
LEASE

Between

LORAIN PORT AUTHORITY, Lessor

and

301 BROADWAY PARTNERS, LLC, Lessee

Dated

as of

[_____], 2016

Memorandum of Lease and Assignment filed for record
on [_____], 2016, as Instrument No.
[_____] in Records of Lorain County, Ohio
Recorder.

INDEX

(The Index is not a part of this Lease
And is only for convenience of reference.)

		<u>Page</u>
ARTICLE I	DEFINITIONS	1
Section 1.1	Use of Defined Terms	1
Section 1.2	Interpretation.....	6
Section 1.3	Captions and Headings	6
ARTICLE II	LEASE TERM AND REPRESENTATIONS.....	6
Section 2.1	Lease; Lease Term; Possession and Use.....	6
Section 2.2	Financing Contingency; Deed Restrictions	6
Section 2.3	Acquisition, Construction, Equipping, Installation, Redevelopment and Completion.....	7
Section 2.4	Representations of the Lessor	7
Section 2.5	Representations and Covenants of the Lessee	8
ARTICLE III	RENTAL PAYMENT	8
Section 3.1	Rental Payment	8
Section 3.2	Additional Payments.....	9
Section 3.3	Payment Instructions.....	9
Section 3.4	Past Due Payments.....	9
ARTICLE IV	MAINTENANCE AND USE OF PROJECT	9
Section 4.1	Compliance with Legal and Insurance Requirements	9
Section 4.2	Maintenance and Use of Project	9
Section 4.3	Alterations, Additions and Improvements	10
Section 4.4	Substitutions and Removals.....	10
Section 4.5	Indemnification	10
Section 4.6	Environmental Matters.....	11
Section 4.7	Encumbrances	12
ARTICLE V	GOVERNMENTAL CHARGES; Liens; insurance	13
Section 5.1	Taxes, Other Governmental Charges and Utility Charges.....	13
Section 5.2	Mechanics' and Other Liens	13
Section 5.3	Insurance	13
Section 5.4	Workers' Compensation Coverage.....	14
Section 5.5	Payment by Lessor	14

Section 5.6	Mutual Waiver of Subrogation	14
ARTICLE VI	DAMAGE, DESTRUCTION AND CONDEMNATION	14
Section 6.1	Damage to or Destruction of Project	14
Section 6.2	Eminent Domain	14
ARTICLE VII	FURTHER REPRESENTATIONS AND AGREEMENTS	
	RESPECTING THE PROJECT.....	15
Section 7.1	Installation and Removal of Personal Property Not Part of Project	15
Section 7.2	Documents to be Provided	15
Section 7.3	Right of Access	15
Section 7.4	Lessee to Maintain its Existence; Conditions Under Which Exceptions Permitted	15
Section 7.5	Title to Project Site	16
Section 7.6	No Warranty of Condition or Suitability	16
Section 7.7	Litigation Notice	16
ARTICLE VIII	LESSEE’S PURCHASE OPTION	16
Section 8.1	Purchase Option	16
Section 8.2	Put Option	16
Section 8.3	No Further Action of Legislative Authority	17
ARTICLE IX	EVENTS OF DEFAULT	17
Section 9.1	Events of Default	17
Section 9.2	Remedies on Default.....	18
Section 9.3	No Remedy Exclusive.....	19
Section 9.4	Lessee to Pay Attorneys’ Fees and Expenses	19
Section 9.5	No Additional Waiver Implied by One Waiver	19
ARTICLE X	ASSIGNMENT, SUBLEASING AND RELEASE OF PORTIONS	
	OF PROJECT	19
Section 10.1	Assignment by the Lessee.....	19
Section 10.2	Assignment by the Lessor	19
Section 10.3	Restrictions on Transfer and Encumbrance of Project by the Lessor	20
Section 10.4	Release of Portion of Project	20
ARTICLE XI	MISCELLANEOUS.....	20
Section 11.1	Quiet Enjoyment	20
Section 11.2	Notices	20

Section 11.3	Binding Effect; Third Party Beneficiaries	21
Section 11.4	Amendments, Changes and Modifications	21
Section 11.5	Execution Counterparts.....	21
Section 11.6	Severability	21
Section 11.7	Extent of Covenants of the Lessor; No Personal Liability	21
Section 11.8	Captions	21
Section 11.9	Governing Law	21
Section 11.10	Relationship of the Parties; No Joint Venture.....	21
Section 11.11	No Accord and Satisfaction	22
Section 11.12	Survival	22
Section 11.13	Time of Essence	22
Section 11.14	Recordation of Lease	22
Section 11.15	Project Sign.....	22
Signature	21
Acknowledgements.....		22
Certificate of Fiscal Officer		23
EXHIBIT A – PROJECT SITE		
EXHIBIT B – PERMITTED EXCEPTIONS		

LEASE

THIS LEASE is made and entered into as of [____], 2016, between the LORAIN PORT AUTHORITY (the “Authority” or “Lessor”), a body corporate and politic and a port authority duly organized and validly existing under the laws of the State of Ohio (the “State”), as lessor (together with its lawful successors and permitted assignees, the “Lessor”), and, 301 BROADWAY PARTNERS, LLC, an Ohio limited liability company, as lessee (together with its successors and permitted assignees, the “Lessee”), and shall be effective on the Leasing Date, under the circumstances hereinafter described, with each capitalized word or term used as a defined term but not otherwise defined herein having the meaning assigned to it in Section 1.1;

WITNESSETH:

WHEREAS, subject to the receipt by the Lessor of the Donation, the Lessor expects to acquire Fee Title in the Project Site on the Donation Date;

WHEREAS, subject to the receipt by the Lessor of the Donation on the Donation Date, and upon the terms and conditions hereinafter set forth, the Lessor is willing to lease the Project Site to the Lessee on the Leasing Date, and the Lessee is willing to accept the lease of the Project Site from the Lessor on such Leasing Date;

WHEREAS, such Leasing Date shall be on or after the Donation Date, as further described herein;

WHEREAS, the Lessor and the Lessee desire to enter into the terms of this Lease prior to the Lessor’s receipt of the Donation on the Donation Date, in order to provide mutual certainty regarding the redevelopment of the Project Site and the overall Project;

WHEREAS, the Lessor and the Lessee each has full right and lawful authority to enter into this Lease and to perform and observe the provisions hereof on its respective part to be performed and observed; and

NOW THEREFORE, in consideration of the premises stated above, which are hereby incorporated and made a part hereof, and the mutual covenants and agreements contained herein, the Lessor and Lessee agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms elsewhere defined in this Lease, each capitalized word or term set forth in this Section 1.1 shall have the respective meaning set forth below, unless the context or use indicates another or different meaning or intent. The following definitions shall be applicable to both the singular and plural forms of any of the words and terms used herein.

“Act” means Sections 4582.21 through 4582.59, inclusive, of the Ohio Revised Code, as enacted and amended from time to time.

“Additional Payments” means the amounts required to be paid by the Lessee pursuant to Section 3.2 and otherwise so identified hereunder.

“Business Day” means a day that is not a (i) Saturday, (ii) Sunday or (iii) day on which banks in New York, New York are closed.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), as enacted and amended from time to time.

“Commitment Letter” means a fully executed and legally binding commitment between the Lessee and a third-party committing the third-party to finance all or a portion of the fee, costs, and other expenses associated with the completion of the Project, as evidenced by a written contract, instrument, or other document. Whether any contract, instrument, or other document constitutes such a Commitment Letter under this Lease shall be in the sole and reasonable discretion of the Lessee.

“Deed Restriction” means any servitude, license, covenant, easement, appurtenance, restraint, restriction on use, or other requirement imposed on the Project Site or the Project Facilities that is reasonably necessary to acquire a Commitment Letter.

