

GROUND LEASE AGREEMENT

between

TAMPA PORT AUTHORITY

and

NOTICE:

The submission of this document for examination does not constitute an option or offer to lease space from the Tampa Port Authority. This document shall have no binding effect on the parties unless executed by the Tampa Port Authority, approved by the Tampa Port Authority's Board and the executed copy is delivered to Tenant.

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ADDENDUM I (Consideration)
EXHIBIT “A” (Description of Premises)
EXHIBIT “B” (Certificate of Insurance)

GROUND LEASE AGREEMENT

This Lease Agreement (“Lease”) made and entered into to be effective the ____ day of _____, 200__, by and between the TAMPA PORT AUTHORITY, a body politic and corporate existing under and by virtue of the Laws of the State of Florida, of Hillsborough County, Florida (“Authority”) whose mailing address is 1101 Channelside Drive, Tampa, Florida 33602 and _____, a _____, authorized to do business in the State of Florida (“Tenant”) whose mailing address is _____

This Lease consists of the following pages as follows:

ADDENDUM I (Consideration)

EXHIBIT “A” (Description of Premises)

EXHIBIT “B” (Certificate of Insurance)

WITNESSETH:

The Authority, for and in consideration of the mutual covenants and agreements herein contained, hereby leases, lets and demises to Tenant, and Tenant hereby leases and hires from the Authority all that certain parcel or parcels of land, consisting of approximately _____ acres of _____ (vacant or improved) land, as more particularly described in Exhibit “A”, TPA Drawing No. _____, dated _____, (collectively the “Premises”) together with

I. TERM

The Term of this Lease shall be for a period of _____ years commencing on the 1st day of _____, 200__ and ending on the 31st day of _____, 20__ (“Term”).

II. CONSIDERATION

A. Rent.

Tenant covenants and agrees to pay to the Authority the rent and considerations specified in Addendum I (“Rent”) in advance on the first day of the calendar month during the Term of this Lease hereof, together with all applicable sales or rental tax thereon. Tenant also covenants and agrees to comply with the terms and conditions of the current Port of Tampa Tariffs (“Port Tariffs”), the Authority’s current Operations Manual, and all other rules and regulations of the Authority, and all of the above as amended from time to time (collectively “Port Rules”).

B. Additional Rent.

Whenever under the terms of this Lease any sum of money is required to be paid by Tenant in addition to the Rent set forth herein (including wharfage, dockage, throughput fees, and any other fees or charges, including the guaranteed minimum amounts thereof, regulated in the Port Tariffs), such sum shall be deemed "Additional Rent" if not paid when due, and shall be collectible as such with the first installment of Rent falling due thereafter. Said sum shall be deemed Additional Rent regardless of whether it is herein described as Additional Rent or a provision is made for the collection of such sum as Additional Rent. However, nothing herein shall require Tenant to pay any sales and/or use taxes on any portion of "Additional Rent" more than once; i.e., no such tax shall be charged on the same tax.

C. Payment and Late Charges.

Tenant hereby expressly covenants and agrees to pay said Rent and Additional Rent, together with any sales or rental tax due thereon, and to perform each and every other covenant and condition under this Lease. All Rent and any other payments required herein shall be made at the Authority's main offices:

Tampa Port Authority
1101 Channelside Drive
Tampa, Florida 33602
Attention: Finance Manager

or such other place, and to such person or persons, as the Authority may from time to time designate in writing. All of said payments shall be unconditionally made without any set-off or deduction whatsoever. If Rent or any other payment required hereunder is not paid within ten (10) days from its due date, Tenant shall pay, in addition to the amount otherwise due, a late payment charge equal to ten percent (10%) of such overdue amount for its administrative costs, which additional percentage is hereby agreed by Tenant to be reasonable. In addition, interest shall accrue on all delinquent Rent and other amounts due as is provided in Item C25 of the Port Tariffs.

D. Bad Checks.

In the event that a check tendered by Tenant for Rent, Additional Rent or any amount due under this Lease, is not honored by the bank upon which the check is drawn upon the first presentment thereof, or if the same is returned unpaid to the Authority, such event shall constitute a default under and pursuant to the terms of this Lease. The Authority may, but is not obligated to, resubmit the dishonored check for payment without waiving the default hereunder caused by submission of the dishonored check. In the event that three or more checks tendered by Tenant for Rent, Additional Rent or any amount due under this Lease are dishonored within any twelve (12) month period, Tenant agrees that the Authority may, in its sole discretion, demand that all future payments be made by cashier's check or other similar form of payment.

III. SECURITY DEPOSIT

Concurrently with the execution of this Lease by Tenant, Tenant shall deposit with Authority and shall maintain on deposit with Authority, the sum of six (6) months Rent as security for the full, prompt and faithful performance by Tenant of all of Tenant's obligations hereunder; provided, however, that if Tenant shall default in the payment of any Rent, Additional Rent or any amount due under this Lease more than two (2) times during any twelve (12) month period, irrespective of whether or not such default is cured, then the security deposit shall, within ten (10) days after demand by Authority, be increased by Tenant to an amount equal to the then annual Rent for such Lease year.

IV. UTILITIES

Tenant shall pay all impact and utility hook-up fees, and all charges for water, gas, electricity and other utilities and services used or consumed by Tenant and its agents and invitees, or for Tenant's activities upon the Premises, during the Term of this Lease hereof (collectively "Utility Charge(s)"). Those payments shall be made directly to the Utility Company when each Utility Charge becomes due and payable. Tenant shall not allow the same to become delinquent or a lien upon this Lease or the Premises. The Authority may, but is not obligated to, advance payment for such utilities at its sole option. Tenant shall reimburse the Authority for any advances made by the Authority for payment of such utilities within thirty (30) days upon receipt of notice thereof. These payment obligations of Tenant shall survive termination of this Lease.

V. CONDITION OF PROPERTY

The Authority has provided Tenant with unrestricted access to the Premises to allow tenant to conduct all surface and subsurface surveys, tests and examinations of the lands comprising the Premises and the adjacent lands, dock, waters and submerged lands, if any. Tenant covenants that it has fully examined, and fully knows, the condition of the Premises, and is fully satisfied that the Premises are suitable for Tenant's uses hereunder. Tenant agrees that no representations as to the condition or repair of the Premises, except as otherwise disclosed herein, have been made by Authority or by its agents prior to or at the execution of this Lease. Tenant specifically acknowledges that, in entering into this Lease, it has relied on its own examinations of the Premises as aforesaid and not any representations as to the condition or repair thereof by the Authority or its agents. Tenant accepts the Premises "AS IS" in every respect.

VI. CONSTRUCTION OF IMPROVEMENTS

A. Authority's Approval Required.

Tenant shall not design and construct any improvements, alterations, additions, or changes to the Premises (including the adjacent lands, waters and submerged lands) without prior written approval of Authority's Engineer

("Port Engineer") in each instance. Any such approval may be made subject to any conditions and requirements as the Port Engineer, in his sole discretion, may determine. Any work on the Premises in excess of the amount set forth in Authority's "Site Improvements Permits" policy, as amended from time to time, shall require approval of Authority's Board of Commissioners. If such approval is given, Tenant agrees to complete the same in accordance with the plans and specifications as approved, free and clear of all liens, in a first class, workmanship-like manner, and in compliance with all requirements, laws and orders of any governmental agency having jurisdiction thereof.

B. No Liens.

Tenant shall inform any person who supplies services, materials or labor to the Premises in connection with such improvements that the assertion of a lien on the Premises is not allowed under Chapter 713, FLA. STAT. Further, before Tenant enters into any contract or makes any alterations or additions, in excess of the amount set forth in Authority's "Site Improvements Permits" policy, as amended, from time to time, Tenant or its contractor shall provide to the Authority a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Payment Bond, payable to the Authority in accordance with Section 255.05, FLA. STAT., as amended from time to time. Each bond shall be in an amount not less than the estimated total construction cost of the Improvement. Upon completion of any such Improvements, alterations, additions or changes, Tenant shall furnish the Authority with lien waivers from all contractors, subcontractors, architects, engineers, laborers, suppliers, and materialmen and from any other person furnishing material or labor to the Premises in connection with such Improvements.

If any lien(s) shall be recorded against the Premises or any Improvements, Tenant shall cause such lien to be removed or transferred to a bond within thirty (30) days of the filing thereof. If Tenant in good faith desires to contest the same, Tenant may do so but the lien shall be removed by bond as provided above.

