

Lease Agreement

Transcript Document No. 1

LEASE AGREEMENT

Dated as of May 1, 2005

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

NEW YORK CONTAINER TERMINAL, INC.

(New York Container Terminal, Inc. Project)

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LEASE AGREEMENT

This LEASE AGREEMENT, made and entered into as of May 1, 2005 (this "Agreement"), by and between NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and NEW YORK CONTAINER TERMINAL, INC., a corporation duly organized and existing under the laws of the State of New York (the "Lessee"), having its principal office at 300 Western Avenue Staten Island, New York 10303, party of the second part;

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 1082 of the 1974 Laws of New York, as amended (together with the Enabling Act, the "Act"), for the benefit of The City of New York (the "City") and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee, for a commercial "project" within the meaning of the Act within the territorial boundaries of The City of New York with respect to port equipment and related parts thereto, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Equipment"), to be used at the terminal facility located at 300 Western Avenue, Staten Island, New York 10303 (the "Terminal"); and

WHEREAS, the Terminal is owned by The City of New York, is leased to the Port Authority of New York and New Jersey (the "Port Authority"), and is subleased by the Port Authority to the Lessee for use as a port facility and terminal; and

WHEREAS, the project will consist of the acquisition of the Equipment (the "Project"); and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Agency will acquire a leasehold interest in the Equipment pursuant to the Company Lease (as defined below), and (ii) the Agency will lease its interest in the Equipment to the Lessee pursuant to this Agreement; and, in furtherance of such purposes, the Agency adopted a resolution on November 9, 2004 (the "Authorizing Resolution"), authorizing the undertaking of the Project, the lease of the Equipment by the Lessee to the Agency and the sublease of the Equipment by the Agency to the Lessee; and

WHEREAS, the provision by the Agency of financial assistance to the Lessee through a straight-lease transaction has been determined to be necessary to induce the Lessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Lessee could not feasibly proceed with the Project; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Lessee will convey, or cause there to be conveyed, to the Agency pursuant to a Company Lease Agreement, dated as of May 1, 2005 (the "Company Lease"), leasehold title to the Equipment as of the date thereof; and

WHEREAS, pursuant to this Agreement, the Agency will lease to the Lessee the Agency's interest in the Equipment.

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State of New York or of The City of New York, and neither the State of New York nor The City of New York shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Equipment, including moneys received under this Agreement):

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1 Definitions. The following terms shall have the following meanings in this Agreement:

Act shall mean, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York), as amended, and Chapter 1082 of the 1974 Laws of New York, as amended.

Additional Amounts Payable shall mean any additional amounts payable as described in Section 3.3(b) of this Agreement.

An Affiliate of a Person shall mean a Person that directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term "control" (including the related terms "controlled by" and "under common control with") means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

Agency shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agreement shall mean this Lease Agreement, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facility shall mean the commercial facility located at 300 Western Avenue, Staten Island, New York 10303, for use as a port terminal.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Agency has given written notice to the Lessee; and (ii) in the case of the Lessee, the President, Treasurer and any Vice President or any other employee who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency.

Base Rent shall mean the rental payment described in Section 3.3(a) of this Agreement.

Business Day shall mean any day that shall not be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close.

City shall mean The City of New York, New York.

Commencement Date shall mean June 15, 2005, on which date this Agreement was delivered.

Company Lease shall mean the Company Lease referred to in the recitals to this Agreement.

Contract Employee means an individual who is, or is employed by, an independent contractor who directly contracts with the Lessee to provide services to the Lessee

in New York City, which services would otherwise be performed by Full-Time Employees or Full Time Equivalent, and who, but for their status as independent contractors, or as employees of an independent contractor, would otherwise fall within the definition of a Full Time Employee or Full Time Equivalent (i.e., for part-time Contract Employees), but specifically excluding contract employees who devote more than ten per cent (10%) of their time providing services to entities other than the Lessee.

Equipment shall mean those items of equipment the title to which shall be acquired by or on behalf of the Agency for use at the Terminal as part of the Project and described in the Description of Equipment in the Appendices attached hereto and made a part hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 hereof, include all property substituted for or replacing items of Equipment and exclude all items of Equipment so substituted for or replaced, and further exclude all items of Equipment removed as provided in Section 4.2 hereof.

Event of Default shall have the meaning specified in Section 7.1 hereof.

Exempt Property shall mean only the Equipment to be acquired as part of the Project for incorporation in the Terminal or for use in the transfer of cargo.

Fiscal Year of the Lessee shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Lessee for accounting purposes as to which the Lessee shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

Full-Time Employee means a full-time employee who works at least 35 hours per week (subject to customary vacation, holiday and sick leave) or a Contract Employee.

Full Time Equivalent means two (2) part-time employees who work at least 20 hours per week (subject to customary vacation, holiday and sick leave).

Guarantor shall mean the Lessee and its permitted successors and assigns.

Guaranty Agreement shall mean the Guaranty Agreement, of even date herewith, from the Guarantor to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Lessee and approved by the Agency (such approval not to be unreasonably withheld or delayed).

Lessee shall mean New York Container Terminal, Inc., a New York corporation, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

Lessee's Property shall have the meaning specified in Section 4.1(c) hereof.

Liens shall have the meaning specified in Section 6.5(a) hereof.

Loss Event shall have the meaning specified in Section 5.1(a) hereof.

Net Proceeds shall mean, when used with respect to any insurance proceeds or confiscation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Agency) incurred in the collection thereof.

Opinion of Counsel shall mean a written opinion of counsel for the Lessee who shall be reasonably acceptable to the Agency.

Payments shall mean, collectively, Base Rent and Additional Amounts Payable.

Permitted Liens and Encumbrances shall mean:

- (i) the Company Lease and this Agreement;
- (ii) liens for assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor or financier of the Equipment may place on or with respect to the Equipment or any part thereof;
- (v) any lien, encumbrance, contingent right or future right of the City and/or the Port Authority derived from the City's and/or the Port Authority's title to or interest in the Terminal, the property on which the Terminal is located and/or the harbor and water adjacent to the Terminal;
- (vi) the lease of the Terminal by the City to the Port Authority and the sublease of the Terminal by the Port Authority to the Lessee under the Port Authority Agreements and any encumbrances in connection therewith; or
- (vii) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Equipment as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Equipment unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency.

Person shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity.

Port Authority shall mean the Port Authority of New York and New Jersey.

Port Authority Agreements shall mean the Lessee's sublease of the Terminal from the Port Authority and the related documentation as the same may be from time to time amended, modified, revised or novated.

Prohibited Person shall mean (i) any Person (A) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Project shall have the meaning ascribed thereto in the recitals hereto.

Project Cost Budget shall mean that certain budget for costs of the Project as set forth by the Lessee in Exhibit B – “Project Cost Budget” – attached to this Agreement.

Project Counsel shall mean Nixon Peabody LLP or such other attorneys that are recognized for their expertise in municipal finance law and are selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

Project Documents shall mean the Company Lease, this Agreement and the Guaranty Agreement.