“Donation” means the acquisition by the Lessor of Fee Title to the Project Site, which shall be demonstrated to the reasonable satisfaction of the Lessee by a written and/or recorded instrument evidencing such Fee Title in accordance with Section 7.5.

“Donation Date” means that date subsequent to the Execution Date, but prior to [____], 2016, upon which the Donation occurs.

“Environmental Complaint” means any written notice of violation, request for information or notification that the Lessee or any other Person is potentially responsible for investigation or clean-up of environmental conditions at the Project or any demand letter or complaint, order, citation or other written notice with regard to any Hazardous Discharge in violation of Environmental Laws applicable to the Project or the interest of the Lessor or the Lessee therein.

“Environmental Laws” means any federal, state, local, municipal, foreign, international, multinational or other applicable constitutions, laws, ordinances, principles of common law, regulations, statutes or treaties designed to minimize, prevent, punish or remedy the consequences of actions that damage or threaten the environment or public health and safety, including without limitation, all applicable federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto, including, without limitation, CERCLA and Chapter 3734 of the Ohio Revised Code.

“Event of Default” means any of the events described as an Event of Default in Section 9.1.

“Execution Date” means the date first stated above in the recitals.

“Executive” means the Executive Director or Secretary of the Lessor or the Chair or the Vice-Chair of the Legislative Authority.

“Fiscal Officer” means the Secretary-Treasurer of the Lessor.

“Fee Title” shall mean fee simple absolute title, as such is defined by all applicable Legal Requirements, or such other equivalent legal title as the parties shall mutually agree.

“Financing Contingency” means the receipt by the Lessee of all Commitment Letters necessary to fully finance the Project, as determined in the sole and exclusive discretion of the Lessee. The Financing Contingency may be evidenced by Commitment Letters from a tax credit equity investor, first mortgage lender, the Ohio Housing Finance Agency, or such other lenders or investors acceptable to the Lessee in its sole discretion.

“Force Majeure” means, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; strikes, lockouts, labor troubles, or inability to procure materials; or any other event or circumstance outside the control of the Lessor or the Lessee, as applicable.

“Governmental Authority” means, collectively, the State, any political subdivision thereof, and any agency, department, commission, board or bureau thereof having jurisdiction over the Project.

“Hazardous Discharge” means any release or threat of release of a reportable quantity of any Hazardous Substance at the Project.

“Hazardous Substance” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), RCRA, or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

“Independent Counsel” means an attorney, reasonably acceptable to the Lessor who is duly admitted to practice law before the highest court of the State and who is not a salaried employee of the Lessor or the Lessee.

“Lease” means this Lease, as it may be amended or supplemented from time to time in accordance with its terms.

“Lease Term” means the period commencing on the Leasing Date and ending on the Lease Termination Date.

“Lease Termination Date” means the earlier of (i) twenty-four (24) months after the Leasing Date, or (ii) the date the Project is transferred to the Lessee (or its designee) pursuant to the Purchase Option or the Put Option.

“Leasing Date” means that date on or after the Donation Date and the satisfaction of the Financing Contingency upon which the Lessor shall grant the leasehold interest in the Project Site to the Lessee, as further described herein. Unless the parties subsequently agree otherwise, the Leasing Date shall be the same date as the Donation Date unless the Financing Contingency has not been satisfied on that date.

“Legal Requirements” means all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time

hereafter may be applicable to the Donation, the Project or any part thereof, or any use or condition of the Project or any part thereof.

“Legislative Authority” means the Board of Directors of the Lessor.

“Lessee” means 301 Broadway Partners, LLC, an Ohio limited liability company, together with its lawful successors and permitted assignees hereunder.

“Lessor” or “Authority” means the Lorain Port Authority, a body corporate and politic and a port authority duly organized and validly existing under the laws of the State as lessor under this Lease, together with its lawful successors and permitted assignees hereunder.

“Notice Address” means:

(a) As to the Lessee: 301 Broadway Partners, LLC
150 S. Wacker Drive, Suite 2400
Chicago, IL 60606

With a copy to: Squire Patton Boggs (US) LLP
2000 Huntington Center
41 S. High Street
Columbus, Ohio 43215
Attn: Greg Daniels

(b) As to the Lessor: Lorain Port Authority
319 Black River Lane
Lorain, OH 44052
Attn: General Counsel

“Person” or words importing persons means firms, associations, partnerships (including without limitation, general, limited and limited liability partnerships), joint ventures, societies, estates, trusts, corporations, limited liability corporations or companies, public or governmental bodies, other legal entities and natural persons.

“Plans and Specifications” means the preliminary plans and specifications for the Project, as prepared by the Lessee, and as such may be changed from time to time by the Lessee as provided in this Lease.

“Project” means, collectively, the Project Site and the Project Facilities.

“Project Facilities” means the facilities and other improvements to the Project Site consisting of a mixed-use redevelopment of the former Spitzer Plaza Hotel into an active deed-restricted senior community with approximately 50-60 apartments, first-floor commercial space, and a parking garage on the Project Site, as more particularly described in the Plans and Specifications, together with any additions and improvements thereto, modifications thereof and substitutions therefor, less any removals of such property, all made in the manner and to the extent authorized by this Lease.

“Project Purposes” means acquiring, constructing, equipping and installing real and personal property, or any combination thereof, constituting “port authority facilities”, as defined in the Act, for lease to the Lessee for use as mixed-use redevelopment of the former Spitzer Plaza Hotel into an active deed-restricted senior community with approximately 50 apartments, first-floor commercial space, and a

parking garage and including such uses and purposes as may result from a change in the Plans and Specifications and as may otherwise be permitted by the Act and this Lease.

“Project Site” means the real estate described in Exhibit A hereto, together with any additions thereto and less any removals therefrom, made in the manner and to the extent authorized by this Lease.

“Purchase Option” means the right, but not the obligation, of the Lessee to purchase and receive Fee Title to the Project on the Purchase Option Date in exchange for the payment to the Lessor of the Purchase Option Payment, all as further described in Section 8.1.

“Purchase Option Date” means a date selected by the Lessee that occurs between two years and one day and two years and two month from the Leasing Date.

“Purchase Option Payment” means the amount of \$1,000.00, plus all reasonable costs, fees, and expenses necessary to transfer all of the Lessor’s interest in the Project to the Lessee and any other costs, fees, and expenses incurred by the Lessor in connection with the Lessee’s exercise of the Purchase Option.

“Put Option” means the right, but not the obligation, of the Lessor to sell and fully transfer Fee Title to the Project on the Put Option Date in exchange for the payment by the Lessee of the Put Option Payment, all as further described in Section 8.2.

“Put Option Date” means a date selected by the Lessor that occurs between two years and two months and two years and three months from the Leasing Date.

“Put Option Payment” means the amount of \$1,000.00, plus all reasonable costs, fees, and expenses necessary to transfer all of the Lessor’s interest in the Project to the Lessee and any other costs, fees, and expenses incurred by the Lessor in connection with the Lessor’s exercise of the Put Option.

“RCRA” means the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), as enacted and from time to time amended.

“Rental Payment Date” means the Leasing Date.

“Rental Payment” means the amount of \$100.00 per year, which is the rent required to be paid by the Lessee to the Lessor in accordance with Section 3.1.

“Required Property Insurance Coverage” means insurance insuring the Project Facilities (i) against loss or damage by causes of loss typically insured under coverage forms referred to as “all risks” and including (a) flood coverage, (b) earthquake coverage, (c) coverage for buildings under construction, (d) coverage for the cost to demolish undamaged portions of the property, the value of undamaged portions of the property and increased costs of construction, (e) during the construction period, builder’s risk coverage, and (f) such other perils, if any, as the Lessor may reasonably require, in the amount of the full replacement cost of the Project Facilities; provided that, such coverage may exclude all personal and business property of any contractors, subcontractors or their agents and employees, other than building materials installed or to be installed at the Project Facilities. The building shall be insured for an amount not less than 100% of the insurable value of the Project Facilities, without deduction for depreciation, on a replacement cost basis with coinsurance waived; such insurance may provide for a loss deductible not greater than \$50,000; provided that, the Lessee shall be liable to the Lessor for any loss or portion thereof that is within the deductible.

