



**Empire State
Development**



**Department of
Transportation**

REQUEST FOR EXPRESSIONS OF INTEREST



HARLEM RIVER YARDS BRONX, NY

RFEI RELEASE DATE: November 18, 2016
SITE TOUR DATE: December 14, 2016
DEADLINE TO SUBMIT QUESTIONS: December 19, 2016 at 5:00 PM
DEADLINE TO SUBMIT PROPOSALS: February 2, 2017 at 2:00 PM

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I. INTRODUCTION

New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”) on behalf of New York State Department of Transportation (“NYSDOT”), is releasing this Request for Expressions of Interest (“RFEI”) to determine interest from qualified parties in the sale or long-term lease (a “Disposition”) of the air space and related real estate interests above a limiting plane approximately 30 feet above a portion of the Intermodal Rail Facility at the Harlem River Yards in the South Bronx (the “Site”).

The majority of the Harlem River Yard is owned by NYSDOT and is under a long-term lease to a third party, Harlem River Yard Ventures, Inc. (“HRYV”). The property leased from NYSDOT to HRYV consists of approximately 96 acres. The total available developable space is approximately 12.8 acres (558,183 square feet) (the “Site”).¹

The goal of this RFEI is to solicit ideas that will advance public policy goals and maximize economic benefits to the State of New York (the “State”) with the least economic and environmental risk to the State, all while preserving the current intermodal footprint.

ESD and NYSDOT will use responses and recommendations generated by this RFEI process to inform a planned RFP process. This process would offer a financeable interest for all or any part of the Site, subject to consent from HRYV. The exact nature of the financeable interest, legal structure with HRYV, as well as the conditions and requirements, is yet to be determined, but would be informed by the responses to this RFEI.

II. RFEI TIMELINE

The following are significant dates under the RFEI Process:

Event	Timeline
RFEI Release Date	November 18, 2016
Site Tour	December 14, 2016
Question Submittal Deadline	December 19, 2016 @ 5PM EST
Question Response Deadline	January 9, 2017
Proposal Due Date	February 2, 2017 @ 2PM EST

¹ Approximately 4.3 acres of the Site is under sublease by HRYV to Waste Management (“WM”). The implementation of any ideas or concepts which include utilizing any of the WM leased area would require reaching an agreement with WM concerning their subleased property.

III. SITE CONTEXT AND DESCRIPTION



About Harlem River Yards

Harlem River Yards is a 96-acre area on the southern waterfront of the Bronx, by the Mott Haven and Port Morris neighborhoods. Originally part of the Penn Central rail system, the yard was sold to NYSDOT in 1982 and is currently primarily used for industrial and manufacturing purposes.

Harlem River Yards is currently under long-term lease from NYSDOT to Harlem River Yard Ventures, Inc. (“HRYV”), part of the Galesi Group. The 96 acre parcel includes a 28-acre intermodal rail facility, a Federal Express Distribution Center, 21st Century Fox America, Inc. (formerly known as News America Incorporated), a printing/distribution facility, a Waste Management solid waste transfer station, and a Fresh Direct distribution center.

The South Bronx, in particular the Mott Haven and Port Morris neighborhoods, has been the subject of numerous improvement and development projects in recent years. In 2016, Silvercup Studios opened a \$35 million film and TV studio in Port Morris, the first in the South Bronx. The Special Harlem River Waterfront District adjacent to the Site brings residential, commercial, and community and park space to a neglected portion of the Harlem River waterfront. Other projects in the immediate area have included renovations of former industrial and warehouse facilities into retail, residential, and office uses.

Description of Site

The Site is located within the Harlem River Yard, bounded by East 132nd Street to the north, the Harlem River to the south, Lincoln Ave to the west, and the Willis Avenue Bridge to the east.

The area is accessible via the Major Deegan Expressway, the Robert F. Kennedy Bridge, the 145th Street Bridge, the Madison Avenue Bridge, the Third Avenue Bridge, and the Willis Avenue Bridge. The Site is served by the No. 6 train line at the Third Avenue–138th Street station, the Nos. 4 and 5 train lines at the 138 St - Grand Concourse station, as well as six bus routes including one express route (BxM1, Bx2, Bx15, Bx21, Bx32, Bx33).



The Site is located near Lincoln Hospital and Hostos Community College, as well as the Bronx Terminal Market shopping complex. The recently opened Randall's Island Connector also provides direct pedestrian and bicycle access to waterfront recreational and green space on Randall's Island.

Intermodal Terminal: The 28-acre Intermodal Terminal is made up of two 30-foot wide linear concrete pads with rail track running between the two pads. The terminal is designed to offload trailers on rail flat cars (TOFC). This mode of transportation combines the efficiency of rail freight service for long distance and truck delivery to local customers. Cargo is loaded into truck trailers in Chicago and points West, which are then placed on rail flat cars for delivery to the terminal. Upon arrival, the trailers are unloaded and placed on the ground where truck tractors then hook them up for local delivery. The non-track area is designated for TOFC truck parking and staging. As depicted to the right, a portion of the Intermodal Terminal is included in the Site.



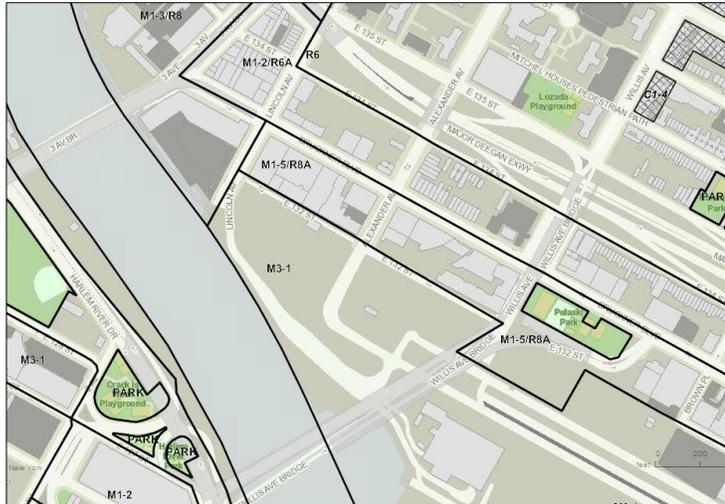
The Site is located within Block 2260, Lot 62. NYSDOT is the fee owner of the Site and long-term ground leases it to HRYV. To the extent that Respondents believe expanding the boundaries of the Site to incorporate adjacent property may achieve the development objectives, Respondents should detail that in their response.

For a copy of the current HRYV lease, please see **Appendix A: Lease with Harlem River Yard Ventures**.

Zoning and Allowable Land Use

Currently, the Site is zoned M3-1, which allows for low-density heavy manufacturing. The Site is subject to an ESD General Project Plan which overrides aspects of the zoning. Please see **Appendix B: ESD General Project Plan** for more detail.

A proposal submitted through this RFEI (“Proposal”) need not assume the current zoning and existing overrides. Respondents are encouraged to propose reuse ideas and concepts that are contextual to the surrounding area and/or reflective of the civic needs of the City of New York and the State while preserving the intermodal use.



Utilities

All utilities (electric, gas, water/sewer, telecommunications) are available off-site and require design of an infrastructure program to bring them onto the Site.

Environmental Conditions

Reflecting its prior use as a rail yard, parts of the site are contaminated, primarily with petroleum, coal and related chemicals. The site was subject to a Phase I and Phase II environmental investigation as described in the FEIS. A remediation plan was developed and accepted by the New York State Department of Environmental Conservation. The general remediation consists of covering areas of surficial contamination with buildings, pavement or clean fill and vegetation to provide a protective barrier. For more detail, please see **Appendix C: Environmental Information**.



No representation or warranty is made or shall be given by ESD, NYSDOT or the State of New York or any other entity as to any environmental condition at, or under the Site, which if offered would be offered as is, where is. The term “environmental condition” as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or Federal law, rule or regulation, solid waste, petroleum and/or petroleum by-products, endangered species of fauna or flora, archeological feature or artifact or any other matter or site condition which may affect the development of the Site.

Ownership and Taxes

The Site is owned by the State of New York acting through NYSDOT, and thus is exempt from current property tax assessments. Respondents should assume a payment in-lieu of taxes (PILOT) equal to full taxes less as-of-right incentives for private uses.

Legal Structure

For the purposes of the RFEI, Respondents should assume that the State would have the ability to sell or lease the air rights above a plane.

IV. DEVELOPMENT OBJECTIVES

Proposals should strive to address the following development objectives (“Development Objectives”):

- Preserve the designated intermodal rail facility footprint at Harlem River Yards, including:
 - Preserving the existing rail track
 - Maintaining 30’ vertical clearance and 15’ horizontal clearance from all tracks
 - Maximizing the clear span over the intermodal terminal
 - Coordinating approvals for development that could affect rail operations;
- Allow for the uninterrupted, continued operation of the Harlem River Yard and its tenants;
- Maximize economic benefit to the State while minimizing the State’s economic and environmental risk
- Enhance the Harlem River Yards as an economic engine for the South Bronx and New York;
- Increase public access to the Harlem River waterfront;
- Increase the availability of high-quality affordable housing in New York;
- Maximize incorporation of green building and sustainable design practices; and
- Feature meaningful participation of Minority Business Enterprises, Women Business Enterprises and Service-Disabled Veteran-Owned-Businesses, per Article 15A of the New York State Executive Law.

V. REQUIRED PROPOSAL CONTENTS

Respondents to this RFEI must submit Proposals which include the following information:

A. Respondent Description

Contact information including name, address, telephone number, and e-mail of the individual who will be authorized to act on behalf of the Respondent as the primary contact and who is available to answer

questions or requests for additional information. Background information on Respondent's organizational structure, including all members of the Respondent and the proposed development team, should include the relevant experience of all principal members.

B. Project Description

The Proposal should include a detailed narrative describing all relevant aspects of the project and any plans/timing of phasing of the development. The description should address:

- The proposed use(s) and improvements on the Site, including a general description of how the project will connect to the existing street grid, preserve the intermodal use and provide access to the waterfront.
- Detailed description of how the development of the Site will preserve the intermodal use.
- Type, bulk and size of each component of the development program (gross and net square footages). If a housing use is proposed, please detail the type of affordable and/or market rate housing.
- Development timeline identifying the estimated length of time to reach key milestones.
- How this project will advance the Development Objectives set forth in this RFEI.
- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.
- A summary of anticipated construction and environmental challenges.
- Estimate of the economic impacts of the proposed project.

C. Financial Information

Respondent must describe the general approach to financing, including an order of magnitude estimate of project cost with a separate line item for the approximate cost to deck over the Site.

D. Zoning Description

Respondent must submit a general description of the proposed zoning for the project. Although ESD may consider the granting of zoning overrides to facilitate a development that satisfies the Development Objectives, ESD does not expect to override any City of New York building, fire, or other related codes beyond necessary at this time.

Proposals should comply with requirements such as but not limited to: (i) the New York State Environmental Quality Review Act and its implementing regulations ("SEQRA"); (ii) the New York State Coastal Zone Management Policies; (iii) New York State Finance Law; and all other applicable laws and regulations. Certain approvals are required prior to any Disposition of the Site, including by NYSDOT, the Office of the State Comptroller ("OSC") and the Attorney General's ("AG") Office.

VI. REVIEW PROCESS

ESD and NYSDOT reserve the right to conduct interviews with or pose questions in writing to Respondents in order to clarify the content of their proposals and to ensure a full and complete understanding of each proposal.

VII. DEVELOPER DUE DILIGENCE

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be disposed of “AS IS” and “WHERE IS” without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent’s purpose.

ESD will post information regarding the RFEI on the ESD website (<http://www.esd.ny.gov/CorporateInformation/RFPs.html>). Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to HarlemRiverYards-RFEI@esd.ny.gov.

Respondents must rely solely on their own independent research and investigations for all matters, including, costs, title, survey, development, financing, construction, and remediation, and shall not rely on the information provided in connection with this RFEI.

VIII. PROPOSAL SUBMISSION INSTRUCTIONS

A. Proposal Submission

Five (5) hard copies and one (1) electronic copy in the form of a flash drive of the Proposal identified by “Harlem River Yards RFEI Response” must be received by ESD by **February 2, 2017 at 2:00 PM** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Edgar Camacho, ESD Procurement Unit
Re: Harlem River Yards RFEI

Please note the following entities and individuals (“Precluded Entities”) are precluded from submitting a response to this RFEI and from participating on any Respondent team, unless otherwise authorized by ESD:

- Any entity that is involved in or may be consulted during the RFEI evaluation process, including, but not limited to: Harlem River Yard Ventures, Inc..
- Any entity that is a parent, affiliate, or subsidiary of any of the foregoing entities, or that is under common ownership, control or management with any of the foregoing entities.
- Any employee or former employee of any of the foregoing entities who was involved with the Site while serving as an employee of such entity.

Notwithstanding the foregoing, if ESD determines in its sole discretion that there is no conflict, then ESD may provide written authorization that such firm, entity or employee may respond to the RFEI or participate on a Respondent team.

Late submissions will not be accepted. NYSDOT and ESD reserve the right, in their sole discretion, to withdraw or modify this RFEI and to reject any proposal as being non-responsive.

B. RFEI Inquiries

ESD will accept written questions via email from prospective Respondents no later than **December 19, 2016 at 5:00 PM**. Please submit questions to: HarlemRiverYards-RFEI@esd.ny.gov

Written questions must include the requestor's name, e-mail address and the Respondent represented. Responses to all timely and appropriate questions will be posted on ESD's website by **January 9, 2017 at 5:00 PM** at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

No contact related to this solicitation with Precluded Entities, ESD Board members, ESD staff or consultants, other than emails to the designated email account for the solicitation at HarlemRiverYards-RFEI@esd.ny.gov (ATTN: Julliard Lin), will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFEI. Any such contact by a Respondent will be grounds for disqualification.

C. Site Visit

An optional site visit is scheduled for **December 14, 2016**. Respondents are not required to attend and must RSVP HarlemRiverYards-RFEI@esd.ny.gov on or before **December 9, 2016** if they wish to participate. When responding, please provide the name of the firm, and the name, title, telephone number and email address of all representatives who are attending. Due to security and logistics reasons, we ask that no more than five people per responding team attend the tour. NYSDOT and ESD reserve the right to limit the number of visitors on such site visit and to require such procedures as necessary to ensure the safety and security of visitors. The tour is anticipated to last approximately one hour.

ESD reserves the right to modify this RFEI schedule at its discretion. Notification of changes in connection with this RFEI will be made available to all interested parties by e-mail and via ESD's website: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

IX. STATEMENT OF LIMITATIONS

The submissions from Respondents to this RFEI, and any relationship between the State and Respondents arising from or connected or related to this RFEI, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFEI.

1. By responding to this RFEI, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFEI, the entity acknowledges and accepts ESD's and NYSDOT's rights as set forth in the RFEI, including this Statement of Limitations.
2. The issuance of this RFEI and the submission of a Response by any firm or the acceptance of such Response by ESD does not obligate ESD or NYSDOT in any manner whatsoever. Legal obligations will

only arise upon execution of a contract by NYSDOT and a firm(s) selected upon approval of the AG and OSC.

3. ESD, on behalf of NYSDOT, reserves the right: (i) to amend, modify, or withdraw this RFEI; (ii) to revise any requirements of this RFEI; (iii) to require supplemental statements or information from any responding party; (iv) to accept or reject any or all responses thereto; (v) to extend the deadline for submission of responses thereto; (vi) to negotiate or hold discussions with any respondent and to correct deficient responses which do not completely conform to the instructions contained herein; and (vii) to cancel, in whole or part, this RFEI, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.
4. All information submitted in response to this RFEI, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of your organization, or (3) critical infrastructure information. Please identify those portions of your Proposal and accompanying documents you believe fall under these exemptions by submitting your Proposal in both redacted and un-redacted form. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Along with the redacted version, please provide a detailed justification for the portions of your Proposal that you believe fall into the exemptions discussed above. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. The identified information will be reviewed and a determination will be made as to whether the information is exempt from disclosure under FOIL. The State's determination may be appealed pursuant to POL §89(5)(c). Please note that if you do not submit a redacted version, your Proposal may be released in un-redacted form if requested under FOIL.
5. The State reserves the right, in its sole discretion, without liability, to utilize any or all of the RFEI Responses, including late Responses, in its planning efforts. ESD and NYSDOT reserve the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFEI (collectively, the "Response Information") for any purpose. By submitting a Response, each Respondent waives any and all claims against ESD, NYSDOT, and the State, relating to the retention or use of the Response Information.
6. This RFEI shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a Response to the RFEI. Neither ESD nor NYSDOT will be responsible for any costs incurred by Respondents related to preparing and submitting a Response to this RFEI, attending oral presentations, or for any other associated costs.
7. To the best of ESD's and NYSDOT's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Responses.

X. APPENDIX

Below is a list of appendices attached to and made a part of this RFEI:

Appendix A: Lease with Harlem River Yard Ventures

Appendix B: ESD General Project Plan

Appendix C: Environmental Information²

² To download a copy of Appendix C, please visit: <http://esd.ny.gov/corporateinformation/rfps.html>

APPENDIX A
EXISTING LEASE WITH HRVY

LEASE AGREEMENT FOR THE HARLEM RIVER
YARD BETWEEN THE NEW YORK STATE
DEPARTMENT OF TRANSPORTATION AND
HARLEM RIVER YARD VENTURES

Lease Date: _____

Commencement Date: _____

Date Executed by New York State
Department of Transportation: _____

Date Executed by Harlem
River Yard Ventures: _____

Date Approved by the Attorney General: _____

Date Approved by the State Comptroller: SEP 18 1991

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Appendix F	Required State Contract Clauses
Schedule 1	TAMS Report

THIS LEASE AGREEMENT made as of the day of August 1991, between the People of the STATE of New York acting by and through the NEW YORK STATE DEPARTMENT OF TRANSPORTATION (the Landlord), an agency of the government of the State of New York having an office at Building 5, State Office Campus, 1220 Washington Avenue, Albany, New York 12232, and HARLEM RIVER YARD VENTURES, INC., ("The Tenant") a Delaware Corporation authorized to conduct business in the State of New York, having an office c/o The Galesi Group, Building 6, East Road, Rotterdam, New York 12306.

W I T N E S S E T H:

WHEREAS, The State of New York is the owner of the Leased Premises as hereafter defined (Leased Premises); and

WHEREAS, it is the Landlord's purpose and intent to have the Tenant develop and operate the herein described property in the public interest in a manner consistent with and for the purposes described in the State of New York Department of Transportation Request for Proposal dated September 29, 1989 ("RFP"), (A copy of which is attached hereto as Appendix A) for the development and management of transportation services, in particular Intermodal Services as described in the RFP at the Harlem River Railroad Yard; and

WHEREAS, the Tenant has submitted a proposal in response to the Landlord's RFP and

WHEREAS, Landlord informed the Tenant by letter dated April

11, 1990 that it had been designated by the Landlord as the selected developer/lessee of the Leased Premises:

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon and subject to the terms, covenants and conditions hereinafter set forth:

ARTICLE 1

DEMISE OF LEASED PREMISES AND TERM OF LEASE.

Section 1.01. Demise of Leased Premises. Subject to the terms and conditions hereinafter set forth, Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire, rent and take from Landlord: (a) any of the real property, to be known as the Leased Premises (Appendix B attached hereto), described in the Proposed Land Use Plan (Appendix C attached hereto) owned by the State of New York under the jurisdiction of the Department of Transportation, together with any buildings, railroad tracks and other improvements now or hereafter constructed thereon; (b) any strips or gores of land adjoining the Leased Premises; (c) any lands lying in the bed of any street or avenue abutting the Leased Premises to the center line thereof; (d) and any and all easements, future easements, appurtenances, and other rights and privileges now or hereafter belonging or appertaining to the Leased Premises, with the exception of the exclusive right of Conrail Corporation, its successors and/or Landlord and its successor(s) to maintain and operate existing and future tracks and trackage rights in, on and over the Leased Premises. It is

contemplated that at a future time a link (known as the "Oak Point Link") will be built from the northern terminus of the Leased Premises at Lincoln Avenue to existing trackage along the Harlem River for a distance of approximately 1.8 miles to allow direct service to and through the Leased Premises by Conrail or its successors in interest. Landlord and Tenant hereby recognize that any use of land necessary to accomplish the construction and operation of the Oak Point Link is and shall be reserved to the Landlord without present or future payment. Notwithstanding anything herein contained, it is the understanding of the parties that the Landlord, by this Lease, grants to the Lessee rights to only those lands including any property rights that the State acquired pursuant to an appropriation made by the Landlord pursuant to the Eminent Domain Procedure Law and/or §30 of the Highway Law on December 27, 1982, by the filing of an appropriation map with the County Clerk of Bronx County, and subject to the rights of ConRail, if any, to use the entire original right-of-way location of August 31, 1869 as conveyed to it in a deed from the Trustees of Penn Central Transportation Company dated October 24, 1978 and recorded November 16, 1978 on Reel 376 of Deeds page 666.

Section 1.02 Term.

(A) The term (the "Term") of this Lease shall commence on the latter to occur of: (i) the first day of the month next following the date of approval of this Lease by the

State Comptroller; or (ii) the date upon which the preliminary Land Use Plan shall be due pursuant to Article 8 (the "Lease Commencement Date") and, unless sooner terminated as hereinafter provided, shall expire on the day prior to the ninety-ninth anniversary of the Lease Commencement Date (the "Expiration Date").

(B) If this Lease or the term thereof shall be canceled or terminated prior to the Expiration Date, the effective date of cancellation or termination shall thereupon be deemed to be the Expiration Date.

ARTICLE 2

RENT

Section 2.01. Method and Place of Payment. Except as otherwise specifically provide herein, all Rental (as described in §2.03) is payable to Landlord shall be paid by good check drawn on a bank account in currency that at the time of payment is legal tender for public and private debts in the United States of America. Rental that is payable to Landlord shall be payable at the office of Landlord set forth above or at such other place as Landlord shall direct by written notice to Tenant.

Section 2.02. Rental. (A) Tenant's Rental payment obligation shall be payable with respect to annual periods referred to herein as "Lease Years." The base or first Lease Year shall be and consist of a twelve-calendar-month period commencing as of the Lease Commencement Date and ending on the

day prior to the anniversary of said Lease Commencement Date. The second and all subsequent Lease Years shall commence on the respective anniversaries of the Lease Commencement Date. The Rental, if any, shall be paid in arrears but shall be made in quarterly annual installments as follows: The first Rental payment shall be made not later than thirty (30) days after the end of the first quarter of the first Lease Year and, thereafter, all quarterly-annual Rental payments shall be made in similar fashion such that if the first Lease Year were to commence on July 1, the first quarterly-annual Rental payment would be due and payable not later than October 30, and the second quarterly-annual Rental payment would be due and payable not later than the following January 30 and so forth.

(B) In the event Tenant's Rental payment obligation shall commence on a date other than the first day of a calendar month, then Tenant's first quarterly-annual payment shall be made not later than thirty (30) days after the end of the first full three-month period following the Lease Commencement Date such that if the Lease Commencement Date were July 7, the first quarterly-annual Rental payment would be due and payable not later than the following November 30 and each and every succeeding quarterly-annual Rental payment would be due and payable as provided in §2.02(A).

Section 2.03. Annual Rent Calculation. Tenant shall pay Landlord annual rental in an amount to be calculated in the

following manner:

(A) The minimum rent due to the Landlord for any Lease Year shall be an amount at least equal to the sum of six (6%) percent of all Gross Revenues (as hereinafter defined) for such Lease Year.

(B) Commencing on the sixth anniversary date of this Agreement and ending on the day prior to the eleventh anniversary date of this Agreement, the annual rent shall be at least \$400,000.00 in Lease Year six; \$425,000.00 in Lease Year seven; \$450,000.00 in Lease Year eight; \$475,000.00 in Lease Year nine; and \$500,000.00 in Lease Year ten; or six (6%) percent of the Gross Revenues of the Tenant, whichever is greater.

(C) Commencing on the eleventh anniversary date of this Lease and continuing in each Lease Year to the end of the term of this Lease, a sum equal to the greater of: (i) six (6%) percent of Gross Revenue; or (ii) \$500,000.00 adjusted by six (6%) percent of fifty (50%) percent of the total of all rent escalations or modifications that are actually realized under any and all subleases between Tenant and its subtenants that are in effect as of the last day of any Lease Year.