Rolling Stock shall mean vehicles that are suitable for highway or rail travel or transport, provided, however, Rolling Stock shall not include vehicles that are only used on-site and that are not licensed to leave the Terminal.

Sales Taxes shall mean New York City sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109, and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption, dated June 15, 2005, which the Agency shall make available to the Lessee in accordance with and substantially in the form set forth in the appendices to this Agreement.

State shall mean the State of New York.

Terminal shall mean the commercial facility located at 300 Western Avenue, Staten Island, New York 10303, for use as a port terminal, which is owned by the City and leased to the Port Authority and which is subleased by the Port Authority to the Lessee.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 1.3 Representations and Warranties by Agency. The Agency represents and warrants that the Agency (i) is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, (ii) assuming the accuracy of the representations made by the Lessee, is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder and (iii) by proper action of its board of directors, has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party.

Section 1.4 Findings by Agency. The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby affirms its findings and determinations set forth in the Authorizing Resolution, and further finds and determines, that

(i) the providing of financial assistance (within the meaning of the Act) through the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Lessee to proceed with the Project;

(ii) the Project is reasonably necessary to induce the Lessee to remain and expand its operations within the City;

(iii) the transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or any other user of the Terminal from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or of any other user of the Terminal located within the State (but outside of the City);

(iv) the transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs;

(v) undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State; and

(vi) no funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

Section 1.5 Representations and Warranties by the Lessee. The Lessee makes the following representations and warranties:

(a) The Lessee is a corporation duly organized and validly existing under the laws of the State of New York, is in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of incorporation or its by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is or shall be a party and the consummation of the transactions herein and therein contemplated will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or by-laws of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Liens and Encumbrances.

(c) There is no action or proceeding pending or, to the best of the Lessee's knowledge, threatened by or against the Lessee by or before any court or administrative agency that would adversely affect the ability of the Lessee to perform its obligations under this

Agreement and each other Project Document to which it is or shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

(d) The acquisition of the Equipment will constitute a “project” under the Act, and the Lessee intends to use the Equipment in connection with its operation of the Terminal, in accordance with this Agreement and as an Approved Facility and a qualified “project” in accordance with and as defined under the Act.

(e) The financial assistance (within the meaning of the Act) provided by the Agency to the Lessee through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is necessary to induce the Lessee to proceed with the Project.

(f) Subject to Sections 4.2 and 5.1 hereof, no property constituting part of the Equipment shall be located at any site other than at the Terminal.

(g) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or any other user of the Terminal from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or any other user of the Terminal located within the State (but outside of the City).

(h) The transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs.

(i) Undertaking the Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(j) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(k) This Agreement and the other Project Documents constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms.

(l) The Lessee is in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality applicable to the Project and the operation of the Equipment at the

Terminal; provided, however, that the Lessee makes no representation as to the compliance with all such laws by either of the City as the owner and lessor of the Terminal's land and buildings or as to the Port Authority's compliance with such laws as the sublessor of the Terminal.

(m) The Project Cost Budget attached as Exhibit B to this Agreement represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project, and the Lessee represents and warrants that the cost of the Project will be provided from equity funds on the part of the Lessee.

(n) The moneys available to the Lessee are sufficient to pay all costs in connection with the completion of the Project.

(o) Except as permitted by Section 9.3 hereof, no Person other than the Lessee is or will be entitled to use, possess or operate the Equipment.

(p) The design and the operation of the Equipment will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

(q) Neither the Lessee nor any Affiliate thereof is a Prohibited Person.

(r) The fiscal year of the Lessee is the 365 or 366 day period, as the case may be, commencing on January 1, and ending on December 31 of each calendar year.

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT

Section 2.1 The Company Lease. The Agency has acquired or will acquire, for good and valuable consideration therefor, pursuant to the Company Lease, good and marketable leasehold title to the Equipment, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Liens and Encumbrances.

Section 2.2 The Project. (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency for purposes of undertaking the Project, including, without limitation, (i) acquiring the Equipment, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons, and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in the acquiring of the Equipment from funds made available therefor in accordance with or as contemplated by this Agreement, and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The cost of the Project shall be financed from equity furnished by the Lessee.

(b) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the conveyance and transfer, or attributable to periods prior to the conveyance and transfer, to the Agency as set forth in Section 2.1 hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(c) The Lessee unconditionally represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Equipment at the Terminal, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and in compliance with the conditions and requirements of all policies of insurance with respect to the Terminal and this Agreement. The Lessee will obtain or cause to be obtained all required permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the operation and use of the Equipment for the purposes contemplated by this Agreement.

(d) Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

Section 2.3 Reserved.

Section 2.4 Limitations on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by the Lessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

(b) The Lessee covenants and agrees that it shall include the following language (through an attached rider or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order entered into by the Lessee as agent for the Agency in connection with the Project:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by New York Container Terminal, Inc., a New York corporation (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting of the acquisition of equipment for use at the port terminal located at 300 Western Avenue, Staten Island, New York 10303 (the "Project"). The equipment and other personal property to be used for the Project that are the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by The City of New York if effected in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is

nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, agreement, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, agreement, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the per annum rate equal to the lesser of eighteen percent (18%) or the maximum rate permitted by law, from the date of such taking.

(c) On the Commencement Date, the Agency shall make available to the Lessee the Sales Tax Letter. The Agency, at the sole cost and expense of the Lessee, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited in both duration and amount as follows:

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) May 31, 2010, (3) the purchase by the Lessee of Exempt Property in the amount of Forty Nine Million Dollars (\$49,000,000), or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Lessee that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations, with respect to any such default.

(iii) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter

(A) shall not be available for payment of any costs including the cost of any items of personalty, other than the costs of the Exempt Property,

(B) shall only be utilized for items of Exempt Property that shall be purchased, completed or installed for use only by the Lessee at the Terminal (and not with any intention to sell, transfer or otherwise dispose of any such items of Exempt Property to a Person as shall not constitute the Lessee), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall

not be made available with respect to any item of Exempt Property unless such item is used solely by the Lessee at the Terminal,

(C) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.4(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(D) shall not be available for or with respect to any item of Rolling Stock or water craft, or tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee for incorporation within or location at the Terminal,

(E) shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Taxes absent the involvement by the Agency,

(F) shall not be available for any cost of utilities, cleaning service or supplies,

(G) shall not be available subsequent to the termination of this Agreement, and

(H) shall only be available for those costs set forth in the Sales Tax Letter.

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.4(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the per annum rate equal to the lesser of eighteen percent (18%) or the maximum rate permitted by law from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) Upon request by the Agency of, and reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Lessee and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary to indicate in reasonable detail those costs for which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(d) The Lessee shall observe and comply with the terms and conditions of the Sales Tax Letter, and upon the termination, expiration or cancellation of the Sales Tax Letter, the Lessee shall promptly surrender the same to the Agency.

