plus, and I was chairman from about 1995.
9 Q Prior to your becoming CEO, what was --
10 what position did you -- did you have?
11 A I was chief operating officer, I'm
12 president and chief operating officer. That -- that
13 position, I believe, was about 1980.
14 Q And that was also for Maher Terminals?
15 A That was Maher Terminals. My whole career
16 was at Maher Terminals.
17 Q Okay. Would you also then please give me
18 your educational background, starting with college
19 first.
20 A Well, that's -- that's it. I have a -- I
21 have a Bachelor's Degree in economics from Ohio State
22 University.

1 Q And when did you get that degree?
2 A 1969.
3 Q And you -- after college you went directly
4 to work with Maher Terminals?
5 A That's correct.
6 Q Okay. Mr. Maher, do you have a general
7 understanding of the issues that are presented in this
8 litigation?
9 A Well, how do we define "this litigation"?
10 Is this the -- the Maersk -- the Maersk/APM case or
11 the Port Authority/Maher case?
12 Q There really are two cases that are
13 presented. One is Maersk versus the Port Authority;
14 and, secondly, it's the Port Authority versus Maher.
15 So let's start with the first one.
16 Do you have a general understanding of the
17 nature of the issues presented by the litigation
18 involving APM and the Port Authority?
19 A Well, just that APM believes that the Port
20 Authority was late in delivering the so-called 84
21 acres and is seeking damages for that.
22 Q Okay. And what about the litigation

1 time having direct discussions with the port
2 department about those negotiations.
3 Q And, once again, did those discussions
4 begin in 1998 or 1999, if you recall?
5 A Yes, I would say that the discussions of
6 the -- of what finally became Lease EP-249 began in
7 '98, in that -- in that time frame, yes. I can't
8 remember exactly when.
9 Q The latter part of 1998, sir?
10 A I don't know. Don't know.
11 Q Okay. Who else on behalf of Maher was
12 involved in the negotiations of Lease EP-249?
13 A Well, my brother Basil; and I would say
14 Randy Mosca, our CFO; and Scott Schley, our general
15 counsel; Roger Nortillo, who was responsible for
16 engineering and facilities; and I would also say Joe
17 Curto, who was our senior operating person.
18 Q And who was involved on behalf of the Port
19 Authority in negotiating EP-249 with you?
20 A Well, of course Lillian Borrone was port
21 director, and my recollection is that Dennis Lombardi
22 was involved. I believe that Gary Arcus was involved.

# Exhibit D

1 BEFORE THE

2 FEDERAL MARITIME COMMISSION

3 - - - - - - - - - - - - - - - - - - - x

4 APM TERMINALS NORTH AMERICA, INC. :

5 Complainant :

6 v. : Docket No. 07-01

7 THE PORT AUTHORITY OF NEW YORK :

8 AND NEW JERSEY, :

9 Respondent and :

10 Third-Party Complainant :

11 - - - - - - - - - - - - - - - - - - - X

12 (Caption continued on Page Two)

13

14 Videotaped Deposition of RANDALL P. MOSCA

15 Newark, New Jersey

16 Wednesday, June 11, 2008

17 2:03 p.m.

18

19 Job No.: 1-131011

20 Pages 1 through 185

21 Reported by: Patricia Mulligan Carruthers, CSR

22

1 (Caption continued from Page 1)

2 - - - - - - - - - - - - - - - - - - X

3 v.

4 MAHER TERMINALS, LLC

5 Third-Party Respondent and

6 Counter-Complainant

7 - - - - - - - - - - - - - - - - - - X

8 Videotaped Deposition of RANDALL P. MOSCA,

9 held at the offices of:

