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**LEASE AND OPERATING AGREEMENT**

**By and Between**

**PHILADELPHIA REGIONAL PORT AUTHORITY**

**And**

**GROWMARK, INC.**

DATED: <sup>March</sup>~~February~~ 5, 2008



**THIS LEASE AND OPERATING AGREEMENT** (this "**Agreement**") is made this <sup>5<sup>th</sup></sup> day of ~~February~~ <sup>MARCH</sup>, 2008 by and between the **PHILADELPHIA REGIONAL PORT AUTHORITY** ("**PRPA**"), a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania, having its principal place of business at 3460 North Delaware Avenue, Philadelphia, Pennsylvania 19134, and **GROWMARK, INC.**, a Delaware corporation ("**Lessee**"), a corporation incorporated under the laws of the Delaware, having its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701.

**WITNESSETH:**

WHEREAS, PRPA owns the Premises (as hereinafter defined at Section 1.1); and

WHEREAS, PRPA is authorized under Section 6 of the Act of July 10, 1989, P.L. 55, P.S. Sections 697.1-697.24 (the "**PRPA Act**") of the General Assembly of the Commonwealth of Pennsylvania (the "**Commonwealth**") to make and enter into contracts for the leasing, management and operation of "port facilities," as such are defined in the PRPA Act; and

WHEREAS, the Board of PRPA wishes, pursuant to Board Resolution No. 2007- 64 adopted on November 16, 2007, to lease the Premises to Lessee and to provide for the operation and management of the Premises by Lessee;

WHEREAS, Lessee wishes to lease the Premises from PRPA and to agree to operate and manage the Premises in accordance with the terms of this Lease;

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

**ARTICLE I - GRANT OF LEASE; INDEPENDENT OPERATOR**

1.1 Grant of Lease.

1.1.1 PRPA hereby demises, leases, and rents to Lessee, and Lessee hereby leases from PRPA, the following property under the terms and conditions set forth herein (the "**Premises**"):

(i) the real property shown on the plan attached hereto as **Exhibit "A"**; and

(ii) such buildings, structures, facilities, equipment, fixtures and improvements which are presently on the real property shown on **Exhibit "A"** and all fixtures and equipment thereon (exclusive of any such fixtures or equipment owned by Lessee or sublessees of Lessee).

1.1.2 Excluded Property. Those items or areas listed or shown on **Exhibit “A”** attached hereto, which are not utilized in Lessee’s operations, are excluded from the Premises (the “**Excluded Property**”).

1.1.3 Quiet Enjoyment. Those areas defined on **Exhibit “B”** attached hereto are subject to (a) an easement for the benefit of the Commonwealth of Pennsylvania and/or the City of Philadelphia for the temporary and permanent extension of Delaware Avenue and (b) easements for the benefit of Conrail and CSX for a rail track bed (collectively, the “**Easement Area**”). PRPA covenants and agrees with Lessee that, upon payment of the Rent (defined in Section 3.3 below) and performance of all of Lessee’s other obligations as provided for in this Lease, Lessee shall and may peaceably and quietly have, hold and enjoy the Premises hereby demised for the Term (defined in Section 2.2 below), subject, however, to the possible interference with such quiet enjoyment by contractors representing the City of Philadelphia or Commonwealth of Pennsylvania during any period of construction in said Easement Area as may occur during the Term.

1.1.4 This Agreement and the Premises shall be subject to the permitted exceptions set forth on **Exhibit “C”** hereto (the “**Permitted Exceptions**”); provided, however, that to the extent any of the Permitted Exceptions prevents Lessee from performing any of its obligations pursuant to Article VII hereof, such performance shall be excused but if such non-performance pertains to a material obligation on the part of Lessee, PRPA may terminate this Agreement upon notice to Lessee.

1.2 Independent Contractor. Lessee shall be an independent contractor in the performance of its obligations under this Agreement. Any employee(s) of Lessee hired to perform services or activities at the Premises shall be the employee(s) of Lessee solely, and PRPA shall not be a joint employer of any of Lessee’s employees. In addition, any employee(s) of any company contracted by Lessee to perform any services shall be the employee(s) of such company solely, and PRPA shall not be a joint employer of any such employees. Lessee and any company contracted by Lessee shall have the exclusive right and obligation 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 PRPA in any employee relations matters concerning those persons employed by or through Lessee.

### 1.3 Use of the Premises.

1.3.1 Lessee shall use the Premises as a “**Marine Terminal**”, hereby defined as a facility for: (i) the docking and mooring of vessels; (ii) the receipt, distributing, moving, loading and unloading of cargo, bulk and breakbulk, liquid and container in, to and from vessels, trucks and railcars; (iii) the provision of berth space and/or terminal services to vessels of all kinds; (iv) the transferring of merchandise, goods, bulk, breakbulk, containers, liquids and cargo to, from, and between cargo vessels of all kinds, trucks and railcars; and (vi) marine activities

similar to the foregoing as approved by PRPA (collectively, the “**Permitted Uses**”).

1.3.2 Lessee shall not use the Premises for any purpose other than the Permitted Uses. If, in the reasonable opinion of PRPA, the Premises or any part thereof is being used for any use or purpose other than the Permitted Uses, Lessee shall immediately cease, and cause any subtenant, assignee, licensee or occupant of the Premises to cease, such improper use following receipt of notice from PRPA to Lessee. Lessee’s failure to comply with such notice shall constitute an immediate default by Lessee of this Agreement, entitling PRPA to exercise any and/or all of its remedies, under Article XVI or in equity or at law, at its sole election, without the necessity of PRPA providing Lessee with any additional notice; provided, however, that if any assignee, subtenant, licensee or occupant of the Premises is using the Premises for any purpose other than the Permitted Uses, Lessee shall have a reasonable period of time to cause the cessation of such improper use (provided that Lessee uses its best efforts to commence, within fifteen (15) calendar days following notice of such use, all necessary and appropriate action to cause the cessation of such improper use and diligently proceeds in the prosecution of such action as expeditiously as possible).

1.3.3 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 Federal, State or local public or governmental authority or agency at any time applicable thereto (collectively “**Laws**”) including, without limitation, the Laws of the Commonwealth and the City of Philadelphia, relating to, by way of example only and not limitation, sanitation or the public health, safety or welfare, or navigational use of the port and port facilities.

## **ARTICLE II – EFFECTIVE DATE; TERM**

2.1 Effective Date. This Agreement shall become effective (the “**Effective Date**”) on the last to occur of:

- (i) February 15, 2008;
- (ii) approval by the Office of the Attorney General of the Commonwealth (the “**Attorney General**”) of the terms and provisions of this Agreement; and
- (iii) 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.

PRPA shall cause the Agreement to be submitted to the Attorney General for approval promptly following execution and promptly thereafter to be submitted for filing with the FMC. The “**First Lease Year**” shall be the 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 (12<sup>th</sup>) full calendar month after the Commencement Date. 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 year.

When the Effective Date has been determined, as provided in this Section 2.1, PRPA shall deliver written notice to Lessee specifying the Effective Date and the Termination Date (as hereinafter defined).

2.2 Term. The term of this Agreement (the "**Term**") shall begin on the Effective Date and shall end on the date (the "**Termination Date**") which is the second (2nd) anniversary of the Commencement Date (hereinafter defined), unless extended or sooner terminated. This Agreement shall be extended automatically on a month-to-month basis commencing upon the termination of the Term unless cancelled by written notice by either party provided no less than sixty (60) days in advance of the date such party chooses to terminate this Lease (a "**Notice Date**"). All such monthly periods prior to such notice date shall be included in the "Term".

2.2.1 Initial Term. Lessee shall have a period of one hundred twenty (120) days from the Effective Date (the "**Initial Term**") within which to alter, modify, improve and restore the Premises to such condition as Lessee reasonably determines is necessary for the full operating capacity for the Permitted Uses, subject to the provisions of Section 3.12 hereinbelow and, in particular, PRPA's approval rights thereunder.

2.2.2 Commencement Date. The "**Commencement Date**" of this Agreement shall be that date which is the earlier to occur of: (i) the day following the last day of the Initial Term, or (ii) the first day on which a commercial vessel calls at the Premises to unload or take on cargo in accordance with the Permitted Uses. If the Commencement Date does not occur on or before July 15, 2008, PRPA may, in its sole and absolute discretion, terminate this Agreement, in which event the parties hereto shall have no further liabilities or obligations under this Agreement.

2.3 Surrender of Possession; Holdover. Lessee shall peaceably deliver up and surrender possession of the Premises to PRPA, in the same condition as at the Effective Date of this Lease and subject to reasonable wear and tear, at the expiration of the Term or earlier termination of this Agreement. Lessee shall not hold over in all or any part of the Premises after the termination of this Agreement or expiration of the Term. 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 PRPA as Rent during each month of the holdover period an amount equal to one-twelfth (1/12) of one hundred and fifty percent (150%) of the Rent, as hereinafter defined, payable for the twelve (12) months immediately preceding the inception of the holdover period. Nothing in this Section 2.3 shall be deemed to give Lessee any right to hold over or to prevent PRPA from evicting Lessee or pursuing any other remedies in the event of such holdover.

2.4 Lessee' Inspection of the Premises. The state and condition of the Premises and any improvements, structures and facilities located thereon at the Effective Date shall, for purposes of this Agreement, be the condition as established by the base line survey ("**Base Line Survey**"), if any, performed by representatives of PRPA and Lessee at the commencement of the Initial Term under the Lease and Operating Agreement between PRPA and Lessee.