(e) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement (Form ST-340 or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Equipment as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency that is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

(f) The Lessee agrees to submit to the Agency on February 1 of each year a completed Benefits Report in the form of Schedule A attached hereto to the extent that the Lessee shall have received benefits with respect to Sales Taxes during the previous calendar year.

(g) The Lessee and the Agency hereby agree that the Sales Tax Letter shall expire yearly on May 31. Upon such yearly expiration, the Lessee must apply to the Agency to have the Sales Tax Letter reissued for another year. The Lessee and the Agency hereby further agree that such Sales Tax Letter shall only be reissued if the Lessee is in compliance with this Agreement and the other Project Documents.

(h) The Lessee hereby represents that its current intention is to utilize the Sales Tax Letter in accordance with Exhibit B attached hereto. However, the Agency and the Lessee hereby agree that the Lessee shall not be bound by Exhibit B attached hereto. The Lessee and the Agency hereby further agree that the listing of an item of equipment on Exhibit B shall not be deemed to constitute the approval of the Agency to purchase that item with the Sales Tax Letter nor to constitute compliance with the provisions of this Agreement.

(i) The Lessee hereby covenants with respect to any vehicles purchased with the Sales Tax Letter in accordance herewith and for which a sales tax exemption is claimed that

such vehicles will never leave the Terminal (except for repairs or for ultimate disposal) nor be registered or licensed to leave the Terminal.

ARTICLE III

LEASE OF EQUIPMENT AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. (a) The Agency hereby leases to the Lessee, and the Lessee hereby leases from the Agency, the Equipment for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts, sole and exclusive possession of the Equipment.

(b) The Lessee hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement (i) the Equipment will be located at an Approved Facility and a “project” within the meaning of the Act; (ii) the Lessee will not take any action, or suffer or permit any action, if such action would cause the Equipment not to be located at an Approved Facility or a “project” within the meaning of the Act; and (iii) the Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Equipment not to be located at an Approved Facility or a “project” within the meaning of the Act. The Lessee shall not use or operate the Equipment, or allow the Equipment or any part thereof to be used or operated, for any unlawful or for any use that may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on midnight (New York City time), May 31, 2015, or such earlier date as this Agreement may be terminated by the Agency or the Lessee as hereinafter provided.

Section 3.3 Rental Provisions. (a) Base Rent. The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00, which shall constitute the entire amount of Base Rent payable hereunder.

(b) Additional Rent. Throughout the term of this Agreement, the Lessee shall pay to the Agency any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Amounts Payable.

(c) Default Interest. In the event the Lessee should fail to make or cause to be made any of the Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

Section 3.4 Payments Payable Absolutely Net. The obligation of the Lessee to pay the Payments provided for in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Payments provided for

herein, and all costs, expenses and charges of any kind and nature relating to the Equipment, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and the Agency shall be indemnified by the Lessee for, and the Lessee shall hold the Agency harmless from, any such costs, expenses and charges.

Section 3.5 Nature of Lessee's Obligation Unconditional. The Lessee's obligations under this Agreement to pay the Payments shall be absolute, unconditional and general obligations, and irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person and the obligation of the Lessee shall arise whether or not the Sales Tax Letter has been as provided in this Agreement. The Lessee will not suspend or discontinue payment of any Payment due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Payments hereunder.

ARTICLE IV

MAINTENANCE, TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Equipment in good and safe operating order and condition, ordinary wear and tear excepted, will use and operate the Equipment in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee with respect to the Equipment shall not be materially impaired or diminished in any way. All replacements, renewals and repairs shall be similar in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Equipment, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Equipment, or to furnish any utilities or services for the Equipment, and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee shall have the privilege of making such alterations of or additions to the Equipment or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that:

(i) as a result of such alterations or additions, the fair market value of the Equipment is not reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or operating efficiency of the Equipment is not materially impaired,

(ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements,

(iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Equipment shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Liens and Encumbrances, and

(iv) such additions or alterations do not change the nature of the Equipment so that it would not constitute a "project" within the meaning of the Act.

All alterations of and additions to the Equipment shall constitute a part of the Equipment, subject to the Company Lease and this Agreement, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey a leasehold title to such property to the Agency and to subject such property to the Company Lease and this Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Liens and Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Terminal, machinery, equipment and other personal property not constituting part of the Equipment at the Lessee's own cost and expense (the "Lessee Property") without conveying leasehold title to such Lessee's Property to the Agency nor subjecting such Lessee Property to the Company Lease and this Agreement. The Lessee Property shall not constitute part of the Equipment leased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee Property, without the consent of or notice to the Agency.

(d) The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Equipment or any part thereof, or the interest of the Agency or the Lessee in the Facility or the Company Lease or this Agreement except for Permitted Liens and Encumbrances.

Section 4.2 Removal of Equipment. (a) The Lessee shall have the privilege from time to time of removing from the Terminal any machinery, equipment or other property constituting part of the Equipment (the "Existing Property") and thereby acquiring such Existing Property free of the leasehold interest of the Agency, provided, however, such Existing Property is substituted or replaced by property (t) having equal or greater fair market value, operating efficiency and utility and (u) being free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Liens and Encumbrances, and no such removal shall be effected if (w) such removal is to another location other than the Terminal, (x) such removal would change the nature of the Facility as a "project" within the meaning of the Act, (y) such removal would impair the usefulness, structural integrity or operating efficiency of the Equipment, or (z) such removal would materially reduce the fair market value of the Equipment below its value immediately before such removal.

(b) The Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency leasehold title to any property installed or placed upon the Terminal pursuant to Section 4.2(a) hereof and subjecting such substitute or replacement property to the Company Lease and this Agreement, and within thirty (30) days after receipt of

written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Terminal pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to the Company Lease and this Agreement any property installed or placed at the Terminal as part of the Equipment pursuant to this Section 4.2 or Section 4.1 hereof.

(c) Other than as set forth in Section 4.2(a) above, the Lessee shall not, without the prior written consent of the Agency and except as permitted above, part with possession or control of or suffer to allow to pass out of its possession or control any item of the Equipment or change the location of the Equipment or any part thereof from the Terminal.

(d) The removal from the Terminal of any Existing Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Lessee to any abatement or reduction in the Payments payable by the Lessee under this Agreement.

(e) Within 120 days after the close of each Fiscal Year of the Lessee during which (i) action was taken by the Lessee pursuant to Section 4.1(b) or action involving property having a value in the aggregate exceeding Two Hundred Fifty Thousand Dollars (\$250,000) was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) no action was taken by the Lessee pursuant to Section 4.1(b) or no action involving property having a value in the aggregate exceeding Two Hundred Fifty Thousand Dollars (\$250,000) was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

Section 4.3 Real Estate Taxes.

In the event that the Equipment shall be deemed realty and subject to City real property taxes, the Lessee shall be responsible for the payment in full of all real estate taxes with respect to the Equipment or, in the alternative, payments-in-lieu-of-taxes equal to the full real estate taxes that would have been due and owing had the Equipment not been leased to the Agency. The Lessee acknowledges and agrees that the Agency's involvement with the Project shall not entitle the Lessee to any reduction in real estate taxes in respect of the Equipment to which it would not be entitled absent such involvement.