10

11 WINSTON & STRAWN LLP

12 One Riverfront Plaza

13 Newark, New Jersey 07102

14 (973) 621-2230

15

16

17 Pursuant to agreement, before Patricia Mulligan

18 Carruthers, Certified Shorthand Reporter and Notary

19 Public of the State of New Jersey.

20

21

22

1 A P P E A R A N C E S

2

3 ON BEHALF OF COMPLAINANT:

4 HEATHER M. SPRING, ESQUIRE

5 SHER & BLACKWELL LLP

6 1850 M Street, Northwest

7 Suite 900

8 Washington, D.C. 20036

9 (202) 463-2500

10

11

12 ON BEHALF OF RESPONDENT AND THIRD-PARTY

13 COMPLAINANT:

14 DONALD F. BURKE, ESQUIRE

15 THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

16 255 Park Avenue South

17 13th Floor

18 New York, New York 10003

19 (212) 216-6370

20

21

22

1 A P P E A R A N C E S C O N T I N U E D

2

3 ON BEHALF OF THIRD-PARTY RESPONDENT AND

4 COUNTER-COMPLAINANT:

5 LAWRENCE I. KIERN, ESQ.

6 WINSTON & STRAWN LLP

7 1700 K Street, Northwest

8 Washington, D.C. 20006-3817

9 (202) 282-5000

10

11

12 ALSO PRESENT:

13 David Lane, Video Specialist

14

15

16

17

18

19

20

21

22

1 Q Where was that?

2 A It was a site, I don't know if it was in

3 New York or New Jersey, but the location wasn't as

4 important as the ability to access the information.

5 Q And that was the actual books and records

6 as opposed to a synopsis?

7 A That was -- Yes. Whatever the information

8 the bidders were looking for that included much more

9 than the financial records of the company.

[redacted]

[redacted]

7 Q Okay. Did Maher have debt to the Port
8 Authority at the time --
9 A Debt wouldn't be the right -- There would
10 be no debt to the Port Authority. We had a lease
11 agreement with the Port Authority. There was no debt.
12 Q What about the improvements that were
13 capitalized?
14 A The improvements. As we borrowed the
15 money, it came back to us in the form of a lease
16 expense.
17 Q Okay. I got you. So you wouldn't call
18 that a debt even though it was infrastructure
19 improvements funded by the Port Authority?
20 A It was strictly a P&L item. It was not a
21 balance sheet item where debt would be recorded.
22 Q Were you involved -- Let's just go back.

# Exhibit E

BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

---

DOCKET NO. 08-03

---

MAHER TERMINALS, LLC

COMPLAINANT,

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT.

---

MAHER TERMINALS, LLC'S RESPONSES TO
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY'S
FIRST SET OF INTERROGATORIES TO MAHER TERMINALS, LLC

---

## General Objections

1. Complainant Maher Terminals, LLC ("Complainant" or "Maher") objects to the Interrogatories and the Instructions to the extent they impose obligations beyond those required by the Federal Maritime Commission Rules of Practice and Procedure (the "Rules"), and to the extent applicable, the Federal Rules of Civil Procedure; Complainant will comply with the Rules and the Federal Rules of Civil Procedure in responding to these requests.

2. Complainant objects to the Interrogatories to the extent they seek information that constitutes privileged attorney-client communications, attorney work product, or information that is otherwise protected production under privileges, laws, or rules. In the event that such information is produced in response to the Interrogatories, such production is inadvertent and

shall not constitute a waiver of any privilege, doctrine, or other ground for protection such documents from production.

3. Complainant objects to the Interrogatories to the extent the information sought is in the sole possession of third-parties, including Respondent Port Authority of New York and New Jersey ("Respondent" or "PANYNJ").

4. Complainant objects to the Interrogatories to the extent they purport to require Complainant to respond on behalf of other persons.

5. To the extent that any Interrogatory is unspecified or not limited in time to the period of the event at issue in this proceeding, Complainant objects to such Interrogatory on the ground that (1) it exceeds the scope of permissible discovery; (2) it improperly attempts to impose upon Complainant an unreasonable burden and expense; and (3) it is neither relevant nor reasonably calculated to lead to the production of admissible evidence

6. To the extent the Interrogatories require Complainant to disclose irrelevant details of its relationship with persons or entities other than parties to the proceeding and/or other entities involved in the matters at issues in this proceeding, Complainant objects on the basis that such Interrogatories are overly broad and burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. Complainant objects to the Interrogatories to the extent they seek Complainant's contentions while discovery is ongoing, as relevant facts may be in the possession of third-parties, including Respondent.