(D) Definitions:

(i) "Affiliate" or "Affiliates", for the purposes of this Lease means:

(a) Any person that is not a publicly-held corporation and that controls directly or indirectly 5% of the capital and/or profits of

Tenant;

(b) Any person that is not a publicly-held corporation and controls directly or indirectly 5% of the Capital and/or profits of the tenant and who is one of the following:

Tenant;

Any Partner of Tenant;

Any Joint Venturer of Tenant;

Any Stockholder of Tenant;

Any Stockholder of a person who is either a Partner of, Joint Venturer of or Stockholder of Tenant; or

Any Partner of a Person who is either a Partner of, Joint Venturer of or Stockholder of Tenant.

(c) Any publicly-held corporation which controls directly or indirectly at least 20% of Tenant, or a Partner of the Tenant, Joint Venturer with the Tenant or Stockholder of the Tenant, or is at least 20% controlled directly or indirectly by the Tenant, a Partner of the Tenant, a Joint venturer with the Tenant or a Stockholder of the Tenant.

(d) Any publicly or non-publicly held corporation, an officer of which is also the officer of the Tenant, or a partner of the Tenant or a joint venturer of the Tenant or a stockholder of the Tenant, or, in which a majority of the directors or officers are also directors or officers of the Tenant, or a partner of the Tenant, or a joint venturer of

the Tenant, or a stockholder of the Tenant, or, which corporation is otherwise under direct or indirect common control with the Tenant, or a partner of the Tenant or a joint venturer of the Tenant or a stockholder of the Tenant.

(e) Any individual who is a member of the immediate family (whether by birth or marriage of an individual who is an affiliate, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his/her spouse; a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing. Ownership of or by, an entity referred to in this definition includes beneficial ownership effected by ownership of intermediate entities.

(ii) "Gross Revenues" means, with respect to any Lease Year, any and all gross rentals, receipts, fees, proceeds, property, and amounts of any kind (and anything else of value), received (in accordance with ordinary accounting principles) as rent or in lieu of rent during such Lease Year, directly or indirectly, by or for the account of Tenant or by any successor to Tenant or by any Assignee or Affiliate (as herein defined)

that performs any of Tenant's obligations in connection with the real estate development of the Leased Premises or benefits from or exercises any of Tenant's rights in connection with the development of Intermodal Service whether or not such amounts are simultaneously accounted for as expenses of Tenant or such successor, Assignee, or Affiliate, from, in connection with, or directly or indirectly arising out of the Leased Premises, any part thereof, any right therein or in respect thereof, or the leasing, use, occupation or operation of the Leased Premises or any part thereof, including amounts received from or in respect of Subleases, such amounts including, without limitation, fixed rental, rental computed on the basis of sales or their criteria, escalation rental, tenant security deposits applied in payment of any rental, proceeds of insurance paid in lieu of rental, if any. There shall be imputed as income (and therefore included in "Gross Revenues" as defined herein to the extent not already included) the amount by which the Fair Market Rental Value (as determined by comparison with like or similar property used for the same or similar purposes and for a like term as that portion of the Leased Premises is to be used within the City of New York at the inception of the lease) of any portion of the Leased Premises occupied by Tenant or such Affiliate exceeds the amount actually paid by such Affiliate.

With respect to Gross Revenues from a non-affiliate, if the transaction is not a bona fide, arms-length transaction, there shall be imputed as income the amount(s) by which rentals and

other charges fail to equal Fair Market Rental Value.

(iii) Annual Adjustment. If it shall be determined by Landlord after submission of audited certified financial statements and other materially pertinent information as required by Landlord, that any installment of Rental has been underpaid by Tenant, Tenant shall pay the amount of such underpayment, plus interest thereon as set forth herein, for the period from the date such payment should have been made to the date such payment shall be made, within twenty (20) days after demand. If it is determined that an installment of Rental has been overpaid, or underpaid there shall be a credit or charge in the amount of such overpayment or underpayment, plus interest accrued on such amount at the rate which is the lesser of the rate which the State receives at such time on its short term investment pool or the interest rate specified in Article XI-A of the State Finance Law of the State of New York, as the same may be amended from time to time, against the quarterly installment of Rental next due.

Section 2.04. Net Lease. It is the intention of Landlord and Tenant that: (a) Rental be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, set off or offset whatsoever (except as expressly provided in this Lease) so that each Lease Year of the Term shall yield, net to Landlord, all Rental; and (b) Tenant shall pay except as otherwise provided herein all costs, expenses and charges of every kind relating to the Leased Premises that may

arise or become due or payable during or after (but attributable to a Lease Year falling within) the Term.

Section 2.05. Payment of Real Property or Real Estate Taxes and Impositions.

(A) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in §2.02. hereof, all Impositions as hereinafter defined that at any time are, or, if the Leased Premises or any part thereof or the owner thereof were not exempt therefore, would be assessed, levied, confirmed, imposed upon, or therefrom charged to the owner of the Leased Premises with respect to: (i) the Leased Premises; or (ii) the sidewalks or street in front of or adjoining the Leased Premises; or (iii) any vault, passageway or space in over or under such sidewalk or street; or (iv) any other appurtenances of the Leased Premises; or (v) any personal property or other facility used in the operation thereof; or (vi) any document to which Tenant is a party creating or transferring an interest or estate in the Leased Premises; or (vii) the use and occupancy of the Leased Premises. In the event that any Real Property Tax is legally imposed by the City of New York upon the land portion of the Leased Premises, the Landlord shall pay the same. The Landlord shall be entitled to reimbursement of any and all taxes or charges actually paid by Landlord for improvements in, upon or to the Leased Premises upon receipt by Tenant of evidence of payment of the charges. The charge, if any, shall be additional rent and shall be payable by Tenant upon the payment.

of the next regular payment of rent to the Landlord. At the time of entering into this Lease there are no Real Property or Real Estate Taxes legally imposed by the City of New York upon the Leased Premises and/or improvements in, upon or to the Leased Premises. It is the understanding of the Parties hereto that in the event that there is a Legislative proposal that would change such circumstances that the landlord shall use its best effort to oppose any such proposal.

(B) Definitions:

(1) "Imposed", "Imposition" or "Impositions" means:

- (i) real property tax whether general or special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district),
- (ii) personal property taxes,
- (iii) occupancy and rent taxes,
- (iv) water, water meter and sewer rents, rates and charges,
- (v) excises,
- (vi) levies,
- (vii) license and permit fees,
- (viii) taxes other than real property or real estate taxes accruing under §2.05 (A),
- (ix) any other governmental levies, fees, rents, assessments or taxes and charges, general and special ordinary and extraordinary, foreseen and unforeseen, now or hereinafter enacted, of any kind whatsoever,

and

(x) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

(2) "Taxes" means any taxes other than real property or Real Estate taxes, if any, without regard to any exemption or abatement assessed and levied against the Leased Premises or any part thereof.

(3) "Real Property or Real Estate Taxes" means any charge imposed or hereafter legally imposed upon Real Property, including improvements, by or on behalf of a taxing authority and shall also include any payment in lieu of such tax which may now or hereafter be levied against the property and/or its improvements.

(C) Payment of Impositions. (i) Subject to the provisions of §27.02 hereof, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty. However, if by law, at Tenant's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments when due with interest.

(D) Income and Similar Taxes of Landlord. Tenant shall not be required to pay any municipal, state or federal corporate income, franchise, inheritance, estate, succession or gift taxes

imposed upon Landlord which is based upon the income or capital of Landlord.

Section 2.06. Evidence of Payment. Tenant shall furnish Landlord, within thirty (30) days after the date when an Imposition is due and payable, official receipts of the appropriate taxing authority, or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 2.07. Evidence of Non-Payment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

Section 2.08. Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Lease Commencement Date or after the Expiration Date, shall be apportioned pro rata between Landlord and Tenant (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment).

Section 2.09. Availability of Tax Exemption. To the extent permitted by law Tenant shall be entitled to the benefit of any as-of-right abatement or exemption from any tax or charge which would otherwise be available if Tenant were the fee owner of the Leased Premises.

Section 2.10. Late Charges. If: (a) any payment of Rental, or any other payment due hereunder, is not received by Landlord within ten (10) days of the day on which it first becomes due; or (b) Landlord has made a payment required to be made by Tenant hereunder, a late charge ("Late Charges") on the sums so overdue or paid by the Landlord, calculated at the rate of interest then in effect and charged by New York State during the period in question for delinquent income taxes (the "Late Charge Rate") from the date such Rental first becomes due or the date of payment by Landlord, as the case may be, to the date on which actual payment of the sums is received by Landlord, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by reason of Tenant's failure to make prompt payment. Tenant shall pay Landlord, within ten (10) days after demand, (which may be made from time to time), all late charges. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of the right to enforce the provisions of this Article 2 in any instance thereafter occurring.

ARTICLE 3

INSURANCE.

Section 3.01. Insurance Requirements.

(A) Insurance Coverage Requirements. From Lease Commencement Date until the Expiration Date, Tenant shall carry or cause to be carried and shall keep in full force and effect or cause to be kept in full force and effect, at its sole cost, insurance coverage of the types and in minimum limits as follows:

(i) Property Insurance. Insurance on the Improvements under an "All Risk of Physical Loss" policy (hereinafter referred to as "All Risk" policy) including, without limitation, coverage for loss or damage by fire, lightning, malicious mischief, vandalism, water, flood (to the extent obtainable), subsidence and earthquake and, when and to the extent obtainable from the United States government or any agency thereof, war risks; such insurance to insure Tenant and Landlord as their interests may appear and shall be written on an "Agreed Amount basis", with full replacement cost claim recovery. The replacement cost of the Improvements, or any portion thereof (the "Replacement Value") shall be determined in the manner hereinafter provided. If not otherwise included within the All Risk coverage specified above, Tenant shall carry or cause to be carried, by endorsement to such All Risk policy, coverage against damage due to water and sprinkler leakage, lightning, malicious mischief, vandalism, flood to the extent obtainable, collapse and earthquake which shall be written with limits of coverage of not

less than the Replacement Value per occurrence (except for flood and earthquake coverage, which may provide for sublimits of the greater of \$500,000 or 10% of Replacement Value). Replacement Value exclusive of the cost of foundations, excavations and footings below the lowest basement floor, shall be deemed to be an amount equal to the lesser of (x) the cost actually incurred or expended in connection with the construction of the Improvements for which the determination is being made, to the extent that such costs can be covered by a standard fire insurance policy, adjusted for each Lease Year which commences after the initial Lease Year by multiplying such costs by a fraction of which the numerator is the Building Index as hereinafter defined on the thirtieth (30th) day preceding commencement of such Lease Year and the denominator is the Building Index for the prior Lease Year, or (y) the lowest Current Cost as hereinafter defined determined during the current or immediately preceding Lease Year. The "Building Index" shall be the Dodge Building Cost Index or such other widely recognized measure of construction costs in the insurance industry as Landlord may reasonably specify from time to time. At any time and from time to time, Landlord or Tenant may cause a survey for the Improvements or any part thereof to be conducted as its own expense by a disinterested general contractor, construction manager or real estate appraiser reasonably acceptable to the other party, and having a place of business in New York State, to determine the current cost (the "Current Cost") of replacing the

Improvements or part thereof, as the case may be, without regard to depreciation, including all hard and soft costs of such construction (e.g., the construction cost of debris removal, grading, paving, landscaping, and architects', engineers' and development fees). The All Risk policy described in this subparagraph (A)(i) shall be made on a replacement cost basis and also shall contain an endorsement whereby the insurer waives all coinsurance requirements and a waiver of subrogation. Said All Risk policy may contain provisions for a deductible, but in no event shall such deductible be more than \$100,000.00.

(ii) Liability Insurance. (a) Comprehensive general public liability insurance with respect to the Leased Premises and the operations related thereto, whether conducted on or off the Leased Premises, against liability for bodily injury, death, and property damage. Such comprehensive general public liability insurance shall be on an occurrence basis, shall designate Tenant as named insured, and Landlord as "additional insured". During any Construction Period of any building on the Leased Premises, such insurance shall be carried or caused to be carried by the tenant and may be written under a "wrap-up" program in form satisfactory to Landlord, and shall designate Tenant and its general contractor (or construction manager) as "named insureds" and Landlord as "additional insureds". Any such comprehensive general liability insurance specifically shall include:

(i) Garage Keeper's Legal Liability, if applicable;

(ii) Contractual Liability



(iii) Water Damages Legal Liability;

(iv) Sprinkler Leakage Legal Liability; and

(v) Motor Vehicle Liability coverage for all vehicles owned, rented or leased by Tenant, and, during the Construction Period, for all vehicles owned or leased by contractors or subcontractors; and

(vi) Products/Completed Operations Liability. All insurance against liability for bodily injury, death, and property damage specified in this §3.01(A)(ii) shall be written for a combined single limit of not less than Five Million Dollars (\$5,000,000) with a One million dollar (\$1,000,000) primary and a Four million dollar (\$4,000,000) umbrella policy, but if an annual aggregate is applicable to the policy, a comprehensive general liability policy of not less than Ten million dollars (\$10,000,000) with a Two million dollars (\$2,000,000) primary and an Eight million dollar (\$8,000,000) umbrella policy provided that attorney's fees, costs and disbursements are not included in such limit; and except that Garage Keeper's Legal Liability coverage shall have a minimum combined single limit of not less than One Million Dollars (\$1,000,000).

(vii) Employee Coverage. Statutory Worker's Compensation Insurance, New York State Benefits Insurance and Employer's Liability (\$500,000 Per occurrence) covering all persons employed by Tenant in connection with the operations conducted at the Leased Premises and during the Construction Period such insurance shall also covers all persons employed in connection with the

performance of any construction. With respect to persons employed by Subtenants, (or sub-subtenants, etc.) Subleases must require Subtenants to carry or cause to be carried such insurance for all persons employed on the sublease premises.

(viii) Business Interruption Insurance. Business interruption insurance ("Business Interruption Insurance"), protecting Tenant against loss of earnings during repair or restoration as a result of a casualty which is a covered loss or insured peril on an All Risk basis for a period of one (1) Year amount based upon the Gross Revenue of the Leased Premises.

(ix) Boiler and Machinery Insurance. Boiler and Machinery Insurance, insuring Tenant and Landlord as their interests may appear, in an amount not less than the replacement cost of such boilers, if any, and other machinery located on the Leased Premises.

(B) Construction Period Insurance. (i) For the period from the commencement of excavation of the foundation for any of the Buildings or the preparation of ground for railroad track, or the construction of bulkheads along the Waterway or any or all new construction work of any nature until the Substantial Completion Date (the Construction Period"), Tenant shall, in lieu of the insurance specified in §3.01(A)(i) above, carry and keep in full force and effect Builder's Risk Insurance written on a completed value (non-reporting) basis, naming Tenant and the general contractor, if any, and construction manager, if any, employed by Tenant as "named insureds", and Landlord as an "additional

insured", as their respective interests may appear. Such insurance policy: (a) shall contain a written acknowledgement (annexed to the policy) by the insurance company that its right of subrogation has been waived with respect to all of the insureds and any Leasehold Mortgagees named in such policy and an endorsement stating that "permission is granted to complete and occupy"; and (b) if any off-site storage location is used, shall cover, for a full insurable value, all materials and equipment at any off-site storage location intended for use with respect to the Leased Premises. Such insurance policy may contain provision for a retainage by Tenant, but in no event shall such retainage be more than \$100,000.00.

(ii) During the Construction Period the insurance coverage specified in §3.01(A)(ii) shall be written for a combined single limit of not less than Ten Million Dollars (\$10,000,000) with Four Million Dollar (\$4,000,000) primary and a Six Million Dollar (\$6,000,000) umbrella policy but if an annual aggregate is applicable to the policy, a comprehensive general liability policy of not less than Twenty Million Dollars (\$20,000,000) with an Eight Million Dollar (\$8,000,000) primary and Twelve Million Dollar (\$12,000,000) umbrella policy or a combination of primary and umbrella policies to satisfy the Twenty Million Dollars (\$20,000,000) limit.

(C) Adjustment of Amounts or Terms. The amounts of all insurance required by this Section (other than property insurance for which the limits are adjusted by appraisal or indexing) shall

be increased at Landlord's reasonable request, based on insurance commonly carried for premises and operations in New York City similar in nature and size to the Leased Premises and the operations at the Leased Premises. In the event a dispute arises between Landlord and Tenant as it relates to either requests for additional kinds of insurance to be purchased by Tenant or a request to raise policy dollar limits by landlord the issue shall be submitted to Dispute Resolution Procedures pursuant to §21.01 herein.

Section 3.02. Application of Proceeds and General Requirements Applicable to Policies.

(A) Proceeds of Insurance in General. Any proceeds of property damage insurance (not liability insurance or Business Interruption Insurance) received pursuant to the insurance coverage required by this Article 3 shall be payable to the Tenant, subject to the rights of the Leasehold Mortgagee, if any. If insurance proceeds payable with respect to a property loss are payable to Tenant, Tenant, in accordance with and subject to the provisions of Article 10 hereof, (a) shall hold the insurance proceeds with respect to such loss in trust for the purpose of paying the cost of the Casualty Restoration, and (B) shall apply such proceeds first to the payment in full of the cost of such Casualty Restoration before using any part of the same for any other purpose.

(B) Insurance Carriers and Form of Policies. All insurance

required by this Article 3 shall be in such form and shall be issued by such insurance companies licensed or authorized to do business in the State of New York as are reasonably approved by Landlord. Any insurance company rated by Best's Insurance Reports (or any successor publication of comparable standing) as A- or better (or the equivalent of such rating) shall be deemed acceptable to Landlord. All insurance policies required by this Article 3 shall be obtained by Tenant for periods of not less than one (1) year. Certificates of insurance evidencing the issuance of all insurance required by this Article 3, describing the coverage and guaranteeing thirty (30) days prior notice to Landlord of cancellation or non-renewal (or ten (10) days if for reason of non-payment of premiums) shall be delivered to Landlord upon issuance of such insurance, or in the case of new or renewal policies replacing any policies expiring during the Term, not later than Ten (10) days before the expiration dates of any expiring policies. The certificates of insurance shall be issued by the insurance company and signed by an officer having the authority to issue the certificate. The insurance company issuing the insurance shall also deliver to Landlord, together with the certificates, proof reasonably satisfactory to Landlord that the premiums for at least the first year of the term of each policy (or installment payments then required to have been paid on account of such premiums) have been paid. Within one hundred twenty (120) days after delivery of said certificates of insurance, certified copies, signed by an authorized

representative of the insurer, of new and renewal or replacement policies renewing or replacing any policies expiring during the Term shall be delivered to Landlord. Certified abstracted policies may be submitted in lieu of complete certified copies if the insurance is effected by blanket policies in conformity with this Lease.

(C) Payment of Premiums. Tenant may pay the premiums for any of the insurance required hereunder in installments in accordance with the provisions of the applicable policies, provided that Tenant pays such installments in full not later than fifteen (15) days before the respective due dates for such installment and provides proof reasonably satisfactory to Landlord of payments of such installments by such dates.

(D) Cooperation in Collection of Proceeds. Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments as may be required of Tenant or Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

(E) Separate Property Insurance. Tenant shall not carry separate property insurance concurrent in form or contributing in the event of loss with that required by this Lease unless Landlord is named as an additional insured, with loss payable as provided in this Lease. Tenant promptly shall notify Landlord if it is carrying such separate insurance and shall cause

certificates of insurance and certified copies of such policies or certified abstracts of such policies, together with proof of payment of all premiums, (or required installment payments on account of such premiums), to be delivered to Landlord in accordance with the provisions of §§3.02(B) and 3.02(C) hereof.

(F) Adjustments for Claims. All property insurance policies required by this Article 3 shall provide that all adjustments for claims with the insurers involving a loss of two million dollars (\$2,000,000) or 1% of the Replacement Value (whichever is greater), or more per claim shall be agreed upon by both Tenant and Landlord. All adjustments for claims with the insurers involving a loss of less than two million dollars (\$2,000,000) or 1% of the Replacement Value, (whichever is greater), per claim shall be made with Tenant only. All loss proceeds, however, shall be payable to Tenant as provided in §3.02 (A) hereof, based upon the actual amount of the loss as such amount has been determined by adjustment with the insurer.

(H) Compliance With Policy Requirements. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article 3, and Tenant shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, the conditions, provisions and requirements of the insurance policies and the companies writing such policies so that, at all times, companies reasonably acceptable to Landlord provide the insurance required by this Article 3.

Insurance required to be carried pursuant to the provisions of this Article 3 (other than worker's compensation and worker's disability benefits insurance) shall contain: (i) agreement by the insurer that such policy shall not be canceled, modified or denied renewal other than for non-payment of premium without at least thirty (30) days prior written notice to Landlord and if for reason of non-payment of premiums without less than ten (10) days prior written notice to Landlord; (ii) a waiver of subrogation by the insurer of any right to recover the amount of any loss resulting from the negligence of Landlord or Tenant, their respective agents and employees; and (iii) an agreement by the insurer that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord.

Section 3.03. Blanket and/or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Article 3 (other than the "wrap-up" liability policy which Tenant may choose to carry under §3.01(A)(ii), above, may, at Tenant's option, be effected by blanket and/or umbrella policies issued to Tenant covering the Leased Premises and other properties owned or leased by Tenant, provided such policies otherwise comply with the provisions of this Lease and allocate to the Leased Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds

thereunder, without possibility of reduction or co-insurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certificates of insurance and certified copies of such policies as provided in §3.02(B), together with schedules annexed thereto setting forth the amount of insurance applicable to the Leased Premises and proof reasonably satisfactory to Landlord that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

Section 3.04. Changes in Prevailing Insurance Practices.

(A) Unobtainable Insurance. If any of the insurance required to be carried under this Lease, pursuant to the preceding §§3.01 through 3.03, shall, after best efforts by Tenant, and through no act or omission on the part of Tenant, be unobtainable at commercially practicable rates from domestic carriers customarily insuring premises (or construction) similar to the Leased Premises (or Construction Work and business (or Construction) operations of a size, nature and character similar to the size, nature and character of the business or construction or completed operations being conducted at the Leased Premises, then Tenant shall promptly notify Landlord of the inability to obtain such insurance and Landlord shall have the right, but not

the obligation, to arrange for Tenant to obtain such insurance at a reasonable cost. If Landlord shall be able to arrange to obtain such insurance, Tenant shall obtain the same up to the maximum limits provided herein. If Landlord shall be unable to arrange to obtain the insurance required hereunder, Tenant shall promptly obtain the maximum insurance which is obtainable, and in such case, the failure to carry the insurance which is unobtainable, shall not be a Default (as hereinafter defined) hereunder for as long as such insurance shall remain unobtainable. Types or amounts of insurance shall be deemed unobtainable if such types or amounts of insurance are: (i) actually unobtainable; or (ii) virtually unobtainable as a result of commercially unreasonable premiums which have made such insurance effectively unobtainable with respect to premises similar to the Leased Premises (or construction similar to the Construction Work), located in New York City. In the event that Tenant after exercising its best efforts cannot obtain any required insurance, it shall notify Landlord of such fact. Tenant shall use diligent effort to purchase only insurance that it could not replace until such time as it may be replaced in a commercially reasonable manner. Notwithstanding anything contained herein, the Tenant must replace the insurance that it has not been able to replace within six months from the date of the policy lapse or submit the issue of its ability to replace such insurance to Dispute Resolution Procedures under Article 21 hereof. Further, any dispute as to whether any insurance required under this Article 3 is

"obtainable" shall be resolved in accordance with the provisions of §21.01 hereof.

(B) Changes in Policies. The parties acknowledge that over the term of this Lease changes in the forms of insurance policies and in insurance practices are likely to occur. In such event, Landlord shall have the right to require Tenant to furnish, at Tenant's sole expense, such additional coverage, policy terms and conditions, or limits of liability, as may be necessary or prudent in light of then-current industry practices to assure to Landlord a degree of insurance protection practically equivalent to that provided by Tenant prior to the advent of the change. Any dispute as to whether any changes to policies or additional terms of insurance are necessary shall be resolved in accordance with the provisions of §21.01 hereof.

Section 3.05. Consumer Price Index for All Urban Consumers in New York -- Northeast New Jersey.

All dollar values set forth in this Article 3 shall be escalated by the Consumer Price Index for all Urban Consumers in New York-- Northeast New Jersey, or its successor index, at the end of each five year increment of this Lease.

ARTICLE 4

ASSIGNMENT AND/OR SUBLET; REFINANCING.

Section 4.01. Right of Tenant to Assign or Refinance.