Section 4.4 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Terminal, the Company Lease, this Agreement, any estate or interest of the Agency or the Lessee in the Terminal, or the Payments or other amounts payable hereunder or under the Company Lease during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or

future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Agency shall forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

Section 4.5 Insurance. (a) At all times throughout the term of this Agreement, the Lessee shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee. In addition to this general requirement, such insurance shall, for purposes of subsections (b) – (g) of this Section 4.5 include, without limitation the insurance coverages described in paragraphs (i) through (v) immediately below (hereinafter: "Specific Coverage"):

(i) During any period of construction, renovation, improvement or reconstruction with respect to the Equipment to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Protective Liability insurance for the benefit of the Lessee and the Agency in a minimum amount of \$5,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) General Liability insurance (including contractual liability coverage, together with any Umbrella Liability insurance), naming the Lessee as primary insured, in accordance with customary insurance practices for similar operations with respect to the Terminal and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) set forth in Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain provisions for a deductible amount;

(iii) Workers' compensation insurance, disability benefits insurance and such other forms of insurance that the Lessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Terminal; the Lessee shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law; and

(iv) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

(b) All Specific Coverage required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies

authorized to write such insurance in the State and having an A.M. Best rating of "A-/X" or better.

(c) Each of the policies evidencing the Specific Coverage required above to be obtained shall:

(i) designate (except in the case of workers' compensation insurance) the Lessee and the Agency as additional insureds as their respective interests may appear;

(ii) provide that there shall be no recourse against the Agency for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its interest in the Facility;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days, or ten (10) days if due to non-payment of premium, after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Terminal would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Terminal owned or operated by it.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the Equipment shall be applied in accordance with Section 5.1 of this Agreement.

(e) The Lessee shall deliver or cause to be delivered to the Agency the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5: (i) on or prior to the execution and delivery of this Agreement, (A) a broker's certificate of coverage, confirming that the Lessee, as of the date of closing, has obtained

Specific Coverage in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance, and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee, at its own cost and expense, shall make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any Specific Coverage required by this Section 4.5 would or might be suspended or impaired.

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE EQUIPMENT OR THE BUSINESS, OPERATIONS OR FINANCIAL CONDITION OF THE LESSEE.

Section 4.6 Advances by Agency. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after first notifying the Lessee in writing of any such failure on its part (except that no prior notification of the Lessee shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum, from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of the Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.7 Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Lessee, the Terminal, any user or operator of the Equipment or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits, privileges, franchises and concessions. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any

violation of or failure by the Lessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Equipment or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

ARTICLE V

DAMAGE, DESTRUCTION AND CONFISCATION

Section 5.1 Damage, Destruction and Confiscation. (a) In the event that at any time during the term of this Agreement the whole or part of the Equipment shall be damaged or destroyed, or taken or confiscated by a competent authority for any public use or purpose, or by agreement among the Agency, the Lessee and those authorized to exercise such right, or if the temporary use of the Facility shall be so taken by confiscation or agreement and the value of such damaged, destroyed or confiscated Equipment shall exceed Fifty Thousand Dollars (\$50,000) for a single event or an aggregate of Two Hundred Fifty Thousand Dollars (\$250,000) for multiple events, such event shall be deemed a "Loss Event". With respect to a Loss Event:

(i) the Agency shall have no obligation to rebuild, replace, repair or restore the Equipment,

(ii) there shall be no abatement, postponement or reduction in the Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party, and

(iii) the Lessee will promptly give written notice of such Loss Event to the Agency, generally describing the nature and extent thereof.

(b) In the event a Loss Event shall occur, the Lessee shall

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below), promptly and diligently rebuild, replace, repair or restore the Equipment to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced, or

(ii) exercise its option to purchase the Agency's interest in the Equipment and to terminate this Agreement as provided in Section 8.1 hereof.

As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee under this Section 5.1(b).

(c) All rebuilding, replacements, repairs or restorations of the Equipment in respect of or occasioned by a Loss Event shall:

(i) automatically be deemed a part of the Equipment and shall be subject to the Company Lease and this Agreement,

(ii) be effected only if the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Equipment as a qualified "project" as defined in the Act, and

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable legal requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor.

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Equipment shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Agency, has been made, (iii) that the Equipment has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and valid leasehold title to all property constituting part of the Equipment and all Equipment is subject to the Company Lease and this Agreement, subject to Permitted Liens and Encumbrances, and (v) that the restored Equipment is ready for use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights against third parties of the Lessee that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom.

(e) The Agency and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Agency and the Lessee, be subject to the written approval of the Lessee.

(f) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Equipment shall be taken or confiscated, or if the taking or confiscation renders the Equipment unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

(g) The Lessee shall be entitled to any insurance proceeds or confiscation award, compensation or damages attributable to the Lessee's Property.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Dissolution of Lessee; Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a corporation, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Lessee, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) the Lessee is not the surviving, resulting or transferee entity and (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State, (B) is not, nor is it an Affiliate of, a Prohibited Person, and (C) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, (2) the Lessee delivers to the Agency an Opinion of Counsel to the effect that this Agreement and all other Project Documents to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, and (3) in the opinion of an Independent Accountant, such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer. The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will (x) continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State, and (y) not constitute a Prohibited Person.

The Lessee further represents, covenants and agrees that (y) it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State, and (z) it does not and throughout the term of this Agreement will not constitute a Prohibited Person.

Section 6.2 Indemnity. (a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant or agent (excluding for this purpose the Lessee, which is not obligated hereof to indemnify its own employees, affiliated companies or affiliated individuals) thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from August 10, 2004, the date the Agency adopted its inducement resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), and, arising from, upon, about or in any way connected with the Equipment, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Equipment or Project,
- (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done with respect to or about the Equipment, or any defects (whether latent or patent) with respect to the Equipment,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, ownership, leasing, subletting or operation of the Equipment or any portion thereof,
- (iv) the execution and delivery by the Indemnified Party, the Lessee or any other Person of, or performance by the Indemnified Party, the Lessee or any other Person, as the case may be, of any of their respective obligations under this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby.
- (v) any injury to any Person or the personal property of any Person in or on the premises of the Terminal,
- (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not limited to, failure to comply with the requirements of the City's zoning resolution, the State Environmental Quality Review Act and related regulations,
- (vii) any damage or injury to the person or property of (A) the Lessee or (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Lessee, or (C) any other Person who may be in or about the premises of the Terminal,
- (viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined in Section 6.2(d) hereof) that are on, from, or affecting the

Terminal; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, or

(ix) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subparagraphs (i) through (viii) of this Section 6.2(a),

Such indemnification set forth above shall be binding on the Lessee for any and all Claims set forth herein and shall survive the termination of this Agreement.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to Lessee or its affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c)(i) In addition to and without being limited by any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that (A) the Lessee has not used Hazardous Materials on, from, or affecting the Terminal in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and, (B) to the best of the Lessee's knowledge, no prior owner or occupant of the Terminal has used Hazardous Materials on, from, or affecting the Terminal in any manner that violates any applicable Legal Requirements; except in both cases, as permitted or disclosed in the Port Authority Documents.