### ARTICLE III - RENT; PAYMENTS

3.1 Base Rent. As consideration for the execution and delivery by PRPA of this Agreement, Lessee shall pay to PRPA during the Term the following annual base rent (“**Base Rent**”) which shall be payable in equal monthly installments in advance on the first (1<sup>st</sup>) day of each calendar month commencing on the first (1<sup>st</sup>) day of the month in which the Commencement Date occurs (pro-rated if the Commencement Date is not the first (1<sup>st</sup>) day of such month):

<u>Lease Year</u>	<u>Base Rent</u>
Initial Term	\$00
1	\$150,000
2	\$210,000

3.2 Late Charges. As compensation to PRPA 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) business days after the date they are due shall be subject to a delinquency charge equal to fifty dollars (\$50) per day from the date due until the charges have been paid. Said delinquency charge is a liquidated sum, payable on demand, to defray PRPA’s costs arising from the delinquency, and is in addition to all other remedies that PRPA may have as provided in 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 Rent. All sums payable by Lessee under this Agreement, whether or not stated to be Base Rent, additional Rent, Impositions, charges, costs, expenses or otherwise denominated (herein collectively referred to as “**Rent**”), shall be collectible by PRPA as Rent and in the event of a default in payment thereof PRPA 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 PRPA set forth in Section 20.1, or any other address of which PRPA shall hereafter give Lessee written notice. If PRPA, 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 PRPA’s rights hereunder with respect to such late or partial payment. No payment by Lessee 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 PRPA may accept any such check or payment without prejudice to PRPA’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.

3.4 Letter of Credit. As security for the performance of its obligations pursuant to and in accordance with the terms of this Agreement, Lessee shall provide a letter of credit for the

benefit of PRPA in the amount of One Hundred Thousand Dollars (\$100,000).

3.5 Guarantees. – Intentionally Omitted.

3.6 Operating Expenses.

3.6.1 In addition to Base Rent, Lessee shall pay to PRPA, within thirty (30) calendar days following demand by PRPA, an amount sufficient to pay all currently due real estate taxes, assessments (whether general or special) and other municipal charges, taxes or duties imposed against the Premises (“**Impositions**”). To the best of PRPA’s knowledge, as of the date of this Agreement, no such Impositions have been imposed upon the Premises. However, in the event any such Impositions in a material amount are imposed upon the Premises during the Term of this Agreement, PRPA and Lessee agree to negotiate in good faith to endeavor to agree upon an equitable resolution regarding the payment of such Impositions; provided, if the parties do not agree upon an equitable resolution within ninety (90) days from the date of any such Imposition, PRPA and Lessee shall each have the right to terminate this Agreement.

3.6.2 In addition to Lessee’ obligations set forth elsewhere in this Agreement, Lessee shall be solely responsible for payment of all insurance premiums (including but not limited to property insurance), utilities, and operating expenses including, without limitation, all costs and expenses for security, snow removal, labor and maintenance and repair incurred in connection with the Cranes and the operations at the Premises. Notwithstanding the foregoing, PRPA acknowledges that Sections 3.12 and 3.13 of this Agreement provide for reimbursement to Lessee of certain specific expenses.

3.7 Intentionally Omitted –

3.8 Dockage Fee. For each twenty-four (24) hour period or fraction thereof (a “**Day**”) during the Term during which any vessel is docked at the Premises, Lessee shall pay to PRPA as additional Rent a dockage fee of twenty-seven cents (\$0.27) per Day per net registered ton for each such vessel docked or moored at the Premises (the “**Dockage Fee**”).

3.9 Tonnage Fee. Commencing on the first day of the Initial Term, Lessee shall pay to PRPA, as additional Rent, the following tonnage fees per each ton of cargo moved over the Premises, whether by ship, rail, truck or other means, (the “**Tonnage Fee**”):

<u>Tons of Cargo</u>	<u>Tonnage Fee</u>
0 - 250,000	\$1.00 per ton of cargo, plus
251,000 - 500,000	\$0.75 per ton of cargo, plus
500,001 and above	\$0.50 per ton of cargo

For purposes of this Section 3.9, cargo is “moved over the Premises” if it is delivered to the Premises by one instrumentality of transshipment and removed by the same or different instrumentality of transshipment. With PRPA’s prior written consent, the Tonnage Fee may be

waived for cargo that is only parked or staged temporarily on the Premises.

**3.10 Payment of Dockage and Tonnage Fees.** On or before the 15<sup>th</sup> day of each month for the preceding calendar month, Lessee shall provide PRPA with a breakdown, together with all data relevant to the computation thereof, of the Tonnage Fees and Dockage Fees generated (“**Monthly Report**”) for such month and for the year to date. Within thirty (30) days of the date each such Monthly Report is due, Lessee shall pay to PRPA, as additional Rent, the Tonnage Fee and the Dockage Fee due for such month as is listed in each Monthly Report (i.e. the Tonnage Fees and Dockage Fees due for January of any year during the Term shall be paid to PRPA no later than March 15 of that year.); provided that Lessee’s failure to submit such Monthly Report on a timely basis shall not excuse Lessee’s obligation to pay such additional Rent as and when due. The Tonnage Fee and the Dockage Fee for the final month of the Term of this Agreement shall be due and payable on the fifteenth (15<sup>th</sup>) day of the second calendar month immediately following the date of termination or expiration of this Agreement.

Lessee shall submit to Lessor on or before the sixtieth (60<sup>th</sup>) day following the end of each Lease Year (including the final 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.

**3.11 Guaranteed Vessel Calls.** Lessee hereby guarantees the following minimum number of annual vessel calls per Lease Year (“**Guaranteed Vessel Calls**”):

<u>Lease Year</u>	<u>Vessel Calls</u>
1	6 Vessels
2	8 Vessels
3	10 Vessels
4–10	12 Vessels

For each Guaranteed Vessel Call which is not made, Lessee shall pay to PRPA, as additional Rent, the sum of Five Thousand Dollars (\$5,000.00).

**3.12 Facility Restoration.** Promptly upon execution of this Agreement, Lessee shall conduct an inspection of the Premises to determine the repairs necessary to restore the Premises to safe operational status. Upon completion of the inspection, Lessee shall generate a report (“**Restoration Report**”) to be delivered to PRPA detailing the alterations, modifications, improvements and repairs that Lessee reasonably deems necessary to restore the Premises to a safe condition such as Lessee reasonably determines is necessary for the operating capacity for the Permitted Uses (the “**Improvements**”). PRPA will evaluate the Restoration Report and within ten (10) calendar days approve or reject the Improvements. If PRPA does not approve of the Improvements, the parties agree to negotiate in good faith to agree upon the Improvements. If PRPA approves of the Improvements, Lessee, at its sole cost and expense, shall implement the performance of the Improvements to the Premises so that the Premises can be used in a safe

manner by Lessee (“**Restoration Plan**”).

#### **ARTICLE IV - PRPA’S RIGHT OF ACCESS TO THE PREMISES**

4.1 Visitors. PRPA and its invitees shall have the right of access to the Premises at all times during the Term; provided that individuals seeking access to the Premises: (i) shall comply with all security requirements and policies with respect to the Premises, including those of the Department of Homeland Security and the Captain of the Port of Philadelphia, and (ii) shall provide advanced written notice of such intended visit (unless such access is required in the event of an emergency), and (iii) shall identify themselves as representatives or agents of PRPA. On a regularly scheduled quarterly basis, PRPA and Lessee shall jointly make an inspection of the Premises.

4.2 Property Under Lessee’ Control. PRPA 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. PRPA assumes no responsibility or liability for, and Lessee hereby releases PRPA from, loss or damage to the property of Lessee or property under the control of Lessee, whether caused by fire, water or otherwise.

4.3 Inspection. PRPA reserves the right to inspect the Premises at any and all times during the Term of this Agreement. The right of inspection reserved hereunder shall impose no obligation on PRPA to make inspections to ascertain the condition of the Premises, and shall impose no liability upon PRPA for the failure to make such inspections.

4.4 Utility Lines and Easements. PRPA reserves to itself and others the right, at PRPA’s cost, to locate, construct, install and maintain sewers, utilities and pipelines upon or across the Premises at locations which do not unreasonably interfere with the use or occupancy of the Premises. Lessee shall cooperate with PRPA or its designees so that any such work can be accomplished in the most efficient manner. Lessee may, at its sole cost and expense, locate, construct or install sewers, utilities and pipelines upon or across the Premises, subject to the conditions set forth above and PRPA’s prior written consent which may be withheld, delayed or conditioned in PRPA’s sole discretion.

#### **ARTICLE V - OPERATION OF THE PREMISES**

5.1 Equipment. Other than the Other Equipment owned by PRPA and located on the Premises at the Commencement Date, Lessee shall, at its sole cost and expense, provide all equipment necessary for the efficient operation of the Premises including, without limitation, all handling equipment such as trucks, tractors, fork lifts, chassis and top loaders.

5.2 Continuous Operation. Lessee shall use its best commercial efforts to continuously operate and use the Premises for the Permitted Uses at all times during the Term of this Agreement in a competent and efficient manner consistent with the manner in which other marine terminals of similar use and design in other major United States ports are operated so as to provide first-class service to all persons or entities whose cargo passes through the Premises.

Lessee shall use its best commercial efforts to conduct operations in such a manner as to maximize the use of the Premises including, without limitation, to increase the amount of cargo handled at the Premises.

5.3 Capital Improvements. Other than as explicitly permitted by the terms of Section 3.12 hereinabove, Lessee shall not make any capital improvements at the Premises without the prior written consent of PRPA, which consent shall not unreasonably be withheld. All capital improvements to be made by Lessee at the Premises shall be at Lessee' sole cost and expense.

5.4 Subleases of Lessee. Lessee represents, warrants and covenants that it shall not assign this Agreement or sublease all or any portion of the Premises without the prior written consent of PRPA, which shall not be unreasonably withheld, provided any proposed assignment or sublease requires the assignee or subtenant thereunder to use the Premises for the Permitted Uses.

5.5 Contracts. Lessee agrees to insert into any material contracts (which for purposes of this Agreement shall mean contracts in excess of \$25,000) and all leases entered into after the Effective Date with respect to the operation or use of the Premises a clause which will provide that Lessee' rights and obligations under all such contracts and leases will be assigned automatically to PRPA (or PRPA's designee) without further action by PRPA or Lessee being necessary upon the occurrence of a default by Lessee of its obligations under this Agreement which has not been cured within any applicable grace period. All bonds, guaranties and assurances of completion provided by a third party to any such contract in favor of Lessee shall also be assignable to PRPA and shall name PRPA as the payee thereunder upon the occurrence of a default by Lessee of its obligations under this Agreement which has not been cured within any applicable grace period.

5.6 Utilities. Lessee shall obtain and furnish to the Premises and any subtenants, licensees and occupants of the Premises all water, sewer, electricity, gas, telephone and other utilities directly from the public utility company furnishing same. All existing utility accounts shall be transferred into the name of Lessee and Lessee shall pay all utility deposits and fees, and all monthly service charges for water, sewer, electricity, gas, telephone and other utilities furnished to the Premises during the Term of this Agreement. Lessee shall maintain and repair, at its sole cost and expense, all piping, feeders, risers and other connections or equipment necessary to furnish utilities or services to the Premises. PRPA makes no representation or warranty as to the condition or capacity of such connections or equipment. PRPA shall not be liable for any interruption whatsoever, nor shall Lessee be entitled to an abatement or reduction of Rent on account thereof, in utility services not furnished to the Premises or to any claim of constructive eviction.

## **ARTICLE VI - INSURANCE; INDEMNIFICATION**

### **6.1 Property Insurance**

6.1.1 PRPA maintains property insurance through the Commonwealth Insurance Program. Tenant agrees to pay to Landlord as additional Rent the cost of all insurance

premiums paid by PRPA and/or the Commonwealth of Pennsylvania to insure the Premises (the “**Insurance Cost**”). Payment of the Insurance Cost will be due and payable within ten (10) days after PRPA provides Lessee with notice of the annual premium for the Insurance Cost paid by or to be paid for the property insurance under the Commonwealth Insurance Program (“**Premium Notice**”). Notwithstanding the foregoing sentence, until further notice from PRPA to Lessee, payment of the Insurance Cost by Lessee to PRPA will be made in twelve (12) equal payments with each payment being due monthly on or before the first (1<sup>st</sup>) day of each month during the relevant year. Lessee shall not be responsible for the cost of any insurance for replacement or liability regarding any of the Excluded Property.

6.1.2 PRPA may from time to time, subject to the requirements of Section 4.1 hereinabove, cause an engineer, appraiser or other representative of PRPA to inspect the Premises to determine the replacement value of the Premises and, upon written notice of any valuation so determined in excess of the amount specified in Section 6.1.1, the Insurance Cost therein specified shall, at PRPA’s option, be increased upon notice to Lessee to an amount not to exceed the valuation so determined, and Lessee shall in that event promptly cause the insurance required by Section 6.1.1 to be increased appropriately in such amount at Lessee’ expense.

6.1.3 Lessee shall keep the contents of the Premises, including without limitation the property of others and 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 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 PRPA and the Commonwealth as additional insureds and loss payees, as their interests may appear.

6.1.4 No policy of insurance maintained by Lessee under this Section 6.1 shall contain a deductible feature in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) unless otherwise approved by PRPA.

6.2 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 PRPA and the 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 PRPA): “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”. Lessee shall also cause any and all contractors, subcontractors, stevedores or other agents it uses to name PRPA and the Commonwealth as additional insureds on said party’s liability insurance policies.

6.3 Workers’ Compensation Insurance. During the Term, Lessee itself shall maintain, and shall also require that any and all contractors, subcontractors, stevedores or other agents 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 worker's compensation insurance and employers' liability insurance, United States Longshoremen's 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.

6.4 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 PRPA and the Commonwealth as additional insureds.

6.5 Insurance; General.

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

6.5.2 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) calendar days prior written notice to PRPA and the Commonwealth at the addresses designated from time to time in writing by PRPA and the Commonwealth, respectively. On or before the Commencement Date, and thereafter at least ten (10) calendar days before expiration of any policy, Lessee shall deliver to PRPA two copies of the certificates of insurance and within a reasonable time period thereafter two copies of the policies evidencing each of the coverages that it is required to carried under this Article VI whether carried by Lessee, its contractors, subcontractors, stevedores, or other agents.

6.5.3 Form of Policy. All policies required hereunder and any renewals thereof (1) shall be in form satisfactory to PRPA, including as to the amount of the deductible, (2) shall be issued by companies satisfactory to PRPA authorized to engage in the insurance business in the Commonwealth or otherwise satisfactory to PRPA, and (3) shall be maintained in full force and effect during the Term of this Agreement.

6.5.4 Additional Insurance. Lessee shall also provide such additional types of insurance in such amounts as PRPA shall from time to time reasonably require. In the event that any such additional insurance is required, Lessee shall deliver two copies of each policy to PRPA.

6.5.5 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 Lessee is required to carry hereunder.

6.5.6 Separate Insurance. Lessee shall not take 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 Lessee under this Article VI, or the insurance

Lessee may reasonably be required to furnish under this Article VI, unless PRPA and Commonwealth are named in such policies as insureds, with loss payable as provided in this Agreement. Lessee shall immediately notify PRPA of the taking out of any such separate insurance and shall cause the policies therefor to be delivered to PRPA as required herein.

6.5.7 Claims Made Policies. Lessee shall not obtain any insurance through policies written on a "claims made" basis without PRPA'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 Lessee's occupancy or use of any portion of the Premises; and (2) Lessee shall maintain such policy for at least four 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 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.

6.6 Accident Reports. Lessee shall provide a notice to PRPA in writing, as soon as practicable but in any event within five (5) calendar days after Lessee, its officers, employees 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 TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) to the Premises or property of any person other than Lessee occurring upon or about the Premises. After receipt of such notice, and upon written request of PRPA, Lessee shall provide a written report of any such accident or occurrence, which report 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 PRPA, as may be known to Lessee, its officers, employees or agents.

6.7 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 Lessee or PRPA. 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 if said damage is due to the negligence or misconduct of Lessee.

6.8 Release and Indemnification.

6.8.1 Lessee agrees that PRPA, its successors and assigns, and 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 PRPA's failure to perform its obligations under Section 7.1 or the gross negligence or willful misconduct of PRPA, its officers, employees or agents. Furthermore, PRPA and 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.

6.8.2 Lessee shall defend, indemnify, save and hold harmless PRPA, the Commonwealth, and their respective agents, employees, officers, directors, shareholders, 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 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 Commencement 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, subtenants, 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 PRPA's failure to perform its obligations under Section 7.1 or the negligence or willful misconduct of PRPA, 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.

6.8.3 The obligation of Lessee to indemnify contained in Section 6.8.2 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.

6.8.4 The release and indemnification contained in this Section 6.8 shall survive the expiration or termination of this Agreement.

## **ARTICLE VII - MAINTENANCE, REPAIR, EQUIPMENT AND IMPROVEMENTS**

### **7.1 PRPA's Obligations.**

7.1.1 PRPA shall maintain and repair roofs, pavings, pavements, railroad tracks and the structural elements of the walls and foundations of the buildings and structures (including wharf structures) at the Premises.

7.1.2 PRPA shall not be required to conduct maintenance dredging.

7.2 Lessee' Obligations.

7.2.1 Subject to the obligations of PRPA contained in Section 7.1.1, Lessee, at its own expense, shall be responsible for and perform all maintenance of the Premises of any nature and shall keep the same in good order and repair and condition, including without limitation, all electrical systems, HVAC systems, water and sewer systems, gutters and down spouts, fire and sprinkler systems, alarm systems, reefer plugs, refrigeration systems, lighting, fences (including the fence along North Delaware Avenue), and shall replace, renew, or repair, to PRPA's satisfaction, all parts that may become worn out, broken or destroyed.

7.2.2 During the Term of this Agreement, Lessee shall, at its sole cost and expense, operate, maintain, repair and service such equipment and/or machinery located at or on the Premises which is utilized by Lessee so as to keep the same in good operating condition, all in compliance with all Occupational Safety and Health Act rules and regulations and other applicable Federal, State or local laws or regulations with all valid inspections and other certifications. Lessee shall provide PRPA with copies of such inspections and certifications immediately upon completion.

7.3 Repair. Without limiting the generality of Lessee' obligations under Section 7.2 above, Lessee shall, at its sole cost and expense, promptly repair, to PRPA's satisfaction, any damage, structural or non-structural, done to the Premises by Lessee' agents, employees, contractors, customers, suppliers and other invitees, including, without limitation, damage by railroad cars, trucks or other equipment, or by the discharging, receiving or delivering of freight or passengers from or to railroad cars, trucks or other equipment. PRPA shall not be responsible for any damage to any furniture, equipment or other effects of Lessee or others or for any theft, damage or loss of property from the Premises, however occurring.

7.4 Condition Survey. At PRPA's option, PRPA and Lessee shall conduct or cause to be conducted a condition survey at any time during the Term, to serve as a basis for determining Lessee' compliance with the provisions of this Agreement.

7.5 Fire Systems. Subject to Section 7.2.1 hereinabove, all fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm and sprinkler monitoring 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 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, should the current sprinkler system on the Premises need to be replaced, other than as a result of Lessee' negligence, then PRPA shall be responsible for replacing such sprinkler system with a new sprinkler system at PRPA's sole cost and expense.

7.6 Load Limits. Lessee shall not place loads on the structural portions of the Premises in excess of the respective maximum load limits for the Premises as set forth in **Exhibit "D"** to be attached hereto and made a part thereof upon determination thereof by PRPA once the Restoration Plan has been agreed to by PRPA, as such load limits may be modified by PRPA from time to time for safety purposes, without the prior written consent of PRPA, which may be granted or withheld in PRPA's sole discretion.

7.7 Condition and Surrender of the Premises. Lessee agrees to accept the Premises, including, without limitation, all improvements, structures and facilities upon the Premises, in their condition existing at the Commencement Date, "as is", "where-is" and without warranty (expressed or implied). Lessee' occupation or use of the Premises shall in itself constitute acknowledgment of such acceptance, and PRPA shall not be obligated to make any improvements or repairs thereto, except as specifically provided elsewhere in this Agreement. Subject to Section 7.2.1 hereinabove, 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 as described on a Base Line Survey performed, if at all, pursuant to Section 2.5 hereof, and with the Improvements in as good a state and condition as the same were at completion in accordance with this Agreement, and the Premises will be left in a clean condition with no build-up of dirt and debris, subject to normal wear and tear.

7.8 Access. Subject to the requirements of Section 4.1, PRPA, its contractors, invitees and their respective employees have the right of access to the Premises at all times to perform their respective duties, responsibilities and jobs as contemplated under this Article VII and to determine the state of maintenance and repair provided said access by PRPA or its representatives does not interfere with Lessee' operation of the Premises. PRPA will schedule such access, to the extent reasonably possible, so as not to materially interfere with Lessee' operations at the Premises, but need not schedule such access if PRPA deems an emergency to exist.

7.9 PRPA's Rights. After the Commencement Date, should Lessee fail to make any repairs or perform any maintenance for which it is responsible, PRPA shall have the option to make or perform the same (but need not do so) following thirty (30) calendar days written notice from PRPA or immediately if, in PRPA's business judgment, the repairs required must be made to prevent damage, injury or loss to persons or property. Within ten (10) calendar days following receipt of an invoice, together with reasonable supporting documentation from PRPA, Lessee shall reimburse PRPA for PRPA's actual cost of such repairs as additional Rent. The making of such repairs by PRPA shall in no event be construed as a waiver of the duty of Lessee to make repairs as herein provided.

7.10 Lessee' Improvements. During the Term, Lessee shall not make any alterations, additions or improvements or Improvements to the Premises without first receiving the written consent of PRPA, which consent shall not be unreasonably withheld. PRPA may, at its option, require Lessee to remove any alterations, additions, improvements constructed by Lessee (other than any alterations, additions or improvements which have been consented to by PRPA) upon the expiration or sooner termination of the Term, and to repair and restore the Premises to its

condition as of the Commencement Date of this Agreement, at Lessee' sole cost and expense. To the extent Lessee is permitted to make any alterations, additions or improvements, including the Improvements, to the Premises such construction shall be subject to the following provisions:

7.10.1 Lessee shall not construct any improvement or effect major repairs or restorations of, alter or demolish any works, structures or other improvements upon the Premises, including a change in the grade or filling of a berth thereof, without first submitting to PRPA a complete set of drawings, plans, and specifications and contracts and obtaining PRPA's written approval thereof, which approval may not unreasonably be withheld, and any other approvals of the Commonwealth, to the extent required, and any approvals required by law. PRPA shall have the right to order changes in said drawings, plans and specifications for reasonable cause and Lessee shall make such changes at its own expense. Lessee shall keep records of all goods, material and labor employed in connection with any such construction and shall make the same available to PRPA at reasonable times upon prior written notice.

7.10.2 Every work, structure or improvement constructed, or alteration or change of grade made by Lessee shall conform with the plans and specifications as approved by PRPA and any other entity or governmental agency whose approval is required, and shall conform in all respects to the applicable federal, state, regional, and local laws, statutes, ordinances, rules and regulations. The approvals given as provided in this Section 7.10 shall not constitute a representation or warranty as to such conformity and shall not relieve Lessee of its responsibilities with regard thereto.

7.10.3 Lessee, at its own expense, shall obtain all permits necessary for such construction and shall require by contract that its contractors and subcontractors comply with all applicable federal, state, and local statutes, ordinances, rules and regulations, and with the provisions of Section 15.1. PRPA shall cooperate with Lessee with respect to obtaining necessary permits.

7.10.4 All construction by Lessee pursuant to this Section 7.10 shall be at Lessee' sole cost and expense.

7.10.5 Lessee shall give written notice to PRPA, in advance, of the date it will commence any construction. Immediately upon the completion of the construction, Lessee shall notify PRPA of the date of such completion and shall, within thirty (30) days after such completion, file with PRPA a statement, verified by an appropriate officer of Lessee, setting forth the cost of the labor and material used. Lessee shall also file with PRPA, in a form acceptable to PRPA, a set of "as built" plans for such construction.

7.10.6 All improvements, works and structures made or erected by Lessee upon the Premises under this Section 7.10 shall be and become the property of PRPA; provided, however, that, at PRPA's election, on or prior to the expiration or earlier termination of this Lease, Lessee shall have the obligation to (i) remove all equipment which can be removed from the Premises without destruction or injury thereto or repair all damage to the Premises occurring as a result of such erection and/or removal; and (ii) fill that portion of Lessee's conveying pit which is on the Premises with such material as PRPA shall reasonably approve.

7.10.7 Lessee will proceed diligently to construct its improvements upon the Premises without delay, and in a good and workmanlike manner, employing therefor workers and materials satisfactory in quantity and quality to PRPA. PRPA shall not be responsible for any delay in any construction schedule for any improvement.

7.10.8 Lessee will permit and assist PRPA or PRPA's representatives to make inspections of the Premises and Lessee's improvements. Prior to the commencement of any construction by Lessee, Lessee shall provide to PRPA a construction schedule. Lessee and PRPA shall establish an inspection schedule setting forth reasonable and appropriate times for PRPA to make such inspections, although PRPA may choose to inspect more frequently. If upon any such inspection PRPA in writing reasonably rejects as unsound or improper and not in substantial compliance with the plans any portion of the improvements or any materials used or to be used therein, Lessee will promptly commence to remove from the Premises or improvements (as the case may be) all rejected materials, and will take down and replace (or, at PRPA's option, repair) any portion of such improvements so rejected. PRPA's inspections are solely for PRPA's benefit and no action or inaction by PRPA shall constitute any representation that such improvements comply with the respective plans or that such improvements are sound or free from defects in material, design or workmanship. Nothing herein shall be construed as imposing any obligation upon PRPA to make any inspections hereunder.

7.10.9 Prior to the commencement of any construction or other performance by a contractor, subcontractor or materialman under a contract with Lessee for improvements at the Premises, Lessee shall cause a waiver of mechanics' and materialmen's liens from all such contractors, subcontractors and materialmen to be filed in accordance with the Commonwealth mechanics' lien law.

7.10.10 In addition to the foregoing requirements, Lessee shall not construct, effect major repairs or restorations of, alter or demolish any works, structures or other improvements upon the Premises without first obtaining PRPA's written approval of the identity of the contractor, which approval may be withheld in PRPA's sole and absolute discretion.

## **ARTICLE VIII - TAXES**

8.1 Taxes. Subject to the last sentence of Section 3.6.1, Lessee covenants and agrees to pay in full when due, without demand, all post-Effective Date currently due Impositions, including any and 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 the Premises and all taxes, assessments, duties and charges on goods, merchandise, fixtures, appliances, equipment and property owned or brought upon the Premises by or through Lessee. To the best of PRPA's knowledge, no Impositions have been imposed upon the Premises during the past ten (10) years.

8.2 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 8.1, unless Lessee shall have given prior written notice to PRPA of intent to so contest or object to an Imposition, and unless, at PRPA's sole option, (i) Lessee shall demonstrate to PRPA'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 Impositions 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 PRPA; or (iii) Lessee shall have provided PRPA with a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

## **ARTICLE IX - ENVIRONMENTAL MATTERS**

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

9.2 Lessee' Representations, Warranties and Covenants.

9.2.1 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) except to the extent explicitly permitted by the terms of Section 9.3 of this Lease, it will not bring, generate, treat, store, release, threaten to release or dispose of Hazardous Substances (as hereinafter defined) at the Premises, (iii) it shall at all times cause its operations at the Premises to 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. Nothing herein contained shall create any duty or responsibility on the part of Lessee with respect to any environmental conditions existing on the Premises as of the Effective Date hereof.

9.2.2 Reporting Requirements. Lessee represents, warrants and covenants that it will promptly deliver to PRPA: (i) copies of any documents received from any federal, state, county or municipal environmental or health agency (including, without limitation, the United States Environmental Protection Agency and the Pennsylvania Department of Environmental Protection) concerning Lessee' operations upon the Premises, and (ii) copies of any documents submitted by Lessee to any federal, state, county or municipal environmental or health agency (including, without limitation, the United States Environmental Protection Agency and the Pennsylvania Department of Environmental Protection) concerning its operations upon the Premises, including, but not limited to, copies of all permits, licenses, annual filings and registration forms. Upon the request of PRPA, Lessee shall provide PRPA with evidence of compliance with Environmental Laws in the manner and form PRPA may require. Demonstration of compliance with Environmental Laws provided by Lessee to PRPA pursuant to this Section 9.2.2 shall include, but not be limited to, environmental site assessments prepared in conformity with American Society for Testing and Materials ("ASTM") Standard E 1527-00, as such standard may be amended from time to time.

9.2.3 Termination, Cancellation, Surrender. At the expiration or earlier termination of this Agreement, Lessee shall surrender the Premises to PRPA 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' occupancy) and to the complete satisfaction of PRPA.

9.3 Permitted Substances. Subject to the provisions of this Article IX and to the prior written consent by PRPA which may be given or withheld in PRPA's sole discretion, Lessee shall be entitled to use and store on the Premises only reasonable quantities of those Hazardous Substances which are necessary for Lessee' business, provided that such usage and storage, and Lessee' disposal of all waste resulting therefrom, are in full compliance with all applicable Environmental Laws. Attached hereto as Exhibit "E" is a list of Hazardous Substances Lessee anticipates may be used, handled and/or stored on the Premises ("**Approved Hazardous Substances**") to which PRPA hereby consents, provided that such Approved Hazardous Substances shall be used, handled, stored, disposed of in compliance with all laws, including all Environmental Laws, and with the terms of this Agreement. PRPA reserves the right to modify such list of Approved Hazardous Substances at any time during the Term, upon written notice to Lessee, should Lessee fail to comply with this Section 9.3 or should PRPA determine, in its reasonable discretion, that such use, handling, storage and/or disposal by Lessee is in violation of Environmental Laws or is unreasonably dangerous.

9.4 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 prior written consent of PRPA, which may be given or withheld in PRPA's sole discretion.

9.5 PRPA's Right of Access and Inspection. PRPA shall have the right but not the obligation, at all times during the Term, to: (i) subject to the requirements of Section 4.1, inspect the Premises, (ii) conduct tests and investigations and take samples to determine whether Lessee is in compliance with the provisions of this Article IX provided same does not interfere with the daily operation of Lessee' business, (iii) request lists of all Hazardous Substances used, stored or located on the Premises, and (iv) review any permits which may be required for Lessee to conduct any business at the Premises. PRPA will be responsible for the cost of any tests or investigations it may undertake unless it is determined that Lessee is not in compliance with the pertinent environmental requirements, in which case Lessee shall be responsible for the cost of the inspection/tests.

9.6 Violations - Environmental Defaults.

9.6.1 Lessee shall give to PRPA immediate verbal and follow-up written notice of any actual, threatened or suspected 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' sole cost and expense; such investigation, clean up and remediation to be performed in accordance with all Environmental Laws and only after Lessee has obtained PRPA's prior 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.

9.6.2 In the event of (i) a violation at the Premises of an Environmental Law attributable to the acts or omissions of Lessee, its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors, or (ii) a release, spill or discharge of a Hazardous Substance on or from the Premises, or (iii) the discovery of any environmental condition at the Premises which requires a response and 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 at the Premises (together “**Environmental Defaults**”), PRPA shall have the right, but not the obligation, to immediately enter the Premises, and either to supervise and approve any actions taken by Lessee to address the violation, release, or environmental condition, or, if PRPA deems it necessary, to perform, at Lessee’ expense, any lawful actions necessary to address the violation, release, or environmental condition but such action is to take place only after PRPA has given Lessee written notice of said condition and demand to correct same and Lessee has failed to undertake to correct said condition within three (3) calendar days of receiving said demand.

9.6.3 PRPA has the right but not the obligation to cure any Environmental Defaults, has the right to suspend some or all of the operation of Lessee until PRPA 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.

9.7 Additional Rent for Remediation. Any expenses which PRPA incurs, which are to be at Lessee’ expense pursuant to this Article IX, will be considered additional Rent under this Agreement and shall be paid by Lessee on demand to PRPA.

9.8 Indemnification. Lessee shall indemnify, defend (with counsel approved by PRPA) and hold PRPA and the Commonwealth, and their respective affiliates, shareholders, directors, officers, employees and agents harmless of, 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 facilities 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, threatened release or discharge of Hazardous Substances on or about the Premises. The terms of this indemnification shall survive the expiration or sooner termination of this Agreement.

## 9.9 Definitions.

9.9.1 “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 “solid waste,” “residual waste,” “municipal waste” “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, any source, special nuclear, or by-product material, radiologically-contaminated material and medical waste.

9.9.2 “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 health, safety, welfare, transportation and handling of food, the environment and environmental conditions, or to any Hazardous Substance (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. Section 9601, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Clean Air Act, 44 U.S.C. Section 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001, et seq.; the Pennsylvania Storage Tank and Spill Prevention Act, 35 P.S. Section 6021.101, et seq.; the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. Section 6020.101 et seq.; the Pennsylvania Air Pollution Control Act, 35 P.S. Section 4001 et seq.; the Pennsylvania Clean Streams Law, 35 P.S. Section 691.101 et seq.; the Pennsylvania Solid Waste Management Act, 35 P.S. Section 6016.10 et seq.; and 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 to all of the foregoing and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder concerning environmental, industrial hygiene, or public health or safety).

9.10 Disposal and Removal of Solid Wastes. Lessee shall, at its sole cost, contract with a reputable, private refuse removal company or companies approved by PRPA 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.

#### 9.11 Remedies.

9.11.1 Upon a default by Lessee of any provision of this Article IX, PRPA may, at its sole discretion, terminate this Agreement by written notice to Lessee, whereupon Lessee shall immediately vacate the Premises.

9.11.2 The parties recognize that no adequate remedy at law may

exist for a default of this Article IX. Accordingly, either party may obtain specific performance of any provisions of this Article IX.

9.11.3 This Section 9.11 shall not be construed to limit any remedies which either party may have against the other at law or in equity for a default of this Article IX.

9.12 Survival. The provisions of this Article IX shall survive the expiration 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 IX unless the termination or modification agreement or other document expressly so states in writing.

9.13 Limitations. Nothing contained herein shall make or be deemed to make Lessee liable or responsible for any contamination existing on the Premises as of the Commencement Date, or for contamination thereafter caused solely by PRPA, its contractors or invitees.

## **ARTICLE X - ASSIGNMENT; LEASING AND LICENSING**

10.1 Assignment; Leasing 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 PRPA, which consent may be withheld, conditioned or delayed for any reason or no reason whatsoever in PRPA's sole and absolute discretion. Lessee shall provide PRPA with a copy of all proposed leases for which Lessee is seeking PRPA's consent together with any other information as may be requested by PRPA. Lessee shall also provide copies of any such permitted leases to PRPA immediately following execution thereof.

10.2 PRPA's Assignment and Successors. PRPA 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 to any successor or affiliate of PRPA.

10.3 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 (if permitted) of the parties hereto. The provisions of this Section 10.3 shall not be deemed a waiver of any of the conditions against assignment by Lessee hereinbefore set forth.

## **ARTICLE XI - LESSEE' COVENANTS**

11.1 Liens and Encumbrances. Lessee shall keep the Premises free and clear of all liens and encumbrances. At PRPA's request, Lessee shall furnish PRPA with written proof of payment of any item which would constitute the basis for such a lien on the Premises if not paid.

11.2 PRPA Regulations. Lessee shall comply with all reasonable rules and regulations of PRPA, 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 PRPA, its tenants, invitees, licensees and the general public to the extent that such rules and regulations do not materially conflict with the terms of this Agreement.

11.3 Security. Lessee shall at all times provide adequate security for the entire Premises, which security shall be as agreed to by both parties and, failing such agreement, shall be as reasonably required by PRPA.

11.4 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. Lessee covenants and agrees that all railroad tracks leading to or from the Premises shall be operated on the same "Belt Line Principle" and to maintain free and unimpeded access to the Premises for any rail carrier delivering or receiving cars to or from the Premises. Lessee further agrees that all railroad tracks shall be kept clear of any and all obstructions including, without limitation, snow and ice, and temporary or moveable structures and equipment.

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

11.6 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 PRPA and the Commonwealth, and other governmental agencies having jurisdiction thereof, provided said removal does not unreasonably interfere with Lessee's business or is unduly burdensome. Upon three (3) calendar days' written notice by PRPA, Lessee shall remove any dirt, rubbish, and/or refuse from the Premises. If Lessee refuses to remove such material, PRPA shall have the right (but not the obligation) to remove same and to charge Lessee 125% of the cost of such removal.

11.7 Explosives. Subject to Section 9.3 hereof, 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 in writing by PRPA or the City of Philadelphia's regulation of March 30, 1983, as heretofore or hereafter amended, supplemented or replaced (attached as Exhibit "F"), any such discharge, loading or storage being hereby specifically prohibited.

11.8 Snow and Ice. Lessee shall immediately remove accumulations of snow and ice from the Premises and, to the extent practical and in accordance with the responsibilities of Lessee hereunder, keep all roofs, eave boxes and deck drains free from any obstruction.

## **ARTICLE XII - DAMAGE TO THE PREMISES**

### **12.1 Damage and Destruction**

12.1.1 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, PRPA shall, subject to its rights under this Section 12.1.1, promptly and

diligently restore, rebuild and repair the Premises, as the case may be, solely to the extent of PRPA or Lessee' available insurance proceeds (all of which shall be paid directly to PRPA by the insurer), as nearly as practicable to the condition existing immediately prior to such casualty.

12.1.2 Demolition. In the event any portion of the Premises is damaged or destroyed and PRPA, pursuant to this Section 12.1.2, elects not to restore, rebuild or repair such portion of the Premises, then PRPA shall raze or otherwise make secure such portion of the Premises, to the extent feasible solely utilizing Lessee' available insurance proceeds, all of which shall be paid directly to PRPA by the insurer.

12.1.3 Base Rent Abatement. Lessee shall be entitled to an equitable reduction of the Base Rent and any and all tonnage and vessel guarantees 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 and its employees and contractors do not have any liability, to the extent such inability to use that portion of the Premises substantially hinders Lessee' ability to handle cargo at the Premises or to the extent that the Premises are not substantially restored to their pre-casualty functionality.

12.1.4 No Consequential Damages. No damages, compensation or claim of any kind shall be payable to Lessee by PRPA for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises following a casualty provided PRPA acts diligently to repair such damage. Subject to the other provisions of this Article XII, PRPA shall use all reasonable efforts to effect repair or restoration undertaken pursuant to this Article XII promptly and in such manner as to not unreasonably interfere with Lessee' use, occupancy and security.

12.1.5 Lessee' Duty to Insure. PRPA will not carry insurance of any kind on Lessee's personal property, cargo, property of others, or on any alterations or improvements constructed at the Premises by Lessee (including the Improvements) and, except as otherwise specifically required by law or this Agreement, shall not be obligated to repair any damage thereto or replace the same. To the extent that any casualty requires repairs to the property insured by PRPA hereunder and to the property of Lessee affixed thereto, PRPA shall cooperate with Lessee and/or Lessee's insurers or contractors as may be reasonably necessary to facilitate such repairs.

12.1.6 Limitation. Notwithstanding anything to the contrary contained in this Article XII, in the event the damage shall involve the Premises generally and shall be so extensive that PRPA shall decide not to rebuild or repair the Premises, or if available insurance proceeds are insufficient to repair or rebuild the damage, or if the casualty shall be of a type not insured against under standard fire policies with extended type coverage, this Agreement shall, at the option of PRPA, exercisable by written notice to Lessee given within ninety (90) calendar days after PRPA 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) calendar 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 XIII - WAIVER**

13.1 Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be meant to be taken as a waiver at any time thereafter (i) of the same or of any other term, condition, covenant or agreement herein contained, nor (ii) of the strict and prompt performance thereof by the proper party.

### **ARTICLE XIV - MECHANIC'S LIENS**

14.1 Mechanic's Liens. Lessee will not permit, and will promptly discharge, at its sole cost and expense, all liens and charges upon the Premises or any part thereof 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, assignees, 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). PRPA 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 PRPA harmless from any claim or liability arising out of any work done on the Premises. Notice is hereby given that PRPA will not be liable for any labor, services or materials furnished or to be furnished by or for Lessee, or to any holding on the Premises through or under Lessee, and that no mechanic's or other such liens for any such labor or materials shall attach to or affect the interest of PRPA in and to the Premises.

### **ARTICLE XV - EMPLOYMENT PRACTICES**

15.1 Employment Practices. During the Term, Lessee shall comply fully with the Employment Practices Requirements as set forth on Exhibit "G" attached hereto and made a part hereof and with PRPA's prevailing wage policy then in effect, if any.