8. Complainant objects to the Interrogatories to the extent they are overbroad, vague, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise unrelated to any claim or defense of any party to this matter.

9. Complainant objects to the Interrogatories to the extent they call for more than principal and material facts.

10. Complainant has not yet completed its investigation of the facts relating to this matter. Consequently, all of the responses contained herein are based only upon such information and documentation as is currently available to Complainant. It is anticipated that further investigation, research, and analysis will supply additional facts, add meaning to known facts, and perhaps establish entirely new factual conclusions, all of which may in turn lead to substantial additions or changes to these responses Accordingly, Complainant reserves the right to supplement and/or amend these responses up to the date of hearing, as its investigation continues Complainant will comply with the Rules in responding to the Interrogatories

11. Complainant objects to the Interrogatories as unduly burdensome to the extent they request specific and comprehensive details concerning years of dealings between Complainant, including its multiple officials and employees, and various parties. Complainant is continuing its investigation into the matters at issue in this action Respondent will have ample opportunity to review documents and depose witnesses with relevant knowledge

12. Complainant objects to the Interrogatories to the extent they seek to impose obligations, standards, or criteria in excess of those imposed by the Shipping Act, 1984, as amended, and other applicable laws.

13. Complainant objects to the requests as unreasonably cumulative and duplicative.

14 Maher objects to the Interrogatories pursuant to Rule 205(d) to the extent that it has produced business records pursuant to the requests of PANYNJ and the burden of PANYNJ

of ascertaining the answer is substantially the same.

15. These general objections are incorporated by reference into each and every response below to the extent applicable and without the necessity to restate them below.

## RESPONSES TO FIRST INTERROGATORIES AND SPECIFIC OBJECTIONS

Interrogatory No. 1: *As to each of the following alleged differences between EP-248 and EP-249, identify when Maher first became aware of the alleged differences, and describe how Maher became aware of the alleged differences, any steps taken by Maher to resolve the alleged difference, and when such steps were taken:*

- *(a) the base annual rent as alleged in paragraphs IV C & D of the Complaint,*
- *(b) the annual increase in the base annual rent as alleged in paragraph IV D of the Complaint,*
- *(c) investment requirements as alleged in paragraphs IV B & F of the Complaint;*
- *(d) container throughput requirements as alleged in paragraphs IV B & G of the Complaint;*
- *(e) first point of rest requirements as alleged in paragraphs IV B. & H. of the Complaint; and*
- *(f) security deposit as alleged in paragraphs IV B & I of the Complaint*

Response: Maher objects to the request to the extent it requires a broad narrative of Maher's claim that is more than the production of principle and material facts, and as overbroad, unduly burdensome, and seeking information not relevant and not reasonably calculated to lead to the discovery of admissible evidence in this matter insofar as it seeks information regarding the date of Maher's awareness of PANYNJ's violations, which date has no bearing on this proceeding in light of the ongoing nature of the violations and because the Shipping Act provides no waiver or estoppel defense. Subject to the foregoing and general objections, Maher hereby provides the principle and material facts regarding Maher's awareness of the alleged differences, how Maher became aware of them, what Maher did to seek relief from PANYNJ's violations, and when Maher sought such relief.

Maher learned of PANYNJ's preference of APM Terminals North America, Inc.

("APM") during negotiation of EP-249. During these negotiations, Maher requested parity with APM , but PANYNJ's Lillian Borrone told Maher the APM terms were "off the table." PANYNJ's preference of APM and its refusal to provide parity to Maher is set forth in the documents produced by the parties in Dkt. No. 07-01 and in the testimony given by Brian Maher and Randall Mosca in Dkt. No. 07-01.

Both verbally and in writing, Maher asked for parity with APM. Such requests were made during the period 1997-2000, in negotiations, responses to draft proposals, as well as in written correspondence between Maher and PANYNJ Persons previously at Maher involved in the PANYNJ negotiations and in making such statements are expected to include, but may not be limited to, Brian Maher, Basil Maher, Randall Mosca, and Scott Schley.