(ii) Without limiting the foregoing, the Lessee shall not cause or permit the Equipment or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any user of the Equipment, a release of Hazardous Materials onto the Terminal or onto any other property.

(iii) The Lessee shall comply with, and require and enforce compliance by, all users of the Equipment with all applicable Legal Requirements pertaining to Hazardous Materials, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all users of the Equipment obtain and comply with, any and all approvals, registrations or permits required thereunder.

(iv) The Lessee shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Terminal in accordance with all applicable Legal Requirements and the Port Authority Documents.

(vi) The parties hereto agree that the reference in this Section 6.2(c) to the Port Authority Documents is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

(d) For purposes of this Section 6.2, the term "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

(e) The indemnifications and protections set forth in this Section 6.2 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision. For the purposes of this Section 6.2, the Lessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(f) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) with respect to the financing of the Project, (3) under the Project documents, and (4) under Section 6.2(c) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(g) The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall survive the termination of this Agreement.

Section 6.3 Compensation and Expenses of the Agency. The Lessee shall pay the fees, costs and expenses of the Agency together with any fees and disbursements incurred by the Agency's Project Counsel and the Agency's general counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

On the Commencement Date, the Lessee shall pay to the Agency its fee of \$47,500 (said amount representing an amount of \$50,000 financing fee, less an application fee of \$2,500), payment of which has been received on the Commencement Date. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$750 payable upon the Commencement Date and each anniversary of the Commencement Date until the termination of this Agreement.

Section 6.4 Retention of Leasehold Title to Equipment; Release of Equipment.

(a) The Agency shall not sell, assign, encumber (other than for Permitted Liens and Encumbrances), convey or otherwise dispose of its leasehold estate in the Equipment or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Lessee and any purported disposition without such consent shall be void.

(b) No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Lessee to any abatement or diminution of the Payments payable under Section 3.3 hereof required to be made by the Lessee under this Agreement or any other Project Document to which it shall be a party.

Section 6.5 Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Equipment or any part thereof or the interest therein of the Agency or the Lessee or against any of the Payments payable under this Agreement or the Company Lease or the interest of the Agency or the Lessee under this Agreement or the Company Lease, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, or Permitted Liens and Encumbrances, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Equipment.

Section 6.6 Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Permitted Liens and Encumbrances, so long as the Lessee shall pay the Payments payable by it under this Agreement

and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Equipment by the Lessee, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Liens and Encumbrances.

Section 6.7 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE EQUIPMENT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE EQUIPMENT, OR THE SUITABILITY OF THE EQUIPMENT FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF ANY EQUIPMENT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF, IS SATISFIED THAT THE EQUIPMENT IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE EQUIPMENT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.8 Financial Statements; No-Default Certificates. (a) Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency, a copy of the most recent annual audited financial statements of the Lessee and of its subsidiaries, if any (including balance sheets as of the end of such fiscal year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles consistently applied, certified by an independent certified public accountant reasonably acceptable to the Agency; provided that if the Lessee does not prepare such statements, Lessee shall provide such financial statements on a compilation basis, and such statements will have been prepared or reviewed by a certified public accountant.

(b) Upon request of the Agency, the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of the immediately preceding calendar year, and at all times during such year, the Lessee was in compliance with all the provisions that relate to the Lessee in this Agreement, including Section 4.5 hereof, and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto. In addition,

upon twenty (20) days prior request by the Agency, the Lessee will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder existing or specifying each such default or breach of which such Authorized Representative has knowledge.

(c) The Lessee shall immediately notify the Agency of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

Section 6.9 Employment Information, Opportunities and Guidelines. (a) Annually, by July 31 of each year, commencing on July 31, 2006, until the termination of this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule B hereto, certified as to accuracy by an Authorized Representative of the Lessee, and shall attach thereto a copy of the Lessee's final payroll report evidencing the total number of employees employed by the Lessee during such reporting period. Upon termination of this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing the date of the last report submitted to the Agency and ending on the last payroll date of the preceding month in substantially the form of Schedule B attached hereto, certified as to accuracy by the Lessee. Nothing herein shall be construed as requiring the Lessee to maintain a minimum number of employees on its respective payroll. The Lessee shall also submit to the Agency annually on each July 31, commencing July 31, 2006, the location and contact information report, substantially in the form of Schedule C hereto. Provided, however, notwithstanding anything herein to the contrary, the Lessee and the Agency hereby agree that the reporting period for purposes of the employment report attached hereto as Schedule B shall be the payroll period ending June 30 of each year.

(b) The Lessee shall ensure that all employees and applicants for employment with the Lessee or its Affiliates with regard to the Terminal are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (P.L. No. 105-220) in which the Terminal is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to consider first, and cause each of its Affiliates with respect to the Terminal to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (P.L. No. 105-220) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“DOL”), to release to the Agency and/or the New York City Economic Development Corporation (“EDC”), and/or to the successors and assigns of either (collectively, the “Information Recipients”), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 of 1993 and any other applicable laws, rules or regulations. In addition, upon the Agency’s written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 of 1993 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, or any information previously released as provided by all or any of the foregoing parties (collectively, “Employment Information”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Nothing in this Section shall be construed to require the Lessee to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 6.10 Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as the Agency deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

Section 6.11 Reserved.

Section 6.12 Further Encumbrances. The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Equipment or any part thereof, or the interest of the Lessee in the Equipment or this Agreement or the Company Lease, except for Permitted Encumbrances.

Section 6.13 Reserved.

Section 6.14 Current Equipment Description. The Lessee covenants and agrees that throughout the term of this Agreement, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Equipment pursuant to Section 5.1 hereof, it will cause the Description of Equipment attached as part of the Appendices to this Agreement to be an accurate and complete description of all current items of Equipment. To this end, the Lessee covenants and agrees (i) that no item of Equipment shall be substituted or

replaced by a new item of machinery or equipment pursuant to Section 4.2(a) or 5.1 hereof, and (ii) that no item of Equipment shall be delivered and installed at the Terminal as part of the Equipment, unless in each case such item of machinery or equipment shall be accurately and sufficiently described in the Description of Equipment in the Appendices attached as part of this Agreement, and the Lessee shall from time to time prepare and deliver to the Agency supplements to such Appendix in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1 Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee to pay when due any Payment within fifteen (15) days of the due date thereof;

(b) (i) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 2.4, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.13, 6.14, 7.6, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(ii) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 4.5 hereof and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

(d) The Lessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Lessee shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof or Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made by the Lessee (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) herein or in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made;

(g) The commencement of proceedings to foreclose any mortgage lien on or security interest in the Equipment;

(h) Any loss of leasehold title by the Agency to the Equipment;

(i) An "Event of Default" under the Guaranty Agreement shall occur and be continuing; or

(j) The Lessee shall become a Prohibited Person.