### **ARTICLE XVI - REMEDIES**

16.1 PRPA's Remedies. If Lessee does not pay in full when due any installment of Rent, or any other charge, expenses or costs to be paid by Lessee under this Agreement after the expiration of the applicable notice and grace periods provided in Section 16.1.5, or otherwise fails to perform, violates or otherwise breaks any covenant of Lessee in this Agreement, or fails to comply with any notice given under the terms of this Agreement after expiration of the applicable notice and grace periods provided in Section 16.1.5, then PRPA shall have the following rights and remedies in addition to any other remedies available at law or in equity (including injunctive relief in the case of a default of any non-monetary obligation by Lessee under this Agreement):

16.1.1 The entire Rent for the entire Term of this Agreement, as well as all other fees, charges, payments, costs and expenses to be paid by Lessee under this Agreement, or at PRPA's option, any part thereof, shall at the option of PRPA, be taken to be due and payable forthwith and in arrears as if by the terms of this Agreement it or they were all

payable in advance, with the right on the part of PRPA to take such action under the provisions of this Agreement as is provided for when Rent is in arrears and unpaid, and the unpaid balance of the entire Rent for the entire Term of this Agreement shall be first paid out of the proceeds realized under any assignment, receivership, or under any sheriff's or marshal's sale, or sale under proceeds in bankruptcy, insolvency or like proceedings, or under any other compulsory procedure or order of court, any law, usage or custom to the contrary notwithstanding.

**16.1.2 THE FOLLOWING PARAGRAPHS SET FORTH WARRANTS OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST LESSEE:**

**(i) IF LESSEE SHALL DEFAULT IN THE PAYMENT OF RENT, ADDITIONAL RENT OR ANY OTHER SUMS DUE UNDER THIS AGREEMENT BY LESSEE, LESSEE HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY PROTHONOTARY OR ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR LESSEE IN ANY AND ALL SUITS OR ACTIONS WHICH MAY BE BROUGHT FOR SAID RENT, ADDITIONAL RENT AND/OR OTHER SUMS; AND IN SAID SUITS OR ACTIONS TO CONFESS JUDGMENT AGAINST LESSEE FOR ALL OR ANY PART OF SAID RENT, ADDITIONAL RENT AND/OR OTHER SUMS AND FOR INTEREST AND COSTS, TOGETHER WITH AN ATTORNEYS' COMMISSION FOR COLLECTION OF FIVE PERCENT BUT NOT LESS THAN TEN THOUSAND DOLLARS (\$10,000). SUCH AUTHORITY SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF, BUT JUDGMENT MAY BE CONFESSED AS AFORESAID FROM TIME TO TIME AS OFTEN AS ANY OF SAID RENT, ADDITIONAL RENT OR OTHER SUMS SHALL FALL DUE OR BE IN ARREARS, AND SUCH POWERS MAY BE EXERCISED AS WELL AFTER THE TERMINATION OR EXPIRATION OF THE TERM OF THIS AGREEMENT.**

**(ii) WHEN THIS AGREEMENT OR LESSEE'S RIGHT OF POSSESSION SHALL BE TERMINATED BY COVENANT OR CONDITION BROKEN, OR FOR ANY OTHER REASON, EITHER DURING THE TERM OF THIS AGREEMENT, AND ALSO WHEN AND AS SOON AS SUCH TERM SHALL HAVE EXPIRED OR BEEN TERMINATED, LESSEE HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD AS ATTORNEY FOR LESSEE AND ANY PERSONS CLAIMING THROUGH OR UNDER LESSEE TO CONFESS JUDGMENT IN EJECTMENT AGAINST LESSEE AND ALL PERSONS CLAIMING THROUGH OR UNDER LESSEE FOR THE RECOVERY BY PRPA OF POSSESSION OF THE PREMISES, FOR WHICH THIS AGREEMENT SHALL BE SUFFICIENT WARRANT, WHEREUPON, IF PRPA SO DESIRES, A WRIT OF EXECUTION OR OF POSSESSION MAY ISSUE FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDINGS WHATSOEVER, AND PROVIDED THAT IF FOR ANY REASON AFTER SUCH ACTION SHALL HAVE BEEN COMMENCED THE SAME SHALL BE DETERMINED, CANCELED OR SUSPENDED AND POSSESSION OF THE PREMISES REMAIN IN OR BE RESTORED TO LESSEE OR ANY PERSON CLAIMING THROUGH OR UNDER LESSEE, PRPA SHALL HAVE THE RIGHT, UPON ANY SUBSEQUENT DEFAULT**

**OR DEFAULTS, OR UPON ANY SUBSEQUENT TERMINATION OR EXPIRATION OF THIS AGREEMENT OR ANY RENEWAL OR EXTENSION HEREOF, OR OF LESSEE'S RIGHT OF POSSESSION, AS HEREINBEFORE SET FORTH, TO CONFESS JUDGMENT IN EJECTMENT AS HEREINBEFORE SET FORTH ONE OR MORE ADDITIONAL TIMES TO RECOVER POSSESSION OF THE PREMISES.**

**(iii) IN ANY ACTION OF OR FOR EJECTMENT OR FOR RENT OR ADDITIONAL RENT, IF PRPA SHALL FIRST CAUSE TO BE FILED IN SUCH ACTION AN AFFIDAVIT MADE BY IT OR SOMEONE ACTING FOR IT SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT, SUCH AFFIDAVIT SHALL BE CONCLUSIVE EVIDENCE OF SUCH FACTS; AND IF A TRUE COPY OF THIS AGREEMENT (AND OF THE TRUTH OF THE COPY SUCH AFFIDAVIT SHALL BE SUFFICIENT EVIDENCE) BE FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING. LESSEE RELEASES TO PRPA, AND TO ANY AND ALL ATTORNEYS WHO MAY APPEAR FOR LESSEE, ALL PROCEDURAL ERRORS IN ANY PROCEEDINGS TAKEN BY PRPA, WHETHER BY VIRTUE OF THE WARRANTS OF ATTORNEY CONTAINED IN THIS AGREEMENT OR NOT, AND ALL LIABILITY THEREFOR.**

16.1.3 PRPA may, at its option, relet the Premises as agent of Lessee for the balance of the Term and receive the rent therefor and apply the same to the payment of any Rent or damage for default of any obligation under this Agreement or any covenant herein contained due by Lessee to PRPA under the terms hereof.

16.1.4 To the extent permitted by law, PRPA may itself or by its agent, without notice, enter upon the Premises, either by force or otherwise, and eject and expel Lessee and all others therefrom, without being liable to any prosecution or action therefor, the consent of Lessee being hereby given to PRPA and to any officer or agent of PRPA holding a warrant of distress or writ of execution issued by PRPA against Lessee to break or otherwise open all locked doors or windows for the purpose of such entry; and upon such entry PRPA or any officer or agent of PRPA holding such a warrant of distress or writ of execution may attach and levy upon any goods found therein.

16.1.5 In the event of any alleged default of any obligation under this Agreement or any covenant herein contained by Lessee, PRPA shall promptly give written notice thereof to Lessee and Lessee shall have a period of ten (10) calendar days in the case of the nonpayment of any Rent and in all other cases a period of thirty (30) calendar days after receipt of such written notice to cure any such alleged default of any obligation under this Agreement or any covenant herein contained. PRPA agrees that it will not exercise any remedy for a default under this Agreement until after the expiration of the appropriate period, and further agrees that it will not exercise any remedy against Lessee if within the appropriate period Lessee (i) cures the default other than the nonpayment of Rent, or (ii) commences action in good faith within said thirty (30) day period to cure the default within a reasonable time and diligently pursues such cure to completion.

16.2 True Copies of Agreement. In exercising any power conferred under this Agreement, either by the entry of an appearance, or by the confession of a judgment if PRPA, or its agent or attorney, shall cause to be filed in such action an affidavit setting forth the facts necessary to authorize the entry of judgment and if a true copy of this Agreement (as of the truth of the copy, such affidavit shall be sufficient proof) be filed in such proceedings, it shall not be necessary to file the original as a warrant of attorney, any law, or rule of court to the contrary notwithstanding.

16.3 No Exhaustion of Powers. Any power herein given to enter an action or to appear for and confess and enter judgment against Lessee, and the right to assess damages under any such judgment, shall be exercisable any number of times and shall not, under any circumstances, be exhausted by one or more uses thereof.

16.4 Waiver of Exemptions. Lessee hereby waives and releases unto PRPA the benefit of any laws which do now or hereafter shall exempt any property upon the Premises or elsewhere belonging to Lessee from levy and sale upon distress for the rents or sums of money hereby reserved as rent, or upon any execution on any judgment obtained in an action brought for a default of any obligation under this Agreement.

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

**16.6 Lessee' Warranty. IN CREATING ANY WARRANT OF ATTORNEY TO CONFESS JUDGMENT, CONTAINED IN THIS AGREEMENT, 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 PRPA.**

## ARTICLE XVII - SIGNS

17.1 Signs. Lessee shall not place any sign(s) on or about the Premises or any building or structure located thereon without the prior written consent of PRPA, which consent shall not be unreasonably withheld. PRPA reserves the exclusive right to place signs at the Premises provided same does not interfere or compete with Lessee' business. Lessee agrees to remove promptly, to the satisfaction of PRPA, and 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 XVIII - REPRESENTATIONS AND WARRANTIES OF LESSEE**

18.1 Authorization. Lessee and the individual signing below on Lessee' behalf hereby represent and warrant to PRPA 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.

18.2 Non-Conflict. Lessee hereby represents and warrants to PRPA that the execution, delivery and performance of this Agreement will not violate any provision of, nor conflict with, nor result in a default 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 XIX - EMINENT DOMAIN**

19.1 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 PRPA without any deduction therefrom of any present or future estate of Lessee, and Lessee hereby assigns to PRPA 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 PRPA or in diminution of the sums payable to PRPA by the condemning authority, such compensation as may be separately awarded or recoverable by Lessee on account of any damage to Lessee' business by reason of the condemnation or on account of any cost or loss to which Lessee might be put in removing Lessee' merchandise, furniture, fixtures, leasehold improvements and equipment.

19.2 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 PRPA 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 appropriate refund by PRPA of a proportionate share 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 PRPA shall at its expense make all necessary repairs or alterations to the affected portion of the Premises; provided, however, that if either PRPA or Lessee reasonably determines that such taking results in Lessee being unable to continue to conduct the Permitted Uses at the Premises, either PRPA or Lessee may terminate this Agreement by written notice delivered to the other within thirty (30) calendar 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 PRPA of a proportionate share 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) calendar days after such taking of possession; provided, that in the event neither party so terminates, all of the terms herein provided shall continue in effect except that the Base Rent shall be equitably abated, and PRPA shall make all necessary repairs or alterations to the affected portion of the Premises.

19.3 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 Lessee shall be entitled to make claim for, recover, and retain (so long as 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, PRPA 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, Lessee shall pay to PRPA Rent as provided for in this Agreement. If any such taking extends for six (6) months or more, Lessee shall have the right to terminate this Agreement upon thirty (30) calendar days' written notice to PRPA.

19.4 Lessee' Recovery of Unamortized Capital Improvements. Lessee shall have the right to make a claim against PRPA for the unamortized portion of any capital improvements made by Lessee at the Premises. For purposes of this provision, the amortization period for any capital improvement shall be the period commencing upon the date of completion of such capital improvement and expiring upon the Termination Date. However, in the case of a temporary taking, Lessee' claim shall be limited to annual payments equal to the amortization for that year.

## ARTICLE XX - MISCELLANEOUS

20.1 Notices. Any notice permitted or required to be sent under this Agreement 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 against a signed receipt, or sent by certified mail, return receipt requested, or by commercial overnight delivery service, postage prepaid, addressed as follows:

If to PRPA:

Philadelphia Regional Port Authority  
3460 North Delaware Avenue  
Philadelphia, PA 19134  
Attention: James T. McDermott, Jr., Esquire  
Executive Director

Philadelphia Regional Port Authority  
3460 North Delaware Avenue  
Philadelphia, PA 19134

Attention: Gregory V. Iannarelli, Esquire  
Chief Counsel

with a copy to:

Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103-6998  
Attention: Wendy E. Bookler, Esquire

If to Lessee:

GROWMARK, Inc.  
1701 Towanda Avenue  
Bloomington, IL 61701  
Attention: General Counsel

with a copy to: Manager of Agronomy Division [same address]

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.

20.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth which are applicable to agreements made and to be performed wholly within the Commonwealth. All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration before the Board of Claims created by Pa. Stat. Ann. tit. 72, § 4651-1 et seq., in the manner and under the terms and conditions provided therein. If the total amount in controversy does not amount to three hundred dollars (\$300.00) or more, or if, for any reason, the Board of Claims cannot exert jurisdiction over the matter, the matter shall be referred to and decided by a panel consisting of the Executive Director of the Authority and the Director of Real Estate and Insurance of the Authority or their respective deputy or deputies

Lessee hereby irrevocably consents to service of process upon Lessee in any litigation by hand delivery to any employee of 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.

20.3 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 thereof may require, as if such words had been fully and properly written in such number and gender.

20.4 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.

20.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all the parties reflected on this Agreement as signatories.

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

20.7 PRPA's Successors and Assigns; Limitation of Liability. The term "PRPA" 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 to possession of the Premises or any entity to which PRPA conveys, assigns or transfers all or part of its interest in the Premises at any time and from time to time. PRPA 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 PRPA, PRPA shall be discharged and relieved of all liability and obligations under this Agreement which shall thereafter accrue, provided the successor-in-interest assumes said liability and obligations, and Lessee shall look solely to such successor-in-interest for the performance of the covenants and obligations of PRPA under this Agreement which shall thereafter accrue. The liability of PRPA and its successors-in-interest under or with respect to this Agreement, and of PRPA's directors, officers, shareholders or constituent partners, shall be strictly limited to and enforceable solely out of its or their interest in the Premises 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 PRPA.

20.8 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.

20.9 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.

20.10 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.

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

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

20.13 Business Interruption. PRPA 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, except if same was due to the gross negligence of PRPA, its agents or representatives.

20.14 Entire Agreement. This Agreement sets forth all the promises, agreements, conditions and understandings between PRPA 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 PRPA and Lessee unless made in writing and signed by both parties hereto.

20.15 Liability of the Commonwealth. This Agreement is not an obligation of the Commonwealth or any political subdivision thereof, other than PRPA, nor shall the Commonwealth or any political subdivision thereof, other than PRPA, 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.

20.16 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. In furtherance of its marketing obligations, Lessee shall coordinate its specific marketing goals to maximize the use and operation of the Premises for increased cargo handling with PRPA's Marketing Department and shall coordinate all marketing efforts with PRPA and its designees and all current and future tenants, licensees and occupants of the Premises. PRPA provides marketing services for all of its facilities in the Port of Philadelphia in conjunction with each individual tenant's marketing efforts. In addition, PRPA assists individual tenants to achieve compliance with regulations imposed by the United States Coast Guard.

20.17 Operations Coordination. Lessee and PRPA will meet routinely (not less than once a month) to discuss current and future operating problems and opportunities with respect to the Premises, critique past operations and efforts for improvement, and coordinate future marketing goals. PRPA will have an operations field representative available to act as a liaison

between the PRPA and Lessee for day-to-day issues.

20.18 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.

20.19 Books, Records and Reports. Lessee shall keep complete and accurate books, records and accounts relating to all operations of the Premises. Lessee shall make all information relating to the operations of the Premises available to PRPA through electronic communication links. Lessee shall submit to the Operations Department of PRPA on or before the 15th day of each calendar month during the Term of this Agreement a true and accurate report on a form provided by Lessee, subject to PRPA's approval prior to the Commencement Date. PRPA or its designees shall have the right and privilege to inspect and audit Lessee's books, records and accounts at all reasonable times to verify the information contained in such monthly reports, and Lessee agrees that such records and accounts shall be made available to PRPA upon request. If any audit discloses that Lessee has understated the fees or Rent due to PRPA under this Agreement, Lessee shall immediately, upon demand pay to PRPA such unpaid fees and/or Rent and the costs and expenses incurred by PRPA in conducting such audit.

20.20 Estoppel Certificates. Each party hereby agrees that, at any time from time to time upon the written request of the other party (the "**Requesting Party**"), it shall within fifteen (15) days of the date of such written request, execute and deliver to the Requesting Party a written statement: (i) confirming the Commencement and Expiration Dates of this Agreement; (ii) certifying that this Agreement is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (iii) certifying that all conditions and agreements under this Agreement to be satisfied or performed by the Requesting Party have been satisfied and performed except as shall be stated; (iv) certifying that the Requesting Party is not in breach or default under this Agreement and there are no defenses or offsets against the enforcement of this Agreement by the Requesting Party except as shall be stated; (v) stating the date through which all Rent and other sums payable under this Agreement have been paid; and (vi) providing any other information which the Requesting Party shall reasonably request.

20.21 Force Majeure.

20.21.1 Neither party hereto shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder, if and to the extent that such failure is caused by a force majeure, which is a cause beyond the control of such party, such as an act of God, fire, flood, explosion, acts of war, riot, civil disorder, casualty caused by third parties not under the control of the party seeking to invoke the application of this Section, strikes or work stoppages (except such strikes or work stoppages resulting from such party's "unfair labor practices," as that term is used in the National Labor Relations Act) or governmental action. Strikes or work stoppages shall be deemed not to have resulted from a party's unfair labor practices until such time, if any, that there is a final administrative or judicial determination, and no appeal is pending and the time for any such appeal has expired, that the

conduct that caused such strike or work stoppage was an unfair labor practice, in which event any reduction in Base Rent payable pursuant to Section 3.1 attributable to the strike or work stoppage caused by such unfair labor practice (as determined by PRPA) shall be paid by Lessee to PRPA within thirty (30) days of such determination. In order for a party not to be deemed to be in breach of this Agreement by reason of force majeure, the parties must mutually agree that a certain event constitutes force majeure. For purposes solely with respect to this Section 20.21.1, any dispute concerning whether a particular event or series of events constitutes force majeure shall be settled pursuant to arbitration in accordance with the rules of the American Arbitration Association and any judgment upon any award rendered may be entered in any court having jurisdiction thereof.

20.21.2 All amounts payable by Lessee hereunder whether characterized as Rent, additional Rent, rent, fees, charges or other sums and Lessee's guaranties set forth in Section III this Agreement shall not be affected by an event of force majeure except that if and to the extent that an event of force majeure materially adversely affects the ability of Lessee to conduct maritime operations at the Premises or the ability of a normal volume of vessels to use the Premises, the guaranties set forth in Section III of this Agreement shall be equitably reduced in an amount to be determined by PRPA.

[Signatures on following page]

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

THE PHILADELPHIA REGIONAL  
PORT AUTHORITY

GROWMARK, INC., a Delaware  
corporation

By:   
Name: James T. McDermott, Jr.  
Title: Executive Director

By:   
Name: Steven J. Barwick  
Title: V.P. Marketing and operations

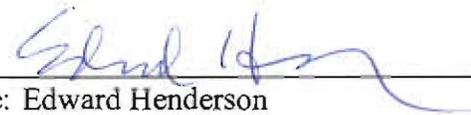
Approved as to Legality and Form:  
Funds:

Approved as to Propriety and Availability of

THE PHILADELPHIA REGIONAL  
PORT AUTHORITY

THE PHILADELPHIA REGIONAL  
PORT AUTHORITY

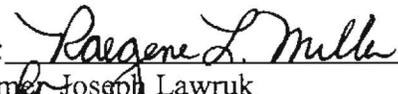
By:   
Name: Gregory V. Iannarelli  
Title: Chief Counsel

By:   
Name: Edward Henderson  
Title: Director of Finance & Capital  
Funding

OFFICE OF THE ATTORNEY  
GENERAL

OFFICE OF THE BUDGET

By:   
Name: Robert A. Mulla, Esquire  
Title: Chief Deputy Attorney General

By:   
Name: Joseph Lawruk  
Title: Comptroller

## **LIST OF EXHIBITS TO LEASE AND OPERATING AGREEMENT**

Exhibit A – Site Plan (also indicating Excluded Premises)

Exhibit B – Easement Areas for Extension of Delaware Avenue and for Rail Track Bed

Exhibit C – Permitted Exceptions

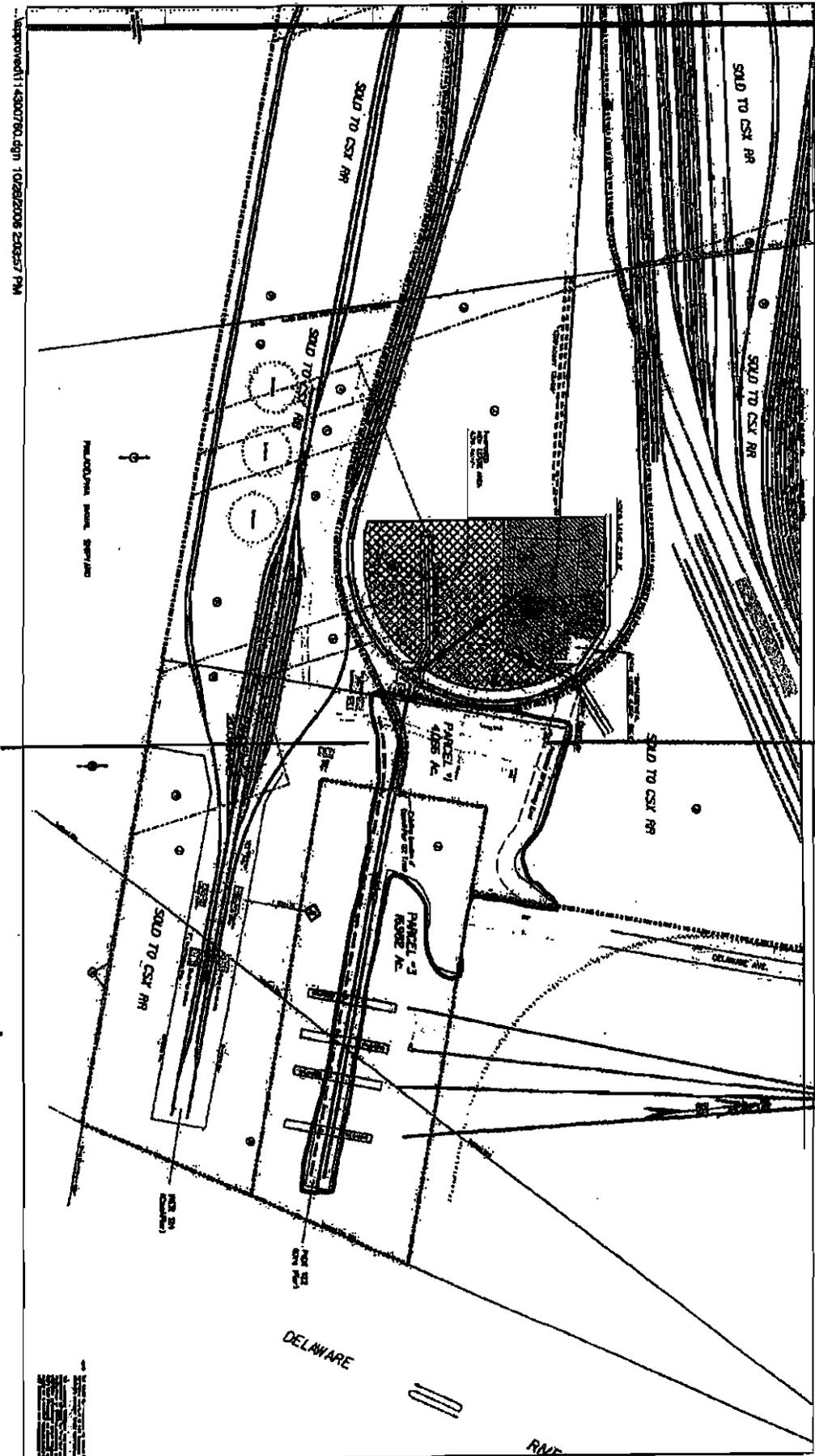
Exhibit D - Load Limits

Exhibit E – Hazardous Materials Permitted at Premises

Exhibit F - City of Philadelphia's Regulation of March 30, 1983 (regarding explosives)

Exhibit G – Employment Practices Requirements

Approved: 11/14/2007 09:00 AM 10/26/2006 2:03:57 PM



Promises  
outer  
boundary.  
Includes:  
Parcel 1,  
Parcel 3,  
and part  
of Parcel 2

Exclude 4  
Buildings  
with 10' buffer  
ground each.

Exclude 4  
Cranes.  
Push to east  
end of pier.

Exhibit "A"

DELaware RIVER  
 FLOW

Regional Authority

Philadelphia Port

Philadelphia Regional Port Airt.

The Philadelphia Naval Business Center

PACKER MARINE TERMINAL

Sub-Station 'A'

Parcel #3  
 SEE SHEET #4

Parcel #1  
 SEE SHEET #2

Parcel #2  
 SEE SHEET #3

55' WIDE DRIVEWAY EASEMENT

LINE LENGTH	BEARING	CHORD
1	S 89° 15' 00" W	100.0000
2	S 89° 15' 00" W	100.0000
3	S 89° 15' 00" W	100.0000
4	S 89° 15' 00" W	100.0000
5	S 89° 15' 00" W	100.0000
6	S 89° 15' 00" W	100.0000
7	S 89° 15' 00" W	100.0000
8	S 89° 15' 00" W	100.0000
9	S 89° 15' 00" W	100.0000
10	S 89° 15' 00" W	100.0000
11	S 89° 15' 00" W	100.0000
12	S 89° 15' 00" W	100.0000
13	S 89° 15' 00" W	100.0000
14	S 89° 15' 00" W	100.0000
15	S 89° 15' 00" W	100.0000
16	S 89° 15' 00" W	100.0000
17	S 89° 15' 00" W	100.0000
18	S 89° 15' 00" W	100.0000
19	S 89° 15' 00" W	100.0000
20	S 89° 15' 00" W	100.0000

LINE TABLE

LINE	LENGTH	BEARING
1	100.00	S 89° 15' 00" W
2	100.00	S 89° 15' 00" W
3	100.00	S 89° 15' 00" W
4	100.00	S 89° 15' 00" W
5	100.00	S 89° 15' 00" W
6	100.00	S 89° 15' 00" W
7	100.00	S 89° 15' 00" W
8	100.00	S 89° 15' 00" W
9	100.00	S 89° 15' 00" W
10	100.00	S 89° 15' 00" W
11	100.00	S 89° 15' 00" W
12	100.00	S 89° 15' 00" W
13	100.00	S 89° 15' 00" W
14	100.00	S 89° 15' 00" W
15	100.00	S 89° 15' 00" W
16	100.00	S 89° 15' 00" W
17	100.00	S 89° 15' 00" W
18	100.00	S 89° 15' 00" W
19	100.00	S 89° 15' 00" W
20	100.00	S 89° 15' 00" W

CONTAINING 21,468 S.F. OR D.48 AC.

P.O.B. ENCUMBRANCE

DELaware RIVER

DELaware RIVER

DELaware RIVER

EXHIBIT "B"

## **PERMITTED EXCEPTIONS**

1. Any encroachments, easements, measurements, variations in area or content, party walls or other facts which a correct survey of the premises would show.
2. Road ways, streams or easements, if any, not shown by the public records, riparian rights and the title to any filled-in lands.
3. Company assumes no liability by reason of failure of tax authority to separately assess.
4. Rights of the United States of America, the Commonwealth of Pennsylvania, the public, and other riparian owners between the high and low water marks of the Delaware River: subject to the laws and authority of the Federal and State Governments, their political subdivisions and agencies, over portions of the premises extending beyond the low water mark of the Delaware River, to regulate commerce and navigation as well as to exert governmental title and ownership vested in the State in the area lying below the original low water mark.
5. Premises in question is an interior lot and has no frontage on any legally opened street or highway. Company assumes no liability for ingress, egress or regress to any legally opened street or highway.
6. Terms, Conditions and Reservations as in Deed Book DCC 1962 page 220.
7. Conditions disclosed on "Proposed Subdivision — Pier 122 made by Urban Engineers, Inc., dated 1/3/2005:
  - a. conveyor belts cross property lines;
  - b. rail lines cross property lines;
  - c. underground electric lines and oil lines.
8. Subject to obligations shared by the grantor herein to perform certain maintenance activities and monitoring activities as described in U.S. Army Corps of Engineers permit No. CENAP-OP-R199900554-5 1 (CSX Intermodal Greenwich Yard, dated March 22, 1999) and Pennsylvania Department of Environmental Protection permit No. ES 1-165 (CSX Intermodal Greenwich Yard) dated June 10, 1999.
9. Subject to a 30 foot wide proposed track easement to be used for construction and maintenance of a future track by CSX, and a 25 foot wide proposed access easement abutting the proposed track easement to the southeast, as indicated on a plan entitled "Proposed Subdivision, Pier 122, by Urban Engineers, Inc., dated December 29, 2004.

EXHIBIT "C"

Page 1 of 2

10. Right of access to and from the land.
11. Conditions and reversionary clause contained in Deed Book EFP 237 page 210.
12. Conditions, Restrictions, Reservations, Easements, Covenants and Reverter Rights as contained in Deed to Insured.

**EXHIBIT "C"**  
Page 2 of 2

Exhibit D  
Load Limits

[To be inserted upon completion of the Restoration Plan.]

Exhibit E

Hazardous Materials Permitted at Premises

Plant Food

Grain and grain by-products

Ethanol

Sand

Cement

Salt



CITY OF PHILADELPHIA

FIRE DEPARTMENT  
Fire Commission Building  
215 S. Spring St. Philadelphia, Pa. 19106

JOSEPH A. AZZO  
Commissioner



March 30, 1983

Thomas J. Tomasco, CHAST&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:

I. 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.

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,

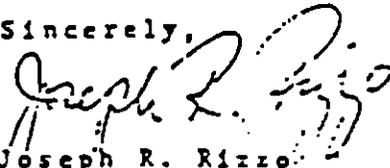
  
Joseph R. Rizzo  
Fire Commissioner

Exhibit "F"

Page 4 of 4

## 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 employes.

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.

3/5/08

RECEIVED  
Office of Attorney General  
FEB 25 2008  
Legal Review Section