PANYNJ told Maher that PANYNJ would provide a "level playing field" and that Maher would receive materially the same, or similar, lease terms to those offered to APM. However, later PANYNJ told Maher that the APM terms were "off the table" and that its terms given to Maher were its best and final offer, that is, it was a take it or leave it proposal The PANYNJ employee involved in these communications is Lillian Borrone, but other PANYNJ employees who may have knowledge include Dennis Lombardi, Vicky Cross-Kelly, Gary Arcus, Robert Evans, Cheryl Yetka, and Rudy Israel.

See also response to Interrogatories 4 and 6 *infra* and responses to Interrogatories 1-5 and 10 of PANYNJ's Second Interrogatories Discovery is still pending in this matter and Maher reserves the right to supplement and/or amend this response as appropriate.

Interrogatory No. 2: *Identify all individuals with material knowledge or salient information relating to the terms and negotiations of EP-248.*

Response: Maher objects to the request to the extent it requires more than the production of

principal and material facts, and as overbroad, unduly burdensome, and seeking information not relevant to this information and not reasonably calculated to lead to the discovery of admissible evidence in this matter. Maher further objects to this request to the extent that it calls for the production of information covered by the attorney client privilege and attorney work product doctrine.

First, the terms of this agreement are publicly available, the subject of media coverage, and therefore, likely are widely known by many persons. Second, EP-248 has many different aspects which do not pertain to the alleged disparities even if they may be otherwise "salient" Third, since PANYNJ and APM are the parties that negotiated EP-248, they in a far better position to know which of their witnesses have knowledge about EP 248

Subject to the general objections and the foregoing specific objections, at this point in the proceeding Maher expects the following PANYNJ persons are likely to have knowledge about EP-248:

- Gary Arcus
- Lillian Borrone
- Robert Evans, II
- Edmond Harrison
- Richard Larrabee
- Dennis Lombardi
- Charles McClafferty
- Myron Ronis

Additionally, Maher expects that current and former management in APM and elsewhere throughout the A.P. Moller group of companies and Maersk, Inc. are familiar with their

agreement with PANYNJ, including Marc Oppenheimer, Patricial Leung, John Nicola, John Leopprich, and Nicholas Taro. Former Sealand employees also have knowledge or information, including Jim Devine. Maher witnesses with relevant knowledge are Brian Maher, Basil Maher, Randy Mosca, and Scott Schley.

Discovery is still pending in this matter and Maher reserves the right to supplement and/or amend this response as appropriate.

Interrogatory No. 3: *Identify all individuals who were involved in the negotiations of EP-249 and/or involved in the consideration of, and decision to accept, the terms of EP-249.*

Response: Maher objects to the request as overbroad, unduly burdensome, and seeking information neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence in this matter. First, EP-249 has many different aspects which do not pertain to the alleged disparities and claims at issue in this litigation. Second, PANYNJ is in a far better position to know which of its witnesses have knowledge about EP-249. Subject to the general objections and the foregoing specific objections, at this point in the proceeding Maher would expect the following persons are likely to have knowledge about EP-249:

- Gary Arcus
- Lillian Borrone
- Robert Evans, II
- Richard Larrabee
- Dennis Lombardi
- Charles McClafferty
- Myron Ronis
- Cheryl Yetka
- Edmond Harrison
- Rudy Israel
- M. Brian Maher

- Randall Mosca
- Scott Schley

Discovery is still pending in this matter and Maher reserves the right to supplement and/or amend this response as appropriate.

Interrogatory No. 4: *Identify the dates on which Maher informed the Port Authority and/or the FMC that it believed that EP-248 was unduly or unreasonably preferential to APM, including the first such date, and identify who made such assertions and to whom, and all documents reflecting such assertions.*

Response: Maher objects to the request as overbroad, unduly burdensome, and seeking information not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence insofar as it requests information regarding the dates Maher informed the Port Authority or the FMC of PANYNJ's violations, which dates have no bearing on this litigation considering the ongoing nature of the violations and the absence of the defenses of waiver and estoppel under the Shipping Act. Subject to the foregoing and general objections, Maher refers PANYNJ to the complaint in this proceeding and its response to Interrogatory No. 1 *supra*.