Section 7.2 Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Equipment to the Lessee, which the Agency may accomplish by executing, at the sole cost and expense of the Lessee, a termination of lease, and the Lessee hereby waives delivery and acceptance of such termination of lease as a condition to its validity;

(b) The Agency may bring an action for damages, injunction or specific performance;

(c) The Agency may suspend or terminate the Sales Tax Letter or require the Lessee to surrender the Sales Tax Letter to the Agency for cancellation; or

(d) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including without limitation, the obligations of the Lessee under Sections 6.2, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

Section 7.4 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Lessee or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

Section 7.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.6 Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Agreement and the Agency should employ outside attorneys or incur other out-of-pocket expenses for the collection of the Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE VIII

OPTIONS; RECAPTURE OF BENEFITS

Section 8.1 Options. (a) The Lessee shall have the option to purchase the Agency's interest in the Equipment and to terminate this Agreement on any date during the term hereof by paying all Payments due hereunder. The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to an Authorized Representative of the Agency stating that the Lessee has elected to exercise its option under this Section 8.1(a) and the date on which such purchase and termination is to be made. In addition, the Lessee shall purchase the Agency's interest in the Equipment on the scheduled expiration date of this Agreement by paying on such date any and all Payments then due hereunder.

(b) The Lessee, in purchasing the Agency's interest in the Equipment and terminating this Agreement pursuant to Section 8.1(a) hereof, shall pay to the Agency, as the purchase price, in legal tender, an amount equal to all Payments due hereunder, plus one dollar (\$1.00).

(c) The Lessee shall not, at any time, assign or transfer its option to purchase the Agency's interest in the Equipment as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to the terms of Section 9.3 hereof without the prior written consent of the Agency.

Section 8.2 Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's interest in the Equipment pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (i) documents conveying to the Lessee all of the Agency's right, title and interest in and to the Equipment and terminating this Agreement; and (ii) all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.5(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or confiscation awards, with respect to the Equipment or any portion thereof.

Upon conveyance of the Agency's interest in the Equipment pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 6.2, 8.5, 9.13 and 9.15 hereof shall survive such termination.

Section 8.3 [Reserved].

Section 8.4 Termination of Agreement. Notwithstanding any other provision of this Agreement to the contrary, on or after the expiration date hereof, and upon receipt of sixty (60) days prior written notice of the Agency requesting termination, the Lessee shall terminate this Agreement by paying the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Project Documents, and thereupon the Lessee shall accept a termination of lease and such termination shall become effective forthwith subject, however, to the survival of the obligations of the Lessee under Sections 6.2, 8.5, and 9.13 hereof.

Section 8.5 Recapture of Agency Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration thereof, the Lessee hereby agrees as follows:

(a) If there shall occur a Recapture Event after the date hereof, the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

(A) one hundred percent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first (6) years after the date hereof;

(B) eighty percent (80%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the date hereof;

(C) sixty percent (60%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the date hereof;

(D) forty percent (40%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the date hereof; or

(E) twenty percent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the date hereof.

The term "Benefits" shall mean, collectively, all miscellaneous benefits derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement, including, but not limited to, any exemption from any applicable mortgage recording tax, New York City commercial rent and occupancy tax, sales or use taxes and filing and recording fees.

The term "Recapture Event" shall mean any of the following events:

(1) The Lessee shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(2) The Lessee shall have ceased all or substantially all of its operations at the Terminal (whether by relocation to another facility or otherwise, within or outside of the City);

(3) The Lessee shall have transferred all or substantially all of its employees to a location outside of the City;

(4) The Lessee shall have effected a substantial change in the scope and nature of the operations of the Lessee at the Terminal;

(5) The Lessee shall have subleased all or any portion of the Equipment in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency;

(6) The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Equipment; or

(7) The Lessee shall have failed to retain 430 jobs; provided, however that if the number of jobs decreases by less than or equal to: 15% of their employees within the first (6) years after the date hereof, 20% of their employees during the seventh (7th) year after the date hereof, 25% of their employees during the eighth (8th) year after the date hereof, 30% of their employees during the ninth (9th) year after the date hereof, and 35% of their employees during the tenth (10th) year after the date hereof, then the Lessee shall have six (6) months to return their employment levels to 430 jobs. For the purposes of this Section 8.5(a)(7), a "job" shall mean a Full Time Employee or a Full Time Equivalent and compliance in any twelve (12) month period from July 1 through June 30 shall be based on the Lessee's monthly average Full Time Employees and Full Time Equivalents. The Agency and the Lessee agree that in order to determine compliance with this Section 8.5(a)(7), the Lessee shall provide the Agency by July 31 of each year, commencing July 31, 2006, a written certification of the Lessee's twelve (12) month average of Full Time Employees and Full Time Equivalents covering the period from July 1 through June 30 of each year.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or confiscation by governmental authority of all or substantially all of the Equipment, (ii) any termination (provided such termination results from no fault of the Lessee) of the Lessee's rights to use or conduct its operations at the Terminal (whether by action of the City or the Port Authority or as a result of any amendment or termination of the Port Authority Documents) or (iii) the inability at law of the Lessee to rebuild, repair, restore or replace the Equipment after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate.

(b) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event occurring within ten (10) years after the date hereof, which notification shall set forth the terms of such Recapture Event.

(c) In the event any payment owing by the Lessee under this Section 8.5 shall not be paid on demand by the Lessee, such payment shall bear interest from the date of such demand at the then current interest rate imposed by the City's Department of Finance on delinquent payments until the Lessee shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee under this Section 8.5.

(e) The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Force Majeure. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the Payments required under the terms hereof, or to comply with Sections 4.5 or 6.2 hereof), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or of the City or of the Port Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, terrorism, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Lessee shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Lessee shall also promptly notify the Agency upon the termination of each such force majeure. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Lessee.

Section 9.2 Reserved.

Section 9.3 Assignment or Sublease. The Lessee shall not at any time except as permitted by Section 6.1 hereof and except in connection with Permitted Liens and Encumbrances, assign or transfer this Agreement, or sublet the whole or any part of the Equipment.

Section 9.4 Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto.

Section 9.5 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by return receipt requested by registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Agency, to the Executive Director, New York City Industrial Development Agency, 110 William Street, New York, New York 10038 with a copy to the General Counsel of the Agency at the same address, and

(b) if to the Lessee, to New York Container Terminal, Inc., Staten Island, New York 10303, Attention: James Devine, with a copy to Hill, Betts & Nash, One World Financial Center, 26th Floor, New York, New York 10281, Attention: Mark Jaffe, Esq.

The Agency and the Lessee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

Section 9.6 Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Equipment.

Section 9.7 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.8 Inspection of Equipment. The Lessee will permit the Agency, or its duly authorized agent, at all reasonable times, to enter the Terminal, but solely for the purpose of (y) assuring that the Lessee is operating the Equipment, or is causing the Equipment to be operated, as a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z)

determining whether the Equipment and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Equipment as such latter obligation is and shall remain solely the obligation of the Lessee.

Section 9.9 Effective Date; Counterparts. This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.10 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Lessee and their respective successors and assigns.

Section 9.11 Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

Section 9.12 Law Governing. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 9.13 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Equipment or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

Section 9.14 Non-Discrimination. (a) At all times during the maintenance and operation of the Equipment, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Lessee shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

(d) The Agency and the Lessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Equipment.

Section 9.15 Recourse Under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee hereunder.

Section 9.16 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on June 15, 2005.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By: Kei Hayashi
Name: Kei Hayashi
Title: Deputy Executive Director

NEW YORK CONTAINER TERMINAL, INC.

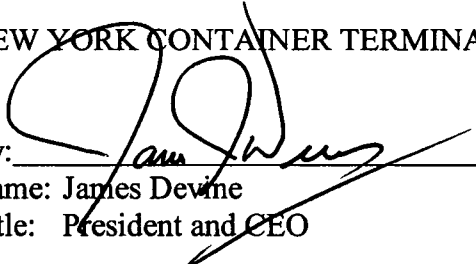
By: _____
Name: James Devine
Title: President and CEO

IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: Kei Hayashi
Title: Deputy Executive Director

NEW YORK CONTAINER TERMINAL, INC.

By:  _____
Name: James Devine
Title: President and CEO

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

On the 13th day of June, 2005, the undersigned, a Notary Public/~~Commissioner of Deeds~~ in and for said State/The City of New York, personally appeared Kei Hayashi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual executed the instrument.




Notary Public/~~Commissioner of Deeds~~

CAROL M. HYDE
Notary Public, State of New York
No: 4977270
Qualified in Queens County
Commission Expires Jan. 28, 2007

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

On the ^{5th} day of June, 2005, the undersigned, a Notary Public in and for said State, personally appeared James Devine personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual executed the instrument.


SAM TALANSKY
Notary Public, State of New York
No. 24-4924623
Qualified in Kings County
Commission Expires April 4, 20 09

Notary Public

APPENDICES

Exhibit A

EQUIPMENT

The Equipment shall consist of chassis, cranes, containers and other port equipment and related parts used in connection with the transfer of cargo at the Terminal's operations as a port facility and terminal located at 300 Western Avenue, Staten Island, New York 10303, acquired with the sales tax letter, dated June 15, 2005, provided to the Lessee by the Agency.

Schedule B to the Lease Dated as of May 1, 2005
 Between
 The New York Industrial Development Agency
 and
 New York Container Terminal, Inc.

ESTIMATED DATES OF EXPENDITURES FOR EQUIPMENT

Estimated Date of Acquisition	Type of Equipment	Estimated Cost of Equipment	Estimated Amount of Sales Tax Benefits
2005	3 toploaders; 1 sidepicker; 6 tractors; 3 forklift trucks; 3 MAFI trailers; 1 spreader; 1 spreader handling chassis; 1 blackhoe and 1 dumptruck; 7 pickups and 3 M&R vans	\$2,885,000	\$126,218
2006	1 rail switcher; 2 reach stackers; 2 toploaders; 6 tractors; 6 pickups and 3 gang forklifts	\$3,019,000	\$132,082
2007	4 Cranes; 2 toploaders; 6 tractors and 6 pickups	\$27,144,000	\$1,187,550
2008	2 toploaders; 6 tractors and 6 pickups	\$1,144,000	\$50,050
2009	2 Cranes; 2 toploaders; 6 tractors and 6 pickups	\$13,664,000	\$597,800
2010	2 toploaders; 6 tractors and 6 pickups	\$1,144,000	\$50,050
	TOTAL	\$49,000,000	\$2,143,750

EXHIBIT C

[FORM OF SALES TAX LETTER]

June 15, 2005

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(New York Container Terminal, Inc. 2005 Project)

Expiration Date: May 31, 2006

Eligible Location: 300 Western Avenue, Staten Island, New York 10303

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on November 9, 2004 and a certain Lease Agreement, dated as of May 1, 2005 (the "Lease Agreement"), between the Agency and New York Container Terminal, Inc., a New York corporation (the "Company"), the Agency has authorized the Company to act as its agent for the acquisition of equipment for use at the port terminal located at 300 Western Avenue, Staten Island, New York 10303 (the "Project").

3. In connection with such resolution, the Lease Agreement and this Sales Tax Letter and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the acquisition of the Equipment and authorizes the Company to use this Sales Tax Letter as its agent only for the payment of the costs of equipment, as described in Exhibit A attached hereto, for such Project.

4. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency for the equipping of the Project shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by New York Container Terminal, Inc., a New York corporation (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent of the acquisition of equipment for use at the port terminal located at 300 Western Avenue, Staten Island, New York 10303 (the "Project"). The equipment and

other personal property to be used for the Project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by The City of New York if effected in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

5. The acquisition of equipment and other personal property constituting a part of the Project shall be exempt from the sales and use tax levied by The City of New York on the condition that (i) such equipment and other personal property are separately identifiable property subject to the leasehold interest of the Agency, and (ii) any such property shall have a useful life of one year or more, and shall solely be for the use of the Company at the Terminal, and for no other entity and at no other location, and be effected by and at the sole cost of the Company.

6. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

7. By execution by the Company of its acceptance of the terms of this Sales Tax Letter, the Company agrees to accept the terms hereof and warrants to the Agency that the use of this Sales Tax Letter by the Company is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) May 31, 2010, (ii) the purchase by the Lessee of Exempt Property in the amount of \$49,000,000, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Sales Tax Letter (in each case as so terminated, the “Termination Date”), all vendors, contractors and subcontractors are hereby authorized to rely on this Sales Tax Letter (or on a photocopy or fax of this Sales Tax Letter) as evidence that purchases of the Project property, to the extent effected by the Company (or by a contractor or subcontractor engaged by the Company) as agent for the Agency, are exempt from all New York City sales and use taxes.

9. The Company agrees and covenants that upon the occurrence of the Termination Date, it will immediately deliver this Sales Tax Letter back to the Agency for cancellation.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

Name Kei Hayashi
Title: Deputy Executive Director

ACCEPTED AND AGREED TO BY:

NEW YORK CONTAINER TERMINAL, INC.

By: _____
Name: James Devine
Title: President and CEO

Exhibit A

The Equipment shall consist of chassis, cranes, containers and other port equipment and related parts used in connection with the transfer of cargo at the Terminal's operations as a port facility and terminal located at 300 Western Avenue, Staten Island, New York 10303.

SCHEDULE A



IDA BENEFITS REPORT
FOR BENEFITS UTILIZED JULY 1, 20XX - JUNE 30, 20XX

Due Date By Facsimile: July 31, 20xx



<<Project Company>>

If your company is entitled to a benefit during the period of July 1, 20xx - June 30, 20xx, but has not utilized the benefit during that period, please report \$0.00 where applicable.