“Required Public Liability Insurance Coverage” means commercial general liability insurance (including auto liability insurance) with coverage limits not less than \$3,000,000 per occurrence for liability for bodily injury or death and property damage liability combined, including blanket contractual liability and personal injury liability coverages, and \$3,000,000 annual aggregate for personal injury and advertising injury liability, \$3,000,000 annual aggregate for products/completed operations liability and \$3,000,000 general aggregate, with a loss deductible or self-insured retention clause not greater than \$50,000 and with no additional exclusions beyond those in the standard general liability policy form in common use at such time (or its equivalent), unless approved by the Lessor, which approval shall not be unreasonably withheld; provided that, the Lessee shall be liable for any liability that is within the deductible. This coverage limit may be achieved through a combination of primary and excess policies.

“State” means the State of Ohio.

Section 1.2 Interpretation. Any reference herein to the Lessor, to the Legislative Authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided that, no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Lessor or the Lessee under this Lease.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Lease; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Lease. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Reference to a numbered or lettered Article, Exhibit, Section or subsection means that Article, Exhibit, Section or subsection of or to this Lease, unless the context indicates a different meaning or intent.

Section 1.3 Captions and Headings. The captions and headings in this Lease are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE II

LEASE TERM AND REPRESENTATIONS

Section 2.1 Lease; Lease Term; Possession and Use. Upon the Leasing Date and subject to the provisions herein set forth, the Lessor shall and does hereby lease to the Lessee, and the Lessee shall accept such and does hereby lease from the Lessor, the Project, together with general, non-exclusive easements for access, structural support and utilities now or hereafter necessary for construction and enjoyment of the Project Facilities, for the Lease Term; provided that under no circumstances shall the Lease Term commence unless the Financing Contingency has been satisfied in accordance with Section 2.2.

Section 2.2 Financing Contingency; Deed Restrictions. The Lessee and Lessor acknowledge and agree that the Financing Contingency is a condition precedent to the Lessee initially leasing the

Project Site and Project Facilities under this Lease. If the Financing Contingency is not satisfied, the Lessee shall have no further obligation, monetary or otherwise, under this Lease. The Lessee and Lessor further acknowledge that certain Deed Restrictions may be necessary to acquire the financing necessary to obtain the Commitment Letters necessary to satisfy the Financing Contingency, and Lessor agrees to promptly cooperate with Lessee in good faith in order to authorize, create, and/or enforce any such Deed Restriction.

Section 2.3 Acquisition, Construction, Equipping, Installation, Redevelopment and Completion.

(a) The Lessee has assumed responsibility for acquiring, constructing, improving, and otherwise redeveloping the Project Facilities in accordance with the Plans and Specifications approved by the Lessor. The Lessee shall have all rights, authority, and other interests necessary for such acquisition, construction, improvement, and redevelopment of the Project Facilities, and the Lessor shall not unreasonably withhold any such grant of a right, authority, or other interest necessary for the Lessee to complete the Project according to the Plans and Specifications.

(b) The Lessor does not have any responsibility for the performance of, or any duty or obligation to perform any aspect of, the acquisition, construction, equipping, installation, or redevelopment of the Project Facilities, except as otherwise expressly provided herein. The Lessor has not made, and does not and will not make, any warranty, express or implied, concerning the condition or suitability of the Project Site or the Project Facilities, or the quality or suitability of any construction or other improvements or of the Plans and Specifications.

(c) The Lessor and the Lessee acknowledge that the Plans and Specifications may require modifications from time to time, and the Lessor agrees that the Lessee may modify the Plans and Specifications from time to time as determined in the sole discretion of the Lessee. The Lessee shall notify the Lessor of any material modifications; provided that under no circumstances shall Lessor have the right to control, approve, or otherwise inhibit Lessee's ability to modify the Plans and Specifications.

(d) For the purpose of excluding building and construction materials to be purchased by a contractor or a subcontractor for incorporation into structures or other improvements to real property comprising part of the Project Facilities from State sales and use taxes as contemplated by Section 5739.02(B)(13) of the Ohio Revised Code, the Lessor has provided or will provide exemption certificates to any construction services provider for delivery to any contractor. The Lessor agrees to cooperate, at the sole cost and expense of the Lessee, in the contest by the Lessee of any claim that such taxes may be payable. The Lessee shall be solely responsible for the determination of whether any particular purchase of building and construction materials qualifies for exemption from State sales and use taxes by virtue of the provisions of Section 5739.02(B)(13) of the Ohio Revised Code.

Section 2.4 Representations of the Lessor. The Lessor represents that:

(a) It is duly organized and validly existing under the laws of the State.

(b) It has duly accomplished all conditions necessary to be accomplished by it prior to the delivery of this Lease.

(c) It is not in violation of or in conflict with any provisions of the laws of the State that would impair its ability to carry out its obligations contained in this Lease.

- (d) It is empowered to enter into the transactions contemplated by this Lease.
- (e) It has duly authorized the execution, delivery and performance of the Lease.
- (f) It will do all things in its power in order to assure the assumption of its obligations under the Lease by any successor public body.

Section 2.5 Representations and Covenants of the Lessee. The Lessee represents and covenants that:

(a) It is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio, and it is duly qualified to conduct business under the laws of the State.

(b) It has full power and authority to execute, deliver and perform its obligations under this Lease and to enter into and carry out the transactions contemplated by this Lease. Its execution, delivery and performance of this Lease does not, and will not, (i) violate Lessee's organizational instruments, (ii) conflict with or result in a default under any agreement or instrument to which the Lessee is a party or by which it is bound, or (iii) to the knowledge of the Lessee, violate any law or governmental regulation. This Lease has, by proper action, been duly authorized, executed and delivered by the Lessee and all necessary actions have been taken to constitute those documents legal, valid and binding obligations of the Lessee, enforceable in accordance with their respective terms.

(c) There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Lessee, threatened, against the Lessee before any court or administrative agency that, if adversely determined, could materially and adversely affect the financial condition, assets or operations of the Lessee, or that question the validity of this Lease or any action to be taken in connection with the transactions contemplated by this Lease.

(d) There are not any defaults with respect to, or violations by the Lessee of, any order, writ, injunction or decree of any court or of any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or official, and there are not any violations by the Lessee of any law, statute, rule or regulation to which the Lessee or its properties is or are subject, that could, individually or in combination, materially and adversely affect the financial condition, assets or operations of the Lessee.

(e) There are not any defaults by the Lessee in the payment or performance of any obligations to any third party or in the performance of any mortgage, indenture, lease, contract or other agreement to which Lessee is a party or by which any of Lessee's assets or properties are bound, that could, individually or in combination, materially and adversely affect the financial conditions, assets or operations of the Lessee.

(f) The zoning regulations applicable to the Project currently permit the Lessee's intended use of the Project; and all utilities, including water, storm and sanitary sewer, gas, electric, and rights of access to public way, are available or arrangements satisfactory to the Lessee exist for their provision to the Project Site, all in sufficient locations and capacities to meet the requirements of the Lessee's intended use of the Project for the Project Purposes and of any applicable Governmental Authority.

ARTICLE III

RENTAL PAYMENT

Section 3.1 Rental Payment. The Lessee shall pay the Rental Payment on or before the Rental Payment Date to the Lessor in immediately available funds of the United States of America. Such Rental Payment shall be the sole Rental Payment for the Lease Term. In addition, the Lessee shall pay to the Lessor a fee equal to 50% of the amount of sales and use taxes exempted pursuant to Section 2.3(d).

Section 3.2 Additional Payments. The Lessor shall pay to or on the order of the Lessor, such Additional Payments identified hereunder in such amounts as may be specified. These shall include but are not limited too the Port's attorney fees, and the Port's financial advisor fees.

Section 3.3 Payment Instructions. Unless the Lessor provides express written instructions of how to make the Rental Payment, Additional Payments, and/or any other payments hereunder, the Lessee shall make payments directly to the Lessor at its principal office.

Section 3.4 Past Due Payments. If the Lessee fails to make the Rental Payment, Additional Payments, or any other payment hereunder, the item in default shall continue as an obligation of the Lessee until it has been fully paid.

ARTICLE IV

MAINTENANCE AND USE OF PROJECT

Section 4.1 Compliance with Legal and Insurance Requirements. The Lessee, at its expense, will promptly comply or cause compliance with all Legal Requirements and Insurance Requirements, and will procure, maintain and comply, or cause compliance, with all permits, licenses and other authorizations required for any use of the Project or any part thereof then being made or anticipated to be made, and for the proper operation and maintenance of the Project or any part thereof, and will comply with any instruments of record at the time in force burdening the Project or any part thereof. The Lessee may, at its expense and after prior notice to the Lessor, contest by appropriate legal proceedings conducted in good faith and with due diligence any Legal Requirement and postpone compliance therewith pending the completion of such contest; provided that, such postponement does not, in the opinion of Independent Counsel selected by the Lessor, subject the Project, or any part thereof, to loss or forfeiture.

Section 4.2 Maintenance and Use of Project.

(a) The Lessee, at its expense, will keep or cause to be kept the Project in good order and condition (ordinary wear and tear excepted) and will make all necessary or appropriate repairs, replacements and renewals thereof, interior, exterior, structural and non-structural, ordinary and extraordinary and foreseen and unforeseen.

(b) The Lessee will not do, or permit to be done, any act or thing that might materially impair the value or usefulness of the Project or any part thereof, will not commit or permit any material waste of the Project or any part thereof, and will not permit any unlawful occupation, business or trade to be conducted on the Project or any part thereof.

(c) The Lessee shall also, at its expense, promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and

appurtenances forming a part of the Project and all instruments creating or evidencing the same, in each case, to the extent compliance therewith is required of the Lessee under the terms thereof.

(d) The Lessee shall remove regularly all trash, litter and debris from the Project Site at the Lessee's expense and shall maintain the Project in a neat and safe manner.

(e) The Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin in connection with the Project.

Section 4.3 Alterations, Additions and Improvements. The Lessee may, in its discretion and at its expense, make such additions, modifications or improvements to the Project from time to time as it may deem desirable for its business purposes; provided that, no such addition, modification or improvement shall adversely affect the structural integrity or strength of any improvements constituting a part of the Project Facilities or shall, in the reasonable judgment of the Lessee, materially interfere with the use and operation thereof for the Project Purposes. All additions, modifications and improvements so made by the Lessee shall become and be deemed to constitute a part of the Project (except as otherwise provided in Section 7.1 hereof), subject to any contrary provisions of any sublease with respect to tenant improvements and subject to the Lessee's right to further modify such additions, modification and improvements.

Section 4.4 Substitutions and Removals. In any instance in which the Lessee, in its reasonable discretion, determines that any item of property constituting a part of the Project Facilities shall have become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary or should otherwise be replaced, the Lessee may remove such items; provided that, unless the Lessee determines, in its reasonable discretion, that such items were unnecessary, the Lessee shall substitute therefor, items of similar character or significance.

Section 4.5 Indemnification. In order to induce the Lessor to undertake the duties, obligations, responsibilities and risks described herein, the Lessee releases the Lessor from, agrees that the Lessor shall not be liable for, and indemnifies the Lessor against, all liabilities, losses, fines, penalties, obligations, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial decision or order) (collectively, "Losses") imposed upon, asserted against or incurred by the Lessor, without willful misconduct or breach of any applicable agreement on the part of the Lessor, on account of:

- (a) ownership of any interest (including but not limited to easements) in the Project;
- (b) any loss or damage to property or any accident or injury to or disease, sickness or death of or loss by any Person that may be occasioned by any cause whatsoever pertaining to activities pursuant to this Lease or the maintenance, operation or use of the Project or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, or streets, alleys or ways;
- (c) any use, disuse or condition of the Project or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, or streets, alleys or ways, or arising from any act or failure to act by the Lessee, or any of its agents, contractors, servants, employees, sublessees or licensees;
- (d) any action taken or omitted to be taken by the Lessor in compliance with the terms of this Lease or any other Lessor Document or related instrument, or any action taken at the written request of or with the written consent of the Lessee;

(e) any liability which may arise from a sales or use tax finding or audit with respect to the sales and use tax exemption claimed for construction and building materials purchase for the Project; and

(f) any claim, action or proceeding brought with respect to the matters set forth in (a), (b), (c), (d), or (e) above;

provided that, the Losses covered by the foregoing indemnification shall not include expenses or costs incurred by the Lessor in performing activities contemplated to be performed by such party in the ordinary course of effecting the transactions contemplated by the agreements to which it is a party; *provided further, however*, that the foregoing proviso shall not limit any claim the Lessor otherwise may have hereunder as a consequence of the event or circumstance resulting in any such deficiency or diminution. In addition to and not in limitation of the immediately preceding sentence, the Lessee agrees to indemnify and hold the Lessor, as applicable, harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against, the Lessor, as applicable, for following any instructions or other directions upon which the Lessor is authorized to rely pursuant to the terms of the agreements to which it is a party.

In case any action or proceeding is brought against the Lessor in respect of which indemnity may be sought hereunder, the Lessor promptly shall give written notice of that action or proceeding to the Lessee, and the Lessee shall have the obligation and the right, upon receipt of that notice, to assume the defense of the action or proceeding with legal counsel reasonably acceptable to the Lessor; *provided that*, failure of a party to give that notice shall not relieve the Lessee from any of its obligations under this Section, except to the extent that failure prejudices materially the defense of the action or proceeding by the Lessee or otherwise results in a material increase in the amount to be indemnified. If the Lessee shall fail to actively and diligently pursue such defense or the Lessor has claims or defenses inconsistent with those of the Lessee, the Lessor affected shall have the right to engage separate legal counsel as may be necessary and to participate in the defense of any such matter at the reasonable cost and expense of the Lessee. The Lessor may employ separate legal counsel at its own expense and participate in the defense. The Lessee shall not be liable for any settlement made without its consent (which consent shall not be unreasonably withheld), so long as the Lessee is actively and diligently pursuing such defense and an Event of Default is not continuing hereunder.

The indemnifications set forth herein and in Section 4.5 are intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Lessor. Those indemnifications are intended to and shall be enforceable to the full extent permitted by law and shall survive the termination or expiration of this Lease.

Section 4.6 Environmental Matters.

(a) Throughout the Lease Term, the Lessee or its employees, contractors or agents shall:

(i) not place or permit to be placed any Hazardous Substances at the Project except to the extent not prohibited by applicable law;

(ii) forthwith upon receipt by the Lessee of written notice of the occurrence of any violation of any Environmental Law in connection with the ownership, occupancy or use of the Project, or the receipt by the Lessee of any citation, notice of investigation, fine or other assessment in connection therewith, report or other communication from any Governmental Authority with respect to any violation or alleged violation of any Environmental Law in connection with the ownership, occupancy or use of the Project,

deliver written notice thereof to the Lessor describing the same and any steps being taken by the Lessee with respect thereto.

(iii) in the event that it obtains, gives or receives written notice of any Hazardous Discharge or receives an Environmental Complaint, then the Lessee shall, within seven Business Days, give written notice of same to the Lessor detailing facts and circumstances of which the Lessee is aware giving rise to the Hazardous Discharge or Environmental Complaint, and copies of all documents and reports concerning a Hazardous Discharge at the Project that the Lessee is required to file with any Governmental Authority under any Environmental Law.

(iv) respond in a timely manner to any Hazardous Discharge or Environmental Complaint and take all necessary action (as reasonably determined by the Lessee) in order to safeguard the health of any Person and, subject to its rights under Sections 5.1 and 5.2 of this Lease, to avoid subjecting the Project to any lien. If the Lessee shall fail to respond in a timely manner to any Hazardous Discharge or Environmental Complaint or the Lessee shall fail to comply in any material respect with any of the requirements of any Environmental Laws, the Lessor may, but without the obligation to do so, for the sole purpose of protecting the interest of the Lessor in the Project, following reasonable (in no event fewer than 30 days) prior written notice to the Lessee: (A) give such notices or (B) enter onto the Project (or authorize third parties to enter onto the Project) and take such actions as the Lessor (or such third parties as directed by the Lessor) deems reasonably necessary or advisable, to clean up, remove, mitigate or otherwise deal with any such Hazardous Discharge or Environmental Complaint, with the costs of such actions undertaken by the Lessor being reimbursable, on demand, as Additional Payments hereunder.

(v) to the full extent permitted by law, defend and indemnify the Lessor and hold the Lessor harmless, from and against any and all claims, actions, proceedings, losses, liabilities, obligations, damages, expenses, costs, civil and criminal fines and penalties, including reasonable attorney's fees and expenses, threatened, suffered or incurred by the Lessor under, in connection with or on account of (A) any threatened, alleged or actual violation of Environmental Laws relating to the Project (including, without limitation, the assertion of any lien thereunder), (B) any Hazardous Discharge affecting the Project Site, (C) any Hazardous Substances or other materials hazardous to Persons or property affecting the Project, whether or not the same originates or emerges from the Project or any contiguous real estate, regardless of whether the same arise out of the release by the Lessee of such substances or materials; provided that, this indemnification shall not be applicable to the extent, if any, that such loss, liability, damage or expense is attributable to any Hazardous Discharge resulting from gross negligence, criminal proceeding or intentional misconduct of the Lessor seeking indemnification. The Lessee shall be obligated to indemnify the Lessor under the terms and conditions of this Section, regardless of whether any federal, state, or local environmental agency has taken or threatened any action in connection therewith.

Section 4.7 Encumbrances. So long as there is not a continuing Event of Default hereunder, no party shall, at any time, or from time to time, encumber its interest in the Project Site by mortgage or other security instrument, by way of assignment or otherwise, without the express written consent of the other party.

ARTICLE V

GOVERNMENTAL CHARGES; LIENS; INSURANCE

Section 5.1 Taxes, Other Governmental Charges and Utility Charges. The Lessee shall pay, as the same respectively become due and payable, all taxes, payments in lieu of taxes, assessments, whether general or special, and any other governmental charges of any kind whatsoever that may at any time during the Lease Term be lawfully assessed or levied against or with respect to the Project and which, if not paid, may become or be made a lien on the Project, and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project.

The Lessee may, at its expense, in good faith contest any taxes, assessments and other charges, and, in the event of any such contest, during the period of such contest and any appeal therefrom, may permit the taxes, assessments or other charges so contested to remain unpaid unless the Lessor shall notify the Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the Project or any part thereof will be materially and adversely affected, or will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid or provision for payment by deposit or bonding shall be made promptly by the Lessee.

Section 5.2 Mechanics' and Other Liens. The Lessee shall not suffer or permit any mechanics' or other similar liens to be filed or exist against the interest of the Lessor or the Lessee in the Project, whether by reason of work, labor, services or materials supplied or claimed to have been supplied to, for, or in connection with the Project or to the Lessee or anyone holding the Project or any part thereof through or under the Lessee; provided that, the filing of any such lien shall not constitute a default hereunder if (a) the Lessee shall, within 90 days after it has notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; or (b) such lien is in an amount not in excess of \$50,000 and the Lessee is contesting the validity or amount of the lien by appropriate proceedings timely instituted. The Lessor shall cooperate fully with the Lessee, but at the Lessee's expense, in any such contest. If the Lessee shall fail to cause such lien to be discharged, or to contest the validity or amount thereof, within such period, then, in addition to any other right or remedy, the Lessor may, but shall not be obligated to, discharge the same by deposit or by bonding and any amounts so advanced, or the cost of obtaining any such bond, shall be reimbursed by the Lessee promptly upon demand as Additional Payments hereunder.

Section 5.3 Insurance. The Lessee shall keep the Project Facilities continuously insured in the amount and with the coverage of the Required Property Insurance Coverage and shall keep and maintain, with respect to the Project, Required Public Liability Insurance Coverage. Such insurance shall name the Lessor as a loss payee or an additional insured and shall be obtained and maintained by means of policies with generally recognized, responsible insurance companies qualified to do business in the State. The insurance to be provided may be by blanket policies. Each policy of insurance shall be written so as not to be subject to cancellation or substantial modification without 30 days' prior written notice to the Lessor. The Lessee shall deposit with the Lessor certificates or other evidence satisfactory to the Lessor that the insurance required hereby has been obtained and is in full force and effect and, prior to the expiration of any such insurance, the Lessee shall furnish the Lessor with evidence satisfactory to the Lessor that such insurance has been renewed or replaced.

All policies providing the Required Property Insurance Coverage shall contain a clause requiring all proceeds resulting from any claim for loss or damage in excess of \$500,000 to be paid to the Disbursing Agent and any Net Proceeds of insurance providing such coverage shall be paid and applied as provided in Section 6.1. The proceeds of Required Public Liability Insurance Coverage shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

Section 5.4 Workers' Compensation Coverage. The Lessee shall maintain, or cause to be maintained in connection with the Project, the workers' compensation coverage required of it by the applicable laws of the State.

Section 5.5 Payment by Lessor. If the Lessee fails to (i) pay taxes, payments in lieu of taxes, assessments and other governmental or utility charges as required by Section 5.1, (ii) pay or discharge mechanics' or other liens as required by Section 5.2, (iii) maintain and keep in force the insurance required by Section 5.3 or (iv) maintain required workers' compensation coverage as required by Section 5.4, the Lessor may (but shall not be obligated to) advance funds to pay any such required charges or items after 10 days' prior written notice to the Lessee. Any funds so advanced as set forth in this Section 5.5 are hereby included as Additional Payments and shall be due on demand.

Section 5.6 Mutual Waiver of Subrogation. Neither Lessor nor Lessee shall be liable for any damage to the property of the other caused by fire or other peril (a) covered by insurance maintained by the other party or (b) usually covered by a standard policy of fire and extended coverage insurance, with vandalism and malicious mischief endorsements, and each party releases the other from all liability for such damage including any subrogation claims of any insurer. This provision shall apply regardless of the negligence of the other party and shall not be limited to the amount of insurance coverage.

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1 Damage to or Destruction of Project. If during the Lease Term, in case of any damage to or destruction of the Project Facilities or any part thereof, the Lessee shall promptly give or cause to be given written notice thereof to the Lessor describing generally the nature and extent of such damage or destruction. The Lessee shall, to the extent that the Net Proceeds of insurance, if any, received on account of such damage or destruction are sufficient for such purpose, promptly commence and complete, or cause to be commenced and completed, repair or restoration of the Project Facilities as nearly as practicable to the value, condition and character thereof existing immediately prior to such damage or destruction, with such changes or alterations, however, as the Lessee may deem desirable or appropriate for proper operation of the Project.