C. Reverter of Improvements.

All constructed Improvements made by Tenant and all fixtures and apparatus which are attached to, installed in or made a part of the Premises (excluding machinery, movable equipment, furniture and furnishings) shall remain upon the Premises as a part thereof and be surrendered with the Premises at the termination of this Lease. Personal property movable in character located in the Premises by Tenant may be removed from the Premises by Tenant at the expiration of this Lease or its earlier termination by consent of the parties, if Tenant is not then in default in the payment of Rent or under any other provision of this Lease. All Improvements surrendered by Tenant at the termination of this Lease shall be free and clear of all encumbrances and rights of third parties. However, upon request by the Authority, Tenant will remove all improvements, fixtures, apparatus, and equipment, which are attached to, installed on, or made a part of the Premises within ninety (90) days of the termination of this Lease.

VII. DRAINAGE SYSTEM MAINTENANCE

A. Storm Water Discharge Compliance.

As used herein, the term "Storm Water" shall have the meaning assigned to it under the Environmental Protection Agency's ("EPA") National Pollutant Discharge Elimination System ("NPDES") Regulations for Storm Water Discharges and under definition by the Florida Department of Environmental Protection ("DEP");

B. Storm Water Discharge Conditions.

Tenant agrees to the following conditions governing the discharge of Storm Water from the Premises:

1. Tenant shall design, construct and maintain all storm water facilities on the Premises and conduct all operations at and on the Premises in such a manner as to insure that there are no discharges of non-Storm Water into any Storm Water conveyance system located off the Premises and owned by the Tampa Port Authority. Tenant's design of the storm water facilities is subject to the written approval of the Port Engineer prior to the commencement of any construction;
2. Tenant shall design, construct and maintain all storm water facilities on the Premises and conduct all operations at and on the Premises in such a manner as to insure no "hazardous materials" are discharged off the Premises. As used herein, the term "hazardous materials" shall mean: "hazardous substances", as defined by CERCLA and "hazardous wastes", as defined by RCRA;
3. Tenant shall prepare and implement generic and site specific best management practices ("BMPs") for its operations at and on the Premises that are consistent with EPA and DEP guidelines governing Storm Water discharges;
4. Tenant shall amend its operations at and on the Premises and amend its BMPs to conform to any applicable standards which may hereinafter be adopted by EPA, the DEP or the Hillsborough County Environmental Protection Commission ("EPC") governing Storm Water discharge regulations; and,
5. Tenant shall allow reasonable inspection of its operations at and on the Premises by members of the Authority, EPA, DEP, EPC or any other regulatory agency for compliance with applicable regulations.

C. Representations as to Drainage Conditions.

Tenant specifically acknowledges that, in entering into this Lease, it has relied upon its own examinations of the drainage and water retention conditions on the Premises, and not upon any representations as to the conditions thereof by the Authority. Tenant further acknowledges and agrees that the Authority shall have no obligation or liability to Tenant, or to anyone claiming by, through, or under Tenant, resulting from insufficient drainage or water retention conditions on the Premises.

VIII. MAINTENANCE AND REPAIR

A. Tenant's Maintenance Responsibilities.

At all times during the Term of this Lease, Tenant, at Tenant's own cost and expense, agrees to keep, maintain or cause to be kept and maintained the Premises and any improvements in a good state of appearance and repair, reasonable wear and tear excepted, and to make any replacements necessary to do so, to the reasonable satisfaction of the Authority.

B. Restoration and Repair of Premises and Improvements.

If the Premises, Improvements, or any part thereof are damaged or destroyed by reason of fire, flood, wind, casualty, catastrophe or any other cause, Tenant shall promptly restore, repair, and make replacements upon the Premises and Improvements, and this Lease shall remain in full force and effect. In each such event, such restoration, repair, and replacements shall commence upon the earlier of the availability of insurance proceeds, or sixty (60) days after such fire, casualty, catastrophe, or other cause occurs.

IX. AD VALOREM TAXES

Tenant agrees to pay directly to the collecting governmental agency any and all ad valorem property taxes and assessments assessed against the Premises and Improvements for any year of the Term of this Lease. Tenant shall be responsible for the ad valorem taxes assessed against the Premises and Improvements for any year in which Tenant has leased or used the Premises regardless of whether the assessments are assessed in the name of the Authority or Tenant. Tenant shall make direct payments to the collecting governmental agency prior to any delinquency. The Authority may, but is not obligated to, advance payment for such taxes or assessments at its sole option. Tenant shall reimburse the Authority for any advances made by the Authority for payment of such taxes or assessments within thirty (30) days upon receipt of notice thereof. These payment obligations of Tenant shall survive termination of this Lease. If applicable, the Authority will cooperate with Tenant in timely providing any tax information that it receives from the Hillsborough County Property Appraiser and/or Tax Collector concerning the Premises.

X. LICENSES AND TAXES

Tenant covenants and agrees to pay, in addition to the foregoing Rent, all applicable taxes, levies, excises, assessments, and any other sums as may be due to any taxing authority whatsoever (collectively, “**Applicable Taxes**”) based in any manner upon or against Tenant, the Rent, Additional Rent, Port Charges (as defined herein), this Lease, the Premises, the Improvements, or the property owned by said Tenant located upon the Premises, before any fine, penalty or delinquency charge be added for non-payment thereof. The failure of Tenant to pay any and all Applicable Taxes prior to the date when the same shall become delinquent shall be a breach by Tenant of the covenants of this Lease. Tenant shall apply for, obtain and maintain all licenses and permits required by every governmental agency that has jurisdiction over Tenant’s use and occupancy of the Premises, including the business conducted by Tenant on the Premises.

XI. ASSIGNMENT AND SUBLETTING

A. Assignment, Subletting, and Transferring.

Tenant may not (i) sell, assign, transfer, mortgage, pledge, or hypothecate the whole or any part of its interest under this Lease, (ii) sublet the whole or any part of the Premises, or (iii) allow the occupancy of the whole

or any part of the Premises by another person or entity, without in each case obtaining the prior written consent of the Authority. Notwithstanding any permitted assignment or subletting, Tenant shall at all times remain directly, primarily, and fully responsible and liable for the payment of Rent and for compliance with all obligations under the terms, provisions, and covenants of this Lease. Any sale, assignment, transfer, or hypothecation of Tenant's interest under this Lease, and any proposed subletting or occupancy of the Premises not in compliance with this Article shall be void and shall, at the option of the Authority exercisable by written notice to Tenant, terminate this Lease. This Lease shall not be assignable by operation of law, except that if Tenant is a natural person, this Lease shall be binding upon and inure to the benefit of the estate of Tenant.

B. No Waiver.

The consent by the Authority to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

C. Factors Considered by Authority.

It is understood that the Authority may refuse to grant such consent to any assignment or subletting if the Authority is not satisfied, in its sole discretion, with the financial responsibility, identity or business character, the nature of occupancy or legality of the proposed use by the proposed assignee or subtenant, the need for alteration of the Premises by the proposed assignee or subtenant, or other factors or issues which may bear upon any assignment or sublease at such time as the same may be proposed to the Authority. The Authority may refuse to grant such consent to any assignment or subletting as long as Tenant is in breach of any covenant or condition of this Lease Agreement.

D. Assumption Agreement.

In the event the Authority approves an assignment or sublease, the assignee or subtenant shall execute an assumption agreement, in a form and substance acceptable to the Authority, agreeing to be bound by and be liable for the performance of all provisions of this Lease to be performed by Tenant from and after the effective date of such assignment or sublease.

E. Consent Required for Subletting.

In the event Tenant desires to sublet all or any portion of the Premises, Tenant shall give not less than sixty (60) days prior written notice thereof to the Authority setting forth the name of the proposed subtenant, the term, rental rate, and any other relevant particulars of the proposed subletting, including, without limitation, current financial statements of the proposed sublessee and evidence satisfactory to Landlord that the proposed sublessee will immediately occupy and thereafter use the sublet portion of the Premises for the entire Term of the sublease.

F. Consent Required for Assignment.

1. Tenant shall in no event assign less than its entire interest in this Lease. In the event Tenant desires to assign all of its interest under this Lease, Tenant shall give not less than sixty (60) days prior written notice thereof to the Authority setting forth the name of the proposed assignee, the terms of the assignment, and any other relevant particulars of the proposed assignment, including without limitation current financial statements of the proposed assignee, the proposed use of the Premises by assignee, and evidence satisfactory to the Authority that the proposed assignee will immediately occupy and thereafter use the entire Premises for the remaining Term of this Lease.