If your company is not entitled to these benefits or if you have reached your maximum benefit prior to the period of July 1, 20xx - June 30, 20xx, please check the not applicable portion of the form.

SALES TAX BENEFITS

not applicable, no benefit utilized this period [] not applicable, maximum benefit reached []
not applicable, project not eligible for benefit []

Total Cost of Purchases: \$
Total Sales Tax Savings: \$

BUSINESS INCENTIVE RATE - (BIR)

not applicable, no benefit utilized this period [] not applicable, maximum benefit reached []
not applicable, project not eligible for benefit []

Amount of Benefit: \$

Certification: I, the undersigned, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete, and that I understand it is submitted pursuant to IDA agreement(s). The Agency, the New York City Economic Development Corporation and/or the successors and assigns of either, and/or the City of New York, may disclose the information provided in this Report in order to comply with requirements of law; and, without limiting the foregoing, such disclosed information may be included in (x) reports prepared pursuant to New York City Local Law 69, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this transaction.

Signature Date

Name/Title Project Company Tax ID

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to: NYC IDA Attention: Compliance Dept. 110 William Street, 4th Floor New York, NY 10038

QUESTIONS: Please contact the IDA Compliance Helpline at (212) 312-3963

SCHEDULE B



EMPLOYMENT REPORT

AS OF JUNE 30, 20XX

DUE DATE BY FACSIMILE: JULY 31, 20XX

<<Project Company>>



In order to comply with Local and State employment reporting requirements, the New York City Industrial Development Agency (the "Agency") requires all of its project companies to complete and return this form to the Agency no later than July 31, 20xx.

Please provide information as of June 30th, 20xx, for all jobs at the eligible Project Location(s). Do not include any subcontractors and consultants; include only employees and/or owners/principals on your payroll. For each employee included in the reported totals below attach the most recent NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return.

Number of existing FULL TIME JOBS as of June 30, 20xx* _____

* At eligible locations only (as defined in the Lease Agreement).

Number of existing PART TIME JOBS as of June 30, 20xx* _____

* At eligible locations only (as defined in the Lease Agreement).

Certification: I, the undersigned, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete, and that I understand it is submitted pursuant to IDA agreement(s). The Company hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or to the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under DOL's control which is pertinent to the Company and the Company's employees. In addition, upon the Agency's request, the Company shall provide to the Agency any employment information in the Company's possession that is pertinent to the Company and the Company's employees. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company itself, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information ") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this transaction.

Signature _____ Date _____

Name/Title _____ Project Company Tax ID _____

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to:
NYC IDA
Attention: Compliance Dept.
110 William Street, 4th Floor
New York, NY 10038

QUESTIONS: Please contact the IDA Compliance Helpline at (212) 312-3963



SCHEDULE C

LOCATION & CONTACT INFORMATION

DUE DATE BY FACSIMILE: JULY 31, 20XX

<<Project Company>>

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits from the New York City Industrial Development Agency ("IDA").

Project Address & Floor Borough Zip Code Type of Benefit (Pilot, Sales Tax, etc.)

Three horizontal lines for providing project location information.

* Please use additional pages if necessary *

Please provide below current Project Contact Information:

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

(Please print CLEARLY)

Signature: _____

Backup Contact Name/Title/Phone Number:

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to: NYC IDA Attention: Compliance Dept. 110 William Street, 4th Floor New York, NY 10038

QUESTIONS: Please contact the IDA Compliance Helpline at (212) 312-3963

SCHEDULE D

ST-340
(10/99)



New York State Department of Taxation and Finance

**Annual Report of Sales and Use Tax Exemptions
Claimed by Agent/Project Operator of
Industrial Development Agency/Authority (IDA)
For Period Ending December 31, _____(enter year)**

Project information

Name of IDA agent/project operator		Federal employer identification number (
Street address		Telephone number	
City	State	ZIP code	
Name of IDA agent/project operator's authorized representative, if any		Title	
Street address		Telephone number	
City	State	ZIP	
Name of IDA			
Street address			
City	State	ZIP	
Name of project			
Street address of project site			
City	State	ZIP	
1 Project purpose:			
<input type="checkbox"/> Services <input type="checkbox"/> Construction <input type="checkbox"/> Agriculture, forestry, fishing <input type="checkbox"/> Wholesale trade <input type="checkbox"/> Retail trade <input type="checkbox"/> Finance, insurance or real estate <input type="checkbox"/> Transportation, communication, electric, gas, or sanitary services <input type="checkbox"/> Manufacturing <input type="checkbox"/> Other (specify)			
2 Date project began: _____ / _____ / _____ MM DD YY			
3 Beginning date of construction or installation (actual or expected): _____ / _____ / _____ MM DD YY			
4 Completion date of construction phase of project (actual or expected): : _____ / _____ / _____ MM DD YY			
5 Completion date of project (actual or expected): _____ / _____ / _____ MM DD YY			
6 Duration of project (years/months; actual or expected): _____ / _____ Years Months			
7 Total sales and use tax exemptions (actual tax savings; NOT total purchases)			7 \$
Print name of officer, employee, or authorized representative signing for the IDA agent/project operator			Title of person signing
Signature			Date

Failure to file a complete report annually may result in the removal of authority to act as an IDA agent/project operator.

Mail completed report to: NYS TAX DEPARTMENT, IDA UNIT, BLDG 8 RM 658, W A HARRIMAN CAMPUS, ALBANY NY 12227.

General information

Who must file?

The General Municipal Law (CML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the New York State Department of Taxation and Finance. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include, on Form ST-340, information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What must be reported?

The report must show the **total value of all state and local sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator, and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the **total combined exemptions** obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Need help?

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Internet access: <http://www.tax.state.ny.us>

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. *If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.*

If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, Taxpayer Correspondence, W A Harriman Campus, Albany NY 12227.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator

Enter the name, address, federal employer identification number (EIN), and telephone number of the IDA agent/project operator.

Name of IDA agent/project operator's authorized representative

Enter the name, address, title, and telephone number of the individual (e.g. attorney or accountant) authorized by the IDA agent/project operator to submit this report.

Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

Line instructions

Line 1 — Project purpose — Check the box that identifies the purpose of the project. If you check *Other*, please be specific in identifying its purpose.

Line 2 — Enter the date the project started <this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance>. Include month, day, and year.

Line 3 — Enter the date on which you, or your general contractor or subcontractor, actually began or expect to begin construction or installation on the project. If the project does not involve any construction, enter **Does not apply**.

Line 4 — Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

Line 5 — Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

Line 6 — Enter the total number of years and months from the project's inception to its completion or expected completion.

Line 7 — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: NYS Tax Department, IDA Unit, Bldg 8 Rm 658, W A Harriman Campus, Albany NY

Privacy notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 8, 28, and 28-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer sales and use taxes or liabilities under the Tax Law, and for any other purpose authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.