(A) The Tenant shall not, without the Landlord's prior

written consent, assign this Lease or any estate or interest therein before the substantial completion of the applicable Proposed Land Use Plan (Appendix C), or Preliminary Land Use Plan, or the approved Final Land Use Plan, as described in Article 8, for the Leased Premises as the same may from time to time be amended except: (i) to an entity in which any of the stockholders of the Tenant are principal stockholders or partners; or (ii) as collateral for any Mortgage made pursuant to Article 5.

(B) Thereafter, this Lease may be assigned as follows:

1. At any time during the term of this Lease with the Landlord's written consent, which consent shall not be unreasonably withheld or delayed, this Lease may be assigned with all of the rights and obligations of this Lease to any business entity that is controlled by the initial holders of the equity of the Tenant;

2. At anytime during the term of this Lease with the Landlord's written consent, which shall not be unreasonably withheld or delayed, this Lease may be assigned with all of the rights and obligations of this Lease to a business entity whose majority ownership shall be owned by the principals of the Tenant.

3. In addition to anything contained in either paragraph one or two above, Tenant may, upon thirty (30) days' written notice to Landlord and with the Landlord's written consent, which shall not be unreasonably withheld or delayed, assign this Lease

with all of the rights and obligations of this Lease provided that the assignee, or its principals, if a corporation, or a joint venture, shall possess:

- (a) Sufficient financial ability to perform all of the covenants and conditions provided for in this Lease;
- (b) Have a business reputation for honesty, integrity, good faith and fair dealing reasonably satisfactory to the Landlord;
- (c) Have experience or have officers or directors who have demonstrated experience in operating a facility the same as, or reasonably similar to the Leased Premises.

4. At any time during the term of this Lease, the improvements on the Leased Premises, or a portion or portions thereof, may be refinanced by Tenant without the Landlord's consent with any business entity or Institutional Investor, as such are defined in Article 5.

Section 4.02 Definitions.

(A) Gross Sales Proceeds shall mean: (i) the full consideration received for purchase of the leasehold, less costs necessarily incurred in connection with the sale including brokerage fees, legal fees and transfer taxes; or (ii) from a refinancing, the proceeds thereof.

(B) Tenant's Equity Contribution means: (i) all cash contributions made by the Tenant or any of its Affiliates with respect to the Leased Property less any funds recovered from other parties because of such parties' responsibility for Environmental Damage and less gifts or grants by any governmental or quasi-governmental entity that are included in (i); (ii) a

development fee, which shall accrue only one time with respect to any particular development, in the amount of 10% of all development costs, but no such costs that are included in (i), incurred by Tenant or any of its Affiliates with respect to the Leased Property, to the extent such amount has not been realized by Tenant or one of its Affiliates in another form (e.g., profits); and (iii) any principal payments made by the Tenant for any mortgage financing incurred in connection with the Leased Property.

(C) Cash return shall mean the Gross Revenue as defined in Article 2, less actual operating expenses, including but not limited to, rent, reasonable security, reasonable administration and management expenses, and, less debt service payment, both principle and interest.

Section 4.03 Proceeds of Assignment or Refinancing.

(A) To the extent that any funds realized through refinancing are not reinvested or committed by contract for reinvestment in the Leased Property (evidence of such reinvestment to be provided to the Landlord within 6 months of such refinancing); or the leasehold interest is assigned or sold, then the following provisions are applicable:

(i) In the event of a transaction described in §4.01, the Gross Sales Proceeds shall be divided as follows:

(a) All capital gains taxes, federal, state and local shall be determined and subtracted from Gross Sales Proceeds.

(b) An amount equal to the amount of outstanding debt of Tenant remaining on the leasehold interest or portion thereof sold or transferred or refinanced shall be determined and subtracted from Gross Sales Proceeds.

(c) The Tenant's Equity Contribution (TEC) for the purposes of this section shall be determined according to the following provisions and subtracted from the Gross Sales Proceeds.

Step 1: TEC shall be adjusted at a compounded annual rate of 20%.

Step 2: TEC shall then be increased or decreased by the amount, if any, by which Cash Return to Tenant produced by the Project is less than or greater than the amount by which TEC was adjusted in Step 1 above.

Step 3: The amount of TEC remaining after the addition or subtraction in Step 2 shall be subtracted from Gross Sales Proceeds.

If, for example, TEC at the end of Year 1 were \$10,000,000 and cash Return showed an operating loss of \$50,000, then the amount of TEC would be computed as follows: \$10,000,000 would be adjusted by 20%. This would result in a figure of \$2,000,000. Then the \$2,000,000 adjustment would be compared to the Cash Return (Operating Loss) of -\$50,000. Cash return is \$50,000 less than the amount of the adjustment. Therefore, Tenant would be entitled to the full adjustment plus \$50,000 or \$2,050,000. This \$2,050,000 would be added to \$10,000,000 for a total of \$12,050,000 which constitutes TEC to be subtracted from Gross Sales Proceeds.

In Year 2, TEC would be \$12,050,000 plus any qualified Tenant Equity Contributions made during the year. Assume that actual contributions made by Tenant during Year 2 were \$2,000,000 and Cash Return was \$250,000. Tenant's Equity Contribution at the end of

Year 2 to be subtracted from Gross Sales Proceeds would be computed as follows: \$12,050,000 would be adjusted by 20%. This results in a figure of \$2,410,000. Then \$2,410,000 would be compared to Cash Return of \$250,000. Cash Return is \$2,160,000 less than the adjusted amount of \$2,410,000. Therefore, TEC would equal \$12,050,000 plus \$2,160,000 (the difference between Cash Return and the adjustment), plus \$2,000,000 (Tenant's actual Tenant Equity Contribution during Year 2) or \$16,210,000 at the end of Year 2.

(d) If the gain from sale or transfer or reduction in Tenant's Equity does not exceed the Tenant's Equity Contribution, then such proceeds shall be retained by the Tenant.

(e) If the gain from sale or transfer or reduction in Tenant's Equity exceeds the Tenant's Equity Contribution, such amount in excess of such sum shall be called Net Profit, and Tenant shall pay 15% of such Net Profit to Landlord.

(ii) In the event of a refinancing of the Leased Premises, then the proceeds, determined in the same manner as a sale or transfer, of such refinancing not otherwise reinvested in the Leased Property shall be deemed Net Profit and Tenant shall pay 15% of such Net Profit to Landlord.

Section 4.04 Sublease Restrictions.

(A) After the substantial completion of the applicable Proposed Land Use Plan (Appendix C), or the Preliminary Land Use Plan, or the approved Final

Land Use Plan, or any severed part of such Plan as it may from time to time be amended, the Tenant may sublease the whole or less than the whole of the Leased Premises without obtaining the Landlord's consent, at any time and from time to time.

(B) Tenant's Obligations with respect to Subtenants. During the Term, Tenant shall make reasonable efforts to cause all Subtenants to comply with their obligations under their respective Subleases. A substantial violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a Subtenant shall not prevent such violation or breach from being an Event of Default hereunder or relieve Tenant of Tenant's obligation to cure such violation or breach.

Section 4.05. Collection of Subrent by Landlord. After an Event of Default described in subparagraph, (B), (C), (G), or (H) of §20.01, Landlord may, subject to the rights of any Leasehold Mortgagee, collect rent and all other sums due under any Subleases and apply the net amount collected to the Rental payable by Tenant hereunder. No such collection shall be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease nor the recognition by Landlord of any Subtenant as a direct tenant of Landlord nor a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 4.06. Required Sublease Clauses. Each Sublease shall provide that:

- (A) It is subject and subordinate to this Lease.
- (B) Except for security deposits and any other amounts deposited with

Tenant or with any Leasehold Mortgagee in connection with the payment of insurance premiums, real property taxes and assessments and other similar charges or expenses, the Subtenant shall not pay rent or other sums payable under the Sublease to Tenant for more than one (1) month in advance (unless Landlord gives its consent to a longer period which consent shall not be unreasonably withheld or delayed).

(C) At Landlord's option, on the termination of this Lease pursuant to Article 20 hereof, the Subtenant shall attempt to, or shall enter into a direct lease on terms identical to its Sublease with Landlord for the balance of the unexpired term of the Sublease and such direct lease or sublease shall provide that it may be assigned by Landlord to a Leasehold Mortgagee with whom Landlord has entered into a new lease of the Leased Premises in accordance with §5.01(H) hereof.

(D) With respect to those Subleases providing for the payment of percentage rent by such Subtenants to Tenant, Subtenant shall maintain full and accurate books of account and records of Subtenant's business operation or enterprise, which books and records shall be so kept and maintained for at least six (6) years after the end of each Lease Year. The Landlord or its agents reserves the right to inspect and audit any and all books, records, documents, data or materials that relate to this Lease.

(E) With respect to those Subleases providing for the payment of percentage rent by such Subtenants to Tenant, Landlord or Landlord's agents or representatives, from time to time during regular business hours, upon reasonable notice shall be permitted to inspect and audit all books and records and other papers and files of Subtenant relating to its Sublease and Subtenant shall produce such books and records for such inspection, audit and

for reproduction, if requested, by Landlord.

(F) The Landlord retains the right to enter upon the premises at all reasonable times for inspection purposes.

Section 4.07. Subtenant Non-Disturbance. This section shall not apply to any development or sublease which is either for less than three acres of land, or less than 50,000 square feet of floor space. Landlord, for the benefit of any Subtenant whose Sublease was made in accordance with the applicable provisions of this Article 4, shall recognize and, at the Subtenant's request, execute an agreement in form satisfactory to Landlord confirming such recognition of Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to the provisions of Article 20 hereof, provided (a) each Leasehold Mortgagee has executed a non-disturbance agreement with respect to the same Sublease, (b) Subtenant is not an Affiliate and Tenant has delivered to Landlord, at the time the Sublease was executed, a certificate of a principal of Tenant, in form and substance satisfactory to Landlord, certifying that the Sublease represents an arms-length transaction the full consideration for which is represented by the Subtenant's obligations under the Sublease; (c) the Sublease confers no greater rights upon Subtenant than are conferred upon Tenant under this Lease nor imposes more onerous obligations upon Landlord under the Sublease than are imposed upon Landlord under this Lease; and (d) at the time of the termination of this Lease: (i) no default exists under such Sublease, which at such time would permit the landlord thereunder to terminate the Sublease or to exercise any remedy for dispossession provided for therein; and (ii) such Subtenant delivers to Landlord an instrument confirming the agreement of the Subtenant to attorn to

Landlord and to recognize Landlord as the Subtenant's Landlord under its Sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(A) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord),

(B) subject to any offsets or defenses that such Subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord),

(C) bound by any payment of rent that such Subtenant might have paid for more than the current month (unless Landlord has given its reasonable consent to payments for a longer period) to any prior landlord (including, without limitation, the then defaulting landlord) other than security deposits and any other amounts deposits with any prior landlord (including, without limitation, the then defaulting landlord) in connection with the payment of insurance premiums, real property taxes and assessments and other similar charges or expenses, to the extent such security deposits or other similar charges or expenses, or other deposit have actually been transferred to Landlord,

(D) bound by any covenant to undertake or complete any construction on the Leased Premises or any portion thereof demised by the Sublease,

(E) bound by any obligation to make any payments to the Subtenant which accrues prior to the attornment, or

(F) bound by any amendment thereto or modification thereof which reduces the basic rent, additional rent, or other charges payable under the sublease or charges the term thereof, or otherwise materially affects the rights of Landlord thereunder, made without written consent of the Landlord.

4.08 Assignment by Landlord. The Landlord may sell, assign, transfer or otherwise dispose of this lease to another State Agency or a public authority or tax-exempt federal, state or municipal authority. The Landlord may also mortgage, bond or pledge the proceeds of this Lease without any restrictions by the Tenant. (See Article 24).

ARTICLE 5

LEASEHOLD FINANCING PROVISIONS

Section 5.01. Liens on Lessee's Leasehold Estate; Rights of Leasehold Mortgagees.

(A) Leasehold Mortgage Authorized. On one or more occasions, without Landlord's prior consent, Tenant may: (i) take back a purchase money Leasehold Mortgage upon a sale and assignment of the leasehold estate created by this Lease; (ii) may mortgage or otherwise encumber Lessee's leasehold estate to one or more Institutional Investors (as hereinafter defined), (the holder of any such Mortgage described in (i) or (ii) hereinafter referred to as a ("Leasehold Mortgagee") under one or more Leasehold Mortgages (a "Leasehold Mortgage"), as such terms are more fully described in subsection (C) of this §5.01; (iii) assign this Lease as security for such Leasehold Mortgage or Leasehold Mortgages; or (iv) do one or more of the foregoing (i) through (iii).

(B) Notice to Lessor. (i)(a) If Tenant shall, on one or more occasions, take back a purchase money Leasehold Mortgage upon a sale and assignment of the Leased Premises or shall mortgage the Leased Premises to a Leasehold Mortgagee, and if the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage together with a true

copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section shall apply in respect to each such Leasehold Mortgage.

(b) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and address shall be provided to Landlord.

(ii) Landlord shall promptly upon receipt of a communication purporting to constitute the notice provided for by subsection B(i) above acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided for by subsection B(i) above or, in the alternative, notify the Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of subsection B(i) and specify the specific basis of such rejection. Failure by Landlord to notify the Leasehold Mortgagee and Tenant within Thirty (30) days shall be deemed to constitute acknowledgment of conformity of the notice with the requirements of subsection (B)(i) of this §5.01.

(iii) After Landlord has received the notice provided for by subsection (B)(i) of this §5.01, the Tenant, upon being requested to do so by Landlord, shall with reasonable promptness provide Landlord with copies of the note or other obligation secured by such Leasehold Mortgage and of any other documents pertinent to the Leasehold Mortgage as specified by the Landlord. If requested to do so by Landlord, the Tenant shall thereafter also provide the Landlord from time to time with a copy of each amendment or other modification or supplement to such documents.

All recorded documents shall be accompanied by the appropriate certification of the custodian of the recording office in which recorded as to their authenticity as true and correct copies of official records and all non-recorded documents shall be accompanied by a certification by Tenant that such documents are true and correct copies of the originals. From time to time upon being requested to do so by Landlord, Tenant shall also notify Landlord of the date and place of recording and other pertinent recording data with respect to such documents as have been recorded.

(C) Definitions. (i) The term "Institutional Investor" as used in this Lease shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, real estate investment trust or pension fund. The term "Institutional Investor" shall also include other lenders of substance which perform functions similar to any of the foregoing.

(ii) The term "Leasehold Mortgage" as used in this Lease shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's Leasehold Estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation, including, without limitation, obligations to reimburse the issuer of a letter of credit.

(iii) The term "Leasehold Mortgagee" as used in this Lease shall refer to a holder of a Leasehold Mortgage in respect to which the notice provided for by subsection (B) of this §5.01 has been given and received and as to which the provisions of this §5.01 are applicable.

(D) Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Leasehold

Mortgage until written notice thereof is given to the Tenant and any Leasehold Mortgagee.

(E) Default Notice. Landlord, upon providing Tenant any notice of either: (i) default under this Lease; or (ii) a termination of this Lease, shall at the same time provide a copy of such notice to every Leasehold Mortgagee. No such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in subsections (F) and (G) of this §5.01 to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Landlord authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the premises by the Leasehold Mortgagee for such purpose.

(F) Notice to Leasehold Mortgagee. (i) Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default, Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate at least 30 days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least 60 days in advance of the

proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of subsection (G) of this §5.01 shall apply if, during such 30 or 60 day termination notice period, any Leasehold Mortgagee shall:

(a) notify Landlord of such Leasehold Mortgagee's desire to cure the default specified in such notice, and

(b) pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the termination notice to such Leasehold Mortgagee and which may become due during such 30 or 60-day period, and

(c) comply or in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee.

(ii) Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Article 5 shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in subsection (B)(i)(a) of this §5.01 unless notice of a change of Leasehold Mortgage ownership has been given to Landlord pursuant to subsection (B)(i)(b) of this §5.01.

(G) Procedure On Default. (i) If Landlord shall elect to terminate this Lease by reason of any default of Tenant and a Leasehold Mortgagee shall have proceeded in the manner provided for by subsection F of this §5.01, the specified date for the termination of this Lease as fixed by Landlord in its termination notice shall be extended for a period of three months, provided that such Leasehold Mortgagee shall, during such three month period:

(a) Pay or cause to be paid the rent, additional rent and other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform or cause performance of all Tenant's other obligations under this Lease, excepting past nonmonetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee; and

(b) if not enjoined or stayed, take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(ii) If at the end of such three (3) month period such Leasehold Mortgagee is complying with subsection (G)(i) of this §5.01, this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this subsection G of this §5.01, however, shall be construed to extend this Lease beyond the original term hereof as extended by any options to extend the term of this Lease properly exercised by Tenant or a Leasehold Mortgagee in accordance with the terms of such Leasehold Mortgagee's Leasehold Mortgage nor to require a Leasehold Mortgagee to continue such foreclosure proceedings, after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(iii) If a Leasehold Mortgagee is complying with subsection (G)(i) of this §5.01, upon the acquisition of Tenant's estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

(iv) For the purposes of this Article 5 the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of this Article 5, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate. If the Leasehold Mortgagee or its designee shall become holder of the leasehold estate and if the buildings and Improvements on the Leased Premises shall have been or become materially damaged on, before or after the date of such purchase and assignment, the Leasehold Mortgagee or its designee shall be obligated to repair, replace or

reconstruct the buildings or other Improvements only to the extent of the net insurance proceeds received by the Leasehold Mortgagee or its designee by reason of such damage.

(v) Any Leasehold Mortgagee or other party who acquires the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, with the consent of Landlord, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Leasehold Mortgagee or acquire and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease.

(vi) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created.

H. New Lease. In the event of the termination of this Lease as a result of Tenant's default, Landlord shall, in addition to providing the notices of default and termination as required by subsection E and F of this §5.01, provide each Leasehold Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Leased Premises with such Leasehold Mortgagee or

its designee (which obligations shall survive the termination of this Lease) for the remainder of the term of this Lease, effective as of the date of termination, at the rent and additional rent, and upon the terms, covenants and conditions (excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

(i) Such Leasehold Mortgagee shall make written request upon Lessor for such New Lease within 60 days after the date such Leasehold Mortgagee receives Landlord's notice of termination of this Lease given pursuant to this subsection (H).

In the event of a controversy as to the net amount to be paid to Landlord pursuant to subsection (H)(ii), the payment obligation shall be satisfied if Landlord be paid the amount not in controversy, and the Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due and the obligation shall be adequately secured.

(ii) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this subsection H(ii) or under the New Lease, an amount equal to the net income derived by Landlord from the Leased Premises during the period from the date of termination of

this Lease to the date of the beginning of the lease term of such New Lease.

(iii) Such Leasehold Mortgagee or its designee shall agree to remedy any Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's notice of termination and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.

(iv) Any New Lease made pursuant to this subsection H shall retain the priority of this Lease with respect to any mortgage or other lien, charge or encumbrance on the fee of the Leased Premises and the Tenant under such New Lease shall have the same right, title and interest in and to the Leased Premises and the Improvements thereon as Tenant had under this Lease.

(v) The Tenant under any such New Lease shall be liable to perform the obligations imposed on the Tenant by such New Lease.

Section 5.02. New Lease Priorities. If more than one Leasehold Mortgagee shall request a New Lease pursuant to subsection (H)(i) of §5.01, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgage title insurance policy issued by a responsible title insurance company doing business within the State in which the Leased Premises are located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

Section 5.03. Leasehold Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee

or its designee, including but not limited to the bankruptcy defaults referred to in Article 5, §5.01, subsection G(iv) or (v) hereof, in order to comply with the provisions of subsections F or G of §5.01 or as a condition of entering into the New Lease provided for by subsection H of §5.01.

Notwithstanding the foregoing, the Leasehold Mortgagee or its designee will be required to pay all amounts required to be paid hereunder and fulfill all Tenant's other obligations under this Lease.

For the purposes of this §5.03, the failure by the Tenant to comply with Article 7 of this Lease shall not be a "default of Tenant not reasonably susceptible of cure" and upon the acquisition of Tenant's interest in this Lease by a Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise the provisions of this Lease including without limitation Article 7 hereof, shall continue in full force and effect.

Section 5.04. Eminent Domain. Tenant's share, as provided by Article 11 of this Lease, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of such section, be disposed of as provided for by any Leasehold Mortgage.

Section 5.05. Casualty Loss. A Standard Mortgagee Clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant and the insurance proceeds will be applied in the manner specified in this Lease and the Leasehold Mortgage shall so provide, except such proceeds, if any, payable directly to the Tenant (but not such proceeds, if any, payable jointly to the Landlord and Tenant) pursuant to the provisions of this Lease.

Section 5.06. Proceedings. The petitioning party shall give to all holders of record prompt notice of any legal proceedings or Dispute Resolution Procedures between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of such proceedings.

Section 5.07. No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Leased Premises and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

Section 5.08. Future Amendments. In the event on any occasions hereafter Tenant seeks to mortgage or collaterally assign the leasehold estate created hereby, Landlord agrees to amend this Lease from time to time to the extent reasonably requested by an Institutional Investor proposing to make a loan to Tenant or issue a letter of credit secured by a lien upon Tenant's leasehold estate, provided that such proposed amendments do not materially and

adversely affect the rights of Landlord or his interest in the Leased Premises. All reasonable expenses incurred by Landlord in connection with any such amendment shall be paid by Tenant.

Section 5.09. Notices. Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to subsection B of §5.01, and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Article 32 hereof. Such notices, demands and requests shall be given in the manner described in Article 32 and shall in all respects be governed by the provisions of that Article.

Section 5.10. Erroneous Payments. No payments made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of such payment or portion thereof provided he shall have made demand therefor not later than one year after the date of its payment.

ARTICLE 6

COMMITMENT TO LANDLORD FOR INTERMODAL RAIL TRANSPORTATION SERVICE.

Section 6.01. Tenant Recognition of Landlord's Purpose and Intent. Tenant recognizes and concurs with the Landlord's purpose and intent to have the Tenant develop and operate the Harlem River Yard in the public interest as a transportation and distribution related facility consistent with the terms

and conditions set forth in the State of New York Department of Transportation Request for Proposal (RFP) dated September 29, 1989. In particular, Tenant recognizes and concurs with the Landlord's goal of the use of the Leased Premises in connection with improving East of Hudson River rail access and the removing of trucks from local highways and bridges. Tenant further recognizes that the Department's interest in leasing the Leased Premises to the Tenant is as set forth in the RFP.

The Tenant acknowledges that the dedication of parcels, or areas within parcels, of the Leased Premises to Intermodal transportation uses, or other transportation intensive uses as prescribed herein, may not, from time to time, constitute the highest and best use of such land.

Section 6.02. Definition: "Intermodal Service" for the purposes of this Lease, Intermodal Service is the systematic merging of different modes of transportation into an operation which permits the efficient movement of freight. Intermodal Service within the context of this Lease shall primarily involve the direct exchange of freight between the rail and the highway transportation modes, and the interchange of truck trailers or containers on a railroad car or its equivalent to motor carrier pick-up and/or delivery purposes.

Section 6.03. Tenant Best Efforts Toward Goals. Tenant further agrees to apply its best efforts to conform to the goals of the RFP and Temple, Barker and Sloane (TBS) Report (a copy of which is attached as Appendix D), which recommends that the Harlem River Yard be developed as an intermodal transportation facility. Tenant shall apply its best efforts to sublet to

tenants that have the potential to use intermodal transportation and the potential to increase the rail freight traffic base east of the Hudson River. Upon request the tenant shall furnish the Landlord information concerning Tenant usage of the Leased Premises and progress in implementing the Final Land Use Plan or any other information relative to Leased Premises.

Section 6.04. Conrail. Tenant shall apply its best efforts to negotiate with Conrail and other relevant railroads to obtain competitive rail rates and services for the Harlem River Yard and its subtenants, and, consistent with its legal responsibilities under law, in particular under any railroad laws.

Section 6.05. Marketing Fund. After approval of the Final Land Use Plan, Tenant shall set up a marketing fund of One Hundred Thousand (\$100,000) Dollars which purpose is to promote rail transportation at the Yard. The fund shall be used for marketing and related promotional activities and shall be managed jointly by Landlord and Tenant. The fund shall be replenished by the Tenant during the term of the Lease.

Section 6.06. Landlord's Best Efforts Toward Conrail. Landlord shall apply its best efforts to support Tenant's efforts in dealing with Conrail and other relevant railroads in pursuing competitive rail services and rail service rates to the Harlem River Yard.

ARTICLE 7

LAND USE PLAN.

Section 7.01. Land Use Plan; Agreement to Adhere. The RFP sets forth certain specific uses for the Leased Premises and the parties agree that it shall serve as the general basis for development of the premises. Attached hereto as Appendix C, and made a part hereof is the Proposed Land Use Plan setting forth what the parties agree are the intended specific uses of specific parcels within the Leased Premises. The parties agree to adhere to Final Land Use Plan approved under §8.02 in the development of the Leased Premises. Those areas which are not shown as being dedicated to a specific use are to be developed so as not to adversely impact the adjacent uses or areas. Both parties to this Lease acknowledge that there are a variety of considerations including environmental issues, local community issues, issues involving the City and State of New York, issues concerning the financing of this project, issues concerning the sequencing of the building and developing of the improvements necessary to fulfill the obligations imposed by the RFP and the Final Land Use Plan. Both parties acknowledge that a reasonable amount of flexibility in the development of the Leased Premises is necessary. The Tenant acknowledges the paramount importance of the concerns of the Landlord in connection with Tenant's uses of the land provided for hereunder.

THEREFORE IT IS AGREED THAT:

(a) The Landlord and Tenant agree that the Landlord shall be designated the Lead Agency for the purposes of SEQR compliance in connection with the review and approval of the Land Use Plan. However, the Tenant shall be obligated, at its own cost and expense, except for the costs and expenses of necessary environmental studies, surveys and reports agreed to by the Landlord.

and Tenant and which were or may be undertaken to obtain any necessary Environmental Permits to develop the Leased Premises, to prepare any and all necessary documents, studies, or other data and materials necessary to perform the lead agency process.

(b) The Improvements may be built in various stages so long as each is completed pursuant to Article 8 herein, and each phase, for all intent's and purposes shall be viewed as a separate and distinct part of the use requirements of the RFP and/or approved Final Land Use Plan.

(c) That the success of the railroad use of the Leased Premises is highly dependent upon the rate structure afforded potential users and shippers to and from the Leased Premises and both the Landlord and the Tenant shall use their best efforts to insure that Conrail acts reasonably in formulating rail rates to encourage the use of the Leased Premises as a rail related facility, fully recognizing that neither party can insure the reasonableness of participation of Conrail.

(d) The Tenant agrees to adhere to the specific goals, intent and purposes of the Landlord as it pertains to the uses to which the Leased Premises are to be devoted as set forth in the RFP and/or Final Land Use Plan.

(e) In the event there is: (i) a final judgment either by a court of competent jurisdiction or by an administrative body having jurisdiction over the Leased Premises that shall for any reason restrict or deny any of the intended uses; or (ii) there is an inability to obtain institutional or non-tenant financing at commercially reasonable rates, to carry out any part of the project; or (iii) the Landlord or the Tenant declares that because of the extent of Remedial Action or Environmental Damage Mitigation costs and expenses that are necessary and required by any Environmental Permit, either

Type X or Type Y situations or both, as these terms are defined in § 7.01(f), such expenses make it economically unfeasible to develop the Leased Premises, it is agreed that, the Landlord and Tenant shall upon entry of final judgment, or denial of financing, or declaration that the development would be economically unfeasible, or as soon as practicable thereafter, attempt to reach agreement as to how to best develop the Leased Premises in light of such judgment or financing decision that have been rendered. Once the environmental studies have been completed and the estimates of Type X and Type Y situations costs and expenses have been established and agreed upon by Landlord and Tenant, the Tenant will provide funds in the first instance for the costs and expenses of the Type X and Type Y situations activities which the parties agree are necessary to be undertaken and as required by any Environmental Permit to correct the Environmental Damage. Tenant shall pay the entire cost and expenses of such activities in the first instance, and shall deduct such costs and expenses from future rent. Such costs and expenses shall include the actual financing costs and expenses that are incurred by Tenant, but in no event shall such exceed the financing costs and expenses commercially available at the time. (The Landlord and Tenant will make best efforts to secure available funding, from sources other than Landlord or Tenant, to undertake Remedial Actions or to mitigate the environmental damages described in the TAMS Study.) To the extent that such funds are used to pay for Type X or Type Y situations Remedial Actions or Environmental Damage Mitigation, the Tenant shall not be entitled to any reimbursement of such funds from the Landlord. In the event that the Leased Premises, or a portion thereof, is involved in such a declaration, this Lease may be terminated at the option of either the Landlord or Tenant and

appropriate adjustments as to costs and expenses involved with the Type X and Type Y situations costs and expenses incurred after the date of this Lease until that point in time shall be determined in an equitable manner between the Landlord and Tenant. Any costs and expenses, other than the TAMS studies costs and expenses, must be agreed to by Landlord and Tenant before they are incurred. The Landlord or the Tenant as the case may be shall give the other party thirty (30) days written notice of its intention to terminate this Lease for such reason. In the event that agreement cannot be reached, the issues shall be submitted to Dispute Resolution Procedures pursuant to Article 21 hereof. In the event that development proceeds, the Landlord will credit Tenant with future rent or additional rent payments to reimburse Tenant the costs and expenses that it incurred in connection with Type X and Type Y situations Remedial Action or Environmental Damage Mitigation that the Tenant funded in the first instance.

(f) Remedial Action or Environmental Damage Mitigation arising out of Environmental Conditions identified in the TAMS' studies and reports, Schedule 1 and Schedule 2, shall be classified as either Type X or Type Y situation costs and expenses. Type X situation costs and expenses are those costs and expenses of Remedial Action or Environmental Damage Mitigation that are or would be necessary to obtain the Environmental Permits for those areas of the Leased Premises not anticipated to be developed by Tenant under the Final Land Use Plan. Type Y situation costs and expenses are those costs and expenses for additional design and construction costs and expenses that are solely necessary for Remedial Action or Environmental Damage Mitigation measures that are undertaken consistent with the Environmental Permits and §§7.01, 8.02, 16.05, 16.07 and 16.08 of this Lease.

(g) The Tenant will join and/or cooperate with Landlord in pursuing claims for Environmental Damage against prior owners of the Leased Premises or any other responsible parties. Any recovered funds shall, if the Tenant has first instanced funds for Remedial Action or Environmental Damage Mitigation, first be used to reimburse Tenant for the Type X and Type Y situations costs and expenses; then be used for any remaining Type X and Type Y Costs; then for any additional environmental costs which under this Lease would be the responsibility of the Landlord.

Section 7.02. Land Use Plan Areas Described. The following descriptions are applicable to the various areas on the Land Use Plan or Plans:

a. Intermodal Terminal Area, Phase I.

This area of not less than 15 acres shall be for the exclusive use of intermodal service for the term of this lease. Areas for approach tracks, access, and other common facilities shall also be provided outside the designated intermodal phase I area. These common facilities shall be constructed so as not to reduce the effective use and capacity of the reserved intermodal area. Construction in the intermodal phase I area shall begin 12 months after the execution of this Lease and after final approval of all Environmental Permits and/or certificates and necessary building permits and be complete within 24 months of execution of this Lease.

b. Intermodal Terminal Area, Phase II.

This designated area of not less than 10 acres shall be reserved for the exclusive use of intermodal service. This property shall be exclusively held for such intermodal use provided a contract for construction of the Oak Point Link is awarded within 5 years from the execution of this lease. If the Oak Point

Point Link project is available for functional operation within 9 years from the date of execution of this Lease, this area shall be used exclusively for Intermodal Service. For the term of this Lease, common facilities outside these designated Intermodal areas shall be constructed so as not to reduce the effective use and capacity of these areas.

If the Oak Point Link is not constructed, the use of this designated area shall be subject to a revised Land Use Plan under Article 8 hereof.

c. Terminal Area.

This area is reserved for rail transportation orientated activities including but not limited to bulk transfer facilities.

d. Municipal Solid Waste, General Warehouse, Paper Recycling and Refrigerated Warehousing.

For areas designated for municipal solid waste and paper recycling, Tenant may at its option sublease land for construction and financing of facilities. For areas designated as general warehousing, refrigerated warehousing and other specialized warehousing, Tenant must be primarily responsible for both construction and financing of these facilities. Upon approval of the Final Land Use Plan and after final approval of all Environmental Permits and/or certificates and necessary building permits, Tenant shall initiate construction of general warehouse facilities in accordance therewith.

e. Parcels Not Designated For Use.

In submission of the Preliminary Land Use Plan, Tenant shall propose use of non-designated parcels and address common or joint facility needs, other intended tenants, or uses, or complementary use such as trailer storage, railroad storage, motor carrier facilities, etc.

ARTICLE 8

CONSTRUCTION

Section 8.01. Tenant Responsible for Design and Construction. The Tenant shall be solely responsible for any and all design and construction work of any kind, at any time, to be done in, on or to the Leased Premises. The Tenant shall do any and all construction work in, on or to the Leased Premises at its sole cost and expense, except for the costs and expenses for Type X and Type Y situations Remedial Action or Environmental Damage Mitigation, without specific contribution from the Landlord or the State of New York or any of its affiliated agencies in their capacity as Landlord. Any structure or other improvement, including infrastructure, shall be designed and constructed and all work performed on the leased premises shall be in accordance with all valid laws, ordinances, regulations, orders and standards of all applicable governmental agencies or entities having jurisdiction over the property. In particular, without limitation, the standards, regulations and building codes promulgated by the New York City Department of Ports and Trade, or any successor agency, shall govern such work. All work performed on the Leased Premises pursuant to this Lease, or authorized by this Lease, shall be done in good workmanlike manner and only with materials of good quality. If at any time the development of the Leased Premises by Tenant requires the relocation of the main line of Conrail or its successor, Tenant shall be solely responsible for all costs associated with such relocation.

Section 8.02. Submission of Land Use Plans. Attached to this Lease, as Appendix C, is a Proposed Land Use Plan, including the proposed financing methods and cost estimates to the extent available of the improvements

thereon. The Tenant shall submit to Landlord within ninety (90) days of the completion of the TAMS Study, Schedule 2, a Preliminary Land Use Plan or Plans for all of the area or each of the parcels and/or areas comprising the Leased Premises. The Preliminary Land Use Plan or Plans shall be in conformity with Article 7 hereof, and shall describe the proposed construction plan, including infrastructure, in reasonable detail on each parcel and shall also include a proposed construction schedule, a financing plan to the extent available for the development(s) and estimates for Remedial Action or Environmental Damage Mitigation that may be necessary for the development(s), including but not limited to the proposed fiscal responsibilities for the Remedial Action or Environmental Damage Mitigation of the Landlord and Tenant.

Within 270 days after submission of the Preliminary Land Use Plan, the Tenant shall submit to the Landlord a Final Land Use Plan or Plans, a financing plan for the development(s) and the agreed to estimates for Remedial Action or Environmental Damage Mitigation that are necessary for the development(s), including but not limited to the agreed to fiscal responsibilities for the Remedial Action or Environmental Damage Mitigation of the Landlord and Tenant including the fiscal aspects thereof, for all of the area or each of the parcels and/or areas comprising the Leased Premises in conformity with this Lease, and any understandings reached with the Landlord during such 270 day period. Such Preliminary and Final Land Use Plans are subject to the review and approval of the Landlord in accordance with the Landlord's responsibility as lead agency pursuant to the State Environmental Quality Review Act (SEQRA). Any modification to the Proposed, Preliminary and/or Final Land Use Plan, including the financial aspects thereof, must be approved by both Landlord and Tenant before becoming effective.

Section 8.03. Tenant Submission of Construction Plans. The Tenant at its own cost and expense shall submit all plans and specifications for construction on the Leased Premises to any and all Federal, State or municipal authorities having jurisdiction over construction on the Leased Premises. Tenant at its own cost and expense shall secure any and all permits, licenses or approvals from the aforementioned authorities prior to commencing work at the Leased Premises and from time to time, as required, secure approval and proper documentation, sign offs, engineers' certifications, certificates of occupancy, etc., that certify that all such work has been properly completed. Copies of all of the aforesaid documents shall from time to time be filed with the Landlord.

Section 8.04. Tenant's Use of Architects and Engineers. Tenant shall at its own cost and expense engage registered architects and engineers, qualified to do work within the State of New York, to prepare all plans and secure all sign offs and certificates of occupancy required by those having authority for construction on the Leased Premises.

Section 8.05. Landlord's Rights With Respect to Construction. The Landlord shall have the right at any time to inspect the Leased Premises. All Plans and Specifications for construction of facilities on the Leased Premises, including utilities and infrastructure, shall be subject to the approval of the Landlord prior to the commencement of construction. Plans and specifications must conform to the principles of the RFP and to the Final Land Use Plan unless the Landlord shall otherwise permit. However, Landlord's approval shall only extend to questions of whether the construction plans

conform and if the proposed use of the facility being built conforms to the purposes set forth in the RFP and to the quality of the construction intended. Design plans for specific facilities shall be submitted to the Landlord for review and comment at: (i) a stage of completion of 25%; (ii) at a stage of completion of 60%; and (iii) when final for approval. The Landlord shall complete its comments and give permission to proceed within forty-five (45) days of the date of the first submission of plans and specifications by the Tenant or Subtenant. Any permission required shall not be unreasonably withheld. In regard to on site inspections, the Landlord will reserve the right to inspect the Leased Premises for the duration of this Lease. The Landlord will accomplish this review by on site inspection both during and after construction to determine that lease and RFP objectives are being met by the tenant and subtenants. The Tenant shall at all times provide Landlord with a reasonable amount of furnished office space, without charge, to allow Landlord to accomplish its purposes under this Lease.

Section 8.06. Tenant Requests for Changes in Land Use Plans. The Tenant shall have the right from time to time to request that the Landlord consider changes to an approved Land Use Plan. Tenant shall submit a specific request to Landlord in writing as provided for herein and Landlord shall respond to such request within sixty (60) days from the date of the making of such request by the Tenant. Landlord shall act reasonably upon such request by Tenant in reviewing a change in an approved Land Use Plan. In the event that the Landlord and Tenant cannot agree on the proposed change, the matter shall be submitted to Dispute Resolution Procedures pursuant to Article 21 of this Lease. However, nothing herein shall be construed to limit the authority and

responsibility of Landlord pursuant to SEQRA.

ARTICLE 9

REPAIR AND MAINTENANCE.

Section 9.01. Maintenance of The Leased Premises. Tenant shall be solely responsible for the maintenance and repair of the Leased Premises and the improvements thereon, without limitation, including the provision of appropriate security and lighting as determined by the Tenant, and shall make all repairs therein and thereon, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good, safe, and attractive order and condition, however the necessity or desirability therefore may occur. Tenant shall neither commit nor suffer, and shall use all reasonable precautions to prevent waste, damage or injury to the Leased Premises. All repairs made by Tenant shall be made at Tenant's sole cost and expense and shall be reasonably equal in quality and class to the original work and shall be made in compliance with the Requirements. As used in this Article, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations and (d) additions.

Section 9.02 Free of Dirt, Snow. Tenant, at its sole cost and expense, shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the railroad tracks, switches, sidewalks, grounds, parking facilities (including the Parking Area), plazas, common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs or any other space in front of, or adjacent to, the Leased Premises or any of such areas or spaces

adjacent to the Leased Premises for which Tenant or the fee owner of the Leased Premises has or would have responsibility for under applicable law.

Section 9.03. No Obligation of Landlord to Repair or to Supply Utilities. Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Leased Premises and shall not have any duty or obligation to make any repair, alteration, change, improvement, replacement, restoration or repair to the improvements; and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, restoration, repair, maintenance and management of the Leased Premises. However, Landlord does hereby agree that it will enter into and grant easements to utility companies and other necessary parties so that all necessary utilities and services can be supplied to the Leased Premises, with respect to land owned by the Landlord in the vicinity of the Leased Premises.

ARTICLE 10

DAMAGE, DESTRUCTION AND RESTORATION.

Section 10.01. Notice to Landlord. Tenant shall notify Landlord immediately if any portion of the Improvements are damaged or destroyed in whole or in part by fire or other casualty to the extent of ten (10%) of Replacement Value or more.

Section 10.02. Casualty Restoration.

(A) Obligation To Restore. Except as otherwise expressly set forth in §10.02(B) below, if all or any portion of the Improvements are damaged or

destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, in accordance with the provisions of this Article 10 and Articles 7 and 8 hereof and subject to Unavoidable Delays, restore the improvements to the extent of the value and as nearly as possible to the character of the improvements as they existed immediately before such casualty and otherwise in substantial conformity with the Plans and Specifications as they were approved by the Department of Ports and Trade of the City of New York at the time of the original Construction of the Improvement or any other portions of and/or any improvements or betterments made to the Leased Premises in substantial conformity with the plans and specification furnished by Tenant to Landlord in accordance with Article 7 hereof, whether or not (i) such damage or destruction has been insured or was insurable, (ii) Tenant is entitled to receive any insurance proceeds, or (iii) the insurance proceeds are sufficient to pay in full the cost of the Construction Work in connection with the Casualty Restoration. Notwithstanding anything contained herein, in the event that any portion of the Leased Premises or the improvements made thereto is damaged or destroyed by fire or other casualty and the portion so destroyed is functionally obsolete the Tenant shall not be required to restore that portion of the Leased Premises, or improvements or betterments therein. In the event that casualty loss payments are received by the Tenant and are not reinvested in the Project within 18 months from date of receipt, then the amount of payment so received shall reduce the Tenant's Equity Contribution to the project.

(B) Option Not to Restore. Notwithstanding the provisions of §10.02(A) hereto, if all or any major part of all Improvements shall be destroyed or damaged as provided in §10.02(A) hereof, after the thirty-fifth (35th) year of

the anniversary of the commencement of this Lease then Tenant at its option, in lieu of performing the casualty restoration required herein may terminate this Lease within sixty (60) days after such damage or destruction by serving upon Landlord, at any time within said sixty day period, a ten (10) day written notice of Tenant's election to so terminate. The Tenant shall remit to Landlord concurrently with the service of such notice an amount equal to all Rental of any kind accrued up to and including the date of termination specified in said termination notice. Upon the service of such notice and the making of such payment this Lease shall terminate on the date specified in such notice with the same force and effect as if such date were the date originally fixed for the termination hereof, and Tenant shall comply with all surrender requirements of Article 23 hereof.

(C) Commencement of Construction Work. Subject to Unavoidable Delays, Tenant shall commence the Construction Work in connection with a Casualty Restoration within one hundred twenty (120) days of the damage or destruction but in no event shall Tenant be required to so commence the Construction Work earlier than thirty (30) days after the signing of a proof of loss with the insurance carrier.

Section 10.03. Effect of Casualty on This Lease. Unless the Lease is terminated as provided in §10.02(B) hereof, this Lease shall neither terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental, by reason of total, substantial or partial destruction of the Improvements or by reason of the untenability of the Improvements or any part thereof. Tenant's obligations hereunder, including the payment of Rental, shall continue as though the Improvements had not been

damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 10.04. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Leased Premises or any part thereof by reason of any casualty to the Improvements. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in §227 of the Real Property Law of the State of New York.

ARTICLE 11

CONDEMNATION

Section 11.01. Certain Definitions:

(A) "Taking" shall mean a taking of the Leased Premises or any part thereof for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right irrespective of whether the same affects the whole or Substantially all of the Leased Premises (as defined herein) or a lesser portion thereof but shall not include a taking of the fee interest in the Leased Premises or any portion thereof if, after such taking, Tenant's rights under this Lease are not affected.

(B) "Substantially all of the Leased Premises" shall be deemed to mean such portion of the Leased Premises as would leave remaining after a Taking a balance of the Leased Premises which would not readily accommodate a facility to support the uses described in the RFP on a commercially reasonable basis

due either to the area so taken or the location of the portion of the Leased Premises so taken in relation to the portion of the Leased Premises not so taken in light of economic conditions, zoning laws or building regulation then existing or prevailing and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed by Tenant. The determination of "commercially reasonable basis" shall be subject to Dispute Resolution Procedures in accordance with §21.01.

(C) "Date of Taking" shall be deemed to be the date on which title to the whole or Substantially all of the Leased Premises or a lesser portion thereof, as the case may be, shall have vested in any lawful power or authority pursuant to the provisions of the applicable Federal, State or City condemnation law or the date on which the right to the temporary use of the same has so vested in any lawful power or authority as aforesaid.

(D) "Condemnation Restoration" shall mean a restoration of any portion of the Leased Premises remaining after a partial Taking and/or a restoration of any portion of the Leased Premises which have been changed or altered as a result of a temporary Taking or as a result of any governmental action not constituting a Taking but creating a right to compensation as provided in this Article 11 so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units and, to the extent practicable, of a size and condition of, and having a character similar to, the character of the Leased Premises existing immediately prior to the Date of Taking or the date of such other governmental action.

Section 11.02 Permanent Taking.

(A) Taking of the whole etc. If during the Term there shall be a

Taking of the whole or Substantially all of the Leased Premises (other than a temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall terminate and expire on the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned to the Date of Taking, as determined by Tenant (subject to audit) and all such Rental shall be paid to Landlord on the Date of Taking; and

(ii) The award payable in respect of such Taking shall be paid as follows: (a) there shall first be paid to Landlord so much of the award which is for, or attributable to, the value of the Land taken in such proceeding considered as unimproved and encumbered by this Lease; (b) then, to the extent proceeds are available the Leasehold Mortgagee which holds a first lien on Tenant's interest in this Lease shall be paid so much of the balance of such award as shall equal the unpaid principal indebtedness secured by such Leasehold Mortgage, with unpaid interest thereon at the rate specified therein to the date of payment and any other sums evidenced or secured by such Leasehold Mortgage; (c) then, subject to rights of any other Leasehold Mortgagees, Tenant shall receive the balance of the award, if any.

(B) Partial Taking. If there shall be a Taking of less than the whole or Substantially all of the Leased Premises (other than a temporary Taking), this Lease and the Term shall continue without diminution of any of Tenant's obligations hereunder, except that this Lease shall terminate as to the portion of the Leased Premises so taken. Tenant may, with the

prior written consent of all Leasehold Mortgagees, elect not to effect a Condemnation Restoration by so notifying Landlord, within (10) days prior to the Date of Taking; and such event the condemnation proceeds will be distributed as provided in §11.02 hereof for a Taking of the whole or Substantially all of the Leased Premises: (a) Tenant shall comply with all the surrender requirements of Article 23 hereof; and (b) this Lease shall terminate.

(iii) the award payable in respect of a partial Taking shall be paid as follows: (a) the entire award for or attributable to the Land so taken, considered as unimproved and encumbered by this Lease, shall be first paid to Landlord and the balance of the award, if any, shall be subject to the right of Leasehold Mortgagees paid to Tenant.

Section 11.03. Restoration of Leased Premises.

(A) If any portion of the Leased Premises must be restored subsequent to such Taking, Tenant at its cost and expense shall in accordance with this Article 11 and Articles 7 and 8 hereof subject to unavoidable delays, restore the remaining portion of the Leased Premises not so taken as nearly as possible to the character of the original Improvements provided:

(i) That the portion to be restored is not so badly damaged that it cannot be restored at reasonable cost. The determination of reasonable cost shall be subject to Dispute Resolution Procedures under Article 21 of this Lease;

(ii) The portion to be restored is obsolete and therefore shall not be restored; and

(iii) The Landlord shall in no event be obligated to restore any remaining portion of the Leased Premises or pay any cost or expense thereof.

(B) Subject to unavoidable delays, Tenant shall commence the construction work in connection with the restoration of the damaged portion of the Leased Premises within One hundred twenty (120) days of the final settlement of all matters relating to the partial taking, but in no event shall Tenant be required to so commence the construction work earlier than thirty days after the settling of a final judgement of any or all litigation relating to the partial taking or the acceptance by the Tenant and the Leasehold Mortgagee of any award by the condemning authority.

Section 11.04. Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Leased Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental; provided, however, that if such governmental action results in changes or alteration of the Leased Premises, then Tenant shall restore the Leased Premises and effect a restoration with respect thereto. Any award payable in the case of such governmental action shall be paid to Tenant for the purpose of paying for the cost of the

restoration in accordance with §11.05 hereof. Notwithstanding the foregoing, however, Tenant hereby waives any and all claims, and releases and relinquishes all of its interest in and to any award, damages or other compensation of any kind resulting from or predicated upon a change of grade or street widening, unless such change of grade or street widening materially and adversely affect access to the premises or the value thereof.

Section 11.05. Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article 11.

Section 11.06. Allocation of Award Between Improvements and the Land. Upon a Taking, the parties shall make every effort to agree to an allocation of the award or payment between the improvements and the Land. If, after a reasonable time, the parties cannot agree the dispute shall be resolved in accordance with the Dispute Resolution Procedures pursuant to §21.01 hereof.

Section 11.07. Condemnation Proceedings. Both Landlord and Tenant shall have the right to appear in any condemnation or similar proceedings and to participate in any and all hearings, trials, and appeals in connection therewith. Nothing herein shall preclude either party from contesting the act of taking or

the compensation to be paid for the taking, and notwithstanding anything herein, either party may request such court to determine, as between them, the division of the compensation, and such action by either party shall not preclude such matters from Dispute Resolution Procedures under Article 21 herein.

ARTICLE 12

CAPITAL IMPROVEMENT.

Section 12.01. Capital Improvement.

(A) Tenant's Right to Make Capital Improvements. Tenant shall be permitted to make Capital Improvements provided that in each case Tenant shall comply with all applicable provisions of Articles 4, 6, 7 and 8 hereof, including, without limitation, provisions concerning Landlord's right to approve material changes to the Plans and Specifications.

(B) Completed Capital Improvements Shall Not Reduce Value of Leased Premises. All Capital Improvements, when completed, shall be of a character that will not reduce the value of the Leased Premises below its value immediately before commencement of such Capital Improvement. Any and all Capital Improvements shall conform to an approved Land Use Plan or any approved modification thereof, and shall be in conformity with the uses set forth in this Lease. No uses and/or activities which involve hazardous or super-hazardous uses and/or activities shall be undertaken on the Leased Premises by the Tenant and/or Subtenants nor anyone under its or their control unless such uses

and/or activities have received all appropriate governmental approvals and thereafter continue in full compliance with all appropriate laws, rules and regulations. All capital improvements of every kind and nature shall be and become the property of the Landlord.

(C) Definition: "Capital Improvement" means a change, alteration or addition to the Improvements including, without limitation, all tenant work, buildings, the parking area, railroad tracks or bulkheads.

ARTICLE 13

CONSENTS AND APPROVALS

Section 13.01. Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals and requests for consents or approvals which may be required under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 13.02. Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is required, then unless expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party of its approval, denial or request for additional information within forty-five (45) days or such other period as is expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefore in reasonable detail, such consent or approval shall be deemed granted. If, pursuant to the terms of this section, any consent or approval is to be deemed granted by the Landlord, it shall not be deemed granted unless Tenant shall have first given Landlord a second notice ten(10) days before the expiration of said forty-five (45) day period, specifically stating that failure of Landlord to respond shall be deemed consent or approval pursuant to this Section. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 13.03. No Fees. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease; provided, however, that this provision shall limit Landlord only in its proprietary capacity as owner of the Leased Premises and Landlord under this Lease and shall not affect Landlord in its governmental capacity.

ARTICLE 14

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES.

Section 14.01. Requirements:

(A) Obligation to Comply. In connection with any Construction Work, maintenance, management, use and operation of the Leased Premises and Tenant's performance of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Leased Premises, or involving or requiring any structural changes or additions in or to the Leased Premises, and regardless of whether such changes or additions are required by reason of any particular use to which the Leased Premises, or any part thereof, may be put. No consent or approval of or acquiescence in any plans or actions of Tenant by Landlord, in its proprietary capacity as Landlord under this Lease, or Landlord's designee shall be relied upon or construed as being a

determination that such are in compliance with the Requirements, or, in the case of construction Plans and Specifications, are structurally sufficient.

(B) Definition:

"Requirements" means:

(i) Any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Authorities (currently in force or hereafter adopted) applicable to the Leased Premises and all improvements situated thereon including without limitation, any buildings, street, road, avenue or sidewalk, rail crossing or bulkhead comprising a part of, or laying in front of, the Leased Premises or any vault in, or under the Leased Premises;

(ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease; and

(iii) the Certificate or Certificates of Occupancy issued for the Improvements as then in force.

Section 14.02. Landlord Approval of Subtenant. The Landlord shall have the right during the term of this Lease to approve any Subtenant to whom the Tenant wishes to lease any portion of the Leased Premises. Such approval shall be limited to (i) the use to which the Subtenant wishes to use the premises, (ii) the business reputation of the proposed Subtenant and/or its principals. The Landlord shall issue said approval within 45

days from the submission of a request for permission by the Tenant. Permission shall not be unreasonably withheld.

ARTICLE 15

DISCHARGE OF LIENS; BONDS.

Section 15.01. Creation of Liens. Except as otherwise provided and permitted hereunder, Tenant shall not create, cause to be created or suffer or permit to remain any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Leased Premises or any part thereof arising out of Tenant's interest in or use or occupancy of the Leased Premises or by reason of any labor or materials furnished or claimed to have been furnished or by reason of any construction, alteration, repair or demolition of any part of the Leased Premises by Tenant or its agents or contractors during the term hereof, or for any other reason. Notwithstanding the above, Tenant shall have the right to execute Leasehold Mortgages and Subleases as permitted by, and in accordance with, the provisions of this Lease.

Section 15.02. Discharge of Liens. If any mechanics, labor, vendor, materialman or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) is filed against the premises or any part thereof, Tenant shall, within thirty (30) days after the filing of such mechanic's, laborer, vendor,

materialman or similar statutory lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

Section 15.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, sub-contractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Leased Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Leased Premises or any part thereof or against assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide that to the extent enforceable under New York law, Landlord shall not be liable for any work performed or to be performed at the Leased Premises or any part thereof for Tenant or any Subtenant or for any material furnished or to be furnished to the Leased Premises or any part thereof for any of the foregoing, and no mechanic's, laborer, vendor, materialman or other similar statutory lien for such work or materials shall attach to or affect the Leased Premises or any part thereof or

any assets of, or funds appropriated to, the Landlord.

ARTICLE 16

REPRESENTATIONS.

Section 16.01. No Brokers. Landlord and Tenant each represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby.

Section 16.02. Tenant Representations.

(A) Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Leased Premises and are fully familiar therewith and with the physical condition and occupancies thereof, if any. Subject to the Memorandum of Understanding between the parties dated September 6, 1990. (a copy of which is attached as Appendix E) and §§7.01, 8.02, 16.05, 16.07 and 16.08 herein, Tenant accepts the Leased Premises in its existing condition and state of repair.

(B) Tenant warrants and represents that no officer, agent employee or representative of the Landlord has received any payment or other consideration for the making of this Lease and that no officer, agent, employee or representative of the State has any interest, directly or indirectly, in the Lease or the proceeds thereof.

(C) Landlord shall not, solely on the basis of this lease, be liable to Tenant for environmental conditions arising during

or after the term of this lease.

Section 16.03. Landlord Representations. The Landlord warrants and represents that:

(A) Tenant shall not be liable for any latent defects in the Leased Premises which defect was present prior to the execution of this Lease. Any Remedial Action or Environmental Damage Mitigation measures undertaken for Environmental Damage revealed in connection with the TAMS Studies and the Environmental Permit Process, will be undertaken in conformance with §§ 7.01, 8.02, 16.05, 16.07 and 16.08.

(B) The Landlord warrants and represents that it has clear title to all of the property described in the Leased Premises description as set forth in Appendix B attached hereto. In the event that any challenge to Landlord's title of the Leased Premises or the validity of any existing easement occurs, it shall be solely the Landlord's responsibility to cure such title defect or challenge to an easement at its sole cost and expense with no contribution by Tenant. In the event that the Landlord fails to timely pursue the clearing of any impediment to the title to the Land or defend any easement over the land the Tenant shall have the authority to act in the name of and on behalf of the Landlord upon the giving of thirty (30) days written notice pursuant to §31.01 hereof of its intention to do so. Landlord shall pay all reasonable legal fees and other costs associated with the clearing of title or defense of an easement.

(C) The Landlord warrants and represents that at the date of execution of this Lease the Leased Premises as described in Appendix B hereof are zoned M3 and that the current zoning will permit, as of right, the carrying out of the purposes set forth in the RFP.

(D) The Landlord warrants and represents that neither the Landlord nor any other agency of the State of New York nor the City of New York nor any agency of the City of New York, other than as set forth in Appendix B or in this Lease has in effect any option or agreement affecting the Leased Premises.

(E) The Landlord warrants and represents that there are no recorded liens against the Leased Premises.

(F) The Landlord warrants and represents that it has no knowledge of any threatened or pending litigation relating to the Leased Premises.

(G) The Landlord warrants and represents that there are no notices of or any pending violations from any governmental authorities relating to the Leased Premises.

(H) The Landlord warrants and represents that it has no knowledge of any unrecorded restrictive covenants against the Leased Premises.

Section 16.04. Definitions. For the purposes of this Lease, the following terms shall have the following definitions:

(A) "Hazardous Materials" shall mean (i) any toxic substance or hazardous waste, substance or related material, or

any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, petroleum and petroleum products, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials", "hazardous wastes" or words of similar import under any Legal Requirement including the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 et. seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801 et. seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et. seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et. seq.; the New York Environmental Conservation Law; New York City Administrative Code §24-601 et. seq.; and (iv) any other chemical, material, gas or substance, the storage, exposure to or release of which is or may hereafter be prohibited, limited or regulated by any governmental or quasi-governmental entity having jurisdiction over the Leased Premises or the operations or activity at the Leased Premises, or any chemical, material, gas or substance that does or may pose a hazard to the health or safety of the occupants of the Leased Premises or the occupants of property adjacent to the Leased Premises.

(B) "Environmental Laws" shall mean all Legal Requirements relating to the protection of human health or the Environment (as defined in §16.04(C), including:

(i) all Legal Requirements relating to reporting, licensing, permitting, investigation and remediation of emissions, discharges, Releases (as defined in §16.04(H)) or Threats of Release (as defined in §16.04(J)) of Hazardous Materials, and other materials as are now or may hereafter be regulated by applicable Legal Requirements (collectively, "Regulated Materials") into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Regulated Materials; and

(ii) all Legal Requirements pertaining to the protection of the health and safety of employees or the public.

(C) "Environment" shall mean soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata and ambient air.

(D) "Environmental Condition" shall mean any condition with respect to the Environment on the Leased Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of Tenant's business or the operation of the business of any subtenant or occupant of the Leased Premises or any activity or operation formerly conducted by any person or entity on the

Leased Premises.

(E) "Environmental Damage" shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, or the costs and expenses of remediation, any of which are incurred at any time as a result of (i) the existence of an Environmental Condition on, about or beneath the Leased Premises or migrating to or from the Leased Premises, (ii) the Release or Threat of Release of Regulated Materials into the Environment from the Leased Premises or (iii) the violation or threatened violation of any Environmental Law pertaining to the Leased Premises, regardless of whether the existence of such hazardous Materials, the Release or Threat of Release of such Hazardous Materials or the violation or threatened violation of such Environmental Law arose prior to, on or after the Commencement Date, and including:

- (i) damages for personal injury, disease or death or injury to property or natural resources occurring on the Leased Premises, including lost profits, consequential damages, and the cost of demolition and rebuilding of any improvements;
- (ii) diminution in the value of the Leased Premises, and damages for the loss or of restriction on the use of the Leased Premises;

(iii) fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation, cleanup and remediation, including the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration or monitoring work; and

(iv) liability to any person or entity to indemnify such person or entity for costs expended in connection with the items referred to in §16.04(E).

(F) "Legal Requirements" shall mean every statute, law, ordinance, code, regulation, order, permit, approval, license, judgment, restriction or rule of any Federal, State, municipal or other public or quasi-public body, agency, court, department, bureau, officer or authority having jurisdiction over the Leased Premises or Tenant.

(G) "Permit" or "Environmental Permit" shall mean any permit, license, approval, consent or authorization issued by a federal, state or local governmental or quasi-governmental entity in accordance with any Environmental Law or Legal Requirement.

(H) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

(I) "Remedial Action" or "Environmental Damage Mitigation" shall mean all actions as are necessary to put the Leased Premises in the condition required by law.

(J) "Threat of Release" shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

Section 16.05. Further Landlord Representations. Landlord represents and warrants to the Tenant that, to the best of its knowledge and except as denoted in TAMS Report (a copy of which is attached as Schedule 1):

(A) Neither the Leased Premises nor any property adjacent to or within the immediate vicinity of the Leased Premises with the exception of the river, is being or has been used for the storage, treatment, generation, transportation, processing, handling, production, or disposal of any Hazardous Material or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(B) Underground storage tanks are not and have not been located on the Leased Premises.

(C) The soil, subsoil, bedrock, surface water and groundwater are free of any Hazardous Material, except as noted in Schedule 1.

(D) There has been no Release nor is there the threat of a Release of any Hazardous Substance on, at or from the immediate vicinity of the Leased Premises which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on the Leased Premises, and the Landlord has not received

any form of notice or inquiry from any federal, state, or local government or quasi-government agency or authority, any operator, tenant, subtenant, licensee or occupant of the Leased Premises or any property adjacent to or within the immediate vicinity of the Leased Premises or any other person with regard to a Release or the threat of a Release of any Hazardous Materials on, at or from the Leased Premises or any property adjacent to or within the immediate vicinity of the Leased Premises.

(E) As of the Commencement Date, all Environmental Permits necessary for the present uses of the Leased Premises have been obtained and are in full force and effect.

(F) No event has occurred with respect to the Leased Premises, which with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(G) There is no agreement, consent order or permit condition or other directive of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Leased Premises which requires any change in the present condition of the Leased Premises or any work, repair, construction, containment, clean up, investigation, study, removal or other Remedial Action or Environmental Damage Mitigation or capital expenditure with respect to the Leased Premises.

(H) There is no action, suit, claim or proceeding, pending or threatened, which could cause the incurrence of any expense or cost of any name or description or which seeks money damages, injunctive relief, Remedial Action or any other remedy that arises out of, relates to, or results from: (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit; (ii) the presence of any Hazardous Material or a Release or the threat of a Release of any Hazardous Substance on, at or from the Leased Premises or any property adjacent to or within the immediate vicinity of the Leased Premises; or (iii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Leased Premises or the ownership, use, operation, sale, transfer or conveyance thereof.

(I) Tenant will first instance fund the Type X and Type Y situations activities portion of the scope of services developed by TAMS (attached as Schedule 2) which the parties agree is necessary to be undertaken as a result of the environmental work by TAMS (Schedule 1). Tenant shall pay the entire cost and expense of such work in the first instance, and shall deduct the Landlord's portion of such costs and expenses from future rent or additional rent.

(J) The Landlord and Tenant agree to use best efforts in resolving environmental problems, in particular in obtaining any necessary consent order from the State Department of

Environmental Conservation.

Section 16.06. Report of Tenant as to Regulated Materials.

At the commencement of this Lease, and on March 30th of each year during the Term, including March 30th of the year after the termination of this Lease, Tenant shall, to the extent Tenant is required to disclose or report the same to any governmental authority, disclose to Landlord the types and amounts of all Regulated Materials which were stored, used, released or disposed of on the Leased Premises, or which Tenant intends to store, use or dispose of on the Leased Premises.

Section 16.07. Indemnification for Environmental Damage by Tenant. Tenant shall be responsible for the costs and expenses of and shall indemnify and hold harmless Landlord from and against any and all Environmental Damages due to Environmental Conditions arising during or after the Term to the extent such conditions were caused by the action, including but not limited to Remedial Action or Environmental Damage Mitigation resulting from construction activities unless such activities are solely necessary for Remedial Actions or Environmental Damage Mitigation for Type X and Type Y situations, or unreasonable failure to act of the Tenant (or any subtenant, licensee or other occupant of the Leased Premises). Tenant's obligations to indemnify shall not apply with respect to Environmental Damages not caused by actions of Tenant and/or Subtenant or parties under its or their

control. Tenant shall be responsible for all costs and expenses for design and construction, except for design and construction costs and expenses that are solely necessary for Remedial Action or Environmental Damage Mitigation Type X and Type Y situations which are the responsibility of the Landlord, provided the Landlord shall have the sole right, which shall be exercised reasonably, to approve the design and the costs and expenses estimates of such Remedial Action or Environmental Damage Mitigation.

Section 16.08. Responsibility for Environmental Damage by Landlord. To the extent permitted by law, subject to conformity with §§ 7.01, 8.02, 16.05, 16.07 and 16.08 of this Lease, Landlord shall be responsible for and hold Tenant harmless from and against any Environmental Damages due to Environmental Conditions based upon, or arising out of, conditions related to the presence on or under the Leased Premises of any Hazardous Materials, as defined by §16.04 herein, but solely to the extent that such loss, damage or expense was: (1) not caused or exacerbated by the action or unreasonable failure to act of the Tenant (or any subtenant, licensee, invitee or other occupant of the Leased Premises), or agents, employees, or contractors of the above; or (2) not caused or exacerbated by Environmental Conditions arising after the Lease Commencement Date to the extent such conditions were caused by the action or unreasonable failure to act of an unrelated third person for which the

Landlord would not otherwise be liable. Without limiting the foregoing, if the presence, Release, or Threat of Release of any Regulated Material on or from the Leased Premises results in any contamination, Tenant shall promptly take all Remedial Actions as are necessary to return the Leased Premises to the condition required by law; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld or delayed. Anything to the contrary notwithstanding, unless agreed to in writing, Tenant shall not be required to undertake any Remedial Action which in the Tenant's reasonable judgment would involve an expenditure in excess of \$100,000 unless the need for such Remedial Action arises from the actions or failures to reasonably act by the Tenant (or any Subtenant, licensee, invitee or other occupant of the Leased Premises) or agents, employees and contractors of the above. The Landlord shall be solely responsible for the costs and expenses involved with the Remedial Action or Environmental Damage Mitigation for Type X and Type Y situations that are necessary or required in accordance with Environmental Permit and §§7.01, 8.02, 16.05, 16.07 and 16.08. In addition to such costs and expenses for such Type X and Type Y situations, and notwithstanding any limitation set forth above, the Landlord is also responsible for any Environmental Damages arising out of Environmental Conditions which were latent or otherwise not known to the Tenant at the time that approval was granted for Remedial Action or Environmental Damage Mitigation measures necessary for

the development of the Leased Premises by Tenant.

Section 16.09. Compliance with Environmental Laws. Tenant shall comply with all Environmental Laws, including, without limitation, Environmental Laws relating or referring to the storage of petroleum products.

Section 16.10. Notice of Environmental Problem. If Tenant receives any notice or acquires knowledge of a Release, Threat of Release or Environmental Condition or a notice with regard to air emissions, water discharges, noise emissions, recycling, violation of any Environmental Law or any other environmental, health or safety matter affecting Tenant or the Leased Premises (an "Environmental Complaint") independently or by notice from any person or entity, including the New York City Department of Environmental Protection ("DEP"), the New York State Department of Environmental Conservation ("DEC") or the United States Environmental Protection Agency ("EPA"), then Tenant shall give immediate oral and written notice of same to Landlord detailing all relevant facts and circumstances.

Section 16.11. Right of Entry for Environmental Problem. Landlord shall have the right, but not the obligation, to exercise any of its rights as provided in Article 19, to enter

onto the Leased Premises or to take such actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of or otherwise deal with any Hazardous Materials, Release, Threatened Release or Environmental Complaint upon its obtaining knowledge of such matters independently or by receipt of any notice from any person or entity, including the DEP, the DEC and the EPA.

Section 16.12. Environmental Related Events of Default.

The occurrence of any of the following events if they arise out of the actions of the Tenant (or any subtenant, licensee or other occupant of the Leased Premises) shall constitute an Event of Default (as defined in Article 20) under this Lease:

(A) If the DEP, DEC, EPA or any other federal, state or local agency asserts or creates a lien upon the Leased Premises;
or

(B) If the DEP, DEC, EPA or any other local, state or federal agency asserts a claim against Tenant (or any subtenant, licensee or other occupant of the Leased Premises), the Leased Premises or Landlord, for damages or cleanup costs related to a Threat of Release, Release, an Environmental Condition or an Environmental Complaint on or pertaining to the Leased Premises; provided, however, such lien or claim shall not constitute an Event of Default if, within 120 days of the occurrence giving rise to the lien or claim:

(i) Tenant can prove to Landlord's reasonable satisfaction

that Tenant has commenced and is diligently pursuing either: (a) cure or correction of the event which constitutes the basis for the lien or claim and continues diligently to pursue the cure or correction to completion and obtains the discharge of any lien;; or (b) proceedings for an injunction, restraining order or other appropriate emergent relief preventing the agency from asserting the lien or claim and, if such relief is granted, the emergency relief is not thereafter dissolved or reversed on appeal;

(ii) in either of the events set forth in subsection 16.04(A), Tenant has posted a bond, letter of credit or other security reasonably satisfactory in form, substance and amount to the agency or entity asserting the lien or claim to secure the proper and complete cure or correction of the event which constitutes the basis for the lien or claim.

Section 16.13. Underground Storage Tanks. In the event that Tenant determines it is necessary to install underground storage tanks for the storage of petroleum or petroleum products at the Leased Premises, Tenant shall:

(A) Comply with all applicable Environmental Laws relating to the installation, maintenance, monitoring, registration licensing, closure, abandonment, and removal of such tanks from service, including, without limitation, the provisions of 40 CFR Parts 280 and 281, 6 NYCRR Parts 610 through 614, inclusive as those provisions may from time to time be amended during the Term; and

(B) Provide Landlord with copies of all plans, specifications, test data, reports, correspondence and other documents relating or referring to such underground storage tanks.

Section 16.14. Survival Clause. The provisions of this Article 16 shall survive the Expiration Date or sooner termination of this Lease.

ARTICLE 17

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE.

Section 17.01. Landlord not Liable. Landlord shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Leased Premises or its appurtenances, nor for any injury or damage to the Leased Premises or to any property belonging to Tenant or to any other Person that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Leased Premises (including, but not limited to, any of the common areas within the Improvements, hatches, openings, stairways or hallways or other common facilities, rail tracks and the streets or sidewalk areas within or adjacent to the Leased Premises) or that may arise from any other cause whatsoever, unless caused by Landlord's or its agents' or employees' gross negligence.

Landlord shall not be liable to Tenant or to any Person for any failure of water supply, gas or electric current or from water, rain or snow which may leak or flow from the street, sewer

or gas mains or water mains, unless caused by Landlord's or its agents' or employees' gross negligence.

ARTICLE 18

INDEMNIFICATION OF LANDLORD AND OTHERS.

Section 18.01. Obligation to Indemnify. Tenant shall not do or permit any act or thing to be done upon the Leased Premises, or any portion thereof, which subjects Landlord, to any liability or responsibility for injury or damage to Persons or property or to any liability by reason of any violation of law or of any legal requirement of any public authority, but shall exercise such control over the Leased Premises so as to protect fully Landlord against any such liability. The foregoing provisions of this §18.01 shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of §18.03 hereof. Subject to any limitation contained in this Lease, Tenant shall indemnify and save Landlord and its respective officers, directors, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following, whether or not knowingly done or permitted by Tenant, except that no Indemnitee shall be so

indemnified and saved harmless to the extent the liabilities, etc. are caused by the gross negligence of such Indemnitee:

(A) Construction Work. Construction and reconstruction Work, including design of construction and reconstruction work, or any other work or act done in, on, or about the Leased Premises or any part thereof;

(B) Ownership. The ownership or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Leased Premises or any part thereof or of any street, plaza, alley, sidewalk, curb, vault, passageway, subway, utility or space comprising a part thereof or adjacent thereto (for which Landlord or the fee owner of the Leased Premises has or would have responsibility pursuant to this Lease or under applicable law) including, without limitation any liability with respect to the maintenance of sidewalks adjoining the Leased Premises and any violations imposed by any Governmental Authorities in respect of any of the foregoing;

(C) Acts or Failure to Act of Tenant. Any act or failure to act on the part of Tenant or any of its or their respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, employees, licensees, or invitees;

(D) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Leased Premises or any part thereof, or in, on, or about any

plaza, sidewalk, curb, vault, passageway, subway, utility or space comprising a part thereof or adjacent thereto (for which Tenant, Landlord or the fee owner of the Leased Premises has or would have responsibility pursuant to this Lease or under applicable law);

(E) Lien, Encumbrance or Claim Against Leased Premises.

Any lien or claim that may be alleged to have arisen subsequent to the creation of the Lease against or on the Leased Premises, or any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their partners, joint venturers, officers, agents, contractors, servants, employees, licensees or invites against any assets of, or funds appropriated to, Landlord or any liability that may be asserted against Landlord with respect thereto.

(F) Failure to Pay Rent. Any failure on the part of the Tenant to pay rent or to perform or comply with any covenant in this Lease, any agreement, term or condition herein or therein or any agreement pursuant to which Tenant pledges security for the benefit of the Landlord.

ARTICLE 19

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS.

Section 19.01. Landlord's Right to Perform. If the Tenant shall at any time fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 3 hereof, or to make any other payment or perform any

other act on its part to be made or performed hereunder, then, subject to the provisions of this Lease permitting Tenant to contest any lien, Imposition or governmental requirement, Landlord may, after ten (10) day's notice to Tenant (or, in case of any emergency, on such notice as may be reasonable under the circumstances), and without releasing Tenant from any obligation of Tenant hereunder and without waiving the right to terminate this Lease upon an Event of Default or any other right or remedy permissible hereunder, may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 3 hereof, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided (except for any maintenance or repair obligation imposed on Tenant pursuant to Article 9 hereof), and may take all such actions as may be necessary therefore. Notwithstanding the foregoing, either Landlord or any agent, employee, contractor or any other person acting on Landlord's behalf may enter upon the Leased Premises or any portion thereof for any such purpose.

Section 19.02. Amount Paid is Additional Rental. All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord's making of

each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant, additional Rental under this Lease and shall be paid by Tenant to Landlord with and in addition to the next quarterly installment of Rental payable following the giving of such notice.

If there shall be an event of default under this Lease, and then Landlord after written notice, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligations on Tenant's behalf.

Section 19.03. Payment by Landlord. All sums paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such obligation, together with interest thereon from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual payment to Landlord, shall be paid by Tenant to Landlord on demand. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article 19 shall not be nor be deemed to be a waiver or release of breach or default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings and/or take such other action as may be permissible hereunder if an event of default by Tenant shall have occurred. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant.

arising out of or by reason of Tenant's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the premises which damage or destruction was required to be insured against hereunder subject to §3.04.

ARTICLE 20

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES.

Section 20.01. Definition. Each of the following events shall be an "Event of Default" hereunder:

(A) if Tenant shall fail to make any payment (or any part thereof) required by Article 2 or Article 3 as and when due hereunder and such failure shall continue for a period of ten (10) days after notice;

(B) if Tenant shall fail to repair and maintain the Leased Premises as provided in §9.01 hereof and if such failure shall continue for a period of fifteen (15) days after notice (in the case of a life-threatening or hazardous condition) or sixty days (60) after notice (in the case of any other condition) unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, be reasonably be performed, done, or removed within such fifteen (15) days.

or sixty (60) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within the fifteen (15) or sixty (60) day period and shall diligently and continuously prosecute the same to completion within two hundred seventy (270) days (subject to unavoidable delays) from said notice, which two hundred seventy (270) day period may be extended in Landlord's reasonable discretion upon Tenant's request;

(C) if Tenant shall fail to deliver to Landlord a proposed development plan for all or any portion of the Leased Premises pursuant to the concepts set forth herein within a period of 270 days from the Lease Commencement Date (subject to Unavoidable Delays) and such failure shall continue for a period of thirty (30) days after notice thereof from Landlord, or if Tenant shall fail to diligently prepare and submit the development plan to Landlord (subject to Unavoidable Delays) and such failure shall continue for thirty (30) days after notice (if it is the first time notified), or three (3) days (if Tenant has been notified that it has so failed more than two times);

(D) if Tenant shall fail to substantially complete the development of the Leased Premises, including, without limitation, all construction work in an approved Final Land Use Plan or Plans including infrastructure and utilities, on or before five years from the Commencement Date (subject to Unavoidable Delays) and such failure shall continue for a period of 180 days after notice thereof from Landlord;

(E) if Tenant shall fail to observe or perform one or more of the material terms, conditions, covenants or agreements of this Lease and such shall continue for sixty (60) days after the date of written notice from the Landlord or such failure, or if such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such sixty (60) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the sixty (60) day period and shall diligently and continuously prosecute the same to completion;

(F) if Tenant shall make an assignment for the benefit of creditors;

(G) if a levy under execution or attachment in excess of \$250,000 shall be made against the Leased Premises or any part thereof, or the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days.

(H) Unless specifically provided to the contrary and after thirty (30) days written notice, any material breach of a material provision of this Lease by the Tenant or its subtenants, not cured pursuant to any applicable provision of this Article 20, shall constitute an event of default. The following, without limitation, shall constitute an event of default:

- i. Failure to purchase and maintain proper insurance

- policies as provided by Article 3;
- ii. Violation of the financial provisions of Article 5;
 - iii. Failure to properly dedicate the required area to Intermodal rail use as prescribed by Article 7 (as further provided in the Proposed, Preliminary or Final Land Use Plan or Plans), or to timely submit the Land Use Plan as provided by Article 7, or to commence and substantially complete the construction improvements as provided in the Proposed, Preliminary or Final Use Plan or Plans, including the construction financing commitments, submitted by Tenant under Article 8;
 - iv. Failure to repair the Premises as provided by Article 9;
 - v. Failure to provide notice of and restoration of damages to improvements including infrastructure, as provided by Article 10;
 - vi. Failure to obtain the required consents and approvals as provided by Article 13;
 - vii. Failure to comply with government requirements as provided by Article 14;
 - viii. Failure to timely discharge liens as provided by Article 15;
 - ix. Failure to provide indemnification protection as

provided by Article 18;

- x. Refusal to arbitrate matters subject to the provisions of Article 21 subject to any other provisions of this Lease concerning
Dispute Resolution Procedures.

(I) Abandonment or surrender of the Leased Premises, or any part thereof or failure or refusal to pay when due any installment of rent or any other sum when required by this Lease to be paid by Tenant, or successor to Tenant or to perform as required or conditioned by any other covenant or condition of this Lease.

Section 20.02. Enforcement of Performance. Subject to the provisions of Article 5 hereof, if an Event of Default occurs, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease, or to recover damages.

Section 20.03. Expiration and Termination of Lease.

(A) If an Event of Default occurs and Landlord at any time thereafter, at its option, gives Tenant and any Leasehold Mortgagee notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date, unless otherwise provided herein, shall not be less than thirty (30) days after the giving of the notice, then this Lease and the

Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and surrender the Leased Premises forthwith. Except as may otherwise be provided by Article 20-A herein, if a termination of this Lease, as provided by §20.03 is stayed by any court having jurisdiction, or by federal or state statute, then, within thirty(30) days after the expiration of any such stay, and the entry of any final order, Tenant or Tenant as debtor-in-possession, or Trustee shall assume all of Tenant's obligations under this Lease; shall provide reasonably adequate protection of Landlord's right, title and interest in and to said Leased Premises; and shall provide reasonably adequate assurance of the continuous future performance of Tenant's obligations under this Lease, or the termination shall become final. Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election to terminate this Lease on fifteen (15) days notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the fifteen (15) day period, this Lease shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Leased Premises.

(B) If this Lease is terminated as provided in §20.03 hereof, Landlord may, without notice, re-enter and repossess the Leased Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or

damages therefor and may dispossess Tenant by summary proceedings or otherwise.

(C) If this Lease shall be terminated as provided in §20.03 hereof Tenant shall pay to Landlord all Rental, payable under this Lease by Tenant to Landlord to the Expiration Date.

Section 20.04. Receipt of Moneys after Notice of Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the Termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Leased Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Leased Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgement, all such moneys collected being deemed payments on account of the use and occupation of the Leased Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 20.05. Strict Performance. No failure by Landlord

to insist upon Tenant's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord by reason of a Default or Event of Default, and no payment or acceptance of full or partial Rental during the continuance of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default by Tenant, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default.

Section 20.06. Payment of All Costs and Expenses. Tenant shall pay Landlord all reasonable costs and expenses, including without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant shall also pay Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants or provisions of this Lease. All of the sums paid or obligations incurred by Landlord, with interest (at the Late

Charge Rate, accruing from the date incurred) and costs, shall be paid by Tenant to Landlord within (10) days after demand.

ARTICLE 20-A

BANKRUPTCY.

Section 20-A.01 Bankruptcy. Should a petition for bankruptcy be filed by the Tenant pursuant to Title 11 USC or its successor statute, the Tenant shall comply with all requirements as set forth in 11 USC §365 or any successor statute regarding the assumption, assignment or rejection of this Lease. The Tenant shall either cure all defaults, compensate actual losses, give adequate assurance of future performance and fulfill all obligations pursuant to 11 USC §365(b)(1) or other applicable law and assume the obligation; or the Debtor shall reject this Lease as provided by Bankruptcy Law. If this Lease is rejected, possession of the premises shall be immediately returned to the State. No sale or assignment of the Leased Premises shall be permitted without the consent of the State or without compliance with the assumption and assignment provisions under Bankruptcy Law pursuant to 11 USC §365 or its successor statute. If an assignment is sought and no Bankruptcy has been filed, such consent shall not be unreasonably withheld. If a Bankruptcy has been filed, the applicable sections of Bankruptcy Law regarding assignment shall govern.

The Debtor may not assume or assign this Lease if this Lease has been terminated pursuant to the terms of this Lease prior to

the filing for a petition for relief in bankruptcy.

Should this Lease be rejected pursuant to Bankruptcy Law, all subletting parties shall be required to deal directly with the Landlord regarding sublease terms and the subleases shall specifically provide for this. Should an insolvency proceeding, receivership or an assignment for the benefit of creditors be commenced under State law, the attornment clauses in the subleases required by §4.04 of this Lease shall require all subletting parties to deal directly with the State concerning sublease terms.

ARTICLE 21

DISPUTE RESOLUTION PROCEDURES.

Section 21.01. Dispute Resolution. In such cases where this Lease provides for the determination of any matter by Dispute Resolution Procedures, the same shall be settled and determined by non-binding dispute resolution conducted in the City of New York substantially in accordance with the rules of the American Arbitration Association, or its successor, except that the trier of fact shall be selected as provided herein. The person conducting the Dispute Resolution proceeding shall not have the right to modify the provisions of this Lease nor shall such determination as may be rendered thereby have the effect of modifying the provisions of this Lease.

Section 21.02. Dispute Resolution Procedures. In each instance under this Lease where it shall become necessary to resort to Dispute Resolution, such Dispute Resolution Proceeding shall be conducted as follows: the party desiring such Dispute Resolution shall give notice to that effect to the other party. Within 30 days after receipt of said notice, the parties, or either of them with notice to the other, shall request the appointment of a trier of fact (hereinafter, the "Hearing Officer") who shall be an Attorney in good standing with at least 10 years experience and not in any way associated with or connected to the parties or anyone else in any way interested in the matter. Said appointment shall be requested from and made by the then President of the Association of the Bar of the City of New York (or any successor organization thereto), or in his absence or failure, refusal or inability to act within 15 days, then either party, on behalf of both, may apply to the Presiding Justice of the highest court in Bronx County for the appointment of such Hearing Officer, and the other party shall not raise any question as to the court's full power and jurisdiction to entertain the application and make the appointment.

In the event of the failure, refusal or inability of any Hearing Officer to act, a replacement Hearing Officer shall be appointed within 10 days in the manner herein above provided. Any appraiser who may be selected or appointed by the Hearing Officer shall be a member of the American Institute of Real Estate Appraisers (or a successor organization), shall be an

appraiser, and shall have been doing business as such in the county or adjoining counties in which the Leased Premises are located for a period of at least 15 years before the date of his appointment. Each Hearing Officer chosen or appointed pursuant to this Section shall be sworn to fairly and impartially perform his or her duties as such. The decision of the Hearing Officer shall be given within 60 days after the completion of the presentation of the dispute to the Hearing Officer by the parties. The parties shall each pay one-half of the fee and expenses of the Hearing Officer.

Section 21.03. Effect of Hearing. The Hearing Officer's decision shall be binding upon the parties unless, within 30 days after receipt thereof, either of them shall have commenced an action or proceeding in a court of competent jurisdiction of the State of New York concerning any matter which was in issue at the hearing.

Section 21.04. Evidence. If either party shall commence an action or proceeding, as provided in Section 21.03, the Hearing Officer's decision shall be admissible into evidence therein but neither party shall be deemed to have waived any objection concerning the admissibility into evidence of any testimony or document or other thing presented at the hearing.

ARTICLE 22

CERTIFICATES BY LANDLORD AND TENANT.

Section 22.01. Certificate of Tenant. Tenant shall, within thirty (30) days after notice by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, and (iii) such other matters as may be reasonably requested, and (b) stating (i) whether Tenant has given Landlord written notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and if so, specifying in detail each such default.

Section 22.02. Certificate of Landlord. Landlord shall, within thirty (30) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a statement (which may be relied upon by such Person) (a) certifying: (i) that this Lease is unmodified and in full

force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and modifications); (ii) the date to which each item of Rental payable by Tenant hereunder has been paid; and (iii) such other matters as may be reasonably requested, and (b) stating: (i) whether an Event of Default has occurred or whether Landlord has given Tenant notice of any event that with the notice or the passage of Time, or both, would constitute an Event of Default; and (ii) whether, to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default.

ARTICLE 23

SURRENDER AT END OF TERM.

Section 23.01. Surrender of Leased Premises. Upon the Expiration Date (or upon a re-entry by Landlord upon the Leased Premises pursuant to Article 20 hereof), Tenant, without any payment or allowance whatsoever by Landlord, shall immediately surrender the Leased Premises, including without limitation all improvements constructed upon the Leased Premises to Landlord in reasonably good order, condition and repair (except in the event of termination upon a taking in condemnation proceedings or damage or destruction under §20.02 hereof), reasonable wear and tear excepted, free and clear of all Subleases, liens and encumbrances (except, in the case of re-entry by Landlord

pursuant to Article 20 hereof), and Subleases as to which Landlord has entered into non-disturbance agreements pursuant to the provisions of §4.05 hereof. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Leased Premises on the Expiration Date.

Section 23.02. Delivery of Subleases, Etc. Upon the Expiration Date (or upon a re-entry by Landlord upon the Leased Premises pursuant to Article 20 hereof), Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Leased Premises, any true and complete maintenance records for the Leased Premises, all original licenses and permits then pertaining to the Leased Premises, permanent or temporary Certificates of Occupancy then in effect for the Improvement and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Improvements, together with a duly executed assignment thereof to Landlord, and any and all other documents of every kind and nature whatsoever relating to the operation of the Leased Premises and the condition of the Improvements (or copies thereof, to the extent Tenant is required by law or Accounting Principles to retain the originals).

Section 23.03. Personal Property. Any personal property of Tenant or of any Subtenant which shall remain on the Leased

Premises for thirty (30) days after the Expiration Date (or upon a re-entry by Landlord upon the Leased Premises pursuant to Article 20 hereof) and after the removal of Tenant or Subtenant or any other person after the expiration date from the Leased Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by Landlord as its property or be disposed of at Tenant's expense, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant.

Section 23.04. Survival Clause. The provisions of this Article 23 shall survive the Expiration Date.

ARTICLE 24

RIGHT OF FIRST OFFER.

Section 24.01 The Purchase Offer.

(A) The State, as Landlord hereunder, shall not sell, transfer or convey its fee interest in the Leased Premises, other than to a duly constituted tax exempt public authority, or a tax exempt Federal, State or Municipal authority, unless Tenant shall have been previously given notice of the State's intention to sell the Leased Premises as provided in §24.01(B) below and the opportunity to purchase the premises pursuant to the provisions of §24.01(B) below.

(B) If, during the Term, the State, as Landlord hereunder, resolves to sell, transfer or convey its fee interest in the Leased Premises, other than to a duly constituted tax exempt public authority, or a tax exempt Federal, State or Municipal authority, the State shall give Tenant written notice at least thirty (30) days prior to giving any other person or entity or publishing the availability of the Leased Premises being for sale (the "Purchase Notice") of the terms and conditions (said terms and conditions being hereinafter referred to as the "Purchase Offer") on which the State would be prepared to sell, transfer or convey the Leased Premises, regardless of whether the State shall have received an offer to purchase the Leased Premises on said terms and conditions. Tenant or any entity of which at least fifty (50%) percent of the shareholders of Tenant have a majority interest in shall then have the right to purchase Landlord's fee interest in and to the Leased Premises in accordance with the Purchase Offer subject to the approval of the State entity having final authority respecting the sale of State owned land provided, however: (i) that at the time of the exercise of the purchase right pursuant to the Purchase Offer, Tenant shall not be in Default under any of the provisions of this Lease; (ii) The State shall have the power to sell the property to the Tenant without public bid; (iii) The Tenant shall have the right to attempt to qualify to purchase the property under any exceptions to public bidding procedures that may be available to it; (iv) §2.05 (A) shall be amended to include real property tax and assessment on

all improvements and betterments that shall thereafter become the liability of the Landlord's assignee without reimbursement from the Tenant.

(C) Tenant shall exercise its right of First Offer to purchase the Leased Premises by giving written notice to Landlord within sixty (60) days after the date on which the Purchase Notice is given, that it elects to purchase the Leased Premises in accordance with the Purchase Offer. If Tenant fails to give such notice to Landlord within sixty (60) day period (or if at any time during said period, Tenant notifies Landlord that it does not intend to purchase the Leased Premises pursuant to the Purchase Offer), Tenant shall be deemed to have waived its right of first offer to purchase the Leased Premises in accordance with the Purchase Offer. In the event Tenant waives, or is deemed to have waived, its right of First offer to purchase the Leased Premises, Landlord shall thereafter have the right to sell the Leased Premises upon terms which are not substantially more favorable to the purchaser than those offered to Tenant in accordance with the Purchase Offer.

(D) If Tenant waives or is deemed to have waived its right of first offer to purchase the Leased Premises, such right of first offer to purchase the Leased Premises shall thereupon be extinguished as to that Landlord, but Tenant shall have the renewed right of first offer to purchase the Leased Premises (including all development rights thereto) with respect to the new Landlord.

Section 24.02. Tenant Purchase Offer. Tenant may at any time after the Substantial Completion Date offer to purchase Landlord's fee interest in the Leased Premises for an amount equal to the fair market value of the Leased Premises as determined by an appraisal made within sixty (60) days prior to said offer. Landlord shall consider Tenant's purchase offer and may in its sole discretion accept or reject the offer.

ARTICLE 25

ENTIRE AGREEMENT OF PARTIES.

Section 25.01. Entire Agreement of Parties. This Lease, together with the Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Leased Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

ARTICLE 26

QUIET ENJOYMENT.

SECTION 26.01. Landlord's Covenants. Landlord covenants that, as long as Tenant faithfully shall perform the agreements,

terms, covenants and conditions hereof, Tenant shall and may (subject to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Leased Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through or under Landlord.

ARTICLE 27

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS.

Section 27.01. Imposition Contest Proceedings. Provided taxes on disputed assessments have been paid Tenant shall have the right to contest, at its sole cost and expenses, the amount or validity, in whole or in part, of any tax or Imposition as defined in §2.04 by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of §2.04 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Leased Premises nor any part thereof would, by reason of such postponement of deferment, be, in the judgement of Landlord, in danger of being forfeited and Landlord is not in danger of being subjected to criminal liability or penalty, or civil liability or penalty; and

(b) if the amount so contested exceeds \$100,000 or if the amount so contested is less than \$100,000 but Tenant's failure to timely pay such Imposition would result in Landlord being subjected to civil liability or penalty, Tenant has given to Landlord a bank letter of credit (in form reasonably satisfactory

to Landlord), in the amount so contested and unpaid together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Landlord's judgement, be assessed against, or become a charge on, the Leased Premises or any part thereof in or during the pendency of such proceedings, or (ii) provide other security (for example, a personal guaranty) reasonably satisfactory to Landlord. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and, upon such payment, Landlord shall return any form of security being held by it together with interest earned thereon, if any. If Tenant shall not pay the amounts referred to in the preceding sentence the Landlord shall likewise be entitled to apply the proceeds of any security deposited with it by Tenant pursuant to said sentence to such Person in payment of said amounts. Tenant shall remain liable for any unpaid balance of said amounts remaining after application by Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it within ten (10) days after Landlord's demand. If at any time during the continuance of such proceedings Landlord, in its judgement, shall deem insufficient the amount or nature of the security deposited,

Tenant, within ten (10) days after Landlord's demand, shall make an additional deposit of such additional sums or deliver to Landlord such other acceptable security as Landlord may request, and upon failure of Tenant to so do, the amount theretofore deposited (or made available by alternative security), together with the interest, if any, earned thereon, may be at Landlord's discretion as the holder of the security to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand.

Section 27.02. Requirement Contest. Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that, if the sum of the amounts necessary to secure compliance with the contested Requirement and all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith shall, in Landlord's determination, exceed

\$100,000, then before instituting any such proceeding, Tenant shall furnish to Landlord a letter of credit of an Institutional Lender or other security, acceptable to Landlord securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith, all such forms of security to be satisfactory to Landlord in form and substance. Any such proceeding instituted by Tenant shall be commenced as soon as is possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of §14.01 hereof if the Leased Premises, or any part thereof, are in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided, by reason of noncompliance therewith, or if failure to comply is hazardous to persons or property or would violate any Mortgage or insurance policy provisions.

Section 27.03. Landlord's Participation in Contest Proceedings. Landlord shall not be required to join in any action or proceeding referred to in this Article 27 or permit the action to

be brought in its name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection therewith.

ARTICLE 28

INVALIDITY OF CERTAIN PROVISIONS.

Section 28.01. Invalidity of Provision. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 29

RECORDING OF LEASE.

Section 29.01. Recording of Lease. Tenant shall cause a memorandum of this Lease and any amendments hereto to be recorded in the Office of the Register of the City of New York (Bronx County) promptly after the execution and delivery of this Lease

or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

ARTICLE 30

LANDLORD'S ASSIGNMENT TO TENANT OF PRESENT LEASES OR PERMITS.

Section 30.01. Assignment of Leases and/or Permits. The Landlord has provided the Tenant with copies of all instruments, including, but not limited to leases and permits under which any person or entity has a possessory right in the Leased Premises. The Landlord hereby assigns to the tenant any and all interest it may have to any leases, permits, tenancies by subleasee, month to month tenancies or any other interest however created as it relates to any person or entity now using the Leased Premises. The assignment shall take effect as of the date of commencement of the Lease. In the event that this Lease shall become effective during the course of any month, the rent received shall be prorated over the remaining days of the month to be calculated on a 30 day basis. The following is a list of such instruments as have been identified:

PERMIT #	PERMITTEE
X0889002689	Gassman Coal & Oil, Inc.
X0977002697	Baldwin Transportation
X0978002695	New Haven Dist. Services, Inc.
X0979002696	New Haven Dist. Services, Inc.
X0986002700	Consolidated Rail Corp.
x0975	Transit Authority, New York City

ARTICLE 31

MISCELLANEOUS.

Section 31.01. Captions. The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 31.02. Table of Contents. The table of contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 31.03. Reference to Landlord and Tenant. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant. The use herein of the words "successors and assign" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant. Tenant shall mean Harlem River Yard Venture, Inc., provided, however, that whenever this Lease and Leasehold Estate hereby created shall be assigned or transferred in accordance with the terms of and in the manner specifically permitted by this Lease, then from and after the date of such assignment or transfer, and until the next permitted assignment and transfer, the term "Tenant" shall mean the permitted assignee or transferee, except that the assignor shall continue to be deemed "Tenant" with respect to any Lease,

agreement or covenant required to be performed or observed by Tenant, or obligations or liabilities of Tenant arising or accruing, prior to the date of such assignment or transfer.

Section 31.04. Person Acting on Behalf of a Party Hereunder. If more than one Person is named as, or becomes a party hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each Person acting through or named as a party shall be fully and jointly and severally liable for all of such party's obligations hereunder. Any notice by a party to any Person acting through or named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 31.05. Landlord's Remedies Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease

or now or hereafter existing at law or in equity or by statute or otherwise.

Section 31.06. Merger. Unless landlord, Tenant and all Mortgagees sign and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Leased Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Leased Premises.

Section 31.07. Performance at Tenant's Sole Cost and Expense. When Tenant exercises any of the rights, or renders or performs any of its obligations hereunder, Tenant hereby acknowledges that it shall so do at Tenant's sole cost and expense.

Section 31.08. Waiver, Modification. No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Landlord and Tenant. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then

existing or subsequent Default thereof.

Section 31.09. Governing Law. This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 31.10. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 31.11. Effect of Other Transactions. No Sublease, Mortgage or other instrument whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Landlord, shall be deemed to modify this Lease in any respect.

Section 31.12. State as Landlord. The obligations of the State in its governmental capacity are not to be construed as obligations of the State in its capacity as Landlord under this Lease.

ARTICLE 32

NOTICES.

Section 32.01. All Notices, Communications in Writing.

Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given

to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Leased Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served as follows:

(A) If by Landlord, in duplicate, by hand with proof of delivery or by mailing the same to Tenant by registered mail, postage prepaid, return receipt requested, one addressed to:

Harlem River Yard Ventures Inc.
The Galesi Group
Building 6, East Road
Rotterdam Industrial Park
Schenectady, N.Y. 12306

Attention: President

and one addressed to:

Hunts Point Produce
Cooperative Assoc., Inc.
Room 2A
Hunts Point Terminal
Produce Market
Bronx, NY 10474

Attention: President

or to such other address(es) as Tenant may from time to time designate by notice given to Landlord by registered mail;

(B) If by Tenant, in duplicate, by hand with proof of delivery or by mailing the same to Landlord by registered mail, postage prepaid, return receipt requested, addressed to:

Commissioner of the New York State Department of Transportation, 1220 Washington Avenue, Albany, New York 12232 and one addressed to New York State Department of Transportation, Attention: Office of Legal Affairs, 1220 Washington Avenue, Albany, New York 12232.

Section 32.02. Service. Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served three (3) days after the time that the same shall have been actually deposited in the United States mails, postage prepaid, as aforesaid, except that notice by registered mail, return receipt requested, shall be deemed effective on the date such receipt is dated by the Post Office.

ARTICLE 33

PROHIBITED PERSONS.

Section 33.01. Tenant Representation. Tenant represents that none of its shareholders, officers or directors are either directly or indirectly Prohibited Persons at the time of execution of this Lease Agreement.

Section 33.02. Definition. A Prohibited Person or entity shall mean any person or entity: (i) which has been convicted in any felony criminal proceeding or convicted of any crime involving moral turpitude; or (ii) any person or entity that is reputed to be owned or operated directly or indirectly by a member of an organized crime family; or (iii) any person or entity

entity who is known to be associated or controlled by or have substantial business or affiliation with reputed members of an organized crime family. Organized crime member or family shall mean any person or group of persons that have been convicted of crimes who are members of a "criminal enterprise" as defined in the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §1961, et. seq.)

Section 33.03. Tenant to Provide Information. Tenant upon written request of Landlord shall from time to time submit to Landlord a list of the names of all of its shareholders, directors and officers. Tenant further covenants that at no time during the term of the Lease Agreement shall it admit as shareholder, director or officer a person who is a Prohibited Person.

Section 33.04. Sublease Requirements. Tenant further represents that it shall make all sublease agreements for space in the Leased Premises conditioned on Landlord's not making an express finding prior to or during the sublease term that the sublessee is a Prohibited Person. The determination of who is a Prohibited Person for purposes of this Lease Agreement shall be made solely by the Landlord who shall act in good faith.

Section 33.05. Finding as to Prohibited Persons. In the event that the Landlord determines that: (i) Tenant, or a

shareholder, director or officer of Tenant is a Prohibited Person; or (ii) that a sublessee or a shareholder, director or officer of a sublessee is a Prohibited Person, it shall notify Tenant of its finding as provided in Article 32.

Section 33.06. Removal of Prohibited Persons. The Tenant shall, within ninety (90) days of receipt of notice pursuant to §31.05: (i) remove such officer or director from their position or; (ii) if the Prohibited Person is a shareholder, the Tenant shall use its best efforts to buy or arrange for the sale of the shares of the shareholder.

Section 33.07. Sublease Requirements - Removal. In the event that the Landlord shall determine that a sublessee or a shareholder, director or officer of a sublessee is a Prohibited Person the sublessee shall within sixty (60) days of the receipt of such notice remove the director or officer or if the Prohibited Person is a shareholder of the sublessee, the sublessee shall within ninety (90) days of receipt of notice pursuant to Article 32 arrange for the sale of the shares of the shareholder.

ARTICLE 34

REQUIRED STATE CONTRACT CLAUSES.

Section 34.01 Required State Contract Clauses. Attachment F is the Required State Contract Clauses which is hereby made a

part of this Lease.

IN WITNESS WHEREOF, this Lease has been executed by the STATE, acting by and through the Commissioner of Transportation, and HARLEM RIVER YARD VENTURES, INC., as of the day and year first above written.

RECOMMENDED BY:

THE PEOPLE OF THE STATE OF NEW YORK

Samuel Hays

By: *Franklin E. White*

Department of Transportation

APPROVED AS TO FORM
NEW YORK STATE
ATTORNEY GENERAL
APPROVED
AUG 08 1991

APPROVED AS TO FORM
AND MANNER OF EXECUTION
ROBERT ABRAMS
ATTORNEY GENERAL

BY: *Henry J. ...*
ASSISTANT
Real Property Bureau

Samuel Hays
Attorney General
ASSOCIATE ATTORNEY

APPROVED: SEP 18 1991

Douglas G. Covert
For the State Comptroller
Under State Finance Law,
Section 112

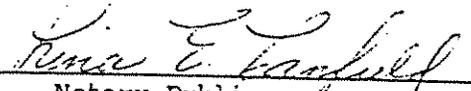
APPROVED
DALLAN ROSS THE
David ...
CHIEF BUDGET EXAMINER
DATE: AUG 09 1991
Michael ...

HARLEM RIVER YARD VENTURES, INC.

By: *Anthony ...*

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

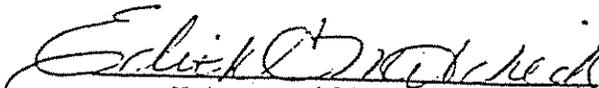
On this 9th day of August, 1991, before me, the subscriber, personally came FRANKLIN E. WHITE, to me known and known to me to be the Commissioner of Transportation of the State of New York and the same person described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same as such Commissioner for and on behalf of the People of the State of New York, and affixed the seal thereon, pursuant to and as provided by statute.


Notary Public

LINA E. CANFIELD
Notary Public, State of New York
No. 4798528
Qualified in Saratoga County
Commission Expires 7/31/92

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

On this 6th day of August in the year 1991, before me personally came Anthony T. DeLorenzo, Assistant to the Chairman, to me known, who, being by me duly sworn, did depose and say that he resides at R.D. 4, Voorheesville, New York 12186; that he is the Assistant to the Chairman of Harlem River Yard Ventures, the corporation described in and which executed the above instrument; and that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.


Notary Public

EDITH C. METCHICK
Notary Public, State of New York
No. 4798527
Qualified in Albany County
Commission Expires 4-30-91



APPENDIX A

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

FRANKLIN E. WHITE
COMMISSIONER

0

REQUEST FOR PROPOSALS

DEVELOPMENT AND MANAGEMENT OF TRANSPORTATION SERVICES
AT THE HARLEM RIVER YARD

June 26, 1989

To All Concerned:

Enclosed is a copy of the Request for Proposals (RFP) referenced above. All information necessary for the submission of your proposal is contained in the solicitation.

Please note that the deadline for the submission of proposals is 4:30 PM on September 29, 1989.

In order to address questions about the RFP, a pre-proposal conference will be held on August 1, 1989 at 1:00 PM in Room 112 of Building 5 at the Harriman State Office Campus located in Albany, New York. If you plan to attend, please provide the names of attendees to Sharon Russell of the NYSDOT Contract Management Bureau by not later than 24 hours prior to the conference. An opportunity will be afforded for questions and answers during the conference. However, to help us in preparing for the meeting, we wish to receive any questions you may have at least 24 hours in advance.

Please note that Conrail has offered to make Mr. Scott Nadler, Director, Industrial & Marketing Development, (215) 851-7921, available as a contact for any necessary service or rate arrangements. The Department has advised Conrail that timely and equitable service arrangements and rates are expected to be provided to all proposers.

All questions regarding the project or proposal should be directed to Sharon Russell of the Contract Management Bureau, (518) 457-2600.

If you are interested in developing a proposal in response to this solicitation, please complete the attached RFP Response Form.

We look forward to the receipt of your proposal.

Sincerely,

STEVEN F. LEWIS
Director, Administration Division

Enclosure

REQUEST FOR PROPOSALS

DEVELOPMENT AND MANAGEMENT OF TRANSPORTATION SERVICES
AT THE HARLEM RIVER YARD

Proposal Due Date: September 29, 1989

Proposal Delivery Location and
Additional Information:

Director, Contract Management Bureau
Building 5, Room 108
NYS Department of Transportation
Albany, NY 12232
Attention: Harlem River Yard

REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
DEVELOPMENT AND MANAGEMENT OF TRANSPORTATION SERVICES
AT THE HARLEM RIVER YARD

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REQUEST FOR PROPOSALS

DEVELOPMENT AND MANAGEMENT OF TRANSPORTATION SERVICES AT THE HARLEM RIVER YARD

I. INTRODUCTION

A. Purpose

The New York State Department of Transportation (the "Department") is seeking proposals from qualified firms interested in developing and managing intermodal transportation services at the State-owned Harlem River Yard (HRY) facility located in the South Bronx in New York City. The offeror selected as a result of this solicitation will be authorized to negotiate a lease with the Department for the use of the Harlem River Yard property, subject to the provisions contained in this Request for Proposals (RFP).

It is the Department's objective to have the private sector invest in, develop, and operate intermodal transportation services in the Harlem River Yard which provide the maximum possible transportation benefit to the public. By this solicitation, the Department is inviting offerors to submit proposals on the development and operation of the Harlem River Yard, generally in accordance with the document entitled "Harlem River Yard Intermodal Park" included as Attachment 1 to this RFP. Further information regarding proposal preparation instructions and evaluation criteria are detailed in Sections IV and V, respectively, of this solicitation.

Each offeror will be required to develop and propose leasing and fiscal arrangements that provide reasonable return to the State while encouraging maximum transportation use of the entire Harlem River Yard facility. The Department is willing to negotiate a long-term lease for the HRY site. The Department anticipates that the project will provide sufficient long-term economic return to attract offers from well-qualified private entities.

B. Background

1. General

The Harlem River Yard facility is strategically located and well suited to the development of intermodal or rail-truck-water transfer transportation services. The Harlem River Yard is presently provided only local rail service by Conrail from their nearby Oak Point Yard. The Department anticipates that direct railroad mainline access may be available via the Oak Point Link in about 4-5 years. The Oak Point Link is partially constructed, and the Department is proceeding with the process for

entering into a contract which would complete construction in about 4-5 years. However, it is not certain that the State will decide to proceed with this project. In any case, the final decision for proceeding with construction completion is dependent upon obtaining the additional funding needed for the project. The Department will make every effort to keep the selected developer-operator apprised of its efforts regarding the status of the Oak Point Link.

Accordingly, offerors must be aware that the initial 4-5 years of development and operation at Harlem River Yard will be under existing conditions regarding rail access. Proposals must address the two possibilities that the Oak Point Link will either 1) be available and provide improved rail clearance and access in 4-5 years, or 2) the existing conditions will continue. Further details of the Harlem River Yard area are presented in Attachment 1 to this solicitation. A copy of an aerial photograph of the Harlem River Yard is appended as Attachment 2. The Executive Summary of a report on the site prepared by the Department's consultant, Temple, Barker and Sloane, is included as Attachment 3. The complete Temple, Barker and Sloane report is available upon request from the NYSDOT Contract Management Bureau. Additional materials which will be made available upon request include the following: 1) property map of the site; 2) initial construction contract "as-built" plans; and 3) existing rental permits.

Proposers should be aware that construction materials from the Oak Point Link and the Manhattan Bridge projects are currently stored on the Harlem River Yard site. Site inspection by each offeror is encouraged, and any inspections of the site should take particular notice of these materials. The Department anticipates letting contracts, resulting in the removal of these construction materials, within the next 2-4 years.

Further, there are currently 4 tenants on site under 30 day revocable permit to the Department, including Gassman Coal Company, Baldwin Transportation, New Haven Distribution, and the Metropolitan Transportation Authority. As stated earlier, copies of these permits are available from the Department upon request. While arrangements have been made for relocation of the major tenants - Baldwin and New Haven - from the Yard, the timing of these relocations has not yet been established.

II. PROJECT SCOPE AND OBJECTIVES

A. Scope

The selected developer/operator shall be responsible for development of the HRY site and daily management of the tenants

and common services. The intent is for site development to occur in a manner similar to the concept presented in Attachment 1.

B. Department Objectives

The selected offeror must have goals for the facility in conformance with the Department's policy for Harlem River Yard. Briefly stated, the policy is:

The Harlem River Yard is to be developed and operated as an intermodal transportation facility having a significant rail component to provide innovative, more efficient and greater capacity freight transportation for the New York City/Long Island area. This will provide benefits to shippers, increase the overall capacity of the area's freight transportation infrastructure and provide a modal alternative to all-truck services, while preserving and maintaining the transportation use of this unique and irreplaceable transportation resource.

Guiding principles that further define this goal include:

- Harlem River Yard's unique site characteristics that permit development of efficient intermodal services, including possible water-rail-highway mode transfers, must be preserved. Particularly, the long straight track sections must not be broken by permanent structures, and transportation use should be encouraged. Further, Harlem River Yard is well suited to act as a rail transportation hub, and should be used to provide rail service extensions to New York City and Long Island.
- Innovative services are those not directly available in the Metropolitan New York area east of the Hudson River, which can provide improved levels of service efficiency (e.g., reliability, speed, lower cost, etc.).
- Priority markets to be served include refrigerated food and municipal solid waste.
- Development of the site should maximize public benefits. Examples may include reducing truck traffic (especially on Hudson River crossings), reducing transportation energy usage, lowering transportation costs to NYS business and industry, providing environmental benefits, creating new jobs, etc.
- Services directly competing with existing railroad services to the east of Hudson River area will not be permitted. Bulk salt services, for example, would simply replace a current LIRR service, and thus damage LIRR viability while providing no additional public or shipper benefit.

C. Organization

The Department intends to award a single contract for the development and operation of the entire facility. Any proposals received for developing only part of the facility will be referred to the selected Developer-Operator for further consideration.

It is anticipated that the selected offeror will act under a negotiated lease entered into directly with the Department. The Department's intent is to allow the Developer-Operator the flexibility and independence necessary to successfully implement the plan for the facility while protecting the State's interests by reserving to the Department the right to approve prospective tenants/uses and review all plans for capital improvements.

The Department intends to designate a management group who will be responsible for the administration and management of the negotiated lease with the selected offeror. The group will include appropriate technical, legal and administrative representation from the Department who can be responsive to project issues and needs.

III. SCOPE OF WORK

A. General

Generally in accordance with the concept presented in Attachment 1, the offeror selected as the Developer-Operator for Harlem River Yard will be responsible for:

1. Arranging construction financing.
2. Designing and constructing common facilities with Department approval.
3. Securing, or working with tenants to secure, any environmental or other approvals and permits that may be required.
4. Marketing the facility to potential tenants in accordance with an approved marketing plan.
5. Negotiating subleases with tenants, signing such leases, and maintaining the leases. The Developer-Operator is an independent contractor and has no authority to bind the State in any of its agreements with tenants, sub-tenants, etc., except to the extent authorized in writing by the State. The Department intends to retain the right to approve tenants/uses and reserves the right to approve subleases.

6. Negotiating or assisting in negotiating necessary access agreements or service arrangements with Conrail or other transportation providers [Please note: Conrail has offered to make Mr. Scott Nadler, Director, Industrial & Marketing Development, (215) 851-7921, available as a contact for any necessary service or rate arrangements].
7. Providing for day to day operations in accordance with an approved Operations Plan, including; but not limited to:
 - General care of the facility to ensure cleanliness, good appearance, and efficient safe operation
 - Security
 - Utilities
 - Track and road maintenance
 - Truck scale service
8. Community relations.
9. Cooperating with the Department in conducting any needed liaison activities with City and State Agencies.
10. Deliverables, including:
 - (a) Regular reports to the Department. Such reports shall include such items and information as the Department and the Developer/Operator may agree to have covered regarding the Developer-Operator and tenant operations in the facility. Offerors shall include in their submittals to the Department a proposed reporting system. At a minimum, the following items will be reported monthly:
 - Truck/Rail car/barge, etc. traffic levels
 - Types and volumes of commodities handled
 - Financial information/data for verification of negotiated payments
 - Significant changes in condition at site
 - Site problems and resolutions
 - Community/public agency contacts
 - (b) Annual updates of marketing and operations plans which shall be subject to Department review.
 - (c) Capital Planning - The Developer-Operator shall provide copies of all plans for capital improvements to the facility, including tenant's plans, to the Department for its review prior to commencing construction.

B. Marketing

A major goal of the Department is to have tenants fully utilize the facility to provide the maximum level of transportation services, with particular emphasis on rail usage so as to

reduce truck traffic on the Hudson River crossings. The marketing plan of the facility must be targeted to accomplish this goal. Proposers must provide a marketing plan which addresses the intended development of the HRY.

C. Capital Project Management

1. Construction contracts for facility development must be let by the Developer-Operator in a competitive fashion.
2. Any design plans that the Developer-Operator will use to accomplish a capital improvement project at HRY will be submitted to the Department for prior review to ascertain compliance with the Department's goals for overall development and engineering considerations. The Department will provide reviews within a mutually agreeable timeframe.
3. The Developer-Operator shall submit to the State such data, reports, contracts, and other documents relating to each capital improvement effort as the Department may reasonably require.
4. The Developer-Operator is an independent contractor and has no authority to bind the State in any of its agreements with contractors, etc., except to the extent authorized in writing by the State.
5. The Developer-Operator shall indemnify the State for all liability for injury, damage to property, or other damages occurring on, or as a result of the use of the site.

IV. PROPOSAL FORMAT AND CONTENTS

In order to permit the efficient and effective comparison of proposals, it is necessary that all submissions follow the same organization. Proposals should be presented in two parts. Part I should address technical and management considerations; Part II should address agreement considerations and related financial information. In submitting a proposal which complies with the accompanying criteria, please use the following format:

A. Part I - Technical and Management

Technical proposals should contain the following information:

1. Title Page, indicating:
 - (a) Name, address and phone number of the proposer, including a contact person and the name of the person(s) who prepared the proposal;
2. Table of Contents

3. Executive Summary

Provide a brief description of the proposal being made.

4. Narrative Description

Outline the substance of the proposal and the firm's understanding of the Department's objectives identified in Section II, with specific reference to the:

- Extent to which intermodal transportation use is maximized.
- Extent to which innovative transportation services are offered.
- Extent to which priority markets are served.

Address how the proposal will accomplish these objectives. Highlight the strengths of your firm and how they can be used to address the development and operating requirements for the facility. If significant departures from the concepts presented in Attachment 1 are proposed, justify your alternate approach and describe how such approach will meet the stated objectives. You are encouraged to be innovative, consistent with sound business practices and your demonstrated competence.

5. Development, Operations and Marketing Plans

Detail all aspects of your plans for developing, operating and marketing the Harlem River Yard facility. Under each major element listed below, address the initial 4-5 year period considering existing conditions (i.e., no Oak Point Link) and how future plans may be impacted assuming a) completion of the Oak Point Link and b) continuance of existing conditions. Specific plans must contain, at a minimum, the following information:

A. Development

1. A description of what is going to be built, including a potential configuration site plan. In addition, specific items which must be addressed include:
 - How you would accommodate the construction materials stored on site.
 - If or when the existing tenants must vacate the site.
2. A description of your plan for managing the construction activity, including any expected subcontracting and a construction schedule. Indicate any environmental and/or other permits

which will be needed and how you will obtain them. Include in this description a plan which details how you would provide for minority/women-owned business enterprise participation in the development effort (Please note a plan for minority/woman-owned business participation will be made part of the negotiated lease agreement).

3. A description of your estimated construction costs, and expected financing arrangements including the amounts and sources of such financing.
4. A description of how you would meet the reporting and review requirements to the State as set forth in Section III. A. 10. (c).

B. Operations

1. A description of your planned operation of the facility, including any proposed subcontracting for this activity. Specific items to be addressed include, at a minimum, a description of the following:
 - Property management including provisions for security, utilities, maintenance, common services for tenants.
 - Rail services at the site, including service arrangements with Conrail or others.
 - Assistance to tenants, including coordination regarding capital improvements, environmental approvals, truck access permits, etc.
 - Approach for involving minority/women-owned business enterprises in the operation of the facility (Please note a plan for minority/women-owned business participation will be a part of the negotiated lease agreement).
 - Approach for maintaining community relations and coordinating with local and state officials.
 - Reporting system for providing monthly information to the Department on fiscal operating data, transportation usage at the site, types and volumes of commodities handled, significant changes in conditions at the site, any operating problems and

resolutions, and community or public agency interaction.

C. Marketing

1. Describe the types of tenants and services anticipated for initial development (i.e. the first 4-5 years at the site). Identify commitments in place, if any. Include letters of intent from any such prospective tenants.
2. Approach for attracting future tenants or types of services.
3. Potential for extension of services, via rail, to New York City and Long Island.

6. Personnel and Organization

Indicate the top management team who will be responsible for implementing your proposal. Detail key personnel roles and responsibilities relative to the development, operations and marketing activities. Provide resumes for all such personnel, including any expected consultants. Provide an organization chart and detail your management plan for carrying out the effort. If consultants or a joint/teaming venture is proposed, detail the structure and arrangements.

7. Experience

Describe your firm's previous experience and current activities in developing similar facilities and/or transportation services. Provide a contact reference for each (name, organizational affiliation, address, phone number, etc.). Indicate personnel identified under item 6. above who are or have worked on such efforts. The Department reserves the right to contact anyone so named.

8. Return to the State; Public Benefits

1. It is the intent of the Department to receive a reasonable return from the development and operation of the Harlem River Yard facility. Further, the Department anticipates that the project will generate sufficient profit or economic incentive to the selected developer to operate viably long term. Describe your plan for making payments to the Department. (Please note the Department is willing to consider a wide range of payment scenarios - lease payments, percentage of gross revenues, usage fees, etc.). Provide a ten year financial forecast in sufficient detail to permit evaluation of the revenues and associated costs of operation, including

debt and tax liability. Include all assumptions used.

2. Describe your assessment of public benefits expected to result from your proposed plan. In the evaluation of your proposal, only quantifiable benefits will be considered. It is your responsibility to justify the extent of the benefits identified by detailing your assumptions and computations. Examples may include reduction of truck traffic on Hudson River crossings or other environmental benefits, potential transportation cost savings to NYS shippers, the creation of new jobs, etc.

B. Part II - Contract Proposal and Related Financial Information

1. Contract Proposal

Each offeror shall specifically state acceptance of (or address, as appropriate) all terms and conditions contained in the Contemplated Format for Harlem River Yard Lease Agreement included as Attachment 4 to these Proposal Instructions and Conditions. If unable or unwilling to indicate such acceptance, the offeror shall identify and explain any exceptions or deviations taken with respect to the terms and conditions contained in the Agreement.

Any exceptions or deviations taken must contain sufficient amplification and justification to permit evaluation. The benefit to the State shall be explained for each exception taken. Such exceptions will not of themselves automatically cause a proposal to be termed unacceptable. However, a large number of exceptions, or significant exceptions not providing benefit to the State may result in rejection of such proposal as unacceptable.

2. Financial Statement

Provide certified financial statements for your past 3 fiscal years and Form 10K, submitted to the U.S. Securities and Exchange Commission, if any, for the past three years.

3. Disclosure

The offeror selected as a result of this solicitation will be required to complete a pre-award disclosure questionnaire provided by the Department on the ownership, management, affiliations, legal background, experience and financial condition of the offeror. The Department also reserves the right to require prospective tenants to complete such disclosure questionnaire.

4. Additional Statements

Each offeror shall provide the following information/statements with the proposal:

- (a) The firm will comply with all applicable Federal, State, and Local Statutes, Rules and Regulations concerning: operation of transportation services, non-collusion in submission of this proposal, non-discrimination and affirmative action in employment and non-discrimination in the conduct of the firm's business.
- (b) An acknowledgement that the State reserves the right to accept, reject, or negotiate modifications to any proposal as it deems is in its best interests.

5. Signature

- (a) The proposal shall be signed by an official authorized to bind the offeror, and shall contain a statement to the effect that the proposal is a firm offer for a 180 day (or more) period. The proposal shall also provide the following information:
- (b) Name, title, address and telephone number of individual(s) with authority to negotiate and contractually bind the company, and also who may be contacted during a period of proposal evaluation.

V. CRITERIA FOR EVALUATION OF PROPOSALS

A. General

Proposals will be evaluated by Department staff based on the technical and contract/financial criteria described below. Technical and management proposals will be point scored based on the information provided in response to Section IV. A. (Part I: Technical and Management Submittal) in accordance with the evaluation criteria listed in Paragraph B below.

B. Evaluation Criteria (Technical/Management)

The major evaluation criteria are in descending order of importance. Sub-criteria within each major factor are also in descending order of importance.

1. Overall Quality of Proposal

- (a) Degree to which your proposal demonstrates understanding of and addresses the stated objectives for developing the full site over time for maximum transportation use. Included will be an assessment

of the extent to which intermodal transportation use is maximized; innovative transportation services are provided; and priority markets are served.

- (b) Overall competence, feasibility and flexibility of proposed plans for accomplishing the stated objectives relative to the development, operation and marketing of the Harlem River Yard site considering the initial 4-5 year period and the alternatives of:
 - 0 - Completion of the Oak Point Link
 - Continuance of existing conditions

(c) Clarity of presentation.

2. Personnel, Organization and Experience

- (a) Quality of key personnel, including extent and relevance of qualifications and experience.
- (b) Quality of project organization.
- (c) Quality, extent and relevance of proposer's experience on similar efforts.

3. Quality of Marketing Plan

- (a) Quality and reasonableness of plan for acquiring near-term tenants/services, including the extent of tenant commitments, if any.
- (b) Quality of approach for attracting future tenants/services, including potential for extensions of rail service to New York City and Long Island.

4. Quality of Development and Operations Plan

- (a) Quality, completeness and comprehensiveness of development plan.
- (b) Quality, completeness and comprehensiveness of operations plan.

5. Return to State; Public Benefits

- (a) Quality of the proposed payment plan, including the reasonableness of the financial projections and the related level of return to the State.
- (b) Extent and reasonableness of public benefits proposed to result from the effort.

C. Evaluation Criteria (Contract Proposal and Related Financial Information)

The contract proposal and related financial information will not be point scored. However, it will be evaluated to determine:

1. Reasonableness of contract proposal.
2. Evidence of financial capability to perform lessee's obligations.
3. Ability to otherwise comply with the State's requirements as stated in this solicitation.

VI. ADMINISTRATIVE SPECIFICATIONS

A. Pre-Proposal Conference

In order to assist firms in preparing proposals in response to this solicitation, a pre-proposal conference will be held on August 1, 1989 at 1:00 PM in Room 112 of Building No. 5 at the Harriman State Office Campus located in Albany, New York. A general review of the solicitation will occur and general questions regarding the solicitation may be answered. Interested firms are encouraged to attend.

B. Proposal Submission

If your firm is qualified and has an interest in becoming the Developer-Operator for the Harlem River Yard as described in this solicitation, 15 copies of Part I (Technical and Management submittal) and 3 copies of Part II (Contract and Related Financial Information) of your proposal must be received by close of business September 29, 1989.

Your proposal must be clearly addressed to:

Director, Contract Management Bureau
NYS Department of Transportation
1220 Washington Avenue
Albany, NY 12232
Attention: Harlem River Yard

C. Evaluation of Proposals

Evaluation of proposals received in response to this solicitation will be performed by NYSDOT employees and may be reviewed by others designated for such purpose in accordance with the evaluation criteria included in this solicitation. While the State is under no obligation to contact firms for clarification, it reserves the right to do so. Depending upon

the number and quality of proposals submitted, the State may elect to interview the top firms during the selection process. Accordingly, firms responding to this solicitation may be requested to provide an oral presentation of their proposal to Department staff. The place, date, and time of any oral presentation will be determined by NYSDOT.

D. State's Rights to Proposal

All proposals, upon submission to the New York State Department of Transportation, shall become its property for use as deemed appropriate. By submitting a proposal, the firm covenants not to make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.

New York State Department of Transportation has the following prerogatives with regard to proposals submitted:

- To accept or reject any or all proposals;
- To utilize any or all of the ideas from proposals submitted;
- To change the proposal's due date upon appropriate notification;
- To adopt any or all of a firm's proposal;
- To negotiate modifications to the scope and payments to State with the selected firm(s) prior to contract award.

E. Conflicts of Interest Prohibited

Neither the firm nor any persons or businesses in which the firm has an interest, or which have an interest in the firm, shall be permitted to engage in any business or provide any services, other than those required of the firm or specifically approved by the State as part of the agreement, at the Harlem River Yard during the term of this agreement.

F. Inquiries and Additional Information

All inquiries concerning this solicitation should be addressed to:

Director, Contract Management Bureau
Building 5, Room 108
NYS Department of Transportation
Albany, NY 12232
Attention: Harlem River Yard

All questions must be submitted in writing. Responses to all questions of a substantive nature, as well as copies of all such questions, will be given to all organizations on the Department's source list for this project. The State shall be the sole judge of any questions substantiveness.

G. Attachments

The following information is provided to assist interested firms in preparing their proposal:

- Attachment 1 - Harlem River Yard Intermodal Park Discussion Document
- Attachment 2 - Aerial Photograph of Site
- Attachment 3 - Executive Summary from Temple, Barker and Sloane Report
- Attachment 4 - Contemplated Format for Harlem River Yard Lease Agreement

The Harlem River Intermodal Park

*A proposed state-of-the-art intermodal freight facility, located in the heart of New York City,
serving businesses and consumers throughout the metropolitan area.*

New York Department of Transportation

Bruce A. Blackie
Deputy Assistant Commissioner
1220 Washington Avenue
Albany, New York 12232

Contents

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- II. The Site
- III. The Intermodal Park Concept
- IV. The Market Opportunity
- V. The Public Benefits
- VI. Economics of Harlem River Intermodal Park

I. Executive Summary

Harlem River Intermodal Park

Harlem River Intermodal Park is a proposed multiuser intermodal facility with an operating concept similar to that of an airport or shopping center: a single park manager provides common facilities and services to multiple independent tenants. These tenants would provide a variety of specialized intermodal transportation services, both conventional TOFC and rail/truck transfer, to New York area transportation users. The 91-acre park, located in the heart of New York City, would offer convenient access to Conrail, the Hunts Point Produce Terminal, the navigable Harlem River, the Major Deegen and Bruckner Expressways, and the Triborough Bridge.

The Opportunity

The New York metropolitan area is America's largest consumer market, with thousands of businesses and millions of consumers. However, most New York shippers and receivers lack direct access to a railroad siding, and many cannot overcome this problem by using railroad piggyback service because the commodities they ship--such as plastic pellets, lumber, brick, or other bulk or high-density products--are not well suited to piggyback shipment. In addition, shipments to New York City businesses are often too small to allow shippers to take advantage of economical railroad carload or even piggyback trailer rates. The result is that New York transportation users must rely on more expensive over-the-road truckers to deliver their freight.

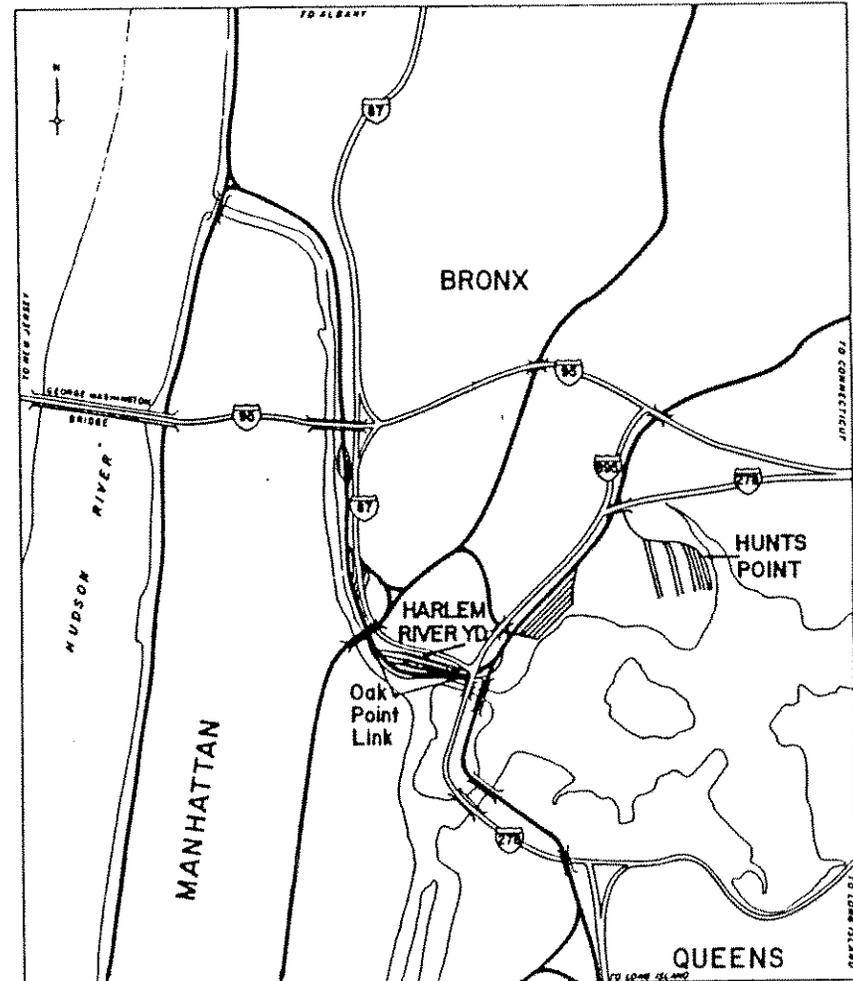
Intermodal marketers, site operators, and transportation companies now have an opportunity to participate in a profitable solution to this problem. The planned Harlem River Intermodal Park will provide New York City with a centrally located, state-of-the-art facility where railroad carload shipments can be efficiently transferred to trucks for final delivery to their destinations throughout the New York metropolitan area. Because Harlem River Intermodal Park is located in the heart of New York City, shippers using the park will avoid the expense and delays incurred when using the Hudson River bridges. The Intermodal Park will give New York City businesses a competitive advantage by offering an efficient facility for receiving goods in economical carload lots and distributing them from a convenient, central location.

Executive Summary

The Intermodal Park offers a profitable solution to another New York City problem as well. As city landfills on Staten Island fill and dumping fees charged to New York communities and companies that need to dispose of solid waste and construction debris skyrocket, New York needs to develop a high-volume facility at which truckloads of waste and debris can be consolidated for rail shipment to out-of-state landfills. Landfills outside the metropolitan area, such as those in the Midwest, are willing to accept such shipments, but transportation to them today is expensive and unreliable. Harlem River Intermodal Park's central location in the New York area would give it an estimated \$600-per-carload advantage over potential solid waste transfer sites west of the Hudson River, making it an ideal site for this urgently needed transfer facility.

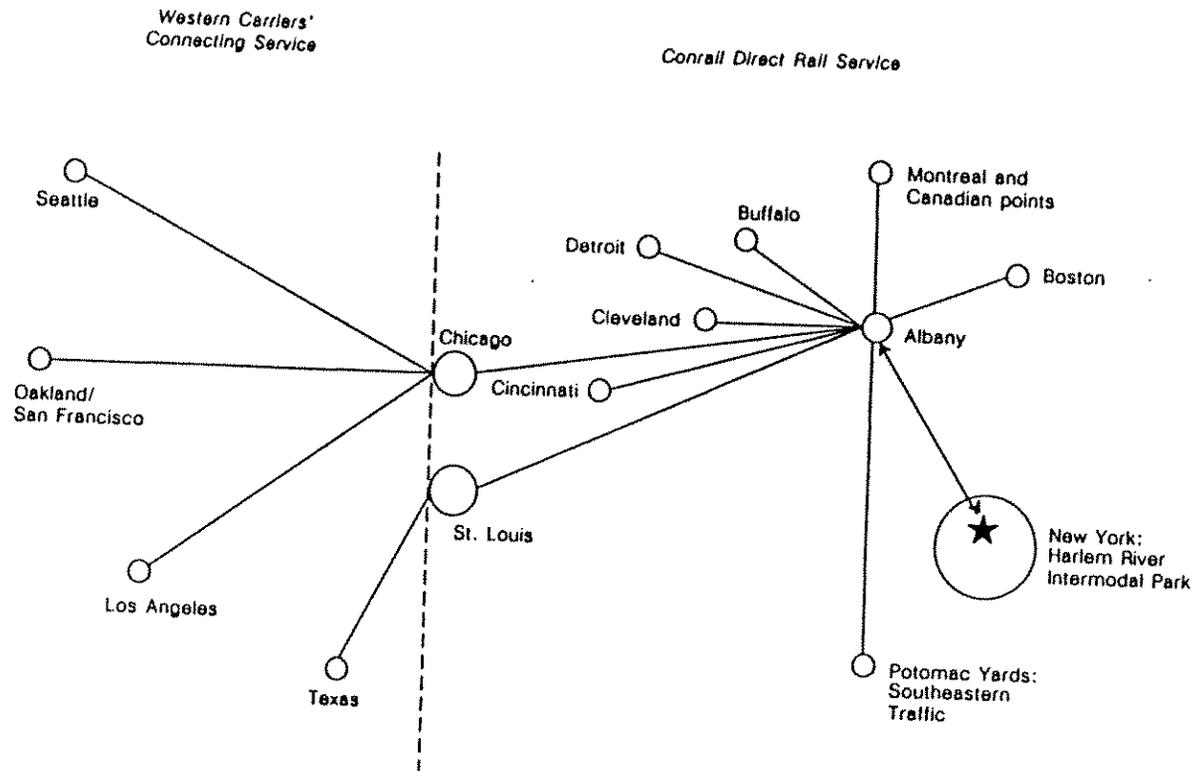
II. The Site

Harlem River Intermodal Park would be located at the southern tip of the Bronx, near the junction of the Major Deegan and Bruckner Expressways, in the shadow of the Triborough Bridge. The prime 91-acre site, located directly across the Harlem River from Manhattan and within a few miles of New York's huge Hunts Point Produce Terminal, once housed a New Haven Railroad piggyback yard. The yard fell into disuse after the Penn Central merger, and piggyback service ceased in 1972. NYDOT, realizing the strategic importance of the site, acquired it for transportation use.



Freight Access to Harlem River Intermodal Park

The site of the Harlem River Intermodal Park enjoys daily railroad freight service by trains operating directly to and from Conrail's Selkirk Yard hub near Albany. The Intermodal Park site can currently handle any kind of railroad equipment except very long or high cars, such as traditional piggyback flatcars and high-cube cars. Current clearance restrictions limit railcar heights to 15'6". The completion of the Oak Point Link would provide 17'6" clearance.



III. The Intermodal Park Concept

What Is an Intermodal Park?

A New York City intermodal park represents an innovative approach to gaining access to an enormous market. Harlem River Intermodal Park responds to the growth in integrated rail-truck service by providing a state-of-the-art facility at which carloads of freight can be transferred to trucks for final delivery (with clearance improvements, the Park could also serve standard TOFC). The Park is analogous to a multipurpose industrial park, a port, an airport, a shopping center, or any other setting in which a single facility operator provides common facilities and services to multiple independent tenants. These tenants would provide a variety of specialized intermodal transportation services to New York area transportation users.

What Is Integrated Rail-Truck Service?

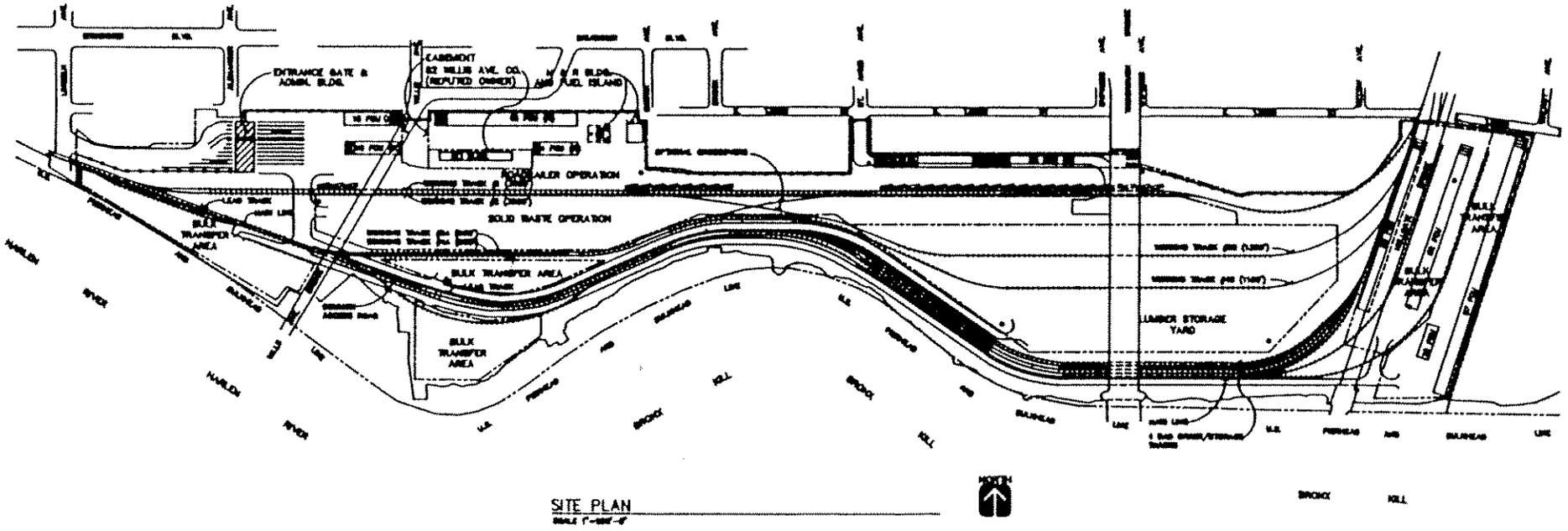
Most intercity freight transportation today is provided through four types of service. One of the types, "integrated rail-truck service," forms the backbone of the Harlem River Intermodal Park opportunity.

- Railroad carload service--which provides low-cost transportation for relatively large shipments and generally requires that both the shipper and receiver have access to a railroad siding
- Railroad piggyback service--which provides truck-competitive service for shipments that can be carried in a truck trailer or steamship container (many developing technologies--the RoadRailer, for example--permit specially designed truck trailers to operate over railroads without being mounted on flatcars)
- Over-the-road truck service--which provides door-to-door service at a price competitive with piggyback but generally somewhat higher than railroad carload service
- **Integrated rail-truck service--which provides for low-cost carload shipments to an unloading facility where freight can be transferred to trucks for final delivery to customers who lack railroad sidings or require less than carload quantities**

Although integrated rail-truck service is almost as old as railroading, it had declined in importance during the mid-20th century. However, the rollback of transportation regulation during the 1980s has brought about the rebirth of rail-truck service by reducing barriers to coordinated service and forcing railroads to seek alternatives to expensive branch-line operations and ways to reach markets not directly served by rail.

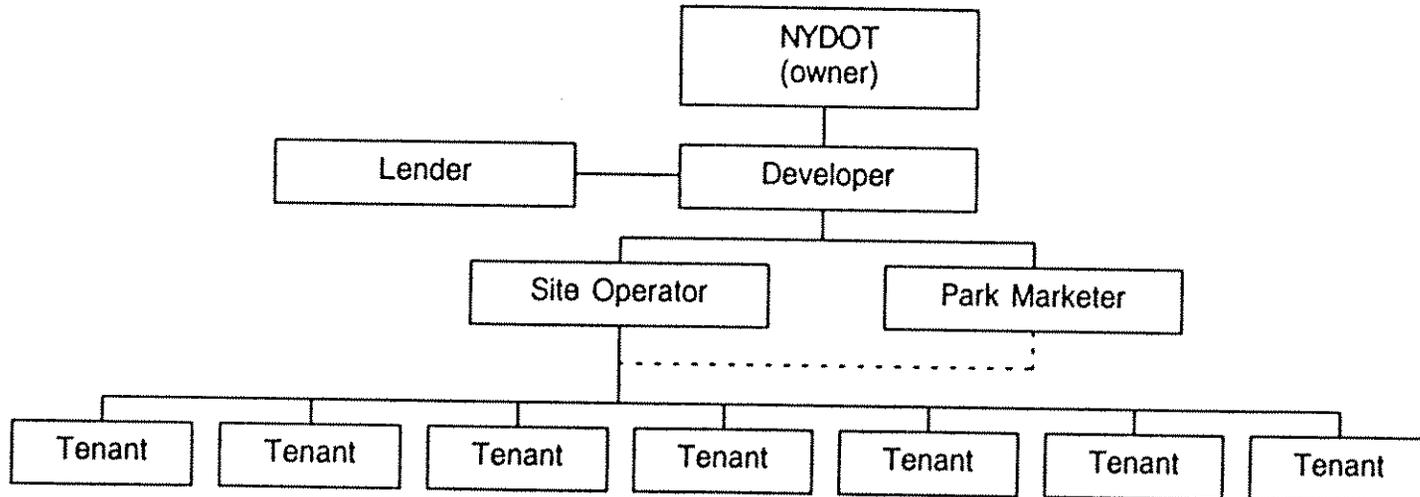
The Intermodel Park Concept

One potential configuration for the Harlem River Intermodal Park is shown below. Other options could prove equally attractive depending on the mix of tenants.



The Intermodal Park Concept

One option for the organization of the Intermodal Park is shown below.



Roles of the Key Participants

The Developer/Operator

Although NYDOT owns the Harlem River Intermodal Park site, it does not currently intend to develop or operate the Park directly. The developer/operator selected will be responsible for:

- Arranging construction financing

- Designing and constructing common facilities in the Park

- Selecting or serving as the operator of the facility

- Marketing the park to potential tenants

- Negotiating or assisting tenants in negotiating a long-term access agreement with Conrail or other transportation providers

The Intermodal Park Concept

- Providing for day-to-day operations, including:
 - Security
 - Utilities
 - Track and road maintenance
 - Truck scale service

Like the operator of an airport, shopping center, or other multiuser facility, the developer/operator will be compensated through rents, user fees, or a combination of both. While most operators of similar facilities seek to rely more heavily on rents than on user fees, both to encourage maximum use of the facility by the tenants and to protect themselves from downturns in volume, any reasonable approach to establishing tenant relationships will be considered.

NYDOT will work with the developer or operator to reduce the risks associated with economic fluctuations. On the basis of the market analysis performed for NYDOT by Temple, Barker & Sloane, the developer/operator should be protected from economic downturns and market shifts because the park's tenants will serve a diversity of niche markets, providing services such as waste transfer that tend to enjoy stable demand during changing economic conditions. Tenant firms that prove to be well run and responsive to the marketplace will expand, while those that are not will be replaced.

The Tenants

Harlem River Intermodal Park provides a truly unique opportunity to companies that provide intermodal transportation service. While rail-truck transfer facilities exist in many locations, never before has a state-of-the-art facility been constructed from the ground up in the center of a market the size of New York City.

The specific market niches served by Harlem River Intermodal Park tenants will be determined by the marketplace, and they will change as transportation technologies and the demand for commodities in New York City change. Based on current market research, initial tenants are likely to serve some of the following markets:

- Fresh produce, meat, and frozen food destined to nearby Hunts Point Terminal
- Lumber and wallboard
- Brick, tile, and cinderblock
- Food and other grocery products
- Road salt
- Cement and aggregates
- Food-grade bulk commodities (e.g., sugar, flour, edible oils)
- Nonfood bulk commodities (e.g., plastic pellets)
- Consumer products
- Solid waste (outbound)

The Intermodal Park Concept

Each tenant will be responsible for lease payments (which would include a pro rata share of improvements to common facilities), utilities, taxes, insurance, and maintenance of any tracks or pavement that it uses exclusively and any leasehold improvements it makes. The length and termination provisions of leases at Harlem River Intermodal Park will depend largely on the value of leasehold improvements made by each tenant. Leases are expected to range from 1 to 30 years.

IV. The Market Opportunity

What Is the Market for Harlem River Intermodal Park?

The market for Harlem River Intermodal Park would be a broad one, encompassing New York area establishments that currently do not have the option of using railroad service because they:

- Do not have access to a railroad siding

- Ship or receive commodities, such as plastic pellets, lumber, and brick, that do not lend themselves to railroad piggyback service

- Ship or receive in quantities too small to allow them to take advantage of low carload rates

Within this broad market are many niches that could be served by transportation companies using the facilities at Harlem River Intermodal Park. These companies can offer efficient long-haul rail service combined with truck delivery to the customer's loading dock. The specific market niches are constantly evolving as new transportation technologies are introduced and the New York City business community develops new markets and sources of supply. Because of the intermodal park concept, with its diversity of tenant companies serving separate transportation niche markