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AMENDMENT NUMBER 1 TO

EXHIBIT B

SCHEDULE OF FEES AND CHARGES

JAXPORT REFRIGERATED SERVICES, INC.

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Dated: \_\_\_\_\_

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

I. **PURPOSE:** This Amendment Number 1 to the Schedule of Fees and Charges ("Schedule") will replace and supersede the existing Schedule attached to the Agreement dated February 25, 1997, as Exhibit B. This Amendment Number 1 amends the provision for wharfage and the Minimum Annual Guarantee previously set forth in said Exhibit B and further includes a provision for crane rental.

II. **TERM:**

A. The "Commencement Date" of this Agreement shall be May 1, 1997. The Term thereof shall continue for a twenty (20) year period from the Commencement Date.

B. Upon written notice to the Authority, Lessee may terminate this Agreement without cause nine (9) months after the Authority's receipt of such notice.

III. **LEASED PREMISES RENTAL:** Indicated on Exhibit A1

A.	RATES	EFFECTIVE DATE	ANNUAL	MONTHLY
1.	40,000 square feet +/- Refrigerated Warehouse Space @ \$1.05 per square feet per year.	5/1/97	\$42,000.00	\$3,500.00
2.	80,000 square feet +/- Refrigerated Warehouse space @ \$1.05 per square feet per year.	5/1/97	\$84,000.00	\$7,000.00
3.	35,000 square feet +/- non-refrigerated warehouse space at \$1.45 per square feet per year.	5/1/97	\$50,750.00	\$4,229.17
<b>TOTALS</b>			<b>\$176,750.00</b>	<b>\$14,729.17</b>



**B. INCREASES IN RENTAL RATES**

1. On May 1, 2000, the per square foot rental rate shall be increased in direct proportion to the percentage increase in the Consumer Price Index ("CPI") for the prior three (3) year period using the latest CPI figure available two (2) months prior to May 1, 2000, provided, however, that said increase shall not exceed twelve percent (12%).
2. On May 1, 2001, and every year thereafter, the per square foot rental rate shall be increased in direct proportion to the percentage increase in the CPI for the previous twelve (12) month period using the latest CPI figure available two (2) months prior to May 1, 2001, provided, however, said increase shall not exceed four percent (4%).
3. The CPI used herein shall be the Consumer Price Index for all Urban Consumers, 1982-84=100.

**C. ADDITIONAL NON-REFRIGERATED STORAGE AREA:** In the event the 5,000 square feet +/- indicated as "Green Cove Maritime" on Exhibit A1 becomes available, said square footage shall automatically become a part of the Non-Refrigerated Warehouse Area thirty (30) days after the area is vacated. The rental rate for said area shall be the then current rental rate per square foot Lessee will be paying for the non-refrigerated warehouse space at the time said area becomes available.

**IV. CRANE RENTAL RATE:**

- A. **RENTAL RATE:** Subject to applicable Florida State tax. Washington or Kone - \$131.02 per working hour without operator.
- B. **INCREASE IN CRANE RENTAL RATE:** Rental Rates shall be reviewed annually in accordance with Paragraph V.F.

**V. THROUGHPUT RATES AND MINIMUM ANNUAL GUARANTEE:**

- A. **EFFECTIVE PERIOD FOR THROUGHPUT RATES AND MINIMUM ANNUAL GUARANTEE:** Lessee shall pay Authority the Throughput Rates and commit to payment of a Minimum Annual Guarantee provided for below for a three (3) year period commencing October 1, 1997 ("Effective Period").
- B. **THROUGHPUT RATES INCLUSIVE:** All Throughput rates include Wharfage and Terminal Use.

**C. REFRIGERATED CARGO THROUGHPUT:**

1. **Application:** Refrigerated Cargo Throughput rates apply to cargo crossing **Authority's** docks moving to or from a water-borne vessel. Method of payment for throughput, and any late or delinquent fees therefor, shall be assessed and handled in accordance with **Authority's** published tariff or its reissue.
2. **Refrigerated Cargo Throughput Rates:** Commencing on the Commencement Date as established in Paragraph A above, Lessee shall pay **Authority** \$1.30 per short ton for all refrigerated cargo.

**D. NON-REFRIGERATED CARGO THROUGHPUT:**

1. **Application:** Non-refrigerated cargo Throughput rates apply to non-refrigerated cargo crossing **Authority's** facilities by water borne vessels. Method of payment and assessment of any late fees therefor shall be assessed in accordance with **Authority's** published tariff or its reissue.
2. **Non-Refrigerated Cargo Throughput Rates:**

a. Internal storage for cargoes stored in Lessee's 35,000 square feet warehouse or 8,120 square feet warehouse, which is governed by a separate agreement, both shown in red on Exhibit A2 - \$1.65 per short ton.

b. External storage for cargoes stored in areas on the Terminal Facilities designated by **Authority** as shown on Exhibit A2 areas 1, 2 and 3 - \$1.95 per short ton for 45 days for each shipment, afterwhich Lessee and **Authority** shall execute a Space Allocation Agreement for such shipment. In those cases in which **Authority's** tariff rate for any commodity is lower than the \$1.95 per short ton rate, then the tariff rate shall be applied.

**E. MINIMUM ANNUAL GUARANTEE:** In consideration of the above Throughput rate structure, Lessee agrees to pay **Authority** the following Minimum Annual Guarantee computed on both Refrigerated and Non-Refrigerated Cargo:

	Year 1 Tonnage	Year 2 Tonnage	Year 3 Tonnage
<b>Total Guarantee</b>	180,000 short tons	210,000 short tons	230,000 short tons

1. **Non-Refrigerated Cargo Defined:** Non-Refrigerated Cargo is general breakbulk cargo and includes lumber, steel, aluminum and paper products cargos that are in packages and are loose, but shall not include sea-going containers or trailers or roll-on, roll-off cargo except under the provisions of Paragraph V.E.2.

2. **Other Cargo Not Specified Herein:** Lessee must obtain the Authority's Director of Marine Terminals Operations and Services approval in writing prior to handling any cargo not specified herein. Such approval shall not be unreasonably withheld.

3. **Shortfalls:** In the event Lessee does not meet its Minimum Annual Guarantee in any year during the Effective Period, Lessee shall be invoiced for the difference between short tons guaranteed for that year and the tonnage that actually crossed the Terminal Facilities at the Refrigerated Cargo Throughput rate. Lessee shall pay such invoice within thirty (30) days of the date of the invoice.

F. **ANNUAL REVIEW OF THROUGHPUT RATES, ANNUAL MINIMUM GUARANTEE AND CRANE RENTAL:** Thirty (30) days prior to the second and third year of the Effective Period, Authority and Lessee shall review the throughput and crane rental rates and the minimum annual tonnage guarantee to establish such rates and guarantee for the ensuing year. In the event Authority and Lessee cannot mutually agree on the minimum annual tonnage guarantee, and/or throughput rate, then the throughput rate for the ensuing year shall be the throughput and crane rental rate contained in Authority's published tariff, and Lessee shall not be required to guarantee an annual minimum tonnage amount.

VI. **OTHER FEES AND CHARGES:** Any other fees and charges due and payable to Authority by Lessee that are not provided for in this Agreement shall be assessed and handled in accordance with Authority's published tariff or its reissue, unless otherwise agreed by the parties hereto in writing.

JAXPORT REFRIGERATED  
SERVICES, INC.



JACKSONVILLE PORT AUTHORITY



EXHIBIT B

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FEDERAL MARITIME  
COMMISSION  
OFFICE OF THE SECRETARY

AMENDED AND RESTATED

AGREEMENT AND LEASE

By and Between

JACKSONVILLE PORT AUTHORITY

and

JAXPORT REFRIGERATED SERVICES, INC.



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**AMENDED AND RESTATED  
AGREEMENT AND LEASE  
JAXPORT REFRIGERATED SERVICES, INC.**

THIS AGREEMENT made and entered into as of this 25th day of February, 1997, by and between the **JACKSONVILLE PORT AUTHORITY**, a body of politic and corporate created and existing under Chapter 63-1447, Laws of Florida, as amended, hereinafter referred to as "**Authority**", and **JAXPORT REFRIGERATED SERVICES, INC.**, a company authorized to do business in the State of Florida, hereinafter referred to as "**Lessee**",

**W I T N E S S E T H**

**WHEREAS, Authority** and **Lessee** entered into an Agreement and Lease dated August 5, 1993, as amended, for the lease and use of transient refrigerated cargo warehouse space; and

**WHEREAS, Authority** and **Lessee** now desire to alter the provisions of said agreement and hereby substitute said document with this new agreement, hereinafter referred to as "Agreement", which shall supersede and cancel all previous agreements between **Authority** and **Lessee** upon the Commencement Date of this Agreement as provided for in Exhibit B,

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, **Authority** and **Lessee** do hereby mutually undertake and agree, each for itself and its successors and assigns, as follows:

**ARTICLE I**

**DESCRIPTION OF PREMISES**

**Authority** leases to **Lessee**, during the term of and for the uses set forth in this Agreement, and upon and subject to the provisions and conditions specified hereinafter, the premises ("Premises") indicated

on Exhibit A attached to this Agreement and includes the "Refrigerated Warehouse" and "Non-Refrigerated Warehouse", and appurtenances thereto, which are located in Building 1. Building 1 is hereafter referred to as the "Warehouse" and is situated on the Talleyrand Marine Terminal area.

## ARTICLE II

### RIGHTS TO TRANSIENT REFRIGERATED CARGO OPERATIONS

2.01 **Rights of Authority and Lessee:** The **Authority** shall not compete with **Lessee** as a common use facility operator in the transient refrigerated cargo business. Effective January 1, 1997 and for the next thirty-six (36) month period, **Authority** shall not permit any party to construct on its marine terminals any common use transient refrigerated cargo storage facility. At the end of such thirty-six (36) month period this restriction automatically renews for a twelve month period each year unless the **Authority** elects not to renew by notice to **Lessee** on January 1 of each year. In the event **Authority** elects not to renew, **Lessee** shall have exclusive rights to operate a common use transient refrigerated storage facility only on **Authority's** property located along Talleyrand Avenue and shall also have the right of first refusal regarding the proposed construction and operation of new, common use transient refrigerated cargo storage facilities on all remaining marine terminal property owned by the **Authority**. The **Authority** shall not lease marine terminal property now owned or hereafter acquired for purposes of common use transient refrigerated cargo storage at locations other than the Talleyrand property during the term of this Agreement unless **Lessee** shall have refused to construct and/or operate comparable facilities on terms equal to or more favorable to the **Authority** than those proposed by any other party. **Authority** shall use its best efforts to advise **Lessee** with written notice within fifteen (15) days, of any written documents between the **Authority** and any third party relating to the third party's development of a transient refrigerated warehouse on the **Authority's** marine

terminal property. Lessee shall have ninety (90) days to exercise its right of first refusal upon the receipt of a written notice from the Authority containing a bona fide proposal. If Lessee fails to exercise its option described in this provision, the Authority may enter into an agreement with the other party regarding the proposed operation.

**2.02 Application of Rights:** This article is prospective in its application and shall not apply to existing Authority leases or their renewals, provided, however, that any renewal of an existing lease shall not expand the renewing lessee's rights with regard to common use transient refrigerated cargo storage, or any other lessee's rights to transient refrigerated cargo storage without being subject to this article.

**2.03 Common Carrier Cargo:** This article shall not apply to any carrier in the handling and storage of that carrier's cargo.

### ARTICLE III

#### TERM OF AGREEMENT

**3.01 Term:** The term of this Agreement (hereafter "Term") shall be for the period of time set forth on Exhibit B, but shall be subject to termination pursuant to Article 19 of this Agreement.

**3.02 Holding Over:** In the event Lessee continues its operations on the Premises after expiration of this Agreement without any written renewal or extension, such continuation shall not be deemed to operate as a renewal or extension of this Agreement, but shall be deemed only a tenancy at sufferance. Such tenancy at sufferance shall be governed by the then applicable provisions of this Agreement and may be terminated by Authority upon fifteen (15) days written notice.

## ARTICLE IV

### USE OF PREMISES

Lessee has the right to use the Premises for the purpose of storing transient cargo. Transient cargo is defined as those products that do not generally remain in storage on the Premises for a period greater than thirty (30) days. In addition, Lessee may use the Premises to store any cargo, shipments or merchandise it may choose regardless of the place of origin of such cargo, shipments or merchandise, provided however, that the storage of transient import or export cargo shall at all times be given precedence by Lessee over the storage requirements of any other cargo.

## ARTICLE V

### FEES AND CHARGES

5.01 **Rental Fees:** Lessee shall pay rent to the Authority in the amount of the monthly rate, plus tax, indicated on Exhibit B.

A. **Payments:** All rent for each month is due in advance on the first day of that month without demand and is late if not paid by the 10th day of the month.

B. **Proration of Rent:** Should this Agreement commence on any day other than the first day of the month, or terminate on any day other than the last day of the month, the rent will be prorated on a per diem basis. This prorated amount will be determined exclusively by the Authority.

5.02 **Wharfage:** Lessee shall pay Authority the wharfage fees set forth on Exhibit B.

5.03 **Delinquent and Late Rental Fees**

A. If any payment required by this Agreement is not paid within thirty (30) days of its due date, then Lessee shall be in default of this Agreement and Authority may terminate this Agreement as provided in Article 19. Upon termination, the Authority may take possession of the Premises by any lawful means.

B. A late fee assessment of one and one-half percent (1-1/2%) per month or fraction thereof from the date due and until the date paid, will be imposed on any rent payments or other fees not paid within ten (10) days of the due date. This provision shall not preclude the **Authority** from terminating this Agreement as provided herein or enforcing any other provisions contained herein or as provided by law.

5.04 **Other Fees and Charges**: Any other fees and charges due and payable to the **Authority** by Lessee shall be assessed as set forth on Exhibit B.

## ARTICLE VI

### UTILITIES

Lessee shall be responsible for promptly paying those persons furnishing or providing utilities or related services to Lessee. Those utilities or related services include, but are not necessarily limited to, electricity, gas, janitorial service, trash removal and telephone service. Water and sewer shall be provided by the **Authority**. In no event shall Lessee be required by the **Authority** to pay a greater cost per unit of electricity than other tenants receiving electricity over **Authority's** lines. Lessee may arrange for direct electric service at its option and expense.

## ARTICLE VII

### TAXES AND ASSESSMENTS

Lessee shall bear, pay and discharge, on or before the last day on which payment may be made without penalty or interest, all ad valorem real estate taxes or other taxes, which shall or may during the Term of this Agreement be charged, levied, assessed, imposed, become due and payable, or become liens upon, or arise in connection with Lessee's use, occupancy or possession of the Premises or any part thereof. None of the provisions, covenants or conditions of this Agreement shall be construed as a release or waiver on the part of **Authority**, as a political subdivision of the State of

possession of the **Authority** as necessary to **Lessee** on any determination of value for tax assessment purposes.

## ARTICLE VIII

### INDEMNIFICATION/ HOLD HARMLESS

**Lessee** agrees to indemnify and hold **Authority**, its agents, servants and employees harmless from and against all liabilities, judgements, costs, damages and expenses which may accrue against, be charged to or recovered from **Authority** by reason of or on account of damage to the property of, injury to, or death of any person, arising from the **Lessee's** use, occupancy and operation of the Premises, use of **Authority's** equipment or facilities, including leakage or spillage of any substance used or handled by **Lessee**, and including acts of **Lessee's** agents, employees, contractors and subcontractors, except when caused by the negligence of the **Authority**. In the event both parties are negligent, the legal principles of comparative negligence shall control. The **Authority** shall give **Lessee** prompt and timely notice of any claim made or suit instituted which, in any way, affects **Lessee** or its insurers. **Lessee** or its insurers shall have the right to compromise and defend the same to the extent of their own interests.

## ARTICLE IX

### INSURANCE

9.01 **Procurement and Maintenance of Insurance:** **Lessee** shall procure and maintain, at its own expense, insurance of the type and in not less than the amounts stipulated on Exhibit C. This insurance must be issued by a company or companies of sound and adequate financial

responsibility, acceptable to the **Authority** and licensed to do business in the State of Florida. This insurance must insure **Lessee** and **Authority** against all liabilities for death, injuries or damages arising out of or in connection with **Lessee's** use, occupancy and operation of the Premises by **Lessee**, including fire and extended coverage on all equipment and improvements in the amount of the full insurable value of such equipment and improvements. **Lessee** shall furnish to **Authority** certificates evidencing such insurance, naming and endorsing **Authority** as an additional insured thereunder. Certificates or binder evidencing the existence thereof, all in such form as the **Authority** may require, shall be delivered to Authority's Risk Manager upon the execution of this Agreement. Each such policy or certificate shall contain a valid provision or endorsement that:

"This policy will not be canceled or materially changed or altered without first giving thirty (30) days written notice in advance thereof to the Risk Manager, Jacksonville Port Authority, P. O. Box 3005, Jacksonville, Florida 32206."

**9.02 Review and Adjustment of Insurance:** The insurance requirements on Exhibit C shall be subject to periodic review and adjustment by the Authority to maintain current industry standards. Adjustment of insurance requirements on Exhibit C shall apply without necessity of formal amendment of this Agreement.

**9.03 Authority's Self Insurance:** The **Authority**, as a body politic and corporate, chartered by the State of Florida, is subject to Florida Statutes, Section 768.28, and maintains a program of self-insurance which will respond to any liability of the **Authority** under this Agreement.

**9.04 Other Insurance Requirements:** **Lessee** understands that the insurance coverage required by this Article will not cover against physical damage, theft or other loss of the cargo or equipment of **Lessee** stored on the Premises, except, to the percentage or extent such losses, damages, demands, and claims are caused by the sole negligence or fault of the **Authority**. It is

incumbent upon **Lessee** to carry such types and amounts of insurance coverage it deems necessary to protect its cargo or equipment.

## ARTICLE X

### RELOCATION OF LESSEE

The **Authority** reserves the sole and unilateral right to assign or relocate **Lessee** to another location on **Authority's** facilities during the Term of this Agreement, and any renewal or extension thereof, should it become necessary. The determination of such necessity is to be determined exclusively by the **Authority**. Any such required move will be at no cost to **Lessee** and will not result in a higher rent than that prescribed by this Agreement. Any required move shall be to comparable facilities which will not prejudice **Lessee's** business. **Lessee** shall not be required to relocate until a comparable facility reasonably acceptable to **Lessee** has been provided.

## ARTICLE XI

### MAINTENANCE AND REPAIRS

**11.01 Maintenance and Repairs of Premises:** During the Term of this Agreement, and any renewal or extension thereof, **Lessee** shall keep the Refrigerated Warehouse Area, Non-Refrigerated Warehouse Area and any improvements thereon, in a good and clean state of repair and preservation, making all necessary and proper replacements thereof and repairs thereto.

**11.02 Authority's Inspection and Entry Rights:** **Authority** and its duly authorized officers, employees, agents or assigns have the right, at reasonable times and upon reasonable notice, during normal working hours, or at any time in case of an emergency, to enter upon any of the Premises for the following purposes:

A. To inspect the Premises to determine whether the **Lessee** has complied and is complying with applicable laws and regulations and the provisions and conditions of this

Agreement. This right of inspection reserved to **Authority** imposes no obligation on **Authority** to make inspections to ascertain the condition of repair or preservation of the said Premises and improvements thereon and imposes no liability upon **Authority** for failure to make such inspections.

B. To perform maintenance and make repairs and replacements in any case where **Lessee** is so obligated and has failed to do so within thirty (30) days after written notice to act. **Authority's** entire cost of said repair, maintenance and replacement shall be paid by **Lessee** to the **Authority** within fifteen (15) days following **Lessee's** receipt of invoice.

C. To perform any emergency repairs to which **Lessee** does not immediately respond. **Authority's** entire cost of said repair, maintenance and replacement shall be paid by **Lessee** to the **Authority** within fifteen (15) days following **Lessee's** receipt of invoice.

11.03 **Effect of Entry:** No such entry as set forth in Section 11.02 on behalf of the **Authority** shall cause or constitute a termination of this Agreement or be deemed to constitute an interference with the possession of the Premises by **Lessee**.

11.04 **Authority's Maintenance and Repairs:** The **Authority** shall maintain the exterior and structural integrity of the warehouse and perform all maintenance required to keep same in a good and clean state of repair and preservation, making all necessary and proper replacements and repairs in a timely manner upon receipt of notice from **Lessee** of conditions requiring repair and/or replacement, unless the need for such repair or replacement is due to the fault of **Lessee**. In such event, **Lessee** shall make such repair or replacement, or **Authority** shall make such repair or replacement and shall invoice **Lessee** for the costs thereof. **Lessee** shall pay said invoice within thirty (30) days of the date of said invoice.

## ARTICLE XII

### ALTERATIONS AND IMPROVEMENTS

12.01 **Consent Required:** Lessee shall make no improvements to the Premises without prior agreement and written consent of **Authority**. Should Lessee desire to make alterations or improvements to the Premises, Lessee shall present the request to the **Authority**, along with plans and specifications for construction. Lessee may only commence construction with the **Authority's** written approval and upon receipt of a Notice to Proceed issued by the **Authority**.

12.02 **"As Builts" to be Provided:** After construction is completed, Lessee shall provide a set of as-built drawings to the **Authority** at no cost to the **Authority**.

## ARTICLE XIII

### ACCESS TO PREMISES

13.01 **Ingress and Egress:** Lessee, its officers, employees, and all other persons or firms doing business with it shall have unimpeded and unobstructed right of ingress to, and egress from, the Premises by means designated and provided by **Authority**.

13.02 **Common Access:** Access roads or railroads shall, without exception, be in common with such persons, including the general public, as **Authority** may authorize or permit, and shall be subject to and in accordance with all applicable local laws and ordinances and such reasonable rules and regulations as may be adopted by **Authority** for the regulation and control of the users thereof.

13.03 **Modification of Access:** **Authority** may, at any time, close, relocate, reconstruct or modify all such means of access, either temporarily or permanently; provided, however, that at all times, a reasonably convenient and adequate alternative means of access is made available to Lessee.

## ARTICLE XIV

### ASSIGNMENT, SUBLETTING AND TRANSFER

Lessee shall not assign, sublet or transfer any of the rights granted in this Agreement, nor shall Lessee assign or otherwise transfer any of its interest in or to the Premises without the prior written consent of **Authority**. Any change in ownership involving less than 25% of the Lessee's outstanding voting share shall not be considered either a transfer of interest or right. The foregoing portion of this Article XIV shall not apply to any assignment, sublet or transfer of any rights granted in this Agreement to or among Donald C. Spence, Jeffrey C. Spence, Cynthia S. Sadler, Carlton H. Spence and Ruby H. Spence, or to any corporation which all of the outstanding capital stock of which is owned by one or more of said individuals. No assignment to sublet or transfer will release Lessee from any of its obligations or responsibilities under this lease unless the **Authority** agrees thereto in writing.

## ARTICLE XV

### NO INDIVIDUAL LIABILITY

No appointed member of **Authority**, or officer, agent, director or employee of either party hereto shall be held contractually or personally liable under this Agreement because of any breach of the Agreement or because of its execution or attempted execution.

## ARTICLE XVI

### LAWS, ORDINANCES AND RULES AND REGULATIONS TO BE OBSERVED

16.01 **Permitted Uses:** Lessee shall not use, or permit the use of, the Premises for any purpose or use other than those authorized by this Agreement, except as may be mutually agreed upon in writing.

**16.02 Unlawful Purposes Prohibited:** Lessee shall not use or occupy the Premises or permit same to be used or occupied for any unlawful purpose.

**16.03 Compliance with the Law:** Lessee shall comply with and shall cause its officers, employees and any other persons over whom it has control to comply with any and all municipal, state and federal laws, ordinances, and rules and regulations, including but not limited to Occupation Safety and Health Administration, United States Customs, United States Coast Guard, Environmental Protection Agency, Department of Environmental Regulation, Department of Natural Resources, Department of Transportation, the Oil Pollution Act of 1990 and **Authority's** published tariff, and will be held responsible for any violation of same.

**16.04 Responsibility for Environmental Damage:** Lessee's responsibilities under this Agreement shall include, but not be limited to, investigative, clean up or restoration costs of any spill or leakage of any substance used or handled by Lessee in its operation.

**16.05 Permits and Licenses:** Lessee shall be responsible for obtaining all permits and/or licenses from any of the above agencies as necessary for it to perform the operation contemplated herein, and maintain said permits and/or licenses throughout the Term of this Agreement.

**16.06 Fines or Penalties:** Lessee will hold harmless and reimburse the **Authority** for any fine or penalty imposed by Lessee's failure to comply with any law, ordinance, rule or regulation.

## ARTICLE XVII

### SECURITY

**Authority** shall provide a twenty-four (24) hour per day, seven (7) day per week, roving guard service on the marine terminal facilities. Any additional security desired by Lessee shall be the responsibility of Lessee.

## ARTICLE XVIII

### SURRENDER OF LEASED PREMISES

18.01 **Condition of the Premises and Improvements:** Lessee covenants that, at the expiration of the Term of this Agreement, or any renewal or extension thereof, or at any earlier termination thereof, Lessee may, at its sole option, either (i) surrender the Refrigerated Warehouse to Authority in a good state of repair as provided in Article 11.01; or (ii) dismantle and remove the Refrigerated Warehouse improvements leaving the Authority's warehouse in the original constructed condition, excluding improvements made to the floor of the warehouse, normal wear and tear excepted.

18.02 **Damage to Property:** Any damage caused by the removal of any equipment and/or property shall be repaired by the Lessee at its expense.

## ARTICLE XIX

### TERMINATION OF AGREEMENT

19.01 **Termination by Authority:** Authority, at its option, may declare this Agreement terminated in its entirety and exercise all right of re-entry upon the Premises upon the happening of any one or more of the following events:

A. If the fees, charges or other payments which Lessee herein agrees to pay or is obligated to pay under any other agreement with Authority, or any part thereof, shall be unpaid for more than fifteen (15) days after its due date.

B. If Lessee files a voluntary petition in bankruptcy, or makes a general assignment for the benefit of creditors; or

C. If Lessee is adjudicated bankrupt; or

D. If any act occurs which deprives **Lessee** permanently of the rights, powers and privileges necessary for the proper conduct and operation of its business; or

E. If **Lessee** abandons and ceases to use the Premises for a period of thirty (30) days at any one time, except when such abandonment and cessation is due to fire, earthquake, strike, action of any government, default of **Authority**, or other cause beyond **Lessee's** control; or

F. If **Lessee** uses or permits the use of the Premises at any time for any purpose for which the use at that time is not authorized by this Agreement under Article IV or by a subsequent written agreement between the **Lessee** or **Authority**; or

G. **Lessee** uses or permits the use of the Premises in violation of any law, rules or regulation; or

H. If **Lessee** violates any of the provisions of this Agreement.

19.02 **Termination by Lessee:** **Lessee**, in addition to all other remedies, may at its option, declare this Agreement terminated in its entirety upon the happening of any one or more of the following events:

A. If a court of competent jurisdiction issues an injunction against **Authority** or any successor thereto preventing or restraining the use of the Premises in its entirety, or any part thereof, which may be used by **Lessee** for its operations; only, however, if such injunction remains in force for a period of forty-five (45) days or more; or

B. If the Premises become unusable, through no fault of **Lessee**, in whole or substantial part for the purposes specified herein and the **Authority** does not proceed as promptly as reasonably practicable with the repairs necessary to restore the Premises to its condition prior to the occurrence of the damage; or

**Authority** shall substantially interfere with the use by **Lessee** of the Premises for the purposes authorized by this Agreement.

**19.03 Interruption of Services or Facilities:** **Authority** does not warrant that any of the utilities, services or facilities mentioned herein will be free from interruptions caused by repairs, renewals, improvements or alterations; strikes or lockouts; accidents; electrical failures, interruptions or surges; inability of **Authority** to obtain utilities or supplies; or any other cause beyond the reasonable control of **Authority**. Except as otherwise provided, no such interruption of utilities, services or facilities shall be deemed an eviction or disturbance of the use or possession of the Premises or any part thereof by **Lessee**, or render **Authority** liable to **Lessee** for damages or relieve **Lessee** from performance of its obligations under this Agreement.

**19.04 Time of Termination:** Notwithstanding anything to the contrary contained in this Agreement, no termination declared by either party shall be effective unless and until thirty (30) days have elapsed after written notice to the other party specifying that such termination shall take effect and the cause for which it is being terminated. If such termination is by reason of a default for which termination is authorized under this Agreement, that default must be specified. No termination shall be effective if such cause or default shall have been cured or obviated during such thirty (30) day period. In the event such cause or default, by its nature, cannot be cured within such thirty (30) days period, such termination shall not be effective if correction of the cause or default is commenced within said thirty (30) days and must be completed within ninety (90) days unless otherwise agreed to in writing by both parties hereto. The **Lessee** must give written notice of its intent to utilize this

extension provision and the reasons therefor. The provision for an extension for a cause that cannot be cured within thirty (30) days shall not apply to the payment of rental fees or other charges due under Article V.

## ARTICLE XX

### WAIVERS

20.01 No waiver by either party of any of the provisions, conditions, covenants, or agreements herein shall be deemed or taken as a waiver at any time thereafter of same or any other provision, condition, covenant or agreement herein contained, nor as a waiver of the strict and prompt performance thereof.

20.02 **No Impairment of Rights:** No delay, failure or omission of **Authority** to re-enter the Premises, and no subsequent acceptance by **Authority** of fees then or thereafter accrued, and no delay, failure or omission of either party to exercise any right, power, remedy, privilege or option arising from any default, shall impair any such right, power, remedy, privilege or option or be construed to be a relinquishment thereof, or a waiver of such default or acquiescence therein. No notice by either party is required to restore or revive any right, power, remedy, privilege or option after waiver by such party of default in one or more instances. No, right, power, remedy privilege or option of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

20.03 **Rights, Powers, Remedies and Options are Independent:** Each of the rights, powers, remedies or options given to either party by this Agreement shall be cumulative, and no one of them shall be exclusive of the other or exclude any remedies provided by law. The exercise of one right, power, remedy or option shall not preclude the exercise of any other right, power, remedy or option, except in those cases where it is expressly so provided.

## ARTICLE XXI

### GENERAL PROVISIONS

21.01 **Modifications:** No change in, modification of or supplement to this Agreement shall be valid or enforceable unless it is approved by the **Lessee** and the **Authority**, reduced to writing and signed by the duly authorized representatives of **Authority** and **Lessee**.

21.02 **Severability:** In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall not materially prejudice either party thereto in its respective rights, and all other obligations and provisions in this Agreement shall remain in full force and effect.

21.03 **Exhibits:** All exhibits or schedules referenced in this Agreement or which from time to time may be referenced in any duly executed amendment to this Agreement are by such reference incorporated herein and shall be deemed a part of this Agreement as if fully set forth herein. Any exhibit or schedule attached to this Agreement may be adjusted by mutual consent of **Lessee** and **Authority** without the necessity of formal amendment to the body of this Agreement. Upon adjustment of any exhibit or schedule, a revised exhibit or schedule shall be prepared by the **Authority** and executed by the **Authority** and **Lessee**. Each successive exhibit or schedule, as it supersedes the previous exhibit or schedule as to its effective date, shall constitute a formal amendment, and as such shall be deemed a part of this Agreement.

21.04 **Withholding Required Approvals:** Whenever approval by the **Authority** or **Lessee** is required by the provisions of this Agreement, no such approval shall be unreasonably withheld or denied.

**21.05 Notices, Consents and Approvals:**

A. All notices, consents and approvals required or authorized by this Agreement shall be given by either party in writing and signed by a duly designated representative of the party on whose behalf they are given. Such notice, consent or approval shall be deemed to be validly and sufficiently served at the time a registered or certified letter, properly addressed, is deposited in any U.S. Post Office.

B. Notice to the **Authority** shall be addressed to:

Director of Marine Operations  
Jacksonville Port Authority  
Post Office Box 3005  
Jacksonville, Florida 32206

C. Notice to the **Lessee** shall be addressed:

JaxPort Refrigerated Services, Inc.  
P.O. Box 2639  
Jacksonville, Florida 32203

With Copy to:

William J. Scott, Esquire  
Peek and Cobb, P.A.  
1609 River Place Drive  
Jacksonville, Florida 32207

**21.06 Place of Payment:** Payments required pursuant to this Agreement shall be made

to:

Jacksonville Port Authority  
Vice-President, Corporate Services  
Post Office Box 3005  
Jacksonville, Florida 32206

**21.07 Headings:** The headings of the sections of this Agreement are included only as a matter of convenience and for reference and in no way define or limit the scope or intent of the provisions and shall not be construed to affect the provisions of this Agreement or to define or limit the interpretation or construction of this Agreement.

**21.08 Counterpart:** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original so long as it bears the signature of both parties.

**21.09 Independent Contractor:** The parties hereto agree that **Lessee** is an independent contractor and is not subject to the direction or control of the **Authority**, except as specified in this Agreement.

**21.10 Non-Discrimination:** **Lessee** covenants, and agrees that (i) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied benefits of or be otherwise subjected to discrimination, and (iii) **Lessee** shall use the Premises in compliance with all other requirements imposed by or pursuant to any applicable federal, state or local law.

**21.11 Eminent Domain:**

A. If all or any part of the Premises are taken or condemned under power of eminent domain by any governmental authority, either before or during the term of this Agreement, then the term of this Agreement shall terminate as to the part so taken from the date of the possession of the part so taken.

B. Lessee shall share, to the extent of its interest, in any apportionment of an award in eminent domain for a taking of the Refrigerated Warehouse. Lessee shall recover the value of its leasehold interest and any award made for fixtures.

**21.12 Warranties and Representations:**

A. Lessee warrants and represents that it has corporate power to enter into this Agreement and to perform all acts required to be performed by Lessee and that its execution and delivery hereof have been duly authorized by all necessary corporate action.

B. Authority warrants and represents that it has corporate power to perform all acts required of it in this Agreement, that the execution and delivery hereof have been duly authorized by all necessary corporate action, and that the Authority has the right to enter into this Agreement for the use of the Premises and appurtenances together with all facilities, rights, licenses and privileges granted herein.

**21.13 Force Majeure:** Neither Authority nor Lessee shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to boycotts, shortages of materials, labor disputes, shipwrecks or obstructions to navigation, acts of God, acts of public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage by third parties, or any other similar circumstances for which they are not reasonably responsible and which are not within their control.

**21.14 Governing Law:** This Agreement is to be read and construed in accordance with the laws of the State of Florida. Any disputes relating to this Agreement must be resolved in accordance with the laws of the State of Florida.

**21.16 Inspection of Records:** Each party hereto, at its expense and upon reasonable notice shall have the right to inspect the books, records or other data of the other party solely for the purpose of determining tonnage and wharfage, provided such inspection is made during regular business hours. **Lessee and Authority** agree to cause, all books, records or other data pertaining to tonnage and wharfage to be retained for three (3) years.

## ARTICLE XXII

**22.01 Arbitration:** Either party shall have the right to make a written demand for final and binding arbitration under the provisions of this Article to resolve any dispute between the parties. Upon a timely written demand, the parties shall arbitrate the dispute.

**22.02 Timeliness:** A written demand for arbitration must be made either before the filing of a judicial action or within ten (10) days of the service of process of a judicial action or the right to arbitration is waived. If arbitration is not invoked, all parties shall retain their right to judicial relief.

**22.03 Arbitration Panel:** Within 10 days of receipt of a written demand for arbitration, the parties shall attempt to agree on three (3) arbitrators to hear the dispute. The parties may mutually agree on a lesser number of arbitrators. If the parties cannot agree on three local arbitrators, the parties shall utilize the selection procedures of the American Arbitration Association to select the arbitrators.

**22.04 Duty of Arbitrator:** The arbitrator(s) duties shall be to interpret this Agreement, make determinations of fact applicable to the Agreement or whether there was in fact a breach of the Agreement, to provide all relief necessary to further the implementation of this Agreement. The arbitrator(s) shall not, however, add to or detract from the provisions of this Agreement. The interpretations and factual determinations of the arbitrator(s) shall be governed by the law of the State of Florida.

**22.05 Arbitrator's Costs:** The non-prevailing party of any arbitration shall pay for all costs of the arbitrator(s), but each party shall bear their own attorneys' fees and costs.

**22.06 Litigation Costs and Fees:** In the event the parties do not arbitrate their disputes but instead seek judicial relief, each party shall bear its own attorneys' fees and costs.

**22.07 Pre and Post Judgement or Arbitration Interest:** The prevailing party in the dispute resolution process shall be entitled to "pre" or "post" judgement interest at the rate of six percent (6%) simple interest per annum.

### XXIII

#### ENTIRE AGREEMENT

The parties hereto understand and agree that this instrument contains the entire agreement for the Premises between the **Authority** and **Lessee**. The parties further understand and agree that neither party nor its agents have made representation or promises with respect to this Agreement except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement. Any other written or oral agreement regarding the Premises with the other party is expressly waived.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers and their official corporate seals to be affixed hereto and attested as of this

25<sup>th</sup> day of February 1997.

Signed, sealed and delivered  
in the presence of:

  
(Signature)

Susan Smith  
Name (Please type or print)

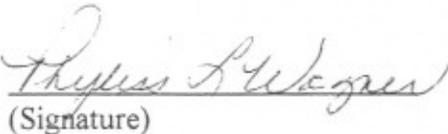
**JACKSONVILLE PORT AUTHORITY**

  
(Signature)

Ken Kravter  
Name (Please type or print)

Pres. & CEO  
Title

**WITNESS**

  
(Signature)

PHYLLIS L. WAGNER  
Name (Please type or print)

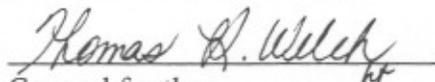
**JAXPORT REFRIGERATED  
SERVICES, INC.**

  
(Signature)

Jeffrey C. Spencer  
Name (Please type or print)

RESIDENT  
Title

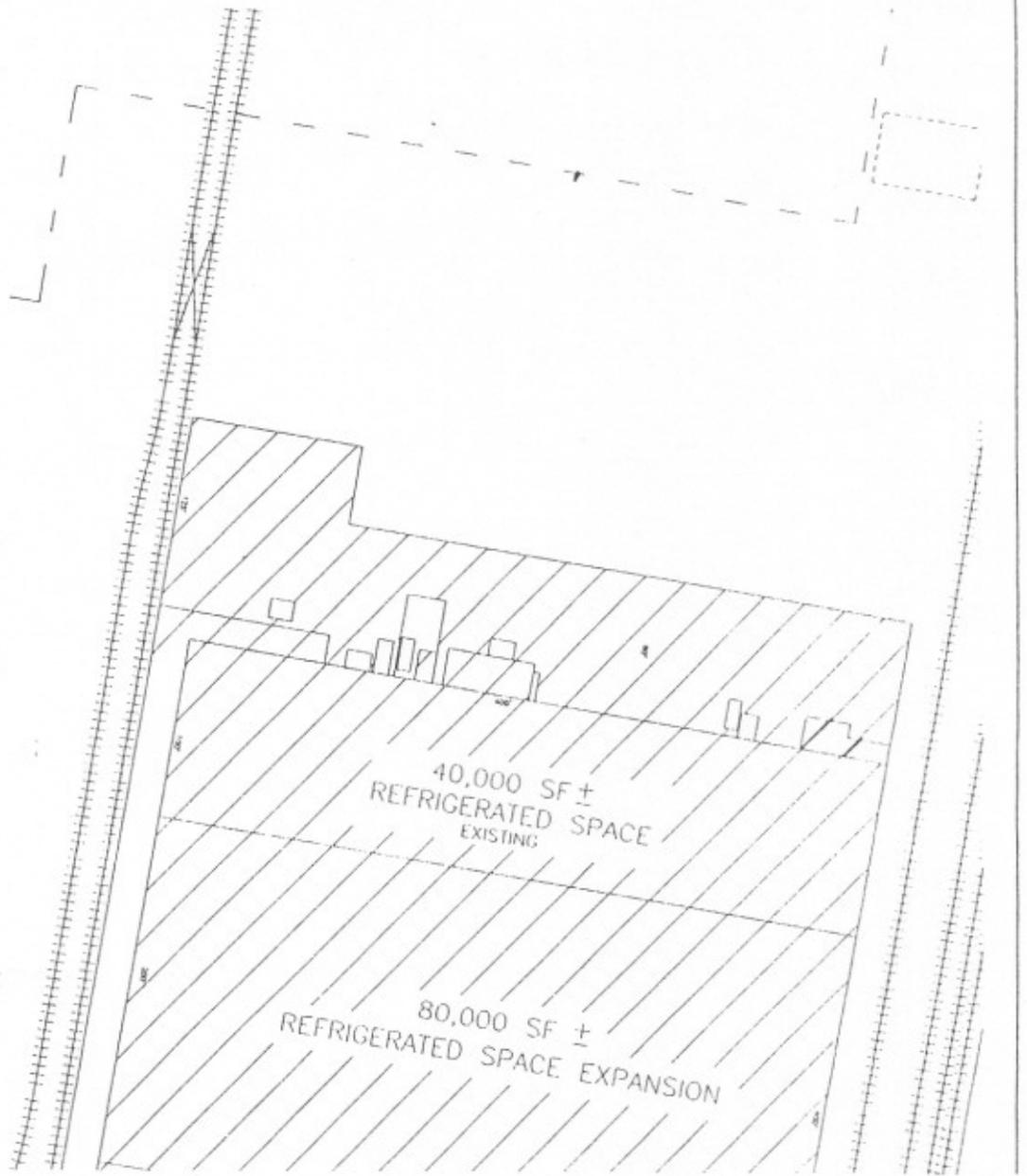
Approved for the  
Jacksonville Port Authority:

  
Counsel for the  
Jacksonville Port Authority

Review and Approval  
Jacksonville Port Authority

	Initials
	
Marine Division	Corporate Services

EXHIBIT A



**EXHIBIT B**  
**SCHEDULE OF FEES AND CHARGES**  
**JAXPORT REFRIGERATED SERVICES, INC.**

**I. TERM**

- A.** The "Commencement Date" of this Agreement shall be upon beneficial occupancy of the additional warehouse space provided for in Section II below, but in no event later than May 1, 1997. Upon such Commencement Date as indicated below, the Term of this Agreement shall be for twenty (20) years.

Commencement Date: \_\_\_\_\_, 1997

- B.** Upon written notice to the **Authority**, Lessee may terminate this Agreement without cause nine (9) months after the **Authority's** receipt of such notice.

**II. LEASED PREMISES RENTAL:**

<b>A. RATES</b>	<b><u>EFFECTIVE DATE</u></b>	<b><u>ANNUAL</u></b>	<b><u>MONTHLY</u></b>
1. 40,000 square feet +/- Refrigerated Warehouse Space @ \$1.05 per square feet per year.	5/1/97	\$42,000.00	\$3,500.00
2. 80,000 square feet +/- Refrigerated Warehouse space @ \$1.05 per square feet per year.	Commencement Date	\$84,000.00	\$7,000.00
3. 35,000 square feet +/- non-refrigerated warehouse space at \$1.45 per square feet per year.	5/1/97	<u>\$50,750.00</u>	<u>\$4,229.17</u>
<b>TOTALS</b>		<b>\$176,750.00</b>	<b>\$14,729.17</b>

**B. INCREASES IN RENTAL RATES**

1. Effective on the third anniversary of the Commencement Date of this Agreement in the year 2000, the per square foot rental rate shall be increased in direct proportion to the percentage increase in the Consumer Price Index ("CPI") for the prior three (3) year period using the latest CPI figure available two (2) months prior to anniversary of the Commencement Date in the year 2000, provided, however, that said increase shall not exceed twelve percent (12%).
2. Commencing on the anniversary of the Commencement Date of this Agreement in the year 2001, and every year thereafter, the per square foot rental rate shall be increased in direct proportion to the percentage increase in the CPI for the previous twelve (12) month period using the latest CPI figure available two (2) months prior to the anniversary of the Commencement Date of this Agreement, provided, however, said increase shall not exceed four percent (4%).
3. The CPI used herein shall be the Consumer Price Index for all Urban Consumers, 1982-84=100.

**C. ADDITIONAL NON-REFRIGERATED STORAGE AREA:** In the event the 5,000 square feet +/- indicated as "Green Cove Maritime" on Exhibit A becomes available, said square footage shall automatically become a part of the Non-Refrigerated Warehouse Area thirty (30) days after the area is vacated. The rental rate for said area shall be the then current rental rate per square foot Lessee will be paying for the current non-refrigerated warehouse space.

**D. ADDITIONAL REFRIGERATED WAREHOUSE SPACE:** Lessee is required, at its expense, to develop a minimum of an additional 80,000 square feet of refrigerated warehouse space within the warehouse indicated on Exhibit A. Lessee will use its best efforts to complete construction of the additional refrigerated space by June 1, 1997. Such additional refrigerated warehouse space shall be comparable to the quality of the existing refrigerated warehouse space. The plans and specifications for such additional refrigerated warehouse space must be approved in writing by the Authority prior to commencement of construction. After construction is complete, the Lessee will provide a set of as-built drawings to the Authority at no cost to the Authority. Rental for the additional refrigerated area shall be the rate provided for in Exhibit B, Paragraph II. A. 2., and charges therefor shall begin on the Commencement Date of this Agreement.

**III. WHARFAGE:**

**A. REFRIGERATED CARGO:**

1. **Application:** Applies to cargo crossing Authority's docks moving to or from a water-borne vessel. Method of payment for wharfage, and any late or delinquent fees

therefor, shall be assessed and handled in accordance with **Authority's** published tariff or its reissue.

2. **Wharfage Rate:** Commencing on the Commencement Date of this Agreement, **Lessee** shall pay **Authority** \$1.30 per short ton for all refrigerated cargo for the first year of this Agreement and thereafter, in accordance with Paragraph III. D. below. All other cargos shall be assessed wharfage in accordance with **Authority's** published tariff or its reissue.
3. **Increase in Refrigerated Cargo Wharfage Rates:** Commencing on the first anniversary of the Commencement Date of this Agreement, and every year thereafter, the above wharfage rate shall increase in direct proportion to the percentage increase in the wharfage rates in **Authority's** published tariff or its reissue for the previous year unless otherwise agreed to by **Authority** and **Lessee** as provided in Paragraph III. D. below.

**B. NON-REFRIGERATED CARGO:**

Applies to non-refrigerated cargo crossing **Authority's** facilities by truck, rail or vessel. The Wharfage charge shall be the rate in **Authority's** published tariff or its reissue, and method of payment and assessment of any late fees therefor shall be assessed in accordance with said tariff.

**C. MINIMUM ANNUAL GUARANTEE:**

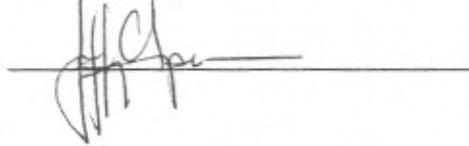
Beginning upon the Commencement Date of this Agreement, **Lessee** shall guarantee that a minimum of 130,000 short tons of refrigerated cargo or non-refrigerated cargo shall cross **Authority's** facility each year to or from water borne vessel. In the event **Lessee** does not meet this 130,000 short ton guarantee in the first year, **Authority** shall invoice **Lessee** for the difference between the actual tonnage crossing **Authority's** facility and 130,000 short tons at a rate of \$1.30 per ton. **Lessee** shall pay **Authority's** invoice therefor within thirty (30) days.

**D. ANNUAL REVIEW OF WHARFAGE RATES AND ANNUAL MINIMUM GUARANTEE:**

Thirty (30) days prior to each anniversary of the Commencement Date, **Authority** and **Lessee** shall review the wharfage rates for refrigerated cargo and the minimum annual tonnage guarantee to establish the wharfage rate and applicable guarantee for the ensuing year. In the event **Authority** and **Lessee** cannot mutually agree on the minimum annual tonnage guarantee and/or refrigerated cargo wharfage rate, then the refrigerated cargo wharfage rate for the ensuing year shall be the wharfage rate contained in **Authority's** published tariff, and **Lessee** shall not be required to guarantee an annual minimum tonnage amount.

**IV. OTHER FEES AND CHARGES:** Any other fees and charges due and payable to **Authority** by Lessee that are not provided for in this Agreement shall be assessed and handled in accordance with **Authority's** published tariff or its reissue, unless otherwise stipulated in writing.

**JAXPORT REFRIGERATED  
SERVICES, INC.**



**JACKSONVILLE PORT AUTHORITY**



Review and Approval  
Jacksonville Port Authority

	Initials	
Marine Division		Corporate Services

**EXHIBIT B**

**EXHIBIT C**  
**SCHEDULE OF INSURANCE REQUIREMENTS**  
**JAXPORT REFRIGERATED SERVICES, INC.**  
Effective Date: \_\_\_\_\_

**I. WORKERS COMPENSATION**

Part I	State Requirement	
Part II	Each Accident	\$500,000
	Disease-Policy Limit	\$500,000
	Disease-Each Employee	\$500,000

**II. COMMERCIAL GENERAL LIABILITY**

Authority shall be named and endorsed as an additional insured.

Combined Single Limit of Liability

General Aggregate	\$1,000,000
Each Occurrence	\$1,000,000

**III. COMPREHENSIVE AUTOMOBILE LIABILITY**

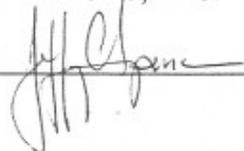
Coverage shall include owned, non-owned and hired automobiles.

Combined Single Limit of Liability \$1,000,000

**IV. PROPERTY INSURANCE/FIRE AND EXTENDED COVERAGE:**

In the amount of the full insurable value of equipment and improvements.

**JAXPORT REFRIGERATED  
SERVICES, INC.**

  
\_\_\_\_\_

**JACKSONVILLE PORT AUTHORITY**

  
\_\_\_\_\_

**EXHIBIT C**