Section 6.2 Eminent Domain. If during the Lease Term, title to or the temporary use of the Project, or any part thereof, shall be taken under the exercise of the power of eminent domain by any Governmental Authority or by any Person acting under governmental authority, the Lessee shall promptly give or cause to be given written notice thereof to the Lessor describing the nature and extent of such taking. Any Net Proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the Lessee for the following purposes:

- (a) The restoration of the Project to substantially the same condition as existing prior to the exercise of the power of eminent domain with such changes or alterations, however, as the Lessee may deem appropriate for the proper operation of the Project and is reasonably acceptable to the Lessor;
- (b) The acquisition, by construction or otherwise, by the Lessor of other improvements reasonably acceptable to the Lessor and suitable for the Lessee's operations on the Project Site (which improvements shall be deemed a part of the Project); or
- (c) The distribution to the Lessor.

ARTICLE VII

FURTHER REPRESENTATIONS AND AGREEMENTS RESPECTING THE PROJECT

Section 7.1 Installation and Removal of Personal Property Not Part of Project. The Lessee may from time to time, in its discretion and at its expense, install personal property and trade fixtures, in addition to the Project Facilities, in or upon the Project. All such items so installed shall remain the sole property of the Lessee and shall not be deemed part of the Project for purposes of this Lease. The Lessee may, at any time while it is not in default under this Lease, remove from the Project any property installed pursuant this Section; provided that, such removal will not impair the character or significance of the Project as furthering the Project Purposes; and, provided further that, if any such removal causes damage to any portion of the Project, the Lessee shall restore the same or repair such damage at its expense.

Section 7.2 Documents to be Provided. From time to time, the Lessor shall execute and deliver such documents as the Lessee may properly request to evidence that particular items of personal property or fixtures installed on or removed from the Project pursuant to Section 7.1 are not part of the Project for purposes of this Lease. From time to time, upon the reasonable request of the Lessor (but not more frequently than once each calendar year), the Lessee shall report to the Lessor on alterations, additions and improvements made pursuant to Section 4.3, removals and any substitutions pursuant to Section 4.4, and installation and removal of personal property and fixtures installed or removed pursuant to Section 7.1.

Section 7.3 Right of Access. The Lessee agrees that, subject to reasonable security and safety regulations and to the rights of sublessees and without unreasonable interference with Lessee's operations, the Lessor and their respective authorized agents, shall have the right at all reasonable times, upon not less than two business days' prior written notice to the Lessee, to enter upon the Project for purposes of inspection. The Lessee further agrees that the Lessor and their respective authorized agents shall be provided such access to the Project Site and the Project Facilities as may be reasonably necessary to cause to be completed the Project Facilities and thereafter for the proper maintenance of the Project in the event of failure by the Lessee to perform its obligations hereunder; provided, however, that, neither the Lessor shall perform any such maintenance unless the Lessee has failed to perform the required maintenance within 30 days after the Lessor has given the Lessee written notice of the Lessee's failure (or, if such maintenance cannot reasonably be completed within 30 days, unless the Lessee has failed to commence performance of the required maintenance within such 30-day period or thereafter fails to diligently complete the required maintenance).

Section 7.4 Lessee to Maintain its Existence; Conditions Under Which Exceptions Permitted. The Lessee agrees that during the Lease Term it will maintain its existence as a legal entity, will not dissolve or otherwise dispose of all or any substantial portion of its assets, will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it and will not distribute all or any substantial portion of its assets, in the form of dividends or otherwise, to any shareholder or member; provided that, the Lessee may, without violating the agreement contained in this Section, consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or a substantial portion of its assets as an entirety and thereafter dissolve, or distribute all or a substantial portion of its assets to a shareholder or member with the consent of the Lessor, which such consent shall not be unreasonably withheld.

If consolidation, merger or sale or other transfer is made as provided in this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section.

Section 7.5 Title to Project Site. Written evidence as to the status of title to the Project Site as of the Leasing Date shall be made available to the Lessee and the Lessor. The Lessor shall provide the Lessee a written and/or recorded instrument adequately evidencing Fee Title in the Project Site. Whether such instrument adequately evidences Fee Title shall be determined in the reasonable discretion of the Lessee.

Section 7.6 No Warranty of Condition or Suitability. The Lessor does not make any warranty, either express or implied, as to the suitability or utilization of the Project, or as to the condition of the Project or that it is or will be suitable for the Lessee's purposes or needs.

Section 7.7 Litigation Notice. Each party shall give the other prompt notice of any action, suit or proceeding by or against that party, at law or in equity, or before any governmental instrumentality or agency, or of any of the same which may be threatened, which, if adversely determined, would materially impair the right of that party to carry on the business which is contemplated in connection with the Project, or would materially and adversely affect its business, operations, properties, assets or condition.

ARTICLE VIII

LESSEE'S PURCHASE OPTION

Section 8.1 Purchase Option. The Lessor hereby grants to the Lessee a Purchase Option in the Project. Upon the Lessee's notification to the Lessor of its desire to exercise such Purchase Option on the Purchase Option Date, and subject to the Lessee's payment to the Lessor of the amount of the Purchase Option Payment, and any other amounts payable by the Lessee in connection with this Lease, the Lessor shall transfer and convey the Project to the Lessee (or the Lessee's designee) by such quit-claim deed and by such other bills of sale, instruments and other documents as are reasonably necessary and appropriate to transfer and convey the Project, including all of its interest in that portion of the Project constituting real estate, to the Lessee (or the Lessee's designee), subject only to:

- (a) liens, encumbrances and covenants running with the land to which title to the Project was subject at the commencement of the Lease Term;
- (b) liens and other encumbrances created by the Lessee or to or in the creation or suffering of which the Lessee consented or acquiesced or in the creation of which it participated;
- (c) liens and other encumbrances for taxes, payments in lieu of taxes, governmental charges or special assessments not then delinquent; and
- (d) liens and other encumbrances resulting from the failure of the Lessee to observe or perform any of its covenants, agreements or obligations under this Lease.

In the event that the Lessee exercises the Purchase Option specified in this Section 8.1, all amounts required to be paid shall be paid to the Lessor in cash or immediately available funds, unless otherwise mutually agreed, at a closing to occur not later than 30 days after the Purchase Option Date. As of the effective date of such closing, the Lessor shall have no further interest in the project.

Section 8.2 Put Option. The Lessee hereby grants to the Lessor a Put Option in the Project in accordance with this Section 8.2. The Lessor must notify the Lessee in writing of its intent to exercise the Put Option on the Put Option Date. Upon such notification, and subject to the Lessee's payment of the Put Option Payment, and any other amounts payable by the Lessee in connection with this Lease, the

Lessor shall transfer convey the Project to the Lessee (or the Lessee's designee) by such quit-claim deed and by such other bills of sale, instruments and other documents as are reasonably necessary and appropriate to transfer and convey the Project, including all of its interest in that portion of the Project constituting real estate, to the Lessee (or the Lessee's designee), subject only to:

- (a) liens, encumbrances and covenants running with the land to which title to the Project was subject at the commencement of the Lease Term;
- (b) liens and other encumbrances created by the Lessee or to or in the creation or suffering of which the Lessee consented or acquiesced or in the creation of which it participated;
- (c) liens and other encumbrances for taxes, payments in lieu of taxes, governmental charges or special assessments not then delinquent; and
- (d) liens and other encumbrances resulting from the failure of the Lessee to observe or perform any of its covenants, agreements or obligations under this Lease.

In the event that the Lessor exercises the Put Option specified in this Section 8.2, all amounts required to be paid shall be paid to the Lessor in cash or immediately available funds, unless otherwise mutually agreed, at a closing to occur not later than 30 days after the Put Option Date. As of the effective date of such closing, the Lessor shall have no further interest in the Project.

Section 8.3 No Further Action of Legislative Authority. Provided that the Lessor shall receive an amount in consideration of its transfer of the Project that is equal to or greater than the Purchase Option Payment and/or Put Option Payment, as applicable, and subject to Sections 8.1 and 8.2, respectively, no further action of the Legislative Authority shall be required to authorize or to effect the conveyances contemplated in Sections 8.1 or 8.2, and upon the payment by Lessee of all amounts payable to Lessor in connection therewith and upon satisfaction of all other requirements therefor, the Executive, either alone or together with any other officer or officers deemed by the Executive to be appropriate, is authorized and directed hereby to execute and deliver any instruments and documents necessary or advisable to effect the conveyance.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.1 Events of Default. Each of the following shall be an "Event of Default":

- (a) The Lessee shall fail to pay the Rental Payment on or prior to the Rental Payment Date.
- (b) The Lessee shall fail to make any other payment (other than the Rental Payment) required to be made under this Lease, which failure shall continue for a period of 30 days after written notice (unless the party to which the payment is due shall agree in writing to an extension of such time prior to its expiration) specifying such failure and requesting that it be remedied, given by the Lessor to the Lessee.
- (c) The Lessee shall fail to observe and perform any of its other covenants, conditions or agreements contained herein for a period of 60 days after written notice (unless the party to or for the benefit of which the adherence and performance is due shall agree in writing to an extension of such time prior to its expiration) specifying such failure and requesting that it be

remedied, given by the Lessor (or the party to or for the benefit of which such covenant, condition or agreement runs) to the Lessee, or in the case of any such default that can be cured with due diligence but not within such 60-day period, the Lessee shall fail to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence.

(d) Any representation or warranty by the Lessee under this Lease is intentionally false or misleading in any material respect.

(e) The Lessee shall: (A)(i) admit in writing its inability to pay its debts generally as they become due; or (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; or (iii) make an assignment for the benefit of creditors; or (iv) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property; (B) file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States or any state thereof; (C) in the event of a petition in bankruptcy filed against it, be adjudicated a bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Lessee, a receiver or trustee for the Lessee or for the whole or substantially all of its property, or approving a petition filed against it seeking reorganization or arrangement of the Lessee under the Federal bankruptcy laws or any other applicable law or statute of the United States or any state thereof and such adjudication, order or decree shall not be vacated or set aside or stayed within 90 days from the date of the entry thereof.

(f) The Lessee shall fail, within 90 days after the commencement of any proceeding against the Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to have such proceeding dismissed, or, within 90 days after the appointment without the consent or acquiescence of the Lessee, of any trustee, receiver or liquidator of the Lessee or any material part of its properties, to have such appointment vacated, or the Lessee shall be adjudicated as a bankrupt or insolvent.

The foregoing provisions of subparagraph (c) of this Section are subject to the following limitations: if by reason of Force Majeure the Lessee is unable in whole or in part to perform or observe its agreements under this Lease other than its obligation to make payments required hereunder, the Lessee shall not be deemed in default during the continuance of such inability, including a reasonable time for the removal of the effect thereof.

Section 9.2 Remedies on Default. Whenever an Event of Default shall have happened and remains uncured, any one or more of the following remedial steps may be taken:

(a) The Lessor may declare any and all payments other amounts payable hereunder to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) The Lessor may re-enter and take possession of the Project without terminating this Lease and sublease the Project for the account of the Lessee, holding the Lessee liable for any difference between the Rental Payment and other amounts payable by such sublessee in such subleasing and the aggregate of amounts payable by the Lessee hereunder;

(c) The Lessor may terminate this Lease, exclude the Lessee from possession of the Project and lease the Project to another, but holding the Lessee liable for the Rental Payment and

Additional Payments and other amounts payable hereunder up to the effective date of such subleasing;

(d) The Lessor may have access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Lessee, insofar as they pertain to the Project; and

(e) The Lessor may take whatever action at law or in equity may appear necessary or desirable to collect the Rental Payment and Additional Payments and other amounts then due and thereafter to become due, or to enforce performance and observance of any other obligation or agreement of the Lessee, under this Lease including, without limitation, actions to recover any amounts owed hereunder, ancillary damages suffered, and for specific performance or injunctive relief.

Section 9.3 No Remedy Exclusive. No remedy conferred or reserved by this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

Section 9.4 Lessee to Pay Attorneys' Fees and Expenses. If an Event of Default should occur and the Lessor should employ attorneys or incur other expenses for the enforcement of any obligation or agreement of the Lessee contained herein, the Lessee shall, on demand therefor and to the extent permitted by law, reimburse the reasonable fees of such attorneys and such other expenses so incurred.

Section 9.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease 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.

ARTICLE X

ASSIGNMENT, SUBLEASING AND RELEASE OF PORTIONS OF PROJECT

Section 10.1 Assignment by the Lessee. This Lease may not be assigned by the Lessee in whole or in part except upon the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

Section 10.2 Assignment by the Lessor. With the prior written consent of the Lessee, which consent shall be within the Lessee's sole discretion, but shall not be withheld in a manifestly unreasonable manner, in accordance with applicable law, the Lessor may grant an assignment of its right, title and interest in, to and under this Lease, and may mortgage or grant a security interest in the Project Facilities as security for payment of any obligations of the Lessor that may be issued to finance costs of the Project.

Section 10.3 Restrictions on Transfer and Encumbrance of Project by the Lessor. The Lessor agrees that it will not sell, assign, transfer, convey or otherwise dispose of the Project or any portion thereof or of its interest therein during the Lease Term, nor will it create or suffer to be created any debt,

lien or charge thereon (except the lien or charge for taxes, governmental charges or special assessments) or make any pledge or assignment of or create any lien or encumbrance upon the rents, revenues and receipts derived from the sale, lease or other use or disposition of the Project other than as permitted in Section 10.2 hereof, except with the prior written consent of the Lessee which consent shall be within the Lessee's sole discretion. Any assignment, transfer or conveyance of all or any portion of the Lessor's interest in the Project (i) shall be subject to all of the provisions of this Lease, including but not limited to the rights of the Lessee to terminate this Lease and require conveyance of the Project, and (ii) shall not survive, and shall be automatically extinguished upon, conveyance of the Project to the Lessee (or the Lessee's designee).

Section 10.4 Release of Portion of Project. The parties hereto reserve the right, at any time and from time to time, to amend this Lease to effect the release of and removal from this Lease and the leasehold estate created hereby of any part of or interest in the Project and the conveyance of such part or interest to a grantee designated by the Lessee and approved by the Lessor. The Lessor, at the Lessee's expense, shall execute and deliver such documents as the Lessee may properly request in order to effect any release pursuant to this Section. Any release pursuant to this Section may be made for the purpose of conveying the part or interests released to the Lessee.

Except as otherwise expressly provided herein, no release or conveyance effected under any of the provisions of this Lease shall entitle the Lessee to any abatement or diminution of the Rental Payment or any Additional Payments payable hereunder. Lessor acknowledges that it is anticipated that Lessee will exercise the right to amend the Lease to effect the release of and removal from this Lease and the leasehold created hereby of portions of the Project from time to time and Lessor shall use good faith efforts to effect each such amendment as soon as commercially practicable after the exercise of such right by Lessee.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Quiet Enjoyment. The Lessor covenants with the Lessee that, so long as no Event of Default exists, the Lessee shall and may, subject to the "Permitted Exceptions" set forth in Exhibit B, peaceably and quietly have, hold and enjoy the Project without let or hindrance from any person whomsoever.

Section 11.2 Notices. All notices, certificates, requests or other communications hereunder shall be deemed to be sufficiently given on the next Business Day when mailed by overnight courier, or when personally delivered, or three (3) Business Days after deposit in the U.S. registered or certified mail, postage prepaid, addressed to the appropriate Notice Address, in each case with all delivery charges and postage prepaid. The Lessee and the Lessor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 11.3 Binding Effect; Third Party Beneficiaries. This Lease shall be binding in accordance with its terms upon the Lessor and the Lessee, and shall inure to the benefit of the Lessor and the Lessee and their respective successors and assigns. Subject to the express provision for the survival of certain provisions hereof and the rights and obligation created thereby, all rights and obligations of the Lessor and the Lessee, and any of their respective successor and assigns, under this Lease shall terminate upon the Lease Termination Date.