2. In the event Tenant requests the Authority to consent to a proposed assignment, subletting, or encumbrance, Tenant shall pay to the Authority, whether or not such consent is ultimately given, ten percent (10%) of Tenant's annual Rent as specified in Addendum I of this Lease, payable to Authority prior to Authority's issuance of a Consent to Assignment as compensation for the Authority's administrative and legal fees and costs for processing such consent. If Tenant's proposed assignment includes leasehold mortgage financing, Tenant shall pay to Authority an additional ten percent (10%) of Tenant's annual Rent as specified in Addendum I, payable to Authority prior to Authority's issuance of a Consent to Assignment.

3. Tenant hereby irrevocably assigns to the Authority all Rent and Additional Rent from any subletting of the Premises and agrees that the Authority, as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed upon the Authority's application, may collect such Rent upon Tenant's default; provided, however, that until the occurrence of any act of default by Tenant, Tenant shall have the right to collect such Rent and Additional Rent and remit the same to the Authority.

4. Tenant shall notify the Authority of any change in control and/or ownership of Tenant or of any company that controls and/or owns Tenant, and any such change in control and/or ownership shall be subject to approval by the Authority. Otherwise, if Tenant fails to notify the Authority and/or the Authority declines to approve any change in control and/or ownership, the Authority may elect to terminate this Lease without penalty upon thirty (30) days' written notice to Tenant. However, the buying or selling of any publicly traded security issued by Tenant, or by any company that controls and/or owns Tenant, on any stock exchange is excluded from this provision.

5. If Tenant is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of the partner or partners owning a majority of the partnership interest as of the date of this Lease, or the dissolution of the partnership, shall be deemed an assignment prohibited by this Article unless the Authority's consent is obtained. If Tenant consists of more than one person, a purported assignment, voluntary, involuntary, or by operation of law, from a majority of such persons to the others shall be deemed an assignment prohibited by this Article unless the Authority's consent is obtained. If Tenant is a corporation or limited liability company, any dissolution, merger, consolidation, or other reorganization of the corporation or limited liability company, as applicable, or the sale or other transfer of a controlling percentage of the corporate stock of Tenant, or the sale of fifty-one percent (51%) of the total combined

voting power of all classes of stock or membership interests of the corporation or limited liability company, as applicable, whether such ownership is direct or indirect, shall be deemed an assignment prohibited by this Article unless the Authority's consent is obtained. This Section shall not apply to a corporation the stock of which is traded through a national or regional exchange.

6. The following shall be deemed an assignment or transfer of this Lease but shall not require the Authority's consent:

(a) the transfer of all or a portion of the stock and/or assets of Tenant in connection with a merger of Tenant and another entity in which Tenant retains a controlling interest in the new entity, or

(b) the transfer of all or a portion of Tenant's stock and/or assets to an entity which is controlled by or under common control of the same individuals which control Tenant, or

(c) the transfer of Tenant's stock and/or assets in connection with a public offering of Tenant.

G. Assignment by the Authority.

The Authority shall have the unrestricted right to sell, transfer, or assign any of its rights and obligations under this Lease without Tenant's consent.

H. Involuntary Assignment.

No interest of Tenant in this Lease shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

1. If Tenant files or has filed against it a petition under the Bankruptcy Act, as may be amended, becomes insolvent, or makes an assignment for the benefit of creditors; or, if Tenant is a partnership, if any partner of the partnership files or has filed against each partner a petition under the Bankruptcy Act, as may be amended, or such partner becomes insolvent or makes an assignment for the benefit of creditors;

2. If a writ of attachment or execution is levied on this Lease; or

3. If, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises.

The provisions of item (1) of this subparagraph (H) shall be applicable to any guarantor of this Lease.

If an involuntary assignment occurs, the Authority shall have the election to terminate this Lease and this Lease shall not be treated as an asset of Tenant, and Tenant shall have no further rights under this Lease. If an attachment or execution is levied against Tenant, Tenant shall have thirty (30) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Tenant, or if a receiver

is appointed, Tenant shall have ninety (90) days in which to have the involuntary proceeding dismissed or the receiver removed.

XII. USE

A. Permitted Use.

Tenant shall use the Premises solely for the _____ and for no other use or purpose without the express written permission of the Authority, which permission may be withheld without reason or explanation.

B. Compliance with Laws, Regulations, and Rules.

In addition, Tenant covenants and agrees that Tenant will comply with all the valid requirements of law and duly constituted public authority and environmental protection laws so far as they concern Tenant's use and occupancy of the Premises. Tenant further covenants and agrees that Tenant shall comply with and be bound by all rules, charges, policies and regulations of the Authority, including, without limitation, the Port Rules, and Operations Manual #5, together with all amendments, revisions and replacements.

C. Use Restrictions.

Cumulative to the other provisions of this Lease regarding Tenant's use of the Premises, Tenant shall not use the Premises or any part thereof in such manner as to create a nuisance, undue noise, noxious odors or unwarranted interference with the enjoyment of adjoining Premises by the owners and tenants thereof, nor use the same for any unlawful purposes or in violation of any state statutes, county and/or city ordinance or rule or regulation promulgated by or under such authority. Tenant further covenants that at all times Tenant will keep said Premises in a clean and sanitary condition and not allow waste, refuse or by-products to accumulate or be stored on the Premises and shall not dump or place any waste, refuse, or by-products in any water, either navigable or non-navigable, within the Port District. It is one of the conditions of this Lease that no alcoholic liquors or beverages of any kind shall be sold on the Premises.

D. Business Conducted on Premises.

Tenant represents and covenants that it will conduct business on the Premises only under the name of _____ . Tenant further covenants that it will not conduct business on the Premises under any other name or permit any other person or entity to conduct business from or on the Premises without the prior written consent of the Authority. Tenant agrees that it shall be responsible for and pay to the Authority any charges, commissions, assessments, or fees resulting from all transactions which involve the use or occupation of the Premises by any person or entity, and which are assessable in accordance with the terms and conditions set forth herein as if the person or entity was Tenant.

XIII. COMPLIANCE WITH ENVIRONMENTAL LAWS

The subparagraphs of this numbered paragraph state the environmental provisions bearing upon this Lease.

A. Definitions for Environmental Provisions.

The following terms, as used in the environmental provisions of this Lease, shall have the meanings indicated:

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§9601, et seq.), as amended from time to time, including without limitation, the Superfund Amendments and Reauthorization Act of 1986 (“SARA”).

“**CERCLIS**” means the Comprehensive Environmental Response, Compensation and Liability Information System, or any other information system, established pursuant to CERCLA or any other Environmental Law or Environmental Regulation.

“**Environmental Law**” means any applicable federal, state or local law, statute, code, ordinance, or common law, whether now in existence or established, enacted or amended during the Term of this Lease, relating to pollution, protection of the environment, health, industrial hygiene, Hazardous Substances (including, without limitation, the manufacture, generation, distribution, use, treatment, storage, disposal, transport or handling thereof), including, but not limited to, CERCLA, SARA, RCRA, the Florida Resource Recovery and Management Act (Florida Statutes §§403.701, et seq.), and the Pollutant Spill Prevention and Control Act (Florida Statutes §§376.011 through 376.17 and 376.19 through 376.21).

“**Environmental Regulation**” means any applicable regulation or rule promulgated by any Environmental Regulator.

“**Environmental Regulator**” means any federal, state or local governmental or quasi-governmental unit, body or agency which is charged with regulating environmental or Hazardous Substances, or which is charged with enforcing any Environmental Law or Environmental Regulation, including, without limitation, the U.S. Environmental Protection Agency (“EPA”), the Florida Department of Environmental Protection (“FDEP”), and the Hillsborough County Environmental Protection Commission (“EPC”).

“**Hazardous Substance**” means asbestos, polychlorinated biphenyls, petroleum products and distillates, and any other substances, materials and wastes which are or become regulated or controlled by any Environmental Law or Environmental Regulation applicable at any time to the use by Tenant, its agents or invitees of the Premises during the Term of this Lease, including, without limitation, those within the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” “solid waste,” “pollutants,” “contaminants,” or “nuclear or byproduct material” in any such Environmental law or Environmental Regulation.

“**National Priorities List**” means the National Priorities List established pursuant to CERCLA or any other list identifying hazardous or toxic waste sites maintained or controlled by any Environmental Regulator.

“**RCRA**” means the Resource Conservation and Recovery Act of 1976 (42 USC §§6901, et seq.), as amended from time to time.

B. Environmental Covenants of Tenant.

Tenant covenants and warrants, as applicable, that at all times during the Term of this Lease:

1. The Premises shall not be used by Tenant, its agents or invitees for the storage or generation of any Hazardous Substance in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator.
2. No Hazardous Substance will be released or disposed of on the Premises by Tenant, its agents or invitees in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator.
3. Tenant and its agents and invitees shall maintain full compliance with all permits and/or licenses issued by Environmental Regulators with respect to the conduct by Tenant, its agents or invitees of operations governed by this Lease.
4. If Tenant shall receive any notice regarding the Premises from any Environmental Regulator of any violation or suspected violation of any Environmental Law or Environmental Regulation, or relating to any clean-up, remediation or other response action or threat thereof, then Tenant shall immediately notify the Authority thereof, and of all subsequent developments related thereto.

C. Covenant Not to Store Hazardous Substances In Violation of Law.

Tenant, for itself, its agents and invitees, covenants and agrees not to use the Premises, at any time, for:

1. the storage, generation, release or disposal of any Hazardous Substance in violation of any Environmental Law or Environmental Regulation, any order of an Environmental Regulator, or any permit issued by an Environmental Regulator;
2. any purpose that would give rise to a clean-up, remediation or other response action; to the imposition of any fine, penalty, assessment, cost, forfeiture or imposition for violation of an Environmental Law or Environmental Regulation, or to a claim, claim of lien or lien (whether against the Premises, the Authority, or the Authority's properties) for response costs, damages or other costs pursuant to any Environmental Law or Environmental Regulation; or
3. any purpose that would cause the Premises to be listed on the National Priorities List or with CERCLIS.

Should the Authority at any time so request, Tenant shall execute and deliver to the Authority certifications, in reasonable form and content, concerning environmental covenants and warranties made by Tenant in this Lease. The Authority may obtain similar certifications, at the Authority's option, from Tenant's officers, employees, agents, invitees or other independent contractors, or other persons having knowledge of the use of the Premises hereunder.

D. Release of Hazardous Materials; Claim.

Tenant agrees to immediately notify the Authority upon the occurrence of any storage, generation, release, disposal or placing of any Hazardous Substance of any kind in, on, about or under the Premises in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator, regardless of the source or other circumstances thereof. Further, Tenant shall immediately notify the Authority in writing of the receipt of any notice, order, correspondence, communication or reasonably reliable information that:

1. a permit is required from any Environmental Regulator for the use or operation by Tenant, its agents or invitees upon the Premises;
2. a summons, citation, order directing compliance or inquiry has been or is being issued or made by any Environmental Regulator;
3. any Environmental Regulator or third party has demanded or asserted any right of recovery for payment or reimbursement, or any claim, claim of lien or lien against the Premises for clean-up costs, damages, or other costs incurred, under or pursuant to any Environmental Law, Environmental Regulation, or the common law;
4. the Premises are or will be listed on the National Priorities List or with CERCLIS;
5. any fine, penalty, assessment, cost, forfeiture or imposition has been, is being, will be or is sought to be imposed against Tenant, its agents or invitees, or the Authority, for violation or asserted violation by Tenant, its agents or invitees of any Environmental Law, Environmental Regulation, any order of an Environmental Regulator or any permit issued by an Environmental Regulator; or
6. any clean-up, remediation or other response action pursuant to any Environmental Law or Environmental Regulation has been, is being, or will be, commenced by any Environmental Regulator or third party with regard to the Premises which would give rise to a claim, claim of lien or lien against the Premises.

E. Clean-up Plan.

In the event of any determination that, through actions by or attributable in any manner to Tenant, its agents or invitees, any Hazardous Substance has been stored, generated, located, released or disposed of in, on, about or under the Premises, or that any storage facility is located in, on, about or under the Premises, in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator, Tenant shall immediately so notify the Authority.

Further, in each such instance, Tenant shall, at Tenant's sole cost and expense, promptly notify and keep the Authority fully informed of response actions proposed or necessary for clean-up or remediation, the details of plans and specifications therefor, and all developments related thereto. As soon as reasonably possible, after obtaining all necessary approvals, permits and/or licenses of all appropriate governmental or quasi-governmental units, bodies or agencies, including, without limitation, Environmental Regulators, Tenant shall diligently prosecute the accomplishment of the response actions contemplated herein, at Tenant's sole cost and expense.

F. Continuing Nature.

The environmental provisions of this Lease shall survive the termination of this Lease, such provisions to continue in full force and effect so long as the possibility of any environmental liability, claim, obligations or losses of the Authority, attributable to Tenant, its agents or invitees, shall exist.

XIV. INSURANCE

During the Term of this Lease, Tenant shall provide, pay for, and maintain with insurance companies satisfactory to the Authority, the types of insurance described herein.

A. Insurance Requirements.

1. Responsible Insurance Companies. All insurance required herein shall be issued by responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Hillsborough County, Florida and shall be construed in accordance with the laws of the State of Florida.

2. Authority as an Additional Insured. All liability policies shall provide that the Authority is an additional insured as to the operations of Tenant under this Lease and shall also provide the severability of interest provision. All insurance coverages of Tenant shall be primary to any insurance or self-insurance program carried by the Authority for this Lease.

3. Certificates of Insurance. Tenant shall deliver to the Authority, prior to the commencement of the Term of this Lease, a certificate of insurance form furnished by the Authority, attached hereto as Exhibit "B" and incorporated herein by this reference ("Certificate") properly executed by an authorized representative of the insurance company evidencing the insurance coverages and limits required under this Lease. The Certificate must be personally and manually signed by the authorized representative of the insurance company(ies) shown in the Certificate with proof that he/she is an authorized representative thereof. In addition, Tenant shall deliver certified, true and exact copies of all insurance policies required herein to the Authority's Risk Management Department, on a timely basis, if requested by the Authority. Tenant authorizes the Authority and its insurance consultant to confirm with Tenant's insurance agents, brokers, surety and insurance companies that all information furnished to the Authority complies with the insurance requirements set forth herein. No work upon or occupancy of the Premises shall commence at the Premises unless and until the required Certificate(s) are in effect and the written notice to proceed or occupy is issued to Tenant by the Authority.

4. Impairment of Coverage. Tenant shall give the Authority's Risk Management Department thirty (30) days prior written notice by registered or certified mail of any cancellation, intent not to renew, or reduction in the policy coverages except in the application of the aggregate limits provisions. In the event of a reduction in any aggregate limit, Tenant shall take immediate steps to restore the coverage amount to the amount required herein. If at any time the Authority requests a written statement from the insurance company as to any impairment to the aggregate limit, Tenant shall promptly

authorize and have delivered such statement to the Authority's Risk Management Department. Tenant shall make up any impairment when known to it.

5. Deductible. Should any of Tenant's insurance policies provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program in excess of \$25,000.00, then Tenant agrees to provide, pay for, and maintain a surety bond from an insurance company acceptable to the Authority (or a standby irrevocable letter of credit in a form acceptable to the Authority from a bank acceptable to the Authority) in the amount of the deductible, guaranteeing its payment of the deductible, self-insured retention, self-insured amount, or any other scheme amount not fully insured, unless its insurance companies agree, in writing, to provide for the deductible or self-insurance amount in full. Said guarantee is to continue for four (4) years following termination of this Lease.

6. Claims Made Forms. If any General Liability Insurance required herein is to be issued or renewed on a "claims made" form as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of this Lease and shall provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) shall be not less than the applicable Statutes of Limitations.

7. Endorsements. All of the required insurance coverages shall be issued as required and policies shall be endorsed, where necessary, to comply with the minimum requirements contained herein.

8. Renewal Certificate. Tenant shall deliver to the Authority's Risk Management Department renewal certificates of insurance ("Renewal Certificates") on the Authority's form or binders acceptable to the Authority at least thirty (30) days prior to the expiration of current coverages. Tenant's failure to deliver Renewal Certificates to the Authority at least thirty (30) days prior to the expiration of the current coverages shall constitute a default under this Lease. Should at any time Tenant not provide or maintain the insurance coverages required in this Lease, the Authority may terminate or suspend this Lease.