Additionally, in the summer of 2007, PANYNJ Deputy General Counsel Christopher Hartwyk asked Maher's General Counsel Scott Schley for a release from Maher's rent disparity claim which Maher declined to give. Then, on August 9, 2007, PANYNJ filed its third-party complaint against Maher in Dkt. No. 07-01. Maher denied PANYNJ's allegations, brought a counter-complaint in Dkt. No. 07-01 and approached PANYNJ to negotiate a resolution in November 2007, as set forth in Maher's responses to Interrogatories 1, 2, 10, and 19 of PANYNJ's Second Interrogatories. Persons representing Maher in connection with such communications include Basil Maher, Samuel Crane, David Kerr, Seth Waugh, and John Buckley. During these meetings, Maher representatives expressed concern regarding the lease

inequities, the competitive disadvantage created from such inequities, and the damaging potential to Maher's present and future operations. Maher's concerns were explained to PANYNJ personnel, including Dennis Lombardi, Richard Larrabee, Kenneth Spahn, and Anthony Shorris in meetings and telephone calls occurring during the period November 2007 through February 2008. However, PANYNJ refused to discuss any meaningful resolution to Maher's claims and put Maher off while negotiating with APM to resolve APM's claims. Moreover, in May 2008, PANYNJ filed its second baseless legal action against Maher, this time in New Jersey state court. In the face of PANYNJ's refusal to deal and hostile legal actions against Maher, Maher filed for relief before the Federal Maritime Commission, commencing this Proceeding and thereby providing formal legal notice of its complaints to and against PANYNJ on June 3, 2008.

See also business records produced as kept in the ordinary course of business as of this date, including specifically records of communications between Maher and PANYNJ. Discovery is still pending in this matter and Maher reserves the right to supplement and/or amend this response as appropriate.

Interrogatory No. 5: *Identify all persons you intend to call as witnesses at hearings pertaining to this matter*

Response: Maher objects to this request as seeking hearing strategy protected by the attorney work product doctrine. The request is also premature. In an effort to be responsive, the witnesses to be called will depend upon facts developed through discovery, legal determinations decided by the Presiding Officer and facts presented and established by other parties. Maher will comply with the Presiding Officer's prehearing order with respect to the disclosure of witnesses who will be called to testify at the hearing in this proceeding.

Interrogatory No. 6: *Identify and describe any damages claimed by Maher in the Complaint, including, but not limited to, stating: (i) the factual basis for such damages; (ii) the legal theory under which such damages are recoverable, (iii) the amount of such damages, and (iv) the methodology used to calculate such damages.*

Response: Maher objects to this request to the extent it calls for a legal conclusion. The information requested is also premature because the discovery order in this proceeding does not require expert disclosures for many months and Maher will designate an expert on damages. Subject to the foregoing and general objections, Maher's damages include the additional costs it incurred relative to APM because of PANYNJ's preferential treatment of APM. These damages are contained in the disparate terms of leases EP-248 and EP-249.

First, Maher's damages include the difference between Maher's base rent and APM's base rent that Maher must pay PANYNJ over the 30 year term of Maher's lease. This includes the difference between Maher's initial base rent of $39,750 per acre and APM's base rent of $19,000, plus differences owing to the 2% annual rent escalator paid by Maher and not paid by APM. For example, Maher's 2008 rent is $45,660 per acre, while APM's base rent remains unchanged at $19,000. Thus, in 2008 alone Maher must pay PANYNJ $26,660 more per acre in base rent than APM pays PANYNJ. Based on this difference the base rent and escalator differential damages alone incurred by Maher since 2000 total approximately $86 million. According to the disparate terms of Leases EP-248 and EP-249, these damages total approximately $474 million through the 30 year lease period based upon the disparate base rent and escalator.

Second, Maher's damages include the additional burdens and risks imposed on Maher and not imposed on APM because Maher's lease requires it to guarantee a higher container throughput per acre than APM. If Maher fails to satisfy the throughput requirements, PANYNJ may terminate the lease. By contrast, APM is not subject to termination for failing to meet its lower throughput requirements.

Third, Maher's damages include the additional twenty-five basis point finance fee that it

must pay relative to APM for infrastructure improvements (175 basis points over the Revenue Bond Index versus APM's 150 basis points over the Revenue Bond Index). Calculation of the present value of this additional cost to Maher remains ongoing and will be subject to actual activity. APM's access to cheaper financing from PANYNJ constitutes ongoing disparate treatment and competitive advantage.

Fourth, Maher's damages are equal to the cost of the additional security deposit requirements that PANYNJ requires of Maher, but not of APM.

Additionally, Maher faces a potential loss of profit because of the cost advantages PANYNJ has wrongfully bestowed on APM. APM has been actively soliciting Maher's customers to expand its third-party business to the detriment of Maher.

Maher's investigation of the full extent of damages in this case is ongoing, and Maher will supplement this response as different or additional information becomes available, including the designation of experts and the submittal of testifying expert disclosures in accordance with the discovery schedule established in this proceeding.

Interrogatory No. 7. *Identify any and all bank presentations, bank books, prospectuses, financial analyses, and investor presentations, reports, and charts created by Greenhill and/or any other investment banking firm with respect to the transaction in which RREEF acquired the stock of Maher*

Response: Maher objects to this request as overbroad, unduly burdensome, and seeking information not reasonably calculated to lead to the discovery of admissible evidence in this matter. The acquisition of Maher shares by RREEF in the summer of 2007 is immaterial to the claims and defenses in this proceeding. The PANYNJ actions that gave rise to the Shipping Act violations occurred before RREEF's acquisition of Maher shares last summer

Interrogatory No. 8: *Describe the due diligence undertaken by Maher in connection with entering into EP-249*

Response: Maher objects to this request as overbroad, unduly burdensome, and seeking

information not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence in this matter. Maher further objects to this request insofar as it calls for the production of information subject to the attorney client privilege and attorney work product doctrine.

Subject to the foregoing specific objections and the general objections, according to the testimony of Randall Mosca and Brian Maher in Dkt. No. 07-01, Maher communicated with PANYNJ negotiators prior to entering into EP-249, including specifically Lillian Borrone, making clear that it wanted parity with APM, but PANYNJ took the APM terms "off the table." Also, see the response to Interrogatory 1 *supra*.

Discovery is still pending in this matter and Maher reserves the right to supplement and/or amend this response as appropriate.

Interrogatory No. 9: *Identify all persons who assisted in and/or provided information or documents used in responding to these interrogatories, specifying the identity of each individual or individuals who provide information with respect to each interrogatory*

Response: Maher objects to this request as seeking information not reasonably calculated to lead to the discovery of admissible evidence and as calling for the production of information subject to the attorney client privilege and work product doctrine.

Documents produced by PANYNJ and APM and testimony of PANYNJ, APM, and Maher witnesses during Dkt. No. 07-01 depositions were used in the responses. Such witnesses include Dennis Lombardi, Robert Evans, II, Roger Nortillo, Edmond Harrison, Nicholas Faro, Marc Oppenheimer, John Loepprich, Cheryl Yetka, John Nicola, Anthony Scioscia, Alvaro Menendez, Brian Maher, and Randall Mosca. Counsel for PANYNJ providing the documents at the relevant time was Donald F. Burke, Esq. Counsel for APM providing the documents at the relevant time was Sher & Blackwell

Additionally, subject to the foregoing and general objections, persons consulted in the

preparation of the responses to these interrogatories include Jay Ruble, Director of Legal Affairs, and Scott Schley, former General Counsel for Maher Terminals, respectively.

See also business records produced as kept in the ordinary course of business as of this date Discovery is still pending in this matter and Maher reserves the right to supplement and/or amend this response as appropriate.

Dated: August 29, 2008

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August 2008, a copy of the foregoing was served by electronic mail and U.S. Mail on the following:

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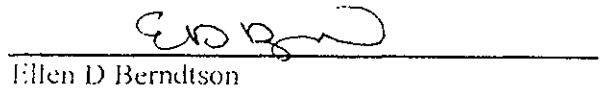

Ellen D Berndtson