

301-200860

PHILADELPHIA REGIONAL PORT AUTHORITY  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE GENERAL MANAGER

Lease and Operating Agreement

Between

PHILADELPHIA REGIONAL PORT AUTHORITY

and

DEPENDABLE DISTRIBUTION SERVICES INC.

for

PIER 84 SOUTH

DATED: April 1, 1994

EFFECTIVE:



TABLE OF CONTENTS

<u>Section</u>	<u>Description</u>	<u>Page</u>
<b>ARTICLE I APPOINTMENT</b>		<b>1</b>
1.1	Grant	1
1.2	Appointment	2
1.3	Independent Contractor	2
1.4	Use of the Premises	3
1.5	Ship Guaranty	4
<b>ARTICLE II EFFECTIVE DATE; TERM</b>		<b>6</b>
2.1	Effective Date	6
2.2	Initial Term	6
2.3	Renewal Options	7
2.4	Confirmation	8
2.5	Surrender of Possession; Holdover	8
<b>ARTICLE III RENT; PAYMENT</b>		<b>8</b>
3.1	Base Rent; Additional Rent	8
3.1.1	Base Rent	8
3.1.2	Tonnage Fee	9
3.1.3	Annual Increase	10
3.1.4	Dockage Fee	10
3.1.5	Payment of Dockage and Tonnage Fees	10
3.1.6	Operating Expenses	11
3.2	Late Charges	11
3.3	Books, Records and Reports	12
3.4	Deposit	13
3.6	Rent	14
<b>ARTICLE IV LESSOR'S RIGHT OF ACCESS TO THE DEMISED PREMISES</b>		<b>14</b>
4.1	Visitors	14
4.2	Property and Cargo Under Lessee's Control	15
<b>ARTICLE V INSURANCE; INDEMNIFICATION</b>		<b>15</b>
5.1	Property Insurance	15
5.2	Liability Insurance	15
5.3	Workers' Compensation Insurance	16
5.4	Automobile Insurance	16
5.5	Waiver of Subrogation	16
5.6	Insurance, General	17
5.6.1	Lessor's Purchase	17
5.6.2	Requirements	17
5.6.3	Form of Policy	17
5.6.4	Additional Insurance	17
5.6.5	Use of Premises	18
5.6.6	Separate Insurance	18

## TABLE OF CONTENTS

<u>Section</u>	<u>Description</u>	<u>Page</u>
	5.6.7 Claims Made Policies .....	18
	5.6.8 Blanket Policies .....	18
5.7	Accident Reports .....	19
5.8	Liability for Damages Caused by Third Parties .....	19
5.9	Release and Indemnification .....	19
<b>ARTICLE VI MAINTENANCE, REPAIR, EQUIPMENT AND IMPROVEMENTS .....</b>		<b>21</b>
6.1	Lessee's Maintenance and Repair Obligations .....	21
6.2	Wharf Structure .....	22
6.3	Fire Systems .....	22
6.4	Load Limits .....	23
6.5	Elevators and Sprinkler Inspection and Maintenance Services .....	23
6.6	Boiler .....	23
6.7	Condition and Surrender of the Premises .....	24
6.8	Equipment .....	25
6.9	Access .....	25
6.10	Lessor's Rights .....	25
6.11	Dredging .....	25
6.12	Lessee's Improvements .....	26
6.13	Lessor's Improvements .....	26
6.14	Pallets .....	28
<b>ARTICLE VII TAXES .....</b>		<b>29</b>
7.1	Taxes .....	29
7.2	Appeals .....	29
<b>ARTICLE VII ENVIRONMENTAL MATTERS .....</b>		<b>30</b>
8.1	Environmental Matters .....	30
8.2	Lessee's Representations, Warranties and Covenants .....	30
	8.2.1 Use of Premises .....	30
	8.2.2 Reporting Requirements .....	30
	8.2.3 Termination, Cancellation, Surrender .....	30
8.3	Permitted Substances .....	31
8.4	Storage Tanks .....	31
8.5	Lessor's Right of Access and Inspection .....	31
8.6	Violations - Environmental Defaults .....	31
8.7	Additional Rent .....	32
8.8	Assignment and Subletting .....	32
8.9	Indemnification .....	33
8.10	Definitions .....	33
8.11	Limitations .....	34
8.12	Disposal and Removal of Solid Wastes .....	35
8.14	Remedies .....	35
8.15	Survival .....	35
8.16	Certain Site Conditions .....	36
<b>ARTICLE IX ASSIGNMENT AND LICENSING .....</b>		<b>36</b>
9.1	Assignment and Licensing .....	36

## TABLE OF CONTENTS

<u>Section</u>	<u>Description</u>	<u>Page</u>
9.2	Lessor's Assignment and Successors .....	36
9.3	Terms Binding on Successors .....	36
9.4	Permitted Assignment .....	37
<b>ARTICLE X LESSEE'S COVENANTS .....</b>		<b>37</b>
10.1	Liens and Encumbrances .....	37
10.2	Lessor Regulations .....	37
10.3	Non-Competition .....	38
10.4	Railroads .....	38
10.5	Operations .....	38
10.6	Fire Safety .....	38
10.7	Sanitation .....	38
10.8	Explosives .....	38
10.9	Snow and Ice .....	39
10.10	Security .....	39
<b>ARTICLE XI DAMAGE TO THE DEMISED PREMISES .....</b>		<b>39</b>
11.1	Damage and Destruction .....	39
11.1.1	Repairs .....	39
11.1.2	Demolition .....	39
11.1.3	Base Rent Abatement .....	40
11.1.4	No Consequential Damages .....	40
11.1.5	Lessee's Duty to Insure .....	40
11.1.6	Limitation .....	40
<b>ARTICLE XII WAIVER .....</b>		<b>41</b>
12.1	Waivers .....	41
<b>ARTICLE XIII [INTENTIONALLY OMITTED] .....</b>		<b>41</b>
<b>ARTICLE XIV EMPLOYMENT PRACTICES .....</b>		<b>41</b>
14.1	Employment Practices .....	41
<b>ARTICLE XV REMEDIES .....</b>		<b>41</b>
15.1	Lessor's Remedies .....	41
15.2	Remedies Cumulative .....	44
<b>ARTICLE XVI SIGNS .....</b>		<b>44</b>
16.1	Signs .....	44
<b>ARTICLE XVII REPRESENTATIONS AND WARRANTIES OF LESSEE .....</b>		<b>45</b>
17.1	Authorization .....	45
17.2	Non-Conflict .....	45

## TABLE OF CONTENTS

<u>Section</u>	<u>Description</u>	<u>Page</u>
<b>ARTICLE XVIII EMINENT DOMAIN</b>		<b>45</b>
18.1	Title to Award	45
18.2	Permanent Taking	46
18.3	Temporary Taking	46
<b>ARTICLE IXX MISCELLANEOUS</b>		<b>47</b>
19.1	Notices	47
19.2	Applicable Law	48
19.3	Gender and Number	48
19.4	Captions	49
19.5	Counterparts	49
19.6	The Lessee's Successors and Assigns	49
19.7	The Lessor's Successors and Assigns	49
19.8	Invalidity of Provisions	50
19.9	No Joint Venture	50
19.10	Exhibits	50
19.11	No Recordation	50
19.12	Time of Essence	50
19.13	Business Interruption	50
19.14	Entire Agreement	51
19.15	Liability of the Commonwealth of Pennsylvania	51
19.16	Marketing	51
19.17	Publicity	51
19.18	Mechanic's Liens	51
19.19	Statutory Authority	52
19.20	Lessee Integrity Provisions	52
19.21	Access to South Berth	52

THIS LEASE AND OPERATING AGREEMENT (this "Agreement" or this "Lease") is made this 1st day of April, 1994 by and between PHILADELPHIA REGIONAL PORT AUTHORITY ("Lessor"), a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania with offices at 210 West Washington Square, Philadelphia, Pennsylvania, 19106 and DEPENDABLE DISTRIBUTION SERVICES INC. ("Lessee"), a corporation incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 1301 Union Avenue, Pennsauken, NJ.

W I T N E S S E T H :

WHEREAS, by that certain deed dated July 26, 1990, the City of Philadelphia, Pennsylvania (the "City") conveyed to Lessor all of the City's right, title and interest in and to certain port facilities;

WHEREAS, Lessor is authorized to make and execute contracts and other instruments necessary or convenient for the conduct of its business; and

WHEREAS, Lessor wishes to lease to Lessee for a maritime-related use, and Lessee wishes to lease from Lessor for a maritime-related use, Pier 84 South, as shown on Exhibit "A", attached hereto and made a part hereof, including the two-level shed situated thereon, appurtenant aprons, associated parking and the north side berthing area but excluding the south side berthing area (the "Premises");

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I APPOINTMENT

1.1 Grant. Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor, for the term and subject to the conditions set forth herein.

1.2 Appointment. It is the intent of the parties that, so long as Lessee is not in default hereunder, Lessee shall during the Term (as hereinafter defined) be the exclusive operator of the Premises. Lessee covenants to operate and use the Premises at all times in a competent, efficient manner, and in a manner comparable in quality and efficiency to the manner in which other piers of similar use and design in other major USA ports are operated, to accommodate the Permitted Use (as defined in Section 1.4.1 below) and to provide first-class service to all customers whose cargo passes through the Premises. Both Lessor and Lessee shall actively and diligently market the services provided by Lessee at the Premises to third parties; provided, however, that Lessor shall also market the services provided by tenants occupying other piers and facilities in the Port of Philadelphia and shall be under no obligation to favor the Premises above other piers and facilities in its marketing efforts.

1.3 Independent Contractor. Lessee shall be an independent contractor in the performance of its obligations under this Agreement. Any employees of Lessee hired to perform warehousing services or other activities at the Premises shall be the employees of the Lessee solely, and Lessor shall not be a joint employer of any of Lessee's employees. In addition, any employees of any company contracted by Lessee to perform any services shall be the employees of such company solely, and Lessor shall not be a joint employer of any such employees. To that end, Lessee and any company contracted by Lessee shall have the exclusive right to supervise and direct the day-to-day activities of all persons who perform services for them, and they shall have sole responsibility with respect to such persons, including without limitation the responsibility to determine and pay their wages and any benefits, to fulfill all applicable requirements under any collective bargaining agreements and to pay all federal, state and local taxes or contributions imposed or required under unemployment, workers' compensation, social security, wage and income tax laws with respect to them. There shall be no direct or indirect participation by Lessor in any employee relations matters concerning those persons employed by or through Lessee.

#### 1.4 Use of the Premises.

1.4.1 Lessee shall use the Premises only for the docking and mooring of vessels and the receiving, shipping, warehousing, distributing, moving, loading and unloading of cocoa beans and coca products or other incidental breakbulk cargoes, and incidental activities related thereto (the "Permitted Use"); provided, however, that warehousing shall only be permitted at the Premises to the extent that there is surplus available space for such use in excess of the space needed for loading, unloading, moving and distributing permitted cargoes (collectively "Cargo Activities"). In the event that at any time during the Term the first floor of the Premises is being used for warehousing and such use would require Lessee to turn away any vessel desiring to use the Premises for Cargo Activities, Lessee shall promptly remove the warehoused goods or cargo from the Premises to the extent necessary to provide Cargo Activities for the vessel in question. For purposes of the immediately preceding sentence, Lessee shall be deemed to be "warehousing" goods or cargo if and to the extent that there are goods or cargo on the first floor of the Premises at any time which have been on the Premises (whether or not on the first floor of the Premises) for a period in excess of sixty (60) days. Lessee shall not use the Premises for any other purpose than the Permitted Use and shall not handle at the Premises, without the prior written consent of Lessor, which Lessor may grant or withhold in its sole discretion, any other cargoes, including without limitation the following: automobiles, forest products, paper, fruit and refrigerated and/or frozen cargoes.

1.4.2 Lessee shall not use or permit the Premises to be used in whole or in part during the Term of this Agreement for any purpose or for any use in violation of, and shall operate the Premises in compliance with, any and all present or future laws, ordinances, general rules or regulations of any public or governmental authority at any time applicable thereto (collectively "Laws") including without limitation the Laws of Commonwealth of Pennsylvania (the "Commonwealth") and the City, relating to, by way of example only and not limitation, sanitation or the public health, safety or welfare, or navigation and use of the port and port facilities.

1.5 Ship Guaranty.

1.5.1 Lessee hereby guarantees to Lessor that during the First Lease Year (as defined in Section 2.2 below), at least three (3) vessels shall call at the Premises for purposes of unloading cargoes of cocoa beans and coca products, and that during each Lease Year thereafter during the Initial Term at least ten (10) vessels shall call at the Premises for purposes of unloading cargoes of cocoa beans and coca products (the "Ship Guaranty").

1.5.2 In the event of any breach of the Ship Guaranty during the First Lease Year, there shall be no penalty. During each Lease Year following the First Lease Year, in the event that less vessels call at the Premises for purposes of unloading cocoa beans and coca products than the number guaranteed under the Ship Guaranty, Lessee shall pay to Lessor the sum derived by multiplying the number of guaranteed vessels which did not call at the Premises during the given Lease Year by Five Thousand Dollars (\$5,000) (that is, if in the Second Lease Year only eight vessels call at the Premises, Lessee will pay \$10,000 to Lessor). Such payment will be due and owing as Additional Rent under this Agreement and shall be paid within thirty (30) days following the last day of the Lease Year in which such breach of the Ship Guaranty occurs. Furthermore, in the event that less than the guaranteed number of vessels call at the Premises during two (2) consecutive Lease Years (exclusive of the First and Second Lease Years), Lessor shall have the right, in addition to the right to collect the penalty fee hereinabove set forth, to terminate this Agreement upon delivery of written notice of termination to Lessee unless Lessee is able to demonstrate to Lessor's reasonable satisfaction that such breaches of the Ship Guaranty resulted from commercially reasonable causes outside of Lessee's control. For purposes of the immediately preceding sentence, "commercially reasonable causes outside of Lessee's control" shall include but not be limited to abnormally severe adverse weather conditions, widespread crop failures, severe earthquakes and other equivalent national disasters, industry-wide

strikes or lockouts, widespread riots, and other events causing gross political, commercial or economic distortions or disruptions (such as, but not limited to, revolution, acts of war, export embargo or substantial increases in tariffs).

1.5.3 In the event that Lessor exercises its right to terminate this Agreement as provided in Section 1.5.2 above, the Lease will terminate one hundred (100) days following Lessee's receipt of Lessor's notice of termination, and Lessee shall vacate the Premises on or before such date, leaving same in the condition in which it is required to be left at the end of the term of this Agreement. If the effective termination date is other than the last day of the calendar month, all Rent shall be apportioned on a pro rata basis for the calendar month in which termination occurs, based upon the number of days in such month. Within sixty (60) days following the effective date of termination, Lessor shall reimburse Lessee in the amount of Lessee's unamortized capital costs of improvements made to the Premises by Lessee in connection with Lessee's initial occupancy of the Premises and thereafter during the term in accordance with Section 6.12 hereof, provided Lessee delivers to Lessor on or before the effective termination date of this Agreement cancelled checks, paid invoices or other documentation acceptable to Lessor in its reasonable discretion evidencing the sums paid and the work to which such payments relate. For purposes hereof, all of such capital costs shall be aggregated and deemed amortized on a straight line basis over the Initial Term. Whether a cost is "capital" in nature shall be determined in accordance with generally accepted accounting principles.

1.5.4 Furthermore, in the event that Lessor exercises its right to terminate this Agreement as provided in Section 1.5.2 above, Lessee may elect, by written notice delivered to Lessor within thirty (30) days following receipt of Lessor's notice of termination of this Agreement, to purchase from Lessor all Pallets (as defined in Section 6.14 hereof) for a cash payment equal to the unamortized balance of Lessor's cost of acquiring such Pallets as of the effective date of termination of this Agreement (for purposes hereof, the Lessor's costs of acquiring the Pallets shall be deemed amortized on a straight line basis from the date of purchase over the remainder of the Initial Term).

The purchase price payable by Lessee to Lessor on account of the Pallets shall be due on or before the effective date of Lessor's termination of this Agreement. Notwithstanding the foregoing, in the event that Lessor is obligated to obtain permission from any governmental department or agency with which Lessor is affiliated prior to selling any capital assets, Lessee's right to purchase the Pallets shall be contingent upon Lessor's receipt of such permission, and Lessor agrees to use all reasonable efforts to obtain such permission (and in the event the permission is not obtained by the effective date of termination of this Agreement, then the date upon which payment for the Pallets is due from Lessee to Lessor hereunder shall be extended until that date which is fifteen (15) days following Lessor's receipt of such consent).

## ARTICLE II EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall become effective on the last to occur of (i) March 15, 1994; (ii) the date on which an executed copy of this Agreement is submitted to the Federal Maritime Commission ("FMC") for filing in accordance with the Shipping Act of 1984 or (iii) the date on which the Attorney General of the Commonwealth of Pennsylvania approves this Agreement (the "Effective Date"). Lessor shall cause this Agreement to be submitted to the FMC for filing promptly following execution.

2.2 Initial Term. The term of this Agreement shall commence on the Effective Date and shall end on the last day of the sixth (6th) Lease Year (the "Initial Term"), unless extended or sooner terminated. The "First Lease Year" shall be the twelve (12) month period commencing on the Effective Date, if the Effective Date is the first day of a calendar month, or, if the Effective Date is other than the first day of a calendar month, then the period commencing on the Effective Date and continuing through the last day of the twelfth (12th) full calendar month thereafter. Each "Lease Year" after the First Lease Year shall be a consecutive twelve (12) month period commencing on the first day of the calendar month immediately following the last day of the preceding Lease Year.

## 2.3 Renewal Options.

2.3.1 Lessee shall have the options to extend the term of this Agreement for two (2) additional consecutive periods of six (6) years each (the "Renewal Periods", each a "Renewal Period") provided no breach has occurred under the Ship Guaranty during the then current term, and provided Lessee is not in default under this Agreement either at the time of exercising a given option or at the commencement of the Renewal Period in question, subject only to agreement as to financial terms of renewal as provided in Section 2.3.2. Lessee shall exercise the aforesaid options to renew by giving Lessor written notice of renewal at least 240 days prior to the end of the then current term. The first Renewal Period shall begin on the day immediately following the last day of the Initial Term. The second Renewal Period shall begin on the day immediately following the last day of the first Renewal Period. In the event Lessee shall fail to timely exercise its option with regard to a given Renewal Period, Lessee's rights hereunder with regard to that Renewal Period and any subsequent Renewal Period shall immediately and irrevocably terminate. The terms and conditions applicable in the Renewal Periods shall be those specified for the Initial Term of this Agreement except for the Rent (as hereinafter defined) due from Lessee to Lessor, which shall be determined for each Renewal Period as provided in Section 2.3.2 below, and except that Lessee shall have no further renewal rights beyond the second Renewal Period.

2.3.2 Lessee and Lessor shall negotiate in good faith the Rent to be paid by Lessee to Lessor during each Renewal Period, commencing upon Lessee's exercise of its option respecting a given Renewal Period. In the event Lessee and Lessor do not reach written agreement on Rent with regard to a given Renewal Period at least ninety (90) days prior to the first day of such Renewal Period, then Lessee's rights hereunder with regard to such Renewal Period and any subsequent Renewal Period shall immediately and irrevocably terminate.

2.3.3 The Initial Term and any Renewal Periods as to which Lessee properly exercises its renewal option are hereinafter collectively referred to as the "Term". In the event that during the Initial Term the

parties have failed to properly file this Agreement or any other document with the FMC, the parties shall undertake prior to the commencement of the first Renewal Period to file with the FMC an amendment extending this Agreement and any other instrument or agreement, as applicable, for such renewal.

2.4 Confirmation. Promptly following the Effective Date the parties shall execute and deliver to one another an agreement confirming the Effective Date which shall be prepared by Lessor and approved by Lessee, which approval shall not be unreasonably withheld or delayed.

2.5 Surrender of Possession; Holdover. Lessee shall peaceably deliver up and surrender possession of the Premises to Lessor at the expiration or termination of this Agreement. Lessee shall not hold over in all or any part of the Premises after the termination or expiration of this Agreement without first obtaining the written approval of Lessor, which Lessor shall have no obligation whatsoever to grant. Any such holdover shall be deemed an extension of this Agreement on a month-to-month basis upon the same terms and conditions of this Agreement, except that Lessee shall pay to Lessor as Rent during each month of the holdover period an amount equal to the greater of (i) one-twelfth (1/12) of one hundred fifty percent (150%) of the Rent, as hereinafter defined, payable for the twelve (12) months immediately preceding the inception of the holdover period, or (ii) an amount equal to the Rent determined pursuant to the terms hereof with respect to Lessee's operations during the holdover period. Nothing in this Section II shall be deemed to give Lessee any right to hold over or to prevent Lessor from evicting Lessee or pursuing any other remedies in the event of such holdover.

### ARTICLE III RENT; PAYMENT

#### 3.1 Base Rent; Additional Rent.

3.1.1 Base Rent. Lessee, in consideration of this Agreement, shall pay to Lessor during the Initial Term an annual Base Rent ("Base Rent") which shall be ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) per annum,

payable monthly in advance, on the first day of each calendar month commencing on the Effective Date if the Effective Date is the first day of a calendar month, otherwise on the first day of the first calendar month following the Effective Date, in the amount of TEN THOUSAND DOLLARS (\$10,000.00); provided, however, that solely during the period commencing October 1, 1994 and ending September 30, 1996, annual Base Rent shall increase to ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), payable monthly in advance, on the first day of each calendar month, in the amount of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) per month; further provided, however, that in the event that Lessor fails to complete those certain improvements to the upper level of the shed forming part of the Premises which are detailed in Exhibit "F" attached hereto (the "Second Floor Improvements") by December 31, 1994, then commencing January 1, 1995 the Base Rent shall automatically reduce by the sum of Two Thousand Five Hundred Dollars (\$2,500.00) per month (apportioned pro rata for any partial month based upon the number of days in the month) until completion by Lessor of the Second Floor Improvements, as evidenced by Lessor's written notice to Lessee of completion, whereupon Base Rent shall automatically revert to the applicable rate above set forth. If the Effective Date is other than the first day of a calendar month, Base Rent shall be prorated from the Effective Date through the end of the calendar month in which the Effective Date occurs, based on the number of days in such month, and shall be payable on the first day of the calendar month next following, together with the installment of Base Rent owing for such month. Base Rent shall be subject to annual increase as provided in Section 3.1.3 below.

3.1.2 Tonnage Fee. In addition to the Base Rent, Lessee will pay to Lessor a tonnage fee per ton of cocoa beans, cocoa products, and incidental cargo moved over the Premises, whether by ship, rail, truck or other means, starting at Ton One (the "Tonnage Fee"). During the First Lease Year the Tonnage Fee shall be one Dollar (\$1.00) per ton. During the second through sixth Lease Years (inclusive) the Tonnage Fee shall be One and 30/100 Dollars (\$1.30) per ton, subject to annual increase as provided in Section 3.1.3 below.

3.1.3 Annual Increase. As of the last day of the First Lease Year, and annually as of the last day of every Lease Year thereafter during the Initial Term of this Agreement, the Base Rent and Tonnage Fee for the next following Lease Year shall be increased by the percentage increase, if any, during the twelve months ending two months prior to the most recent anniversary of the Effective Date (the "Cost Adjustment Date") of the U.S. Bureau of Labor Statistics Consumer Price Index (the "Index") "United States City Average for Urban Wage Earners and Clerical Workers, Selected Date (1967 = 100) All Items". In the event the Index shall have been replaced by an alternative means of cost price measurement, then such replacement cost price measurements will be used. It is expressly agreed that each such annual recomputation of the Base Rent and Tonnage Fee by means of the Index will establish the new Base Rent and Tonnage Fee for the succeeding Lease Year; provided that in no event shall such recomputation or adjustment cause the Base Rent or Tonnage Fee to decrease. Lessor will give Lessee written notice of each increase of the Base Rent or Tonnage Fee pursuant to this Section.

3.1.4 Dockage Fee. Lessee shall also pay to Lessor as additional rent a dockage fee equal to fifty percent (50%) of all dockage fees and layberth charges, however denominated, charged by Lessee for services at the Premises for vessels docked or moored at the Premises during the term (the "Dockage Fee").

3.1.5 Payment of Dockage and Tonnage Fees. Lessee shall pay the Tonnage Fee and the Dockage Fee to Lessor monthly in arrears, based upon activity during the second preceding month, on or before the fifteenth (15th) day of the second calendar month following each calendar month, together with a reasonably detailed written accounting showing all data relevant to the computation thereof (that is, the payment respecting fees owing for January will be due on or before March 15). The Tonnage Fee and Dockage Fee for the last month of the Term of this Agreement shall be due and payable on the fifteenth (15th) day of the second calendar month immediately following the date of termination or expiration of this Agreement. Lessee agrees to submit to Lessor on or before the sixtieth (60th) day following the end of each Lease Year

(including the last Lease Year) a written statement, signed and certified by Lessee's duly authorized financial officer to be true and correct, showing (i) an accounting of all cargo moved over the Premises during the preceding Lease Year and the aggregate Tonnage Fee payable on account thereof, and (ii) an accounting of all dockage and wharfage charges and revenues charged by Lessee at the Premises during the preceding Lease Year and the aggregate Dockage Fee owing on account thereof.

3.1.6 Operating Expenses. Lessee shall also pay to Lessor as additional rent a sum equal to the actual operating expenses incurred by Lessor on account of Lessee's operations at the Premises during each calendar month of the Term (which shall not include any of Lessor's costs of performing those repair, replacement and maintenance obligations of Lessor contained in this Agreement to be performed by Lessor at its expense, all of which costs shall be borne solely by Lessor). Lessor shall bill Lessee on or about the fifteenth (15th) day of each calendar month for Lessor's operating expenses respecting the Premises incurred during the immediately preceding calendar month, and Lessee shall pay each such bill within ten (10) days following receipt thereof. Each bill shall be accompanied by a reasonably detailed accounting of the expenses to which the bill relates. Should Lessee question the accuracy of any such bill, Lessee shall object thereto within five days after receipt thereof or shall be deemed to have waived such objection. Lessee's objection to any bill shall not excuse late or partial payment thereof.

3.2 Late Charges. As compensation to Lessor for costs and expenses involved in handling delinquent payments, all Rent, as hereinafter defined, fees, and other charges that remain due and unpaid for a period of ten (10) days after the date they are due shall be subject to a delinquency charge equal to one and one-half percent (1.5%) of said charges per month or fraction of month from the date due until the charges have been paid. Said delinquency payment is in addition to all other remedies that Lessor may have as provided by this Agreement or otherwise by law or in equity to enforce payment of Rent or other charges that have accrued and have not been paid.