9. Insurance Forms. The amounts and types of insurance shall conform to the minimum requirements set forth herein with the use of Insurance Service Office ("ISO") policies, forms, and endorsements or broader where applicable. Notwithstanding the foregoing, the wording of all policies, forms and endorsements must be acceptable to the Authority. Acceptance will not be unreasonably withheld.

B. Insurance Coverages and Limits.

1. **Workers' Compensation and Employer's Liability Insurance** shall be maintained in force during the Term of this Lease by Tenant for all employees engaged in the operations under this Lease. If the operations of Tenant require Longshoreman's and Harbor Workers' Insurance, it must be included under this insurance requirement.

Limits of coverage shall not be less than:

Workers' Compensation : Florida Statutory Limits

Employer's Liability:	\$1,000,000	Limit Each Accident
	\$1,000,000	Limit Disease Aggregate
	\$1,000,000	Limit Disease Each Employee

The Tenant and the Authority will each require their insurance company to waive its subrogation rights against each other by specific endorsement to their policy.

2. **Commercial General Liability Insurance** shall be maintained by Tenant on a full occurrence form for the Term of this Lease. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Lease, Independent Contractors, Broad Form Property Damage, Products & Completed Operations Coverages, and shall not exclude coverage for the "X" (explosion), "C" (collapse), and "U" (underground) Property Damage Liability exposures. Completed Operations Liability Coverage shall be maintained for a period of not less than two (2) years following termination of this Lease.

Limits of Coverage shall not be less than:

Bodily Injury, Personal Injury & Property Damage Liability:	\$1,000,000.00	Combined Single Limit Each Occurrence and Aggregate
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3. **Business Automobile Liability Insurance** shall be maintained by Tenant during the Term of this Lease as to the ownership, maintenance, loading and unloading, and use of all owned, non-owned, leased or hired vehicles to be used on the Premises with limits of not less than:

Bodily Injury Liability	\$1,000,000.00	Limit Each Person
	\$1,000,000.00	Limit Each Accident
Property Damage Liability	\$1,000,000.00	Limit Each Accident
OR		
Bodily Injury & Property Damage Liability	\$1,000,000.00	Combined Single Limit Each Accident

4. **Umbrella Liability Insurance.** Throughout the Term of this Lease Tenant shall maintain an umbrella insurance policy, insuring over and above the primary limits of liability insurance required for Commercial General Liability, Business Liability and Employers Liability Insurance coverages required in this section of the Lease. The limit of insurance to not be less than \$2,000,000.00 each occurrence and aggregate. The Self Insured Retention shall not be more than \$25,000.00 each claim. The required primary coverage limits shall not be less than those required herein with coverages to be the same or broader.

5. **Fire and Allied Property Insurance.** Throughout the Term of this Lease Tenant shall, at its expense, insure the Improvements on the Premises at replacement cost, including debris removal and building ordinance coverage, in an amount to be determined by the Authority, against loss of or damage to, by or from, but not limited to, the following causes of loss: fire, lightning, windstorm, hail, riot, riot attending a strike, civil commotion, explosion, smoke, aircraft, vehicles, vandalism and malicious mischief, flood and earthquake on an "all risk" type policy. Any deductible or sub-limit of coverage must be agreed to in writing by the Authority, whose consent will not be unreasonably withheld or delayed, with Tenant being fully responsible thereof. The Authority shall be named as "Loss Payee", as their interest may appear at the time of loss, with the policy endorsed to add the Tampa, Florida location and to provide thirty (30) days prior written notice of cancellation or non-renewal, for any reason, by the insurance company, by registered or certified mail, to be given the Authority's Risk Management Department. The insurance policy shall be endorsed to provide that any payment for a claim will name both the Tenant and the Authority on any loss payment check and release since they both have an interest in the loss. If Tenant has the right to terminate this Lease in the event of fire or other casualty and elects to do so, the Authority shall be entitled to insurance proceeds up to the amount necessary to repay the then outstanding debt incurred to construct the Improvements, otherwise if Tenant does not have the right to terminate this Lease in the event of fire or other casualty or if Tenant does not elect to terminate this Lease, said insurance proceeds shall be used to rebuild the Improvements. Any insurance proceeds remaining after repayment of the referenced debt or after rebuilding the Improvements shall belong solely to Tenant.

Tenant and Authority agree to require their Property Insurance carriers to provide full waivers of their subrogation rights against each other, their agents, servants or employees for any claims paid to Tenant or the Authority for loss of or damages to their property, including Business Interruption, Extra Expense and Loss of Rental Income claims. If this waiver shall render void any such insurance policy or shall result in the denial of coverage for a party under such insurance policy, then this provision of this Lease shall be deemed to be null and void. These insurance policies to be endorsed to show this joint waiver of Subrogation by the insurance companies involved.

6. **Boiler and Machinery Insurance.** Throughout the Term of this Lease, Tenant shall, at its expense, insure the following type machinery and equipment, contained in or on the Premises if servicing such Premises: steam boilers, steam and water pipes, steam engines, and other steam pressure vessels and all electric and lighting systems, including transformers and miscellaneous electrical apparatus and air conditioner equipment and systems, against loss, damage and breakdown for their full repair and/or replacement cost values. The Authority shall be named as "Loss Payee", as their interest may appear at the time of loss, with the policy endorsed to add the Tampa, Florida location and to provide thirty (30) days prior written notice of cancellation or non-renewal, for any reason, by the insurance company, by registered or certified mail, to be given the Authority's Risk Management Department. The insurance policy shall be endorsed to provide that any payment for a claim will name both the Tenant and the Authority on the check and release since they both have an interest in the loss.

Tenant and Authority agree to require their Boiler & Machinery Insurance carriers to provide full waivers of their subrogation rights against each other, their agents, servants or employees for any claims paid to Tenant or the Authority for loss of or damages to their property, including Business Interruption, Extra Expense and Loss of Rental Income claims. If this waiver renders void any such insurance policy or shall result in the denial of coverage for a party under such insurance policy, then this provision of the Lease shall be deemed to be null and void. These insurance policies to be endorsed to show this joint waiver of Subrogation by the insurance companies involved.

XV. INDEMNIFICATION

A. Environmental Indemnification.

Tenant agrees to and shall indemnify, defend (by counsel acceptable to the Authority) and hold the Authority harmless from and against all of the following matters, which may arise by virtue of the use or occupancy of the Premises, by Tenant, its agents or invitees hereunder:

1. any and all liabilities, claims, demands, obligations, losses, awards, judgments, or amounts paid in settlement or compromise thereof, and costs associated therewith, including reasonable attorneys' fees, by virtue of any investigation, inquiry, suit, proceeding, action, cause of action, right to recovery, assessment, claim, claim of lien or lien of or by any Environmental Regulator, or any third party, with respect to the Premises or any adjoining lands, for clean-up costs, damages (including without limitation punitive or consequential damages, whether foreseeable or unforeseeable), or costs pursuant to any Environmental Law, Environmental Regulation or order of an Environmental Regulator or any common law right of recovery, including without limitation those arising from personal injury, death or property damage;

2. any and all fines, penalties, assessments, forfeitures, payments, impositions or amounts paid in settlement or compromise thereon, together with costs associated therewith, including reasonable attorneys' fees, imposed or obtained by or awarded to any Environmental Regulator or third party for violation of, or non-compliance with, any Environmental Law or Environmental Regulation;

3. any and all costs required to effect any necessary remediation or response action as to the release of any Hazardous Substance in, on under or affecting the Premises, or into the air, any waters, or surrounding or adjoining properties;

4. any and all costs required to rectify any non-compliance, in connection with the Premises or any surrounding or adjoining properties, with Environmental Laws, Environmental Regulations, orders of Environmental Regulators or permits issued by Environmental Regulators;

5. any breach of the environmental warranties or covenants of Tenant contained herein; and,

6. in connection with the foregoing, any and all costs of any required engineering or other professional services, inspections or audits, and any closure or other required plans and specifications.