Section 11.4 Amendments, Changes and Modifications. This Lease may be amended, changed, modified or altered by a written instrument executed by both the Lessee and the Lessor.

Section 11.5 Execution Counterparts. This Lease may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Lease to produce or account for more than one of those counterparts. Signatures transmitted by facsimile or electronic means are deemed to be original signatures.

Section 11.6 Severability. If any provision of this Lease, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act, or action, or part shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 11.7 Extent of Covenants of the Lessor; No Personal Liability. All covenants, stipulations, obligations and agreements of the Lessor contained in this Lease shall be effective to the extent authorized and permitted by applicable law. No such covenant, stipulation, obligation or agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Lessor in other than his official capacity, and neither the members of the Legislative Authority nor any other officer of the Lessor nor any official executing this Lease shall be liable personally on this Lease or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, stipulations, obligations or agreements of the Lessor contained in this Lease or in any other document.

Section 11.8 Captions. The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 11.9 Governing Law. This Lease shall be governed exclusively by and construed in accordance with the laws of the State of Ohio.

Section 11.10 Relationship of the Parties; No Joint Venture. Nothing contained in this Lease shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rental Payments or Additional Payments nor any other provision contained in this Lease, nor any acts of the parties to this Lease, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Any intention to create a joint venture or partnership relationship between the Lessor and the Lessee is hereby expressly disclaimed.

Section 11.11 No Accord and Satisfaction. The acceptance by the Lessor of any sums from the Lessee in amounts which are less than the amounts due and payable by the Lessee hereunder is not intended, nor shall any such acceptance be construed, to constitute an accord and satisfaction of any dispute between the Lessor and the Lessee regarding amounts due and payable by the Lessee hereunder, unless the Lessor specifically declares it as such in writing.

Section 11.12 Survival. The obligations of the Lessee to be performed under this Lease at or prior to the Lease Termination Date, and the obligation of the Lessor to transfer and convey the Project pursuant to Section 8.1, and the obligations of the Lessee to pay or reimburse the Lessor for expenses or costs or for indemnification, shall survive the expiration or termination of this Lease. The extension of any applicable statute of limitations by any party shall not affect such survival.

Section 11.13 Time of Essence. Time is of the essence of this Lease.

Section 11.14 Recordation of Lease. Upon the Leasing Date, the parties shall execute a memorandum of this Lease in accordance with Revised Code Section 5301.251, which shall include such provisions of this Lease as the Lessor or the Lessee desire to include, and which shall be recorded at the Lessee's expense. Upon termination of this Lease in accordance with its terms, the parties agree to execute and deliver such documents as may be reasonably required to release and terminate such memorandum of this Lease of record.

Section 11.15 Project Sign. Lessee shall permit Lessor to erect a sign on the Project Site, at Lessor's cost, acknowledging the Lessor's role in the Project, provided that the location thereof shall be agreed upon mutually by the Lessor and the Lessee.

Signature Page Follows

IN WITNESS WHEREOF, the Lessor and the Lessee caused this Lease to be duly executed in their respective names, all as of the date hereinbefore written.

LORAIN PORT AUTHORITY

By: _____
Rick Novak, Executive Director

301 BROADWAY PARTNERS, LLC

By: [_____]
its Manager

By: _____
Name:
Its:

The undersigned hereby guarantees performance by the Lessee of its obligations under this Lease:

James Louthen

STATE OF OHIO)
) SS:
COUNTY OF _____)

On [____], 2016, Rick Novak, Executive Director of the Lorain Port Authority, acknowledged before me his execution of the foregoing instrument for and in the name and on behalf of the Lorain Port Authority.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

NOTARY PUBLIC

STATE OF OHIO)
) SS:
COUNTY OF _____)

On [____], 2016, _____, the _____ of 301 Broadway Partners, LLC acknowledged before me that he signed the foregoing instrument for and in the name and on behalf of that corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

NOTARY PUBLIC

This instrument was prepared by:

Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215

CERTIFICATE

The undersigned, Secretary-Treasurer and Fiscal Officer of the Lessor under the foregoing Lease, hereby certifies that the moneys, if any, required to meet the obligations of the Lessor during the year 2016 under the aforesaid Lease have been lawfully appropriated by the Board of Directors of the Lessor for such purposes and are in the treasury of the Lessor or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. The obligations of the Lessor under the Lease are limited as provided in the recitals thereto and Section 12.8 thereof. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: [____], 2016

Secretary-Treasurer and Fiscal Officer
Lorain Port Authority

EXHIBIT A

Project Site Legal Description

[To be inserted from Title Instrument/Policy]

EXHIBIT B

Permitted Exceptions

[To be inserted from Title Instrument/Policy]

MEMORANDUM OF LEASE

This Memorandum of Lease dated as of [____], 2016 is made by and between the LORAIN PORT AUTHORITY, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “Lessor”), as Lessor, and 301 Broadway Partners, LLC, a limited liability company organized and existing under the laws of the State of [____] (the “Lessee”), as Lessee, under the following circumstances:

Lessor and Lessee have entered into a Lease dated as of [____], 2016 (the “Lease”), Lessor and Lessee desire to enter into this Memorandum of Lease to be recorded in the Office of the Recorder of Lorain County, Ohio in accordance with, Section 5301.251, Ohio Revised Code. The premises (the “Project Site”) which is the subject of the Lease is described in Exhibit A attached hereto. Lessor acquired title by way of [____] evidenced by a [____] recorded as Instrument No. _____, with the Lorain County, Ohio, Recorder’s Office.

- (a) The name and address of the Lessor as set forth in the Lease are:

Lorain Port Authority
319 Black River Lane
Lorain, OH 44052
Attn: General Counsel

- (b) The name and address of the Lessee as set forth in the Lease are:

301 Broadway Partners, LLC
[_____]

(c) The term of the Lease commences on the date of its execution and delivery and is scheduled to expire on [____], 2016, or such earlier date on which the Lease is terminated pursuant the Lease or extended according to its terms.

(d) Pursuant to the terms of the Lease, Lessor has granted to Lessee general, non-exclusive easements for access, structural support and utilities now or hereafter necessary for construction and enjoyment of the Project Facilities (as defined in the Lease).

(e) A complete copy of the Lease is on file at the office of the Lessor and at the office of Lessee as specified in Sections (a) and (b), respectively, above; to the extent, if any, required by law, the terms, conditions, provisions and covenants of the Lease are incorporated in

this Memorandum as though set forth in full herein. Nothing contained herein shall be construed to be a modification of or amendment to any of the terms and conditions of the Lease.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Memorandum to be duly executed in their respective names, all as of the date set forth above.

Lessor:

LORAIN PORT AUTHORITY

By: _____

Name: Rick Novak

Title: Executive Director

Lessee:

301 BROADWAY PARTNERS, LLC

By: [_____]

its Manager

By: _____

Name:

Its:

Date _____

STATE OF OHIO)
) SS:
COUNTY OF LORAIN)

On [____], 2016, Rick Novak, Executive Director of the Lorain Port Authority, acknowledged before me his execution of the foregoing instrument for and in the name and on behalf of the Finance Authority.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

NOTARY PUBLIC

STATE OF _____)
) SS:
COUNTY OF _____)

On [____], 2016, _____, an authorized officer of 301 Broadway Partners, LLC acknowledged before me that he signed the foregoing instrument for and in the name and on behalf of that partnership.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

NOTARY PUBLIC

This instrument was prepared by:
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215

EXHIBIT A

Project Site Legal Description

[Insert from Title Instrument/Policy]