3.3 Books, Records and Reports. At least twenty-four (24) hours prior to commencing work loading or unloading any ship docked at the Premises, Lessee shall deliver to Lessor a true and correct copy of the ship's manifest. Additionally, Lessee shall deliver to Lessor each month, on or before the date Base Rent is payable for that month, a reasonably detailed report in form satisfactory to Lessor listing all ships which have docked at the Premises during the immediately preceding month and all cargo of every sort received at the Premises or shipped from the Premises during such month (including, without limitation, all cargo received at the Premises from any source for warehousing, detailing the type of cargo and the tonnage) and a listing of all charges made to vessels docked or moored at the Premises during such prior month, which statement shall be certified to be true and correct by an officer of Lessee. Lessee shall prepare and keep on the Premises or its home office, presently at 1301 Union Avenue, Pennsauken, NJ (Lessee's "Home Office"), for a period of not less than twenty-four (24) months following the end of each Lease Year, true, complete and accurate books, records and accounts, conforming to generally accepted accounting principles consistently applied, relating to cargo received at or shipped from the Premises including without limitation all accounting of all cargo handled at the Premises with a breakdown of the type of cargo and the tonnage, original records of all charges made to vessels docked or moored at the Premises, ship manifests, computer disks and all other data, matters and information of every kind and nature from which the Tonnage Fee and Dockage Fee can be determined. Lessor shall have the right and privilege through its designated representatives at reasonable times to inspect, audit or copy such books, records and accounts of Lessee in order to verify the accuracy of the amounts of Tonnage Fee and Dockage Fee due and owing by Lessee to Lessor hereunder, and Lessee agrees that all such books, records and accounts shall be made available to Lessor upon forty-eight (48) hours' prior written request. In no event shall the provisions of this paragraph be interpreted in a manner which would obligate Lessee to make available for inspection by Lessor or its designated representatives any books or records of Lessee's business not directly germane to the computation of the Tonnage Fee or the Dockage Fee. If any audit conducted by or for Lessor shows that during the period covered by such audit, Lessee has underpaid the Tonnage Fee or the Dockage Fee due to

Lessor under the terms of this Agreement by two percent (2%) or more, Lessee shall immediately upon demand pay to Lessor such unpaid Tonnage Fee or Dockage Fee and all costs and expenses incurred by Lessor in obtaining such audit, as Rent. In all other events, Lessor shall pay for its audit. If any audit shall be commenced by Lessor or if there shall arise a dispute concerning the Tonnage Fee or the Dockage Fee, then Lessee's books of account and records shall be preserved by Lessee at the Premises (or, if the Term shall have expired, at Lessee's principal place of business) until such audit has been completed or final resolution of such dispute has been reached, notwithstanding that the aforesaid twenty-four (24) month period may have been exceeded.

3.4 Deposit. Lessee, contemporaneously with the execution of this Agreement, will post with Lessor the sum of \$25,000 (the "Deposit"). The Deposit shall be held by Lessor as security for the full and faithful performance by Lessee of all terms, covenants, and conditions of this Agreement by Lessee to be kept and performed during the Term. If at any time during the Term of this Agreement any of the Rent shall be overdue and unpaid, or any other sum payable by Lessee to Lessor hereunder shall be overdue and unpaid, then Lessor may, at its option, appropriate and apply any portion of the Deposit to the payment of any such overdue Rent or other sum. In the event of the failure of Lessee to keep and perform any of the other terms, covenants and conditions of this Agreement to be kept and performed by Lessee, the Lessor, at its option, may appropriate and apply the Deposit, or so much thereof as may be necessary, to compensate Lessor for loss or damage sustained or suffered by Lessor due to such breach on the part of the Lessee. Should the entire Deposit, or any portion thereof, be appropriated and applied by Lessor as aforesaid, then Lessee shall, upon the written demand of Lessor, forthwith remit to Lessor a sufficient amount in cash to restore said Deposit to the original sum deposited, and Lessee's failure to do so within five (5) days after receipt of such demand shall constitute a monetary default under this Agreement. Should Lessee comply with all of said terms, covenants and conditions and promptly pay all Rent hereunder provided for when due, and all other sums payable by Lessee to Lessor

hereunder, the Deposit shall be returned in full to Lessee on or before ninety (90) days after the end of the Term of this Agreement or at the earlier termination of this Agreement.

3.6 Rent. All sums payable by Lessee under this Agreement, whether or not stated to be Rent, Base Rent or additional Rent, or otherwise denominated (herein collectively referred to as "Rent"), shall be collectible by Lessor as rent and in the event of a default in payment thereof Lessor shall have the same rights and remedies as for a failure by Lessee to pay Base Rent (without prejudice to any other right or remedy available therefor). All Rent shall be payable when due, without notice, demand, deduction or set-off, at the address of Lessor set forth in Section 18.1 below, or any other address of which Lessor shall hereafter give Lessee written notice. If Lessor, at any time or times, shall accept any payment of Rent after the same shall be due and payable hereunder, or shall accept any lesser amount than the sum then due on account of Rent, such acceptance shall not excuse delay upon subsequent occasions or constitute or be construed as a waiver of any of Lessor's rights hereunder with respect to such late or partial payment. No payment by Lessee or received by Lessor of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and the Lessor may accept any such check or payment without prejudice to Lessor's right to recover the balance of such Rent or to pursue any other remedy provided for in this Agreement or available at law or in equity.

#### ARTICLE IV LESSOR'S RIGHT OF ACCESS TO THE DEMISED PREMISES

4.1 Visitors. Lessor and its invitees shall have the right of access to the Premises at all times during the Term, provided that except in the event of an emergency twenty-four (24) hours' prior telephonic or written notice shall be required for access by persons other than Lessor's employees.

4.2 Property and Cargo Under Lessee's Control. Lessor reserves the right, but shall have no responsibility or obligation, to inspect the Premises as to fire hazards and other hazards of a like kind or nature. Lessor assumes no responsibility or liability for, and Lessee hereby releases Lessor from, loss or damage to the property of Lessee or property under the control of Lessee, whether caused by fire, water or otherwise, except to the extent such loss or damage is caused by the gross negligence or wilful misconduct of Lessor, its employees or contractors.

#### ARTICLE V INSURANCE; INDEMNIFICATION

##### 5.1 Property Insurance.

5.1.1 Lessor shall keep the Premises continuously insured during the Term against "all risks" of direct physical loss on a replacement cost basis in the amount of \$21,050,782.

5.1.2 Lessee shall keep the contents of the Premises, including without limitation the property of others and cargo, improvements and betterments, and "contractor's equipment", continuously insured during the Term against "all risks" of direct physical loss, on a legal liability basis with respect to cargo and property of others, and on an actual cash value basis with respect to all other contents, improvements and betterments, and "contractor's equipment". Lessee shall cause the policy evidencing such insurance to name Lessor and the Commonwealth as additional insureds, as their interests may appear.

5.2 Liability Insurance. During the Term, Lessee shall continuously keep in effect comprehensive general liability insurance of at least Ten Million Dollars (\$10,000,000.00), single limit, as to personal injury, death or property damage. Lessee shall cause the policy evidencing such insurance to name Lessor and Commonwealth as additional insureds, and shall cause such policy to

incorporate a cross liability endorsement provision as follows (or a substantially identical provision satisfactory to Lessor):

"Cross Liability - it is understood and agreed that the insurance afforded by this policy for more than one named insured shall not operate to increase the limits of the Company's liability, but otherwise shall not operate to limit or void the coverage of any one named insured with respect to claims against the said named insured by any other named insured or the employees of any such other named insured".

5.3 Workers' Compensation Insurance. Lessee itself shall maintain, and shall also require that any terminal operator and/or stevedoring company with which it contracts for services at the Premises maintain, in full force and effect at all times during the Term of this Agreement statutory workers' compensation insurance and employers' liability insurance; United States Longshoremens' and Harbor Workers' Compensation Act insurance, Jones Act insurance, Occupational Disease Act insurance, and any disability benefits act insurance required by federal, state or local law.

5.4 Automobile Insurance. During the Term, Lessee shall continuously keep in effect comprehensive automobile liability insurance in the amount of Five Million Dollars (\$5,000,000.00) per each accident for bodily injury and property damage combined, naming Lessor and the Commonwealth as additional insureds.

5.5 Waiver of Subrogation. All casualty and property insurance policies carried by either party covering the Premises and Lessee's operations at the Premises shall expressly waive any right on the part of the insurer against the other party.

5.6 Insurance, General.

5.6.1 Lessor's Purchase. If Lessee fails to maintain any insurance required in this Agreement to be maintained by it, Lessor may at its option procure same wherever available, at Lessee's expense, and the Lessee shall pay to Lessor the cost thereof, and such other costs incurred by Lessor in connection therewith, including without limitation Lessor's reasonable attorney's fees, on demand as Rent.

5.6.2 Requirements. Every policy of insurance required by this Agreement to be maintained by Lessee shall contain a provision prohibiting cancellation thereof or changes therein without at least thirty (30) days prior written notice to Lessor and to the Commonwealth at the addresses designated from time to time in writing by Lessor and the Commonwealth, respectively. On or before the Commencement Date, and thereafter at least thirty (30) days before expiration of any policy, Lessee shall deliver to Lessor two copies of the policies evidencing each of the coverages that it is required to carry under this Article V.

5.6.3 Form of Policy. All policies required hereunder and any renewals thereof shall be in form satisfactory to Lessor, including as to the amount of the deductible, shall be issued by companies satisfactory to Lessor authorized to engage in the insurance business in the Commonwealth of Pennsylvania or otherwise satisfactory to Lessor, and shall be maintained in full force and effect during the Term of this Agreement.

5.6.4 Additional Insurance. Lessee shall also provide such additional types of insurance in such amounts as Lessor shall from time to time reasonably require with a view to a change in the nature of the Premises, or the use to be made thereof by Lessee. In the event that any such additional insurance is required, Lessee shall deliver two copies of each policy to Lessor.

5.6.5 Use of Premises. Lessee agrees not to use the Premises in any manner that will result in the cancellation or increase in cost of any insurance policy that Lessor is required to carry hereunder.

5.6.6 Separate Insurance. The Lessee shall not take out separate insurance that is concurrent in form with, or which contributes to an event or events of loss which are covered by, either the insurance required to be furnished by the Lessee under this Article V, or the insurance the Lessee may reasonably be required to furnish under this Article V, unless the Lessor and the Commonwealth are named in such policies as insureds, with loss payable as provided in this Agreement. The Lessee shall immediately notify the Lessor of the taking out of any such separate insurance and shall cause the policies therefor to be delivered to the Lessor as required herein.

5.6.7 Claims Made Policies. The Lessee shall not obtain any insurance through policies written on a "claims made" basis without Lessor's prior express written consent, which consent shall not unreasonably be withheld if the proposed policy and Lessee satisfy all of the following requirements: (1) the policy retroactive date shall coincide with or precede the Lessee's occupancy or use of any portion of the Premises; and (2) the Lessee shall maintain such policy for at least four (4) years following the termination or expiration of the Term (whichever is later); and (3) if such insurance is prematurely terminated for any reason, Lessee shall, in addition to securing immediate replacement coverage for such insurance, purchase an extended reporting provision of at least four (4) years duration to report claims arising from this Agreement or Lessee's occupancy; and (4) the policy shall allow for the report of circumstances or incidents which might give rise to future claims.

5.6.8 Blanket Policies. Any insurance required of the Lessee under this Article V may be effected by a blanket or multi-peril or all-risk policy or policies issued to the Lessee or to any person with which the Lessee is affiliated, and covering the Premises as well as other properties owned by or leased to the Lessee or affiliated person, provided that (a) such policy or policies shall be satisfactory to and approved by the Lessor and shall comply in

all respects with the provisions of this Agreement and (b) the amount of insurance allocated thereunder to Lessee's property located in the Premises shall be specified either in such policy or policies or in an endorsement thereto and shall equal the amounts required under this Agreement.

5.7 Accident Reports. Lessee shall provide a report to Lessor in writing, as soon as practicable but in any event within two (2) days after Lessee, its officers, or agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or loss or damage in excess of Ten Thousand Dollars (\$10,000.00) to the Premises or to property of any person other than Lessee occurring upon or about the Premises. All such reports shall include, to the extent available and appropriate, (1) the names and addresses of the persons involved; (2) a general statement as to the nature and extent of the injury or damage; (3) the date and hour of the occurrence; (4) the names and addresses of witnesses; and (5) such other information reasonably requested by Lessor as may be known to Lessee, its officers, employees or agents.

5.8 Liability for Damages Caused by Third Parties. Lessee shall maintain the necessary security on the Premises to assure that the Premises is not used by anyone not having the permission of the Lessee or Lessor. Lessee is and shall be solely liable for all damage to the Premises which is caused by third parties not authorized to be upon the Premises, or by Lessee's employees, agents, contractors invitees or licensees.

5.9 Release and Indemnification.

5.9.1 Lessee agrees that Lessor, the Commonwealth and their respective agents, employees, officers, directors, shareholders and partners shall not be liable to Lessee and Lessee hereby releases said parties from any liability, for any personal injury, loss of income or damage to or loss of persons or property, or loss of use of any property, in or about the Premises from any cause whatsoever unless such damage, loss or injury results from the negligence of Lessor, its officers, employees or agents. Furthermore, Lessor,

the Commonwealth and their respective agents, employees, officers, directors and partners shall not be liable to Lessee for any such damage or loss, whether or not such damage or loss so results from their negligence, to the extent Lessee is compensated therefor by Lessee's insurance.

5.9.2 Lessee shall defend, indemnify, save and hold harmless ("Indemnify") Lessor, the Commonwealth and their respective agents, employees, officers, directors, shareholders, and partners from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including reasonable attorneys' fees, court costs, administrative costs, and costs of appeals which may be imposed upon or incurred by or asserted against any of them by reason of any of the following which shall occur during the Term of this Agreement, during any holdover period after expiration or termination of the Term, or during any period of time prior to the Effective Date when Lessee may have been given access to or possession of all or any portion of the Premises:

(1) any work or act done in, on or about the Premises or any part thereof at the direction of or caused by Lessee, its agents, contractors, subcontractors, servants, employees, licensees or invitees;

(2) any negligence, tort or other wrongful act or omission on the part of Lessee or any of its agents, contractors, subcontractors, servants, employees, subtenants, licensees or invitees;

(3) any accident, injury or damage to any persons or property occurring in, on or about the Premises or any part thereof, unless caused by the negligence of Lessor, its employees or agents; and

(4) any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement on its part to be performed or complied with.

5.9.3 The obligation of Lessee to Indemnify contained in Section 5.9.2 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Lessee, its agents or contractors under workers' or workman's compensation acts, disability benefit acts or other employee benefits acts, or under any other insurance coverage Lessee may obtain.

5.9.4 The release and indemnification given in this Section shall survive the expiration or termination of this Agreement and the Term.

#### ARTICLE VI MAINTENANCE, REPAIR, EQUIPMENT AND IMPROVEMENTS

6.1 Lessee's Maintenance and Repair Obligations. Lessee shall, at all times, keep the Premises in a neat, clean and orderly condition. Lessee shall perform all maintenance and repair, including without limitation sweeping, snow removal, trash removal, patching of paving, minor painting (Lessee shall not be obligated to paint or repaint the exterior of the buildings on the Premises), traffic or pier striping, relamping of Premises, lights, replacing light bulbs, cleaning closed drains, daily janitorial service, storm drain inlet maintenance and repair, rolling and sliding door maintenance and repair, pier electrical signage maintenance and repair, the repair and maintenance of elevators and all other improvements contained in buildings upon the Premises, repairing and maintaining fencing, and shall be responsible for security in and around the Premises. Lessee shall use every reasonable precaution against fire. Lessee shall perform maintenance and repair of water, sewer and electric utilities upon the Premises. Lessee shall be liable, at its own expense, to make all repairs to windows, irrespective of cause of damage. Lessee's obligations hereunder shall be to maintain and repair those elements of the Premises for which it is responsible in the condition they were in on the Effective Date, subject to normal wear and tear. Lessee shall be responsible for causing those items which it is Lessee's responsibility to repair and maintain hereunder to conform to all governmental laws, regulations and requirements respecting same.

6.2 Wharf Structure. Lessor shall maintain and repair the Wharf Structure, as hereinafter defined, the roofs, the structural elements of the walls, the foundations of the buildings on the Premises, and the water, sewer and electric utilities lines between the point of entry onto the Premises and the point of entry into the buildings upon the Premises, in their "as is" condition as of the date of the survey conducted pursuant to Section 6.7 hereof. Lessor shall be responsible for causing those items which it is Lessor's responsibility to repair and maintain hereunder to conform to all governmental laws, regulations and requirements respecting same. Notwithstanding anything to the contrary in this Agreement, if damage to the Wharf Structure or the roofs, walls and foundations of such buildings is caused by the acts of or failure to act by Lessee, its officers, employees, agents, contractors, invitees, or licensees, including persons performing work on the Premises at the request or under the direction of Lessee, Lessor may, in Lessor's sole discretion, make all necessary repairs and Lessee shall pay to Lessor upon demand and as additional Rent all costs and expenses incurred by Lessor in making such repairs upon presentation of supporting documentation by Lessor to Lessee, to the extent such costs are not reimbursed by insurance. For the purpose of this Agreement, the "Wharf Structure" shall mean and be defined as the beams, girders, subsurface support slabs, and prestressed concrete or wood pilings located on the Premises between the pierhead line and the bulkhead line of the Delaware River.

6.3 Fire Systems. All fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire protective or extinguishing systems or appliances which have been or may be installed on the Premises shall be maintained or repaired, as may be necessary, so as to be in compliance with all applicable laws at all times, by Lessee, at its sole cost and expense, and in accordance with all applicable laws, including without limitation, the City of Philadelphia Fire Code and all additions, revisions and amendments thereto, and in accordance with the recognized standards relating thereto. Notwithstanding the foregoing, in the event that the sprinkler system, fire hydrant system, standpipe system, fire alarm system or other fire protective or extinguishing systems or appliances

serving the Premises are required to be supplemented or replaced due to a change in the Philadelphia Fire Code applicable to all structures similarly situated and not the result of Lessee's unique use of the Premises, Lessor shall be obligated to undertake such supplementation or replacement at Lessor's sole expense.

6.4 Load Limits. Lessee shall not place loads on the structural portions of Pier 84 South and the two-level shed and other improvements constructed thereon (collectively, the "Pier") in excess of the respective maximum load limits for such Pier as set forth in Exhibit "B" attached hereto and made a part hereof, without the prior written consent of Lessor.

6.5 Elevators and Sprinkler Inspection and Maintenance Services. Lessee shall cause an elevator maintenance and inspection service and a sprinkler system maintenance and inspection service, each properly licensed and each as approved by the governmental agency having jurisdiction over same, if such licensing and approval is required by said agency, to carry out, respectively, systematic inspection, adjustment and maintenance, at monthly intervals, or at such other intervals, of the elevators and sprinkler systems on the Premises, to the extent required by law, and furnish to Lessor reports of each such inspection, or copies of the reports submitted by the aforementioned services to Lessee, within ten (10) days following the inspection in question. Lessee shall be responsible for obtaining all periodic certifications of the sprinkler system and elevators upon the Premises required by law and shall indemnify and hold Lessor harmless of and from any and all fines (including interest and penalties relating thereto) resulting from any failure of Lessee to obtain and maintain such certifications during the Term.

6.6 Boiler. Lessee shall cause a boiler and machinery inspection service, properly licensed and approved by the agency having jurisdiction over same, to make such inspections and certifications as are required by the Boiler and Unfired Pressure Vessel Regulations of the Pennsylvania Department of Labor

and Industry (as the same may be amended, expanded or replaced from time to time) and furnish to Lessor copies of all reports of such inspections and all certificates resulting therefrom within ten (10) days thereafter.

6.7 Condition and Surrender of the Premises.

6.7.1 Lessee agrees to accept said Premises, improvements, structures and facilities in their condition existing at the Effective Date, "as is". Lessee's occupation or use of the Premises shall in itself constitute acknowledgement of such acceptance, and Lessor shall not be obligated to make any improvements or repairs thereto, except as specifically provided elsewhere in this Agreement. Lessee covenants and agrees that at the expiration of the Term it will quit and surrender the Premises with all the improvements thereon in as good a state and condition as the same were at the inception of the Term, and the first and second decks, the berths and the yard will be left in a clean condition with no build-up of dirt and debris, subject to normal wear and tear.

6.7.2 Prior to the Effective Date, but in any event within thirty (30) days following the date of this Agreement, Lessee and Lessor shall conduct a joint survey of the Premises. To the extent Lessor and Lessee deem it appropriate, they shall retain a third party to conduct a portion of such survey and shall each pay half of such third party's fees and expenses. One purpose of the survey shall be to reflect the date and condition of the Premises, including improvements thereon, at the inception of this Agreement. The parties shall conduct another joint survey of the Premises at the termination or expiration of the Term of the agreement. In addition, as a result of the initial joint survey, Lessor may elect to make certain repairs and/or improvements to the Premises and the improvements thereof. Lessor shall only be required to make such repairs and improvements, if any, as it commits in writing to make following such joint survey. In the event that Lessor, following such survey, notifies Lessee that it has elected to repair a component of the Premises and such component, prior to the effectuation of such repair by Lessor, becomes inoperative, Lessee, notwithstanding its repair and maintenance obligations set

forth herein, shall not be deemed to be in default hereunder as a result of such condition unless the condition gives rise to a hazard to the health, safety and welfare of any person.

6.8 Equipment. Lessee shall provide all equipment necessary for the proper and efficient operation of the Premises, including without limitation all cargo handling equipment such as tractors, forklifts, and chassis.

6.9 Access. Lessor, its contractors, invitees and their respective employees have the right of access to the Premises to perform their respective duties, responsibilities and jobs as contemplated under this Article VI and to determine the state of maintenance and repair. Lessor will schedule such access, to the extent reasonably possible, so as not to materially interfere with Lessee's operations at the Premises.

6.10 Lessor's Rights. Should Lessee fail to make any repairs or perform any maintenance for which it is responsible, Lessor shall have the option to make or perform the same if Lessee fails to do so after having received thirty (30) days written notice from Lessor or immediately if, in Lessor's reasonable business judgment, the repairs required must be made to prevent further damage, injury or loss. Within ten (10) days following receipt of an invoice together with reasonable supporting documentation from Lessor, Lessee shall reimburse Lessor for the Lessor's actual cost of such repairs as additional Rent. The making of such repairs by Lessor shall in no event be construed as a waiver of the duty of Lessee to make repairs as herein provided.

6.11 Dredging.

6.11.1 Lessor, without expense to Lessee, but subject to all applicable governmental regulations and restrictions, shall perform such maintenance dredging as is required in Lessor's reasonable opinion to assure and maintain sufficient depth of water for the safe passage of working cargo ships at or about the Premises.

6.11.2 Lessee assumes all liability, under applicable federal and state statutes, for wire, steel bands, baling wires, trash of any kind, timbers, pieces of steel and the like, that may be encountered by dredges working in the docks and waterways adjacent to the Premises, and Lessor shall remove and dispose of such materials, when encountered, at Lessee's sole expense, in which event Lessee shall pay to Lessor on demand Lessor's costs incurred in the removal and disposal of such materials as well as any costs incurred by Lessor, including without limitation fines, reasonable attorneys' fees and court costs, as a result of any alleged liability of Lessor for the presence of such materials under applicable federal, state and local laws, all of which sums shall be payable as additional Rent.

6.12 Lessee's Improvements. Promptly following the Effective Date, Lessee shall, at its sole costs and expense, diligently pursue and complete all interior improvements and repairs required on the lower level of the shed forming part of the Premises to satisfy the requirements of Lessee's customers, which work shall include, without limitation, rodent proofing, stripping loose paint, painting, repairing insulation, cleaning, and sealing cracks and holes. During the Term, Lessee shall not make any alterations, additions or improvements to the Premises without first receiving the written consent of Lessor. Lessor will not unreasonably withhold or condition its consent to nonstructural alterations, additions or improvements proposed by Lessee. Lessor may at its option require Lessee to remove any alterations, additions or improvements constructed by Lessee upon the expiration or sooner termination of the Term, and to repair and restore the Premises to its condition as of the Effective Date of this Lease, at Lessee's sole cost and expense.

6.13 Lessor's Improvements.

6.13.1 Subject to the provisions of this Section 6.13, the capital improvements set forth on Exhibit "F" (the "Lessor Capital Improvements") shall be constructed or reconstructed by Lessor at the Premises during the Term. The provisions of Exhibit "F" are incorporated herein by reference and shall be given the same force and effect as if set forth in full

in the main body of this Agreement. Notwithstanding any other provision of this Section 6.13, Lessor shall not be required to expend on any Lessor Capital Improvement more than the estimated cost therefor set forth on Exhibit "F" (the "estimated costs"), and Lessor shall not be required to spend, in the aggregate on all of the Lessor Capital Improvements, more than the total estimated costs therefor set forth on Exhibit "F". If estimated costs are exceeded by the actual bids for any Lessor Capital Improvements, the Lessor and Lessee will consult as to whether an award for the work should be made prior to Lessor making such decision. Lessor agrees, however, that if the estimated costs set forth on Exhibit "F" are exceeded in one or more of the Lessor Capital Improvements, Lessor shall cause the savings, if any, realized on other Lessor Capital Improvements to be made available to complete the Lessor Capital Improvements where such estimated costs were exceeded. The redistribution of such Lessor Capital Improvement funds will be done in consultation with and with the approval of the Lessee. In the event that the aggregate cost of completing the Lessor Capital Improvements is greater than the aggregate of all of the estimated costs set forth on Exhibit "F", Lessee agrees to reimburse Lessor the amount of such additional costs over and above the aggregate estimated costs upon demand, as Additional Rent payable under this Agreement. Lessor agrees that in the event that the aggregate cost of completing the Lessor Capital Improvements is less than the aggregate of all of the estimated costs set forth on Exhibit "F", Lessor shall expend the difference, to the maximum extent permitted by law, on other capital improvements at the Premises.

6.13.2 Lessor will use all reasonable efforts to cause the Lessor Capital Improvements to be constructed promptly. Lessee recognizes that its operations will be affected during the time construction or reconstruction of the Lessor Capital Improvements is being performed. Lessee agrees that Lessor shall not be liable to Lessee as a result of any interference with Lessee's operations upon the Premises by reason of the construction of the Lessor Capital Improvements, and Lessor shall use all reasonable efforts to prevent unreasonable interference with Lessee's operations upon the Premises by reason of the construction or reconstruction of the Lessor Capital Improvements (however, nothing in this Agreement shall be deemed to require Lessor to conduct

such work at night or at times other than normal business hours except on an occasional and infrequent basis as deemed necessary by Lessor to prevent significant interference with terminal operations).

6.13.3 Lessee recognizes that Lessor reserves total control over the design of the Lessor Capital Improvements, award of any contracts respecting same, and the supervision of contractors for work undertaken by Lessor. During construction of the Lessor Capital Improvements, Lessee shall give no orders to any contractors unless first requested or permitted in writing by Lessor to do so. Lessee agrees to fully cooperate with contractors in providing all necessary access to the Premises and otherwise.

6.14 Pallets. Lessor hereby leases those certain pallets intended to be purchased by Lessor pursuant to Exhibit "F" hereto as one of the Lessor Capital Improvements (herein the "Pallets") to Lessee, which hereby rents the Pallets from Lessor. No rent shall be payable by Lessee to Lessor on account of the Pallets during the first Lease Year. Commencing with the first day of the second Lease Year, and on the first day of each calendar month thereafter through and including the last calendar month of the sixth Lease Year, Lessee shall pay to Lessor as rent for the use of the Pallets (and as additional Rent owing under this Agreement) that sum equal to one-sixtieth (1/60) of Lessor's aggregate cost of purchasing the Pallets (including, without limitation, any sales tax and delivery charges paid by Lessor on account of the Pallets). During any Renewal Terms, Lessee shall pay to Lessor rent for the Pallets at the rate of One Dollar (\$1.00) per Pallet per Lease Year, in equal monthly installments due on the first day of each calendar month. Lessee shall be solely responsible for the maintenance and repair of the Pallets during the Term, at Lessee sole cost and expense. Subject only to the exception set forth below, in the event any of the Pallets are lost, stolen or destroyed, Lessee shall purchase replacement Pallets of quality equal to or better than the quality of the lost, stolen or destroyed Pallets, at Lessee's sole expense. Should Lessee fail to do so, and such failure is not cured within five days following Lessee's receipt of written notice thereof from Lessor, Lessor may, at its election, purchase replacement Pallets and Lessee shall reimburse Lessor the

cost thereof upon demand as additional Rent. Notwithstanding the foregoing, Lessee need not replace each Lease Year that number of Pallets which is one and one-half percent (1.5%) of the total number of Pallets originally purchased by Lessor hereunder, which number of excluded Pallets shall be cumulative over the Initial Term and any Renewal Periods (that is, solely by way of example, if Lessee need not replace ten Pallets each Lease Year but only five Pallets require replacement during the first Lease Year, then Lessee need not replace up to fifteen Pallets during the second Lease Year). Lessor shall cause the Pallets to be inventoried on an annual basis to determine the number of replacement Pallets which are needed. Upon the expiration or sooner termination of the Term of this Agreement, the Pallets shall remain the property of Lessor.

#### ARTICLE VII TAXES

7.1 Taxes. Lessee covenants and agrees to pay when due all lawful taxes, assessments or charges which may be levied by any federal, state, county or city, or by any tax or assessment levying agency upon Lessee's interest in this Agreement or any activities or rights pursuant thereto, as well as all taxes, assessments, duties and charges on goods, merchandise, fixtures, appliances, equipment and property owned or brought upon the Premises by or through Lessee (collectively "Impositions").

7.2 Appeals. Lessee shall have the right to contest or object to the amount or validity of any such Impositions by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending the covenants of Lessee to pay any such Impositions at the time and in the manner provided in Section 7.1, unless Lessee shall have given prior written notice to Lessor of intent to so contest or object to an Imposition, and unless, at Lessor's sole option, (i) Lessee shall demonstrate to Lessor's satisfaction that the legal proceeding shall operate conclusively to prevent the placing of a lien on the Premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Lessee shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lessor; or (ii)

Lessee shall have provided Lessor with a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

## ARTICLE VII ENVIRONMENTAL MATTERS

8.1 Environmental Matters. Lessee covenants that it shall comply at all times with the following terms of this Agreement relating to environmental matters.

8.2 Lessee's Representations, Warranties and Covenants.

8.2.1 Use of Premises. Lessee represents, warrants and covenants that (i) the Premises will not be used for any dangerous, noxious or offensive trade or business and that it will not cause or maintain a nuisance there, (ii) it will not bring, generate, treat, store or dispose of Hazardous Substances (as hereinafter defined) at the Premises, (iii) it shall at all times comply and shall cause the Premises to comply with all Environmental Laws (as hereinafter defined), and (iv) it will keep the Premises free of any lien imposed pursuant to any Environmental Laws.

8.2.2 Reporting Requirements. Lessee warrants that it will promptly deliver to the Lessor, (i) copies of any documents received from the United States Environmental Protection Agency and/or any state, county or municipal environmental or health agency concerning the Lessee's operations upon the Premises, (ii) copies of any documents submitted by the Lessee to the United States Environmental Protection Agency and/or any state, county or municipal environmental or health agency concerning its operations on the Premises, including but not limited to copies of permits, licenses, annual filings and registration forms and, (iii) upon the request of Lessor, Lessee shall provide Lessor with evidence of compliance with Environmental Laws.

8.2.3 Termination, Cancellation, Surrender. At the expiration or earlier termination of this Agreement, Lessee shall surrender the Premises to Lessor free of any and all Hazardous Substances excepting any present upon the

Premises prior to Lessee's occupancy, and in compliance with all Environmental Laws (excluding any noncompliance existing prior to Lessee's occupancy) and to the complete satisfaction of Lessor.

8.3 Permitted Substances. Subject to the provisions of this Article and to the prior written consent by Lessor which may be given or withheld in Lessor's sole discretion, Lessee shall be entitled to use and store on the Premises only those Hazardous Substances that are necessary for Lessee's business, provided that such usage and storage are in full compliance with all applicable Environmental Laws.

8.4 Storage Tanks. Lessee shall not be entitled to install any tanks under, on or about the Premises for the storage of Hazardous Substances without the express written consent of Lessor, which may be given or withheld in Lessor's sole discretion.

8.5 Lessor's Right of Access and Inspection. Lessor shall have the right but not the obligation, at all times during the term of this Agreement to (i) inspect the Premises, (ii) conduct tests and investigations and take samples to determine whether Lessee is in compliance with the provisions of this Article, and (iii) request lists of all Hazardous Substances used, stored or located on the Premises, the cost of all such investigations, tests and inspections to be borne by Lessee.

8.6 Violations - Environmental Defaults.

8.6.1 Lessee shall give to Lessor immediate verbal and follow-up written notice of any actual or threatened spills, releases or discharges of Hazardous Substances on the Premises, caused by the acts or omissions of Lessee or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors. Lessee covenants to promptly investigate, clean up and otherwise remediate any spill, release or discharge of Hazardous Substances caused by the acts or omissions of Lessee or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors at

Lessee's sole cost and expense; such investigation, clean up and remediation to be performed in accordance with all Environmental Laws and to the satisfaction of Lessor and after Lessee has obtained Lessor's written consent, which shall not be unreasonably withheld. Lessee shall return the Premises to the condition existing prior to the introduction of any such Hazardous Substances.

8.6.2 In the event of (i) a violation of an Environmental Law, or (ii) a release, spill or discharge of a Hazardous Substance on or from the Premises, or (iii) the discovery of an environmental condition requiring response which violation, release, or condition is attributable to the acts or omissions of Lessee, its agents, employees, representatives, invitees, licensees, subtenants, customers, or contractors, or (iv) an emergency environmental condition (together "Environmental Defaults"), Lessor shall have the right, but not the obligation, to immediately enter the Premises, to supervise and approve any actions taken by Lessee to address the violation, release, or environmental condition, or if the Lessor deems it necessary, then Lessor may perform, at Lessee's expense, any lawful actions necessary to address the violation, release, or environmental condition.

8.6.3 Lessor has the right but not the obligation to cure any Environmental Defaults, has the right to suspend some or all of the operations of the Lessee until it has determined to its sole satisfaction that appropriate measures have been taken, and has the right to terminate this Agreement upon the occurrence of an Environmental Default.

8.7 Additional Rent. Any expenses which the Lessor incurs, which are to be at Lessee's expense pursuant to this Article, will be considered additional Rent under this Agreement and shall be paid by Lessee on demand to Lessor.

8.8 Assignment and Subletting. Notwithstanding anything to the contrary in this Agreement, the Lessor may condition its approval of any assignment or subletting by Lessee upon Lessor's determination that the proposed

assignee or subtenant, in the sole judgment of the Lessor, does not create any additional environmental risk or exposure.

#### 8.9 Indemnification.

8.9.1 Lessee shall indemnify, defend (with counsel approved by Lessor) and hold Lessor, the Commonwealth and their respective affiliates, shareholders, directors, officers, employees and agents harmless from and against any and all claims, judgments, damages (including consequential damages), penalties, fines, liabilities, losses, suits, administrative proceedings, costs and expenses of any kind or nature, known or unknown, contingent or otherwise, which arise out of the acts or omissions of Lessee, its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors during or after the Term of this Agreement (including, but not limited to, attorneys', consultant, laboratory and expert fees and including without limitation, diminution in the value of the Premises, damages for the loss or restriction on use of any facility or amenity of the Premises and damages arising from any adverse impact on marketing of space in or about the Premises), arising from or related to the use, presence, transportation, storage, disposal, spill, release or discharge of Hazardous Substances on or about the Premises.

#### 8.10 Definitions.

8.10.1 "Hazardous Substances" means, (i) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Laws or any applicable laws or regulations as a "hazardous substance", "hazardous material", "hazardous waste", "infectious waste", "toxic substance", "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (ii) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development

or production of crude oil, natural gas, or geothermal resources and (iii) petroleum products and by products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), and medical waste.

8.10.2 "Environmental Laws" collectively means and includes all present and future federal, state and local laws and any amendments thereto (whether common law, statute, rule, order, regulation or otherwise), permits, and other requirements or guidelines of governmental authorities applicable to the Premises and relating to the environment and environmental conditions or to any Hazardous Substance (including, without limitation, CERCLA, 42 U.S.C. §9601, et seq, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq, the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq, the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq, the Clean Air Act, 33 U.S.C §7401, et seq, the Clean Air Act, 42 U.S.C. §741, et seq, the Toxic Substances Control Act, 15 U.S.C. §2601-2629, the Safe Drinking Water Act, 42 U.S.C. §300f-300j, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §1101, et seq, the Pennsylvania Hazardous Sites Cleanup Act, the Pennsylvania Clean Streams law, any so-called "Super Fund" or "Super Lien" law, any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency, and any state and local laws and regulations similar to any of the foregoing, all amendments thereto and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety).

8.11 Limitations. Nothing contained herein shall make or be deemed to make Lessee responsible or liable for contamination present on the Premises on the Effective Date, or for contamination thereafter caused solely by Lessor, its contractors, or invitees.

8.12 Disposal and Removal of Solid Wastes. Lessee shall, at its sole cost, contract with a reputable, private refuse removal company approved by Lessor in writing in advance for the removal and disposal of any solid waste (other than solid wastes lawfully discharged through the City's sewer system) generated or introduced by Lessee from the Premises, in accordance with all Environmental Laws.

8.14 Remedies.

8.14.1 Upon material breach by Lessee of any provision of this Article VIII, or upon a pattern of less significant breaches, Lessor may at its sole discretion terminate this Agreement by written notice to Lessee, whereupon Lessee shall immediately vacate the Premises. No breach of any provision of this Article VIII shall be grounds for termination of this Agreement unless (i) Lessee has received notice of said breach, and (ii) after such notice, Lessee is not proceeding in good faith with all due diligence to bring itself into compliance with this Agreement and to cure any past noncompliance.

8.14.2 The parties recognize that no adequate remedy at law may exist for a breach of this Article VIII. Accordingly, either party may obtain specific performance of any provisions of this Article VIII.

8.14.3 This Section 8.14 shall not be construed to limit any remedies which either party may have against the other at law or in equity for a breach of this Article VIII.

8.15 Survival. The provisions of this Article VIII shall survive the end of the Term and the termination of this Agreement. No subsequent modification or termination of this Agreement by agreement of the parties or otherwise, shall be construed to waive or to modify any provisions of this Article VIII unless the termination or modification agreement or other document so states in writing.

8.16 Certain Site Conditions. Lessee acknowledges that Lessor has advised it that certain installations of asbestos insulation are present upon the Premises and that the installations do not require removal or encapsulation. Neither Lessor nor Lessee shall be deemed to be in default hereunder on account of such installations. In the event such asbestos requires removal or encapsulation during the Term for reasons not caused by Lessee, its employees, contractors or invitees, Lessor shall remove or encapsulate the same at Lessor's expense. In the event such asbestos requires removal or encapsulation during the Term due to any act or omission of Lessee, its employees, contractors or invitees, Lessee shall remove or encapsulate the same to Lessor's reasonable satisfaction at Lessee's sole expense.

#### ARTICLE IX ASSIGNMENT AND LICENSING

9.1 Assignment and Licensing. Lessee shall not, either directly or indirectly, assign, hypothecate, encumber or transfer this Agreement or any interest therein, or lease or sublease the Premises in whole or in part, without the prior written consent of Lessor. For purposes of this Section, an assignment shall include any direct or indirect transfer of fifty (50%) percent or more of the stock of a corporate tenant, or fifty (50%) percent or more of the equitable or other interests of a partnership, individual or noncorporate tenant, and shall also include any pledge, mortgage or encumbrance of Lessee's interest under this Agreement. No such assignment or transfer shall relieve Lessee of any liability hereunder.

9.2 Lessor's Assignment and Successors. Lessor shall have the right to assign, hypothecate, or transfer this Agreement, its interest in and to the Premises, or any interest in either of the foregoing in whole or in part.

9.3 Terms Binding on Successors. All the terms covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment by Lessee hereinbefore set forth.

9.4 Permitted Assignment. Notwithstanding the foregoing, Lessor hereby consents to an assignment of Lessee's interest in this Agreement to a corporation of which Harvey Weiner is both the chief executive officer and the owner of at least fifty-one (51%) percent of all of such corporation's issued and outstanding stock, subject to compliance with the following terms and conditions:

9.4.1 Lessee shall give Lessor at least thirty (30) days prior written notice of Lessee's intent to make the assignment.

9.4.2 The assignment shall be effected using forms approved by Lessor, which approval shall not be unreasonably withheld or delayed.

9.4.3 Dependable Distribution Services Inc. shall remain fully and primarily liable for the full and timely performance of all of the obligations of Lessee under this Agreement, and Lessor shall be entitled to proceed against either Dependable Distribution Services Inc., the assignee, or both, at Lessor's sole discretion, in exercising its remedies following the occurrence of any default by Lessee under this Agreement.

#### ARTICLE X LESSEE'S COVENANTS

10.1 Liens and Encumbrances. Lessee shall keep the Premises free and clear of all liens and encumbrances arising or growing out its use of said Premises. At Lessor's request, Lessee shall furnish Lessor with written proof of payment of any item which would constitute the basis for such lien on the Premises if not paid.

10.2 Lessor Regulations. Lessee shall comply with all applicable and reasonable rules and regulations of Lessor, as provided by written notice to Lessee, pertaining to the Premises or any buildings or structures located thereon either now in existence or hereafter promulgated for the general safety and convenience of Lessor, its tenants, invitees, licensees and the general

public to the extent that such rules and regulations do not conflict with the terms of this Agreement, and provided that any rules or regulations hereafter promulgated by Lessor are uniformly applicable to all other tenants of Lessor similarly situated.

10.3 Non-Competition. During the Term of this Agreement Lessee shall not solicit business from any customer at a facility owned or leased by Lessor for business or cargo then handled at such facility; provided, however, that if the Lessor's interest in this Agreement shall be assigned to The Port of Philadelphia and Camden, Inc., Lessee may freely solicit business from customers at facilities operated by any persons or entities not having a provision substantially similar to this Section 10.3 in their respective leases.

10.4 Railroads. Lessee covenants and agrees that any railroad upon the Premises shall be operated on the "belt line principle"; i.e., no railroad shall be granted an exclusive right to deliver and/or receive railcars to and from the Premises.

10.5 Operations. Lessee shall operate the Premises continuously during the Term and conduct its business thereon in such a manner as to maximize the tonnage of cargo handled at the Premises.

10.6 Fire Safety. Lessee shall use every reasonable precaution against fire.

10.7 Sanitation. Lessee shall promptly remove all dirt, rubbish and refuse matter from the Premises and keep the same clean at all times to the satisfaction of Lessor, the Commonwealth of Pennsylvania and other governmental agencies having jurisdiction.

10.8 Explosives. Lessee shall not discharge, load or store, nor permit the discharging, loading or storage of explosive materials of any kind upon the Premises, or vessels, railroad cars, trucks or other vehicles moored to or upon the Premises except as permitted by Lessor or the City of Philadelphia's

regulation of March 30, 1983, as heretofore or hereafter amended, supplemented or replaced (attached as Exhibit "C"), any such discharge, loading or storage being hereby specifically prohibited.

10.9 Snow and Ice. Lessee shall promptly remove accumulations of snow from the Premises, and to the extent practical, and in accordance with the responsibilities of Lessee hereunder, keep the roof, eave boxes and the deck drains free from any obstruction.

10.10 Security. Lessee shall at all times provide adequate security for the entire Premises, satisfactory to Lessor in its reasonable discretion.

#### ARTICLE XI DAMAGE TO THE DEMISED PREMISES

##### 11.1 Damage and Destruction.

11.1.1 Repairs. In the event that the Premises or any part thereof is damaged or destroyed by fire or other casualty, provided that Lessee is not in default of this Agreement and that no event, occurrence, action or inaction has occurred and is continuing, which with the passage of time or giving of notice, or both, would render Lessee in default of this Agreement Lessor shall, subject to its rights under this Section 11.1, promptly and diligently, restore, rebuild and repair the Premises, as the case may be, to the extent of available insurance proceeds, as nearly as practicable to the condition existing immediately prior to such casualty.

11.1.2 Demolition. In the event any portion of the Premises is damaged or destroyed and Lessor, pursuant to this Section, elects not to restore, rebuild or repair such portion of the Premises and Lessee has not terminated this Agreement, then Lessor shall raze or otherwise make secure such portion of the Premises.

11.1.3 Base Rent Abatement. Lessee shall be entitled to an equitable reduction of the Base Rent during any period in which the Premises or any portion thereof is not usable by Lessee due to damage or destruction caused by a fire or casualty for which Lessee does not have any liability, to the extent such inability to use that portion of the Premises substantially hinders Lessee's ability to handle cargo at the Premises.

11.1.4 No Consequential Damages. No damages, compensation or claim of any kind shall be payable to Lessee by the Lessor for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises following a casualty. The Lessor shall use its best efforts to effect repair or restoration undertaken pursuant to this Section promptly and in such manner as not unreasonably to interfere with the Lessee's use, occupancy and security.

11.1.5 Lessee's Duty to Insure. Lessor will not carry insurance of any kind on the Lessee's personal property and, except as otherwise specifically required by law or this Agreement, shall not be obligated to repair any damage thereto or replace the same.

11.1.6 Limitation. Notwithstanding anything to the contrary contained in this Section 11, in the event the damage shall involve the Premises generally and shall be so extensive that Lessor shall decide not to repair or rebuild the Premises, or if available insurance proceeds are insufficient to repair or rebuild the damage, or if the casualty shall not be of a type insured against under standard fire policies with extended type coverage, this Agreement shall at the option of Lessor, exercisable by written notice to Lessee given within ninety (90) days after Lessor is notified of the extent of the casualty, be terminated as of a date specified in such notice (which shall not be more than sixty (60) days thereafter) and the Base Rent (taking into account any abatement as aforesaid) shall be adjusted proportionately as of the termination date and Lessee shall thereupon promptly vacate the Premises.

## ARTICLE XII WAIVER

12.1 Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor the strict and prompt performance thereof by the property party.

## ARTICLE XIII [INTENTIONALLY OMITTED]

## ARTICLE XIV EMPLOYMENT PRACTICES

14.1 Employment Practices. During the Term of this Agreement, Lessee hereby agrees to fully comply with the provisions of Employment Practices as set forth in Exhibit "D" attached hereto and made a part hereof.

## ARTICLE XV REMEDIES

15.1 Lessor's Remedies. If Lessee fails to pay in full when due any installment of Rent or any other charge, expense, cost or payment to be paid by Lessee under this Agreement, or otherwise fails to perform, violates or otherwise breaches any covenant, condition or warranty of Lessee in this Agreement, and such failure, violation or breach is not cured within the applicable cure period, if any, set forth in this Section below, then Lessee shall be in default hereunder and:

15.1.1 This Agreement, and the Term hereby created shall at the option of Lessor terminate and become absolutely void without any right on the part of Lessee to save the forfeiture by payment of Rent due, or by other performance of the condition violated. When the Agreement shall be so determined and also, when and as soon as the Term hereby created shall have expired, it shall be lawful for any attorney, as attorney for Lessee, to sign an agreement for entering in any competent court an amicable action and confession

of judgment in ejectment, without any stay of execution or appeal, against Lessee and all persons claiming under Lessee for the recovery by Lessor of possession of the Premises, for which this Agreement or a copy hereof shall be a sufficient warrant, whereupon, if Lessor so desires, a writ of possession may issue forthwith without any prior writ or proceedings whatsoever. And, if for any reason after such action has been commenced, the same shall be discontinued and possession of the Premises remain in or be restored to Lessee, Lessor shall have the right upon any subsequent defaults to bring one or more further amicable actions in the manner and form as hereinbefore set forth, to recover possession of the Premises for such subsequent default. No such termination of this Agreement for recovering possession of the Premises shall deprive Lessor of any remedies or action against Lessee for all arrears of Rent or for damages for the breach of any covenant herein contained, nor shall the bringing of any such action for Rent, or breach of covenant, nor the resort to any other remedy herein provided for the recovery of Rent and of other monies due hereunder or for damages for breach of covenant be construed as a waiver of the right to insist upon the forfeiture and to obtain possession in the manner herein provided.

15.1.2 Lessor may, at its option, sublease the Premises as agent of Lessee for the balance of the Term of this Agreement and receive the Rent therefor and apply the same to the payment of any Rent or damage for breach of covenant due by lessee to Lessor under the terms hereof.

15.1.3 In addition to the foregoing remedies, Lessor cumulatively shall have all available rights, remedies, powers and privileges afforded from time to time by law or in equity.

15.1.4 In the event of any failure, violation or breach of covenant by Lessee, Lessor shall, except as provided in the following sentence, given written notice thereof to Lessee, and Lessee shall have a period of ten (10) days after receipt of such written notice to cure any monetary breach, including but not limited to replenishment or replacement of the Deposit, and Lessee shall have a period of thirty (30) days after receipt of such written

notice to cure any other such failure, violation or breach. Lessor agrees that it will not exercise any remedy for default or breach hereunder, including applying any portion of the Deposit in respect thereof, if within the appropriate period Lessee (i) cures the default or breach with respect to the nonpayment of Rent or failure to replenish or replace the Deposit, or (ii) with respect to defaults or breaches other than the nonpayment of Rent and the failure to replenish or replace the Deposit, commences action in good faith within ten (10) days to cure the default or breach of covenant and proceeds to effect and complete a cure within thirty (30) days (unless Lessor in its reasonable judgment determines that more than thirty (30) days is required to effect a cure, in which case the cure period shall be extended accordingly); provided, however, that Lessor shall not be required to provide any notice or cure period for a monetary default or breach more than two (2) times in any twelve (12) month period.

15.1.5 In exercising any power conferred under this Agreement, either by the entry of an appearance, amicable action or by the entry of judgment in ejectment by confession, Lessee agrees that if a true and correct copy of this Agreement be filed in such proceeding, it shall not be necessary to file the original as a warrant of attorney, any law or rule of court to the contrary notwithstanding.

15.1.6 Any power herein given to enter an amicable action or to appear for and confess and enter judgment against Lessee shall be exercisable any number of times and shall not, under any circumstances, be exhausted by one or more uses thereof. Such power may be exercisable by any assignee of Lessor and may be exercised against any permitted assignee of Lessee.

15.1.7 Lessee hereby waives, to the extent any such right may be applicable, the right to three (3) months and fifteen (15) or thirty (30) days notice required under certain circumstances by the Pennsylvania Lessor and Lessee Act of 1951, as amended, and the benefit of all laws now or hereafter in force with respect to notices to be provided under this Agreement and hereby

agrees that the respective notice periods, if any, provided for in this Agreement shall be sufficient in any such case.

15.1.8 In creating the warrant of attorney to confess judgment in ejectment, Lessee represents and warrants that it knowingly, intentionally and voluntarily, and on the advice of its separate counsel, has agreed to such remedy and rights granted thereby to Lessor.

15.1.9 For purposes of the remedies under this Agreement, the term "amicable action" shall include the procedure for complaint in confession of judgment in ejectment and other procedures for entering judgment by confession in ejectment under Pennsylvania Rules of Civil Procedure, however denominated.

15.2 Remedies Cumulative. All of the remedies herein given to Lessor and all rights and remedies given to it by law or in equity, shall be cumulative and concurrent. No termination of this Agreement or the taking or recovering of the Premises shall deprive Lessor of any of its remedies or actions against Lessee for all arrearages of Rent or for damages, or for the breach of any covenant herein contained, nor shall the bringing of any action for arrears of Rent or breach of covenant, or the resort to any other remedy herein provided for recovery of arrears of Rent be construed as a waiver of the right to obtain possession of the Premises.

#### ARTICLE XVI SIGNS

16.1 Signs. Lessee shall not place a sign on or about the Premises or any building or structure located thereon without the prior written consent of Lessor. Lessor reserves the exclusive right to place signs at the Premises. Lessee agrees to remove promptly and to the satisfaction of Lessor, at the cost and expense of Lessee, upon the expiration of the Term or the earlier termination of this Agreement, any and all signs and placards placed by it upon the Premises, and to repair all damage caused by such removal or the initial installation of such sign.

## ARTICLE XVII REPRESENTATIONS AND WARRANTIES OF LESSEE

17.1 Authorization. Lessee and the individual signing below on Lessee's behalf hereby represent and warrant to Lessor that Lessee has the requisite power and authority to make and perform its obligations under this Agreement, and that the execution of this Agreement has been duly authorized by all requisite corporate action.

17.2 Non-Conflict. Lessee hereby represents and warrants to Lessor that the execution, delivery and performance of this Agreement will not violate any provision of, nor conflict with, nor result in a breach of, any of the terms, conditions, or provisions of, nor constitute a default under, any agreement, indenture or instrument to which Lessee is a party.

## ARTICLE XVIII EMINENT DOMAIN

18.1 Title to Award. In the event the Premises or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi public use or purpose by any competent authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion, and fee, shall belong to the Lessor without any deduction therefrom of any present or future estate of Lessee, and Lessee hereby assigns to Lessor all its right, title and interest to any such award. Lessee shall nonetheless have the right to independently claim and recover from the condemning authority, but not from Lessor or in diminution of the sums payable to Lessor by the condemning authority, such compensation as may be separately awarded or recoverable by Lessee on account of any damage to Lessee's business by reason of the condemnation or on account of any cost or loss to which Lessee might be put in removing Lessee's merchandise, furniture, fixtures, leasehold improvements and equipment.

18.2 Permanent Taking. If the whole of the Premises shall be taken by any public authority under the power of eminent domain, this Agreement shall terminate as of the day possession shall be taken by such public authority, and Lessee shall pay Rent up to that date with an appropriate refund by Lessor of such Rent as shall have been paid in advance for a period subsequent to the date of the taking. If less than twenty-five percent (25%) of the area of the Premises shall be so taken, this Agreement shall terminate only with respect to the parts so taken as of the day possession shall be taken by such public authority, and Lessee shall pay Rent for the entire Premises up to that day with an appropriate refund by Lessor of such rent as may have been paid in advance for a period subsequent to the date of the taking and, thereafter, the Basic Rent shall be equitably adjusted, and Lessor shall at its expense make all necessary repairs or alterations to the Premises structure so as to constitute the remainder of the Premises a complete architectural unit; provided, however, that if Lessee reasonably determines that such taking results in Lessee being unable to continue to conduct the Permitted Use at the Premises, Lessee may terminate this Agreement by written notice delivered to Lessor within thirty (30) days after such taking occurs. If more than twenty-five percent (25%) of the area of the Premises shall be so taken, then this Agreement shall terminate with respect to the part so taken from the day possession shall be taken by such public authority, and Lessee shall pay Rent for the entire Premises up to that day with an appropriate refund by Lessor of such Rent as may have been paid in advance for a period subsequent to the date of the taking, and either party shall have the right to terminate this Agreement upon notice in writing within thirty (30) days after such taking of possession; provided, that in the event that Lessee remains in possession, and if Lessor does not so terminate, all of the terms herein provided shall continue in effect except that the Base Rent shall be equitably abated, and Lessor shall make all necessary repairs or alterations to the Premises structure so as to constitute the remaining portion of the Premises a complete architectural unit.

18.3 Temporary Taking. If less than the fee title to all or any portion of the Premises shall be taken for temporary use or occupancy, this Agreement shall continue in full force and effect without reduction or abatement

of the Base Rent except as herein provided, and the Lessee shall be entitled to make claim for, recover and retain (so long as the Lessee shall not be in default under this Agreement) any awards in the form of rent recoverable in respect of such taking, except that if such taking shall be for a period extending beyond the expiration of the Term of this Agreement, the Lessor shall be entitled to receive such portion of the award as shall be attributable to the portion of such period occurring after such expiration. During the period of any such taking prior to the expiration of the Term of this Agreement, the Lessee shall pay to the Lessor Rent as provided for in this Agreement. If any such taking extends for six (6) months or more, the Lessee shall have the right to terminate this Agreement upon thirty (30) days written notice to the Lessor.

#### ARTICLE IX MISCELLANEOUS

19.1 Notices. Any notice permitted or required to be sent hereunder by either party to the other party shall be in writing, and shall be deemed to have been given when served in person on the addressee, or sent by certified mail, return receipt requested, or commercial overnight delivery service, postage prepaid, addressed as follows:

If to Lessor:

Philadelphia Regional Port Authority  
210 West Washington Square, 8th floor  
Philadelphia, PA 19106  
Attention: Mr. John P. LaRue  
Executive Director

with a copy to:

Philadelphia Regional Port Authority  
210 West Washington Square, 8th floor  
Philadelphia, PA 19106  
Attention: James T. McDermott, Esquire  
Chief Counsel

If to Lessee:

Dependable Distribution Services, Inc.  
1301 Union Avenue  
Pennsauken, NJ  
Attn: Mr. Harvey Weiner

with a copy to:

Harris Ominsky, Esquire  
BLANK, ROME, COMISKY & MCCAULEY  
Four Penn Center  
Philadelphia, PA 19103

or at such other place and to such other persons as the parties hereto may from time to time designate. Notices may be given on behalf of either party by such party's counsel.

19.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania which are applicable to agreements made and to be performed wholly within Pennsylvania. Any action brought to enforce or interpret the terms of this Agreement shall be brought solely in the Court of Common Pleas of Philadelphia, Pennsylvania or in the Federal District Court for the Eastern District of Pennsylvania. The Lessee hereby irrevocably consents to service of process upon the Lessee in any litigation by hand delivery to any employee of the Lessee at the Premises. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared same. It is agreed and stipulated that all parties hereto have participated equally in the preparation of this Agreement and that legal counsel was consulted by each responsible party before the execution of this Agreement.

19.3 Gender and Number. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any

Section or clause hereof may require, as if such words had been fully and properly written in such number and gender.

19.4 Captions. The captions and table of contents in this Agreement are inserted only as a matter of convenience and for ease of reference and in no way define, limit, enlarge or describe the scope or intent of this Agreement nor shall they in any way affect this Agreement or the construction of any provision hereof.

19.5 Counterparts. This Agreement may be executed in any number of identical counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

19.6 The Lessee's Successors and Assigns. The covenants, conditions and agreements in this Agreement shall bind and inure to the benefit of the Lessee, and, except as otherwise expressly provided in this Agreement, its legal representatives, heirs, successors and assigns.

19.7 The Lessor's Successors and Assigns. The term "Lessor" as used in this Agreement means the fee owner of the Property from time to time or, if different, the party from time to time holding and exercising the right as against all others (except space tenants of the Building) to possession of the Building. The Lessor represents that it is the holder of such right as of the date hereof. In the event of the voluntary or involuntary transfer of such ownership or right to a successor-in-interest of the Lessor, the Lessor shall be discharged and relieved of all liability and obligations hereunder which shall thereafter accrue and the Lessee shall look solely to such successor-in-interest for the performance of the covenants and obligations of the Lessor hereunder which shall thereafter accrue. The liability of the Lessor and its successors-in-interest under or with respect to this Agreement, and of Lessor's directors, officers, shareholders or constituent partners, shall be strictly limited to and enforceable solely out of its or their interest in the Property and shall not be enforceable out of any other assets, and Lessee shall cause the judgment index

to be so marked. Subject to the foregoing, the provisions hereof shall bind and inure to the benefit of the successors and assigns of the Lessor.

19.8 Invalidity of Provisions. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19.9 No Joint Venture. Nothing herein contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) principal and agent, (ii) a partnership, or (iii) a joint venture between the parties hereto, it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship to the parties hereto other than the relationship of landlord and tenant.

19.10 Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference and made a part hereof as if fully set forth in this Agreement; provided, however, in the event that at the time of the execution of this Agreement any of the exhibits attached hereto are incomplete, the parties shall use their best efforts to complete such exhibits at the earliest possible date.

19.11 No Recordation. This Agreement shall not be recorded in the public records in whole or in memorandum form by either party hereto without the prior written consent of the other.

19.12 Time of Essence. Time is of the essence of this Agreement.

19.13 Business Interruption. Lessor shall not be liable for damages by reason of any inconvenience or interruption to the business of Lessee arising

from any taking under the power of eminent domain, any loss or damage to or destruction of the Premises by fire, casualty or other cause whatsoever, or from the making of additions, alterations or repairs to the Premises.

19.14 Entire Agreement. This Agreement sets forth all the promises, agreements, conditions and understandings between Lessor and Lessee relative to the Premises, and that there are no promises, agreements, conditions or understandings either oral or written, between them other than as are herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Lessor and Lessee unless made in writing and signed by both parties hereto.

19.15 Liability of the Commonwealth of Pennsylvania. This Agreement is not an obligation of the Commonwealth or any political subdivision thereof, other than Lessor, nor shall the Commonwealth or any political subdivision thereof, other than Lessor, be liable for any of the obligations under this Agreement. Nothing contained in this Agreement shall be deemed to pledge the general credit or taxing power of the Commonwealth or any political subdivision thereof.

19.16 Marketing. Lessee shall market its services offered at the Premises and the Premises itself in a professional, first class manner at least equivalent to the marketing efforts of similar enterprises.

19.17 Publicity. Lessee and Lessor agree to cooperate with each other in advertising, promotion and marketing activities for the Premises and the Port of Philadelphia.

19.18 Mechanic's Liens. Lessee will not permit, and will promptly discharge, at its costs and expense, all liens and charges upon the Premises or a part hereof arising by reason of any labor or materials furnished or claimed to have been furnished to or on behalf of Lessee, its agents, sublessees, licensees, assigns, permittees, employees or independent contractors or by

reason of any construction, alteration, addition, repair or demolition of any part of the Premises (by or on behalf of Lessee, its agents, sublessees, licensees, assignees, permittees, employees or independent contractors). Lessor shall have, and is hereby given authority to enter upon the Premises at any reasonable time to post notices in a reasonable manner and at reasonable places which in its option shall be necessary to hold Lessor harmless from any claim or liability arising out of any work done on the Premises. Notice is hereby given that Lessor will not be liable for any labor, services or materials furnished or to be furnished by or for Lessee, or to anyone holding the Premises through or under Lessee, and that no mechanic's or other such lien for any such labor or materials shall attach to or affect the interest of Lessor in and to the Premises.

19.19 Statutory Authority. This Agreement is being entered into pursuant to the provisions of Section 11(c) of the Philadelphia Regional Port Authority Act, Act of July 10, 1989, P.L. 291, No. 1989-50, with approval of a majority of the members of the Board of the Authority.

19.20 Lessee Integrity Provisions. During the term of this Agreement, Lessee hereby agrees to fully comply with the Lessee Integrity Provisions set forth in Exhibit "E" attached hereto and hereby made a part hereof.

19.21 Access to South Berth. During the term of this Agreement, third parties authorized by Lessor to utilize the berth on the south side of the Premises shall have free access to such berth across the Premises (excluding access to buildings upon the Premises) at all times from the "South Berth Trailer and Parking Area" shown on Exhibit "A" attached hereto, notwithstanding anything to the contrary elsewhere contained in this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SEAL

PHILADELPHIA REGIONAL PORT AUTHORITY

Attest: \_\_\_\_\_  
Title: \_\_\_\_\_

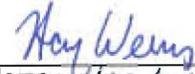
By:   
John P. LaRue  
Executive Director

Date: \_\_\_\_\_

SEAL

DEPENDABLE DISTRIBUTION SERVICES INC.

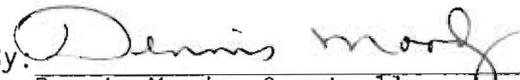
Attest: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Harry Weiss  
Title: President

Date: \_\_\_\_\_

CONSENT AS TO PROPRIETY AND AVAILABILITY OF FUNDS:

Date: \_\_\_\_\_

By:   
Dennis Moody, Comptroller  
Philadelphia Regional Port 4-5-94.  
Authority

By:   
Bruce Colucci,  
Fiscal Administrator  
Philadelphia Regional Port  
Authority

APPROVED AS TO FORM AND LEGALITY:

Date: \_\_\_\_\_

By:   
Office of the Attorney General of  
the Commonwealth of Pennsylvania

Date: \_\_\_\_\_

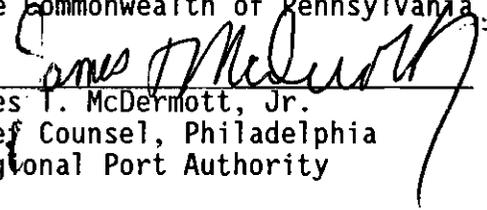
By:   
James I. McDermott, Jr.  
Chief Counsel, Philadelphia  
Regional Port Authority

EXHIBIT "A"

PREMISES

GRAPHIC SCALE



( IN FEET )

1 Inch = 200 ft.

DELAWARE

RIVER

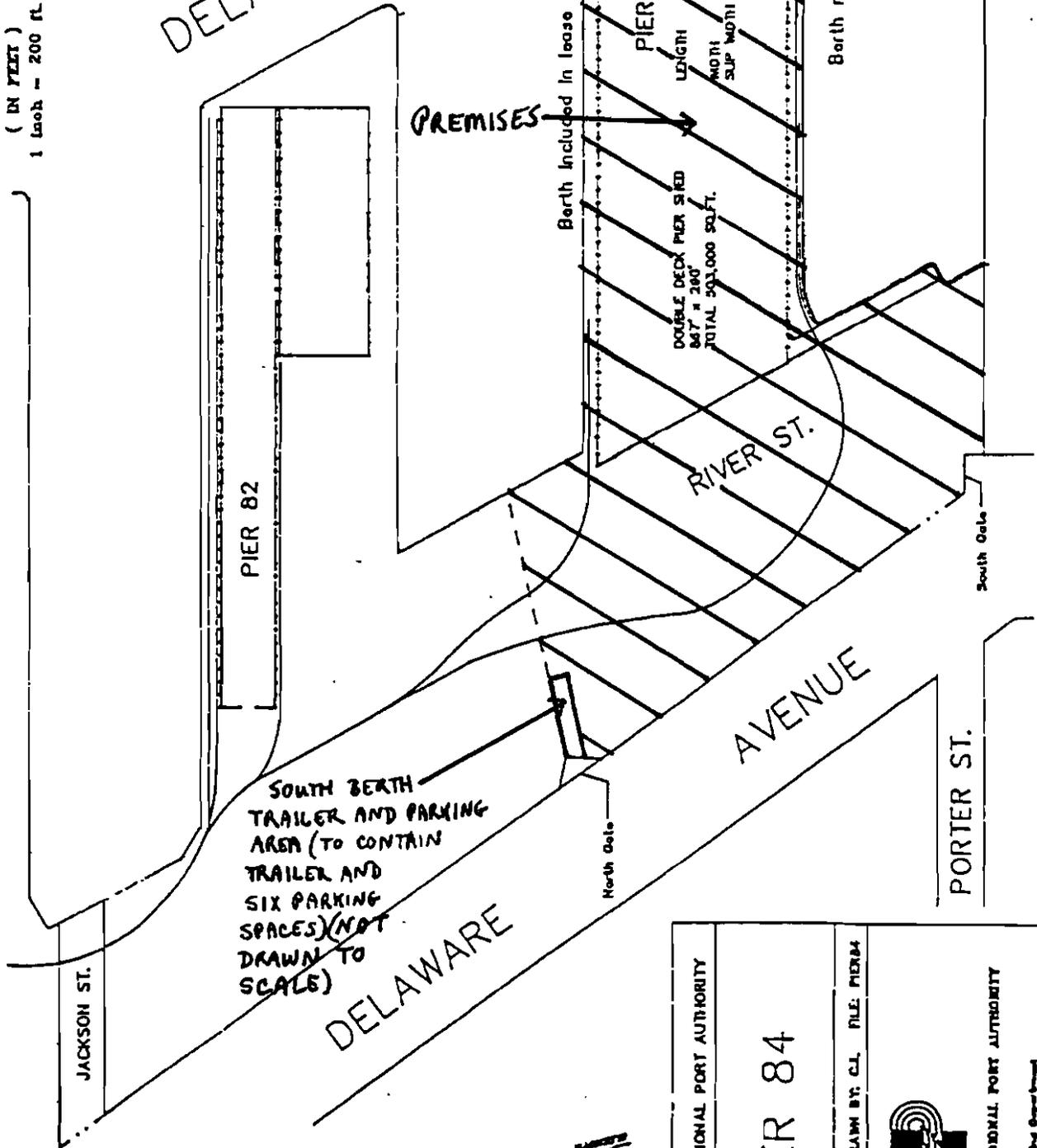


EXHIBIT "A"

PHILADELPHIA REGIONAL PORT AUTHORITY
PIER 84
DATE 10/18/83 DRAWN BY: C.L. FILE: PIER84

PHILADELPHIA REGIONAL PORT AUTHORITY Engineering Department 1st and Market Square Philadelphia, PA 19106 (215) 562-4400

EXHIBIT "B"

PIER LOAD LIMITS

Second Level: 300 pounds per square foot live load\*

First Level : 800 pounds per square foot live load

- \* The second level load limit shall increase to 305 pounds per square foot live load upon completion of removal of a layer of flooring on the second level which Lessee is undertaking.



CITY OF PHILADELPHIA

FIRE DEPARTMENT

Fire Administration Building

348 & Spring Garden Streets Philadelphia, Pa. 19104, Pa.

JOSEPH A. RIZZO  
Commissioner



March 30, 1983

Thomas J. Tomasco, CMAST&T Mgr.  
Traffic and Regulatory Matters  
Phila. Port Corporation  
1020 Public Ledger Building  
6th and Chestnut Streets  
Philadelphia, Pa. 19106

Dear Mr. Tomasco:

The Philadelphia Fire Department, having recognized the need for appropriate guidelines to be followed when moving explosive material through the port of Philadelphia, met with representatives of those agencies and companies involved in the Marine Transportation Industry and developed the following regulations.

Effective immediately, the movement of explosive products through the Port of Philadelphia will be accomplished in compliance with the following:

1. GENERAL GUIDELINES -

[CFR-33§126.29(a), CFR-33§126.35, CFR-49§173.1(b)]

The U.S.C.G. Captain of the Port is authorized to require that any transaction of handling, storing, stowing, loading, discharging or transporting dangerous goods at or on a waterfront facility shall be undertaken and continued only under the immediate supervision and control of the Captain of the Port or his duly authorized representative and the local authority (Fire Department). Owners, operators and agents of waterfront facilities are not relieved of their primary responsibility for the safety and security of their facilities. It is the duty of each person who offers or receives hazardous materials for transportation to instruct his officers, agents and employees having any responsibility for preparing or receiving hazardous materials for shipment as to applicable city, state, and federal regulations and they are responsible for strict adherence to these regulations.

EXHIBIT "C"

GUIDELINES REGARDING EXPLOSIVES

Prior to shipment of explosives in authorized vehicles to waterfront facilities for export, manufacturers are required under federal law (Code of Federal Regulations - CFR's 33 and 49) to obtain permits for transportation from local and federal regulatory agencies.

## II. PROHIBITED COMMODITIES -

[CFR-49§171.7]

Through research, experimentation and extensive testing conducted by and under the auspices of the Bureau of Explosives of the Association of American Railroads (AAR), International Maritime Organization (IMO), Institute of Makers of Explosives (IME), National Fire Protection Association (NFPA) and other competent authorities, the transportation of the following explosives is forbidden ergo the handling and storage of these explosive in or on waterfront facilities is forbidden:

[CFR-49§173.51]

- a. Explosive compounds, mixtures, or devices which ignite spontaneously or undergo marked decomposition when subject to a temperature of 167°F (75°C), for 48 consecutive hours.
- b. Explosive mixtures or devices containing an acidic metal salt and a chlorate.
- c. Explosive mixtures or devices containing an ammonium salt and a chlorate.
- d. New explosive compounds, mixtures or devices not examined and assigned a recommended description and hazard class.
- e. Leaking or damaged packages of explosives.
- f. Nitroglycerin, diethyleneglycol dinitrate or other liquified explosives not authorized as a desensitized liquid explosive or any solid compound mixtures or device designated and examined by the Bureau of Explosives.
- g. Loaded firearms.
- h. Fireworks that combine an explosive or blasting cap and a detonator.

- i. Fireworks containing yellow or white phosphorous.
- j. Toy torpedoes, with a maximum outside dimension exceeding 7/8 inch or toy torpedoes containing a mixture of potassium chlorate, black antimony, and sulfur with an average weight of explosive composition for each unit exceeding four grains.

### III. TRANSPORTATION OF EXPLOSIVES -

All transportation and handling of explosives will be accomplished in compliance with §5-1000 of the Philadelphia Fire Code.

Designated dangerous cargo as defined in CFR-49

Class "A" Explosives: CFR-49§173.53 to and including §173.86.

Class "B" Explosives: CFR-49§173.88 to and including §173.196.

Class "C" Explosives: CFR-49§173.100 to and including §173.114a.

in the amount specified below shall not be brought onto a waterfront facility, except when laden within a railroad car or highway vehicle and shall remain in such railroad or highway vehicles except when removed as an incident of its prompt transshipment, without prior notification of the Captain of the Port:

- . Explosives, Class "A", all shipments at any one time;
- . Explosives, Class "B", in excess of one net ton at any one time;
- . Explosives, Class "C", in excess of ten net tons at any one time.

Explosives approved for handling on marine facilities shall be delivered and loaded aboard vessels on sailing day. It shall be the responsibility of the Terminal Operator to coordinate delivery and loading functions so as to eliminate delay.

IV. STORAGE OF EXPLOSIVES -

In instances of emergency or unforeseen delay, permission may be obtained from the Philadelphia Fire Department to retain the explosives on the facility in a "safe haven" approved by the Philadelphia Fire Department. The storage of Class "A" and Class "B" explosives in quantities in excess of 50 lbs. net explosive content, and Class "C" explosives in excess of 3000 lb. net explosive content on the land area of port facilities is prohibited. Each terminal handling explosives shall develop a specific "safe haven" plan which shall comply with CFR-27, Parts 181.198, 181.199, and 181.200 and the American Table of Distances for storage of explosive materials. "Safe Haven" plans must be submitted to, and inspected and approved by, the Philadelphia Fire Department.

Permission to use a "Safe Haven" for the storage of explosives will be granted or denied by the Fire Department based on the following criteria:

1. Nature of the emergency and/or unforeseen circumstances which lead to delay in loading.
2. Class of, and quantity of, explosives to be stored, and storage capacity of approved "safe haven".
3. Duration of storage in "safe haven".

These criteria will be considered and permission for "safe haven" use granted or denied on a case by case basis. The Fire Department may also seek input from the Coast Guard, the Terminal Operators, the Port Corporation, the DRPA, or other concerned entities or individuals in arriving at "safe haven" use decisions.

The Fire Department will continue to monitor this procedure, and will adjust this policy position as the need arises.

Sincerely,

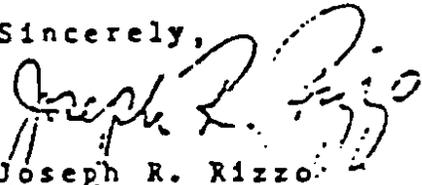
  
Joseph R. Rizzo  
Fire Commissioner

EXHIBIT "D"

EMPLOYMENT PRACTICES REQUIREMENTS

EXHIBIT "D"

EMPLOYMENT PRACTICES REQUIREMENTS

During the term of this lease, Lessee agrees as follows:

1. Lessee shall not discriminate against any employe, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, sex or handicap. Lessee shall take affirmative action to ensure that applicants are employed, and that employes or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, sex or handicap. Such affirmative action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Lessee shall post in conspicuous places, available to employes, agents, applicants for employment and other persons, a notice setting forth the provisions of this nondiscrimination clause.

2. Lessee shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex or handicap.

3. Lessee shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Lessee.

4. It shall be no defense to a finding of a noncompliance with Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause that Lessee had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that Lessee was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Lessee will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause, Lessee shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Lessee shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Lessee's

noncompliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Lessee may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

7. Lessee shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, Lessor and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to §49.35 (relating to information concerning compliance by contractors). If Lessee does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

8. In the event Lessee seeks to sublease the Premises, Lessee shall actively recruit minority sublessees or sublessees with substantial minority representation among their employees.

9. Lessee shall include the provisions of this nondiscrimination clause in any sublease of the Premises, so that such provisions will be binding upon each sublessee.

10. The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.

11. Lessee's obligations under this clause are limited to the Premises.

**EXHIBIT "E"**

**LESSEE INTEGRITY PROVISIONS**

**1. Definitions**

a. "Confidential" means information that is not public knowledge, or available to the public or request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with PRPA.

b. "Consent" means written permission by a duly authorized officer or employe of Lessor, provided that where the material facts have been disclosed, in writing, by prequalifications, bid, proposal, or contractual terms, Lessor shall be deemed to have consented by virtue of execution of this agreement.

c. "Financial interest" means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employe, or the like, or holding any position of management.

d. "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscription, advances, deposits of money, services, employment of contracts of any kind.

e. "Lessee" means the individual or entity that has entered into this agreement with Lessor, including directors, officers, partners, managers, key employes, and owners of more than a 5% interest.

2. Lessee shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth of Pennsylvania (the "Commonwealth") or Lessor.

3. Lessee shall not disclose to others any confidential information gained by virtue of this agreement.

4. Lessee shall not, in connection with this or any other agreement with Lessor or the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on any one as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employe of Lessor or the Commonwealth.

5. Lessee shall not, in connection with this or any other agreement with Lessor or the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employe of Lessor or the Commonwealth.

6. Except with the consent of Lessor, neither any sublessee or anyone in privity with said sublessee shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of obligations under this agreement except as provided therein.

7. Except with the consent of Lessor, Lessee shall not have a financial interest in any contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. Lessee, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify Lessor in writing.

9. Lessee, by execution of this agreement, certifies and represents that he has not violated any of these provisions.

10. Lessee shall, upon request of Lessor, reasonably and promptly make available to Lessor, for inspection and copying, all business and financial records of Lessee of, concerning, and referring to this agreement with Lessor, or which are otherwise relevant to the enforcement of these provisions.

11. For violation of any of the above provisions, Lessor may terminate this and any other agreement with Lessee, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another lessee to complete performance hereunder, and debar and suspend Lessee from doing business with Lessor. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those Lessor and/or the Commonwealth may have under law, statute, regulation or otherwise.

EXHIBIT "F"

LESSOR CAPITAL IMPROVEMENTS (To be expended in accordance  
with Section 6.13)

I. SECOND LEVEL PROJECTS.

A. Removal of Loose Paint/Encapsulate.

Estimated Cost: \$140,000.00.

B. Resurface Deck.

Estimated Cost: \$500,000.00.

C. Fogging System. (Both first and second levels)

Estimated Cost: \$140,000.00.

D. Ventilation.

Estimated Cost: \$100,000.00.

Second Level Total: \$880,000.00

II. FIRST LEVEL PROJECTS.

A. Partitions, Strip Partitions and Five Strip Doors.

Estimated Cost: \$100,000.00.

B. Repair and Improve Four 16,000 lb. Elevators.

Estimated Cost: \$10,000.00.

C. Sprinkler System Repairs.

Estimated Cost: \$10,000.00

D. Security Alarm System

Estimated Cost: \$15,000.00

First Level Total: \$135,000.00

III. EXTERIOR PROJECTS.

A. Exterior Paint Removal Around Eight Doors.

Estimated Cost: \$55,000.00

B. Rail Track Rehabilitation.

Estimated Cost: \$8,329.00

Exterior Projects Total: \$63,329.00

IV. MISCELLANEOUS

A. Purchase of Pallets and other Improvements (Quantity and specifications to be mutually agreed upon by Lessor and Lessee).

Estimated Cost: \$560,000.00

Miscellaneous Total: \$421,671.00

TOTAL ESTIMATED COSTS: \$1,500,000.00