B. General Indemnification.

In addition to the other indemnifications set forth herein, Tenant hereby covenants and agrees to indemnify and to save harmless the Authority and its Board members, officers, agents and employees, from and against any and all claims, demands, costs, damages, debts, liabilities and causes of action of every kind or character whatsoever, whether in law or in equity, and including reasonable attorneys' fees and costs, by reason of any death, injury or damage to any person(s), or any damage to or destruction of property of Tenant, its agents (including its employees), or of any third persons, in, upon or respecting the Premises or any other properties of the Authority, or any use of such properties, and arising in whole or in part out of Tenant's wrongful, intentional or negligent acts or omissions during the Term of this Lease, or possession thereof.

Further, it is expressly agreed that the terms of Tenant's indemnifications of the Authority herein shall also cover and apply to the wrongful, intentional or negligent acts or omissions of all invitees of Tenant, and of all agents (including employees) of such invitees, while engaged in, or having entered upon the Premises or any other properties of the Authority in connection with, any activities allowed to Tenant under this Lease, as fully as if they were the acts and omissions of Tenant.

C. Environmental Indemnifications Cumulative.

Tenant acknowledges and agrees that the environmental indemnity provisions contained herein, and Tenant's obligations and liabilities arising under such provisions, are exclusive of, and in addition to, the other obligations of Tenant under this Lease.

D. Survival of Indemnifications.

The indemnifications, obligations, and liabilities of Tenant under this Lease shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of the termination or expiration of the Term of this Lease or the transfer of all or any portion of the Premises, or any interest in this Lease.

XVI. SECURITY MEASURES

The State of Florida has enacted seaport security standards, which are codified in Chapter 311, Florida Statutes. Furthermore, Congress has passed the Maritime Transportation Security Act of 2002, which imposes federal seaport security standards on Authority. Authority has prepared a security plan for the Port of Tampa in accordance with applicable law (The federal, state and local laws, regulations, rules and policies concerning security and the Authority's security plan are collectively referred to as the "Security Seaports Standards"). Tenant shall comply with all Seaport Security Standards, as amended from time to time, applicable to Tenant and/or the Premises or adjoining wharf or berth areas, all at Tenant's expense. Further, Tenant shall cooperate with Authority in good faith to achieve and maintain Authority's compliance with the Seaport Security Standards as they may be amended from time to time and supplemented by other state or federal laws and regulations imposing an obligation on Authority regarding security of the Port of Tampa. Notwithstanding any mobile patrol or other security measures

Authority may undertake during the Term of this Agreement, such measures are hereby acknowledged to be for the security of the land, buildings, structures, and personal property under the direct use, control and possession of Authority. Therefore, it is expressly agreed for purposes of this Agreement that Tenant shall be solely responsible and Authority shall have no responsibility whatsoever, for providing any and all security for the Premises including any of Tenant's improvements and personal property located thereon and, further, that Authority shall not be liable for any loss, damage or injury occurring on the Premises resulting from the security of the Premises. Further, Tenant shall be solely responsible obtaining approval from the United States Coast Guard and/or the Florida Department of Law Enforcement for its facility and personnel security plan ("Security Plan"). In addition, Tenant shall be solely responsible for the formulation, implementation and compliance with its Security Plan, including, without limitation, applicable background checks, finger printing and badging of officers, employees, contractors and agents of Tenant, and designation of a facility security officer responsible for maintaining a security presence within the Premises to enforce the provisions of its Security Plan.

XVII. ERECTION OF SIGNS

Tenant has the right to erect signage on the Premises provided that each sign is in compliance with all applicable governmental rules and regulations and further providing that any such sign does not interfere with the Authority's operation of the Port Facilities.

XVIII. INSPECTION

Tenant covenants and agrees that the Authority, by and through its duly authorized officers, agents, and representatives, shall have the right at any and all times to go upon and inspect the Premises.

XIX. DEFAULT AND REMEDIES

A. Default.

The happening of any one or more of the events enumerated below, all and singular, shall constitute a default by Tenant under this Lease, at the option of the Authority, no notice whatsoever being necessary from the Authority unless otherwise stated:

1. Tenant shall fail to pay Rent, Additional Rent, or other payment due hereunder when any such payment is due, and that failure continues for a period of ten (10) days;
2. Tenant's continued default in performance of any other covenants of this Lease for a period of more than thirty (30) days after delivery of written notice of such default to Tenant by the Authority or the Authority's agents;
3. Tenant's making an assignment for the benefit of creditors;
4. A receiver or trustee being appointed for Tenant;

5. Tenant's voluntary petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement, or insolvency law;
6. An involuntary bankruptcy filing against Tenant, which is not dismissed within ninety (90) days after filing;
7. Tenant's vacating or abandoning the Premises;
8. Tenant's ceasing to operate its business as a going concern for the permitted uses for a period of thirty (30) days;
9. Tenant's interest under this Lease being sold under execution or other legal process;
10. Tenant's interest under this Lease being assigned by operation of law;
11. Failure to comply with terms of all Port Tariffs, rules, regulations, and policies, and such failure continues for more than thirty (30) days after delivery of written notice of such default to Tenant by the Authority or the Authority's agents;
12. The Repeated Violation or breach of any non-monetary requirement of this Lease, notwithstanding the cure of each such violation or breach within any applicable curative period (for purposes of this subparagraph, "Repeated Violation" occurs when substantially the same violation has occurred more than three (3) times during any three (3) consecutive years of the Term of this Lease); or
13. Any of the goods or chattels of Tenant used in or incident to the operation of the Premises or any Improvements being seized, sequestered, or impounded by virtue of or under authority of any legal proceeding, which seizure, sequestration or impounding shall materially affect the possible continuation of the operation of the Premises by Tenant.

B. Remedies.

Upon the occurrence of any of the foregoing events of default, the Authority, at its election, may exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by law at the same time, or subsequently:

1. Terminate Tenant's right to possession under this Lease and re-enter and take possession of the Premises and re-let or attempt to re-let the Premises on behalf of Tenant, at such rent and under such terms and conditions as the Authority deems best under the circumstances for the purpose of reducing Tenant's liability. The Authority shall not be deemed to have thereby accepted a surrender of the Premises, and Tenant shall remain liable for all Rent, Additional Rent, and all other payments due under this Lease and for all damages suffered by the Authority because of Tenant's breach of any of the covenants of this Lease; or
2. Declare this Lease to be terminated, ended and null and void, and re-enter upon and take possession of the Premises whereupon the Term of this Lease hereby granted and all right, title and interest of Tenant in the Premises shall end. Such termination shall be without prejudice to the Authority's right to collect from Tenant any Rent, Additional Rent, or other payments hereunder which has accrued prior to

such termination together with all damages suffered by the Authority because of Tenant's breach of any covenants under this Lease; or

3. Accelerate and declare the entire remaining unpaid Rent for the balance of this Lease to be immediately due and payable. At the Authority's option, Authority may take immediate action to recover and collect same either by distress or otherwise; or

4. Exercise any and all rights and privileges that the Authority may have under the laws of either the State of Florida or of the United States of America, or both; or

5. Deny Tenant the rights of wharfage, docking or throughput from any vessel located within the Port, as well as the right to use any road or railroad within the Port during any condition of default and continuing until every Tenant default of this Lease is cured.

Any Rent which may be due the Authority, whether by acceleration or otherwise, as herein provided in this Paragraph, shall include Rent, and any other costs and expenses denominated as Additional Rent in this Lease.

Re-entry or retaking possession of the Premises by the Authority shall not be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to Tenant. The Authority's pursuit of any remedy herein provided shall not constitute a forfeiture or waiver of any Rent, Additional Rent, or other monetary obligations of Tenant hereunder, or of any damages accruing to the Authority by reason of any violations of any of the terms, provisions and covenants herein contained.

XX. WAIVER

A waiver of any default on the part of Tenant or any extension of time granted by the Authority to Tenant for any purpose whatsoever shall not be held or deemed to be a waiver of any of the provisions or terms of this Lease or of any default thereafter occurring. The receipt by the Authority of Rent, Additional Rent, or of any other payment required to be made by Tenant, or any part thereof, shall not be a waiver of any other Rent, or Additional Rent or other payments when due, nor shall receipt, with knowledge of the breach of any covenants or condition thereof, operate as or be deemed to be a waiver of such breach, and no waiver by the Authority of any of the provisions thereof, or any of the Authority's right, remedies, privileges or options hereunder, shall be deemed to have been made unless made by the Authority in writing.

XXI. ATTORNEY'S FEES AND COSTS

In any litigation arising out of this Lease, the prevailing party shall be entitled to reimbursement of all of its costs and expenses, including reasonable attorneys' fees and paralegal fees (at both trial and appellate court levels).

XXII. AMERICANS WITH DISABILITIES ACT

A. Compliance.

Tenant shall not do, and shall not permit any person within Tenant's control to do, any act or thing in or upon the Premises or Improvements that will invalidate or be in conflict with the certificate of occupancy for the Improvements or violate any requirements of any legally constituted public authority that may be in effect from time to time, including, without limitation, applicable terms of the Americans with Disabilities Act of 1990, as amended, ("ADA"), each as modified and supplemented from time to time (collectively "Requirements").

B. Alterations.

Tenant shall, at its own expense, take all action, including any required alterations necessary to comply with all Requirements made necessary by reason of Tenant's use or occupancy of the Premises and Improvements. With regard to the physical structure of the Improvements, Tenant agrees to use good faith and due diligence to undertake those actions that are "readily achievable" (as such term is defined in the ADA) in order to attempt to bring the physical structure in compliance with applicable Requirements.

C. Indemnification.

If it is determined that, for any reason, the Premises or Improvements are not in compliance with any Requirement, or if because of any subsequent Requirements or interpretations of the Requirements, additional changes to the Premises or Improvements are necessary to comply with the Requirements, then Tenant acknowledges and agrees that the Authority has and shall have no obligation or liability whatsoever to Tenant, or to anyone claiming by or through Tenant, regarding any failure of the Premises or Improvements or the activities thereon to comply with the Requirements. Further, if the Authority is joined in any action regarding the failure of the Premises or Improvements to comply with any Requirements for which it is Tenant's responsibility to so cause the Premises or Improvements to comply, Tenant shall defend, indemnify and hold the Authority, its officers, directors, employees, and agents harmless respecting such action and any claims, awards, damages or costs relating thereto.

D. Notices.

Within ten (10) days after receipt, the Authority and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the ADA relating to any portion of the Premises or Improvements; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Premises or Improvements; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises or Improvements

XXIII. LANDLORD'S LIEN AND SECURITY AGREEMENT

Tenant acknowledges that Florida law provides for a statutory lien for rent, which rights and remedies created thereby are a part of this Lease. Tenant grants to the Authority a security interest in the furniture, fixtures, equipment, goods and chattels of Tenant, which may be brought or put on said Premises, as security for the payment of Rent and Additional Rent herein reserved. This Paragraph XXIII of this Lease shall be a "Security Agreement" as that term is defined by the Uniform Commercial Code ("UCC"). On demand of the Authority, Tenant must execute and deliver to the Authority financing statements, including any extensions or continuations thereto, and do all things for the creation and perfection of the Authority's security interest as may be required under the UCC. Tenant further agrees that the security interest granted to the Authority for the payment of said Rent shall be enforced in the manner provided for enforcement under the UCC. In the event Tenant becomes delinquent on any bill for utility services rendered or initially paid by the Authority, the same shall constitute a lien in favor of the Authority on all property of Tenant located upon the Premises, which lien shall be in addition to any other liens and remedies available to the Authority arising under applicable law.

XXIV. HOLDING OVER

The failure of Tenant to surrender the Premises on the date provided herein for the expiration of the Term of this Lease or any renewal thereof (or at the time this Lease may be terminated otherwise by the Authority) and the subsequent holding over by Tenant, with or without the consent of the Authority, shall result in the creation of a tenancy at will at one hundred fifty percent (150%) the Rent payable at the time of the date provided herein for the expiration of this Lease or at the time this Lease may be terminated otherwise by the Authority. The parties agree that this provision does not give Tenant any right to hold over at the expiration of the Term of this Lease, either by operation of law or otherwise.

XXV. NOTICE

All notices required to be given to the Authority and Tenant hereunder shall be sent by (a) registered or certified mail, whereupon notice shall be deemed to have been given on the third day after deposit for mailing; or (b) delivery (i.e., courier or other hand delivery), overnight delivery, whereupon notice shall be deemed to have been given on the day of delivery. If the day of notice is Saturday, Sunday, or legal holiday, notice shall be deemed to have been given on the first calendar day thereafter which is not a Saturday, Sunday, or legal holiday.

All notices required to be given to the Authority and all payments due hereunder shall be made to the Authority at:

**Tampa Port Authority
1101 Channelside Drive
Tampa, Florida 33602
Attention: Director of Real Estate**

or to such other address as the Authority may direct from time to time by written notice forwarded to Tenant as provided above.

All notices required to be given to Tenant hereunder shall be sent to Tenant at:

or to such other address as Tenant may direct from time to time by written notice forwarded to the Authority as provided above.

XXVI. JURISDICTION AND VENUE

Tenant, by execution of this Lease, hereby acknowledges that it is doing business in the State of Florida. In the event Tenant fails or ceases to have a registered agent or resident agent for service of process located in the State of Florida, then in that event Tenant shall be deemed to constitute and appoint the Secretary of State of Florida as its agent for the service of process in any civil action begun in the courts of the state against Tenant. The execution of this Lease by Tenant is signification of its agreement that process against it which is so served is of the same validity as if served personally on Tenant. It is further agreed that venue for all disputes hereunder lies exclusively in the federal and state courts with jurisdiction in Hillsborough County, Florida, and Tenant hereby expressly waives any right it has to object to the venue of any action commenced in any courts in Hillsborough County, Florida.

XXVII. WAIVER OF JURY TRIAL

The Authority and Tenant recognize that this Lease involves relatively complex business transactions; that this Lease is lengthy and its terminology technical in nature and, thus, may be susceptible to misinterpretation; and that, in the event of any dispute as to rights and obligations hereunder, a judge, rather than a jury, would be the most efficient and qualified trier of fact. Accordingly, the parties are each desirous of waiving their respective rights to jury trial with respect to any litigation or other legal proceedings, as follows:

EACH PARTY, BY THE EXECUTION HEREOF, DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, FOR THEMSELVES AND THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS, ANY RIGHT WHICH ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, ACTION, SUIT OR PROCEEDING (WHETHER AT LAW OR IN EQUITY) BASED ON THIS LEASE, ANY AMENDMENT OR ADDITION TO THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY OR THEIR RESPECTIVE OFFICERS, PRINCIPALS, PARTNERS, EMPLOYEES, AGENTS OR REPRESENTATIVES IN CONNECTION HEREWITH, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE. NO PARTY SHALL SEEK TO CONSOLIDATE ANY SUCH LITIGATION, ACTION, SUIT

OR PROCEEDING WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL AND MUTUAL INDUCEMENT TO ENTERING INTO THIS LEASE.

If for any reason the foregoing waiver is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, so that any litigation or other legal proceedings relating to or arising in connection herewith is in fact conducted before an impaneled jury, each party hereto agrees not to seek to have the foregoing waiver or the existence thereof admitted into evidence, and this entire numbered Paragraph shall be excised herefrom when this Lease may be presented to such jury.

XXVIII. EMINENT DOMAIN

A. Definitions.

“Award” means all compensation, sums, or anything of value awarded, paid, or received on a total or partial Condemnation.

“Condemnation” means (1) the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor, and (2) a voluntary sale or transfer by the Authority to any Condemnor, either under threat of condemnation or while legal proceedings for Condemnation are pending.

“Condemnor” means any public or quasi-public authority, or private corporation, having the power of Condemnation.

“Date of Taking” means the date the condemnor has the right to possession of the property being taken by Condemnation.

B. Effect of Lease.

If there is any Condemnation of all or any part of the Improvements or twenty-five percent (25%) of the Premises, the Tenant shall have the election to terminate this Lease effective upon the Date of Taking, otherwise this Lease shall remain in full force and effect. If there is a Condemnation of all of the Premises, or part of the Premises so that the remaining part of the Premises is impractical for Tenant’s continued use of the Premises, either party shall have the election to terminate this Lease upon the Date of Taking. The elections to terminate this Lease as provided herein, shall be exercised, if at all, within sixty (60) days after the nature and extent of the Condemnation is determined; otherwise, this Lease shall remain in full force and effect. If there is a Condemnation of the Premises for temporary use, this Lease will continue in full force and effect and Tenant will continue with Tenant’s obligations under this Lease, except to the extent compliance is rendered impossible by reason of the Condemnation.

C. Award - Distribution.

The Award shall belong to and be paid to the Authority and/or Tenant as their interest may appear, except that Tenant may make a separate claim for any business damages to which it is entitled to under law.

XXIX. ABSOLUTION FOR GOVERNMENTAL FUNCTIONS

Tenant agrees to absolve and release the Authority, its commissioners, officers, employees, and agents from any and all liability, damages, costs, or expenses, including attorneys' fees, arising from any act, event, decision, or omission of action involving a governmental policy, program, function, or objective of the Port Rules, including, without limitation, the scheduling of berthing reservations and other Port facilities, the enforcement of Port Rules, and the issuance of licenses and permits.

XXX. TERMINATION AND SURRENDER

Unless otherwise mutually agreed by the Authority and Tenant, subject to the terms of Article VI (C) above, upon termination of the Term of this Lease, Tenant agrees to deliver possession of the Premises and all Improvements to the Authority in substantially the same condition as they originally existed immediately following the completion of all approved Improvements, free from all liens and encumbrances, reasonable wear and tear excepted.

XXXI. DISCRIMINATION PROHIBITED

Tenant shall not, because of the race, color, sex, religious creed, or national origin of any individual, refuse to hire or employ such individual, bar or discharge from employment such individual, or otherwise discriminate against such individual, with respect to compensation, tenure, terms, conditions, or privileges of employment. No person, on the ground of race, color, sex, religious creed, or national origin, shall be excluded from participation in or denied the benefits of, or otherwise be subjected to discrimination in, the use of the Premises. In addition, no person shall be excluded from participation in, or denied the benefits of, furnishing services or materials or constructing improvements to the Premises, or otherwise be subjected to discrimination in such endeavors.

XXXII. COMPLETE AGREEMENT

This Lease, including all Attachments and Addenda attached hereto, and other documents referenced herein, contain the complete agreement of the parties with reference to the leasing of the Premises. No waiver of any breach of covenants herein shall be construed as a waiver of the covenant itself or any subsequent breach thereof.

XXXIII. DEFINITION OF AUTHORITY

The term "Authority" as used in this Lease means only the owner for the time being of the land comprising the Premises. In the event of any sale or transfer of said land, the Authority shall be and hereby is entirely freed and released of all covenants and obligations of the Authority hereunder, and it shall be deemed and construed without the further agreement between the parties hereto or between the parties and the purchaser at any such sale, that the

purchaser of the land or building has assumed and agreed to carry out any and all covenants and obligations of the Authority hereunder.

XXXIV. GENERAL PROVISIONS

A. Radon Gas.

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to people who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit. Each party hereto disclaims any liability for any health risks incurred by the other, its employees, and/or its invitees as a result of, or claimed to be a result of, radon at the Premises.

B. Conditions and Covenants.

All of the provisions of this Lease shall be deemed covenants running with the land, and construed to be “conditions” as well as “covenants” as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

C. Time of Essence.

Time is of the essence of this Lease, and of each provision.

D. Headings and Captions.

Headings and captions used herein are for convenience only and are not to be deemed part of this Lease and shall not be held to limit the substantive terms and provisions of this Lease.

E. Computation of Time.

Subject to the provisions below regarding the effective date of notices, demands and requests, the time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a legal holiday, and then it is also extended to the next business day.

F. Unavoidable Delay-Force Majeure.

If either party shall be delayed or prevented from the performance of any act required by this Lease (other than payment of Rent, Additional Rent, and other sums due) by reason of acts of God, strikes, lockouts, labor troubles, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

G. Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

H. Relationship of Parties.

Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between the Authority and Tenant, other than the relationship of landlord and tenant.

I. Interpretation and Definitions.

The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against the Authority or Tenant. The words "herein," "hereof," "hereunder," and other similar compounds of the word "here," when used in this Lease shall refer to the entire Lease and not to any particular provision or section.

J. Parties.

The neuter gender includes the feminine and masculine, and the singular number includes the plural, and the word "person" includes a corporation, partnership, firm or association wherever the context so requires.

K. Modifications.

This Lease is not subject to modification except in writing signed by the Authority and Tenant.

L. Federal Maritime Commission Filing.

This Lease may be subject to and contingent upon filing with the Federal Maritime Commission.

M. Approval.

The obligations of the Authority under this Lease are subject to and contingent upon (a) approval of the terms of this Lease by the Tampa Port Authority Board of Commissioners as evidenced by a resolution adopted at a duly called meeting of the Board and (b) the Authority giving twenty (20) days notice of a public hearing in a newspaper of general circulation published in Hillsborough County, Florida, and holding a public hearing on the Lease terms.

N. Binding Effect.

This Lease shall bind and inure to the benefit of the Authority and Tenant, and any such successors or assigns of the Authority and Tenant (including, as to the Authority, such third parties) as may succeed by law to the

rights, powers and duties of the Authority, or become in any manner vested with the administration of affairs of the Authority.

O. Governing Law.

This Lease shall be construed according to the laws of the State of Florida.

P. Consent.

The parties intend that whenever the Authority's consent or approval is expressly or implicitly required by any provisions of this Lease, the consent or approval may be granted or withhold arbitrarily in the Authority's sole discretion unless otherwise specifically stated in such provision. Notwithstanding anything to the contrary contained in this Lease, if any provision of this Lease expressly or implicitly obligates the Authority not to unreasonably withhold its consent or approval, an action for declaratory judgment or specific performance will be Tenant's sole right and remedy in any dispute as to whether the Authority has breached such obligation.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year first above written.

Signed, sealed and delivered
in the presence of:

WITNESSES:

TAMPA PORT AUTHORITY, a body politic and corporate
existing under and by virtue of the laws of the State of Florida

Print Name: _____

Richard A. Wainio
Port Director

Print Name: _____

Date: _____

Approved as to form and content this _____ day of
_____, 2009.

Charles E. Klug, Jr.
Port Counsel

Signed, sealed and delivered
in the presence of:

WITNESSES:

_____, a _____

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

Date: _____

EXHIBIT "A"

DESCRIPTION OF PREMISES

EXHIBIT "B"

CERTIFICATE OF INSURANCE

ADDENDUM I

(Consideration)

In consideration of the use of the demised Premises, Tenant covenants and agrees to pay to the Authority the following consideration:

A. Rent for the Initial Term of the Lease

Rent shall be due and payable monthly in advance, together with any Applicable Taxes, based on the following schedule:

	<u>Annually</u>	<u>Monthly</u>
Lease Year 1		
Lease Year 2	annual Rent for Year 1 times the CPI Adjustment Factor	monthly Rent during Year 1 times the CPI Adjustment Factor *
Lease Year 3	annual Rent for Year 2 times the CPI Adjustment Factor	monthly Rent during Year 2 times the CPI Adjustment Factor *
Lease Year 4	annual Rent for Year 3 times the CPI Adjustment Factor	monthly Rent during Year 3 times the CPI Adjustment Factor *
Lease Year 5	annual Rent for Year 4 times the CPI Adjustment Factor	monthly Rent during Year 4 times the CPI Adjustment Factor *

B. CPI Adjustment Factor

Commencing with the second Lease Year, and at the beginning of each Lease Year thereafter during the Initial Term of this Lease, the annual Rent shall be adjusted upward by the cumulative change in the Consumer Price Index ("CPI") for All Urban Consumers, Southern Region, All Items (1982 – 84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor. If the CPI ceases to use 1982 – 84 = 100 as a base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to be published, any substitute or successor index selected by Landlord and published by any agency of the United States will be used.

The CPI Adjustment Factor is defined as follows:

The CPI at the end of a particular Lease Year, as numerator divided by the CPI at the beginning of a particular Lease Year, as denominator. By way of example, if at the end of Lease Year 1 the CPI was 253 and at the beginning of Lease Year 1, the CPI was 248, then the CIP Adjustment Factor would be:

$$253 \text{ divided by } 248 = 1.02$$

$$\text{the Rent for Lease Year 2 would be } 1.02 \times \$15,000 = \$15,300.00$$

Any delay or failure of the Authority in computing or billing for the Rent adjustments herein provided shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such Rent adjustments hereunder. Notwithstanding any expiration or termination of this Lease prior to the date that this Lease is scheduled to expire (except in case of a cancellation by mutual written agreement), Tenant's obligation to pay Rent as adjusted herein shall continue and shall cover all periods up to the date that this Lease is scheduled to expire and shall survive any expiration or termination of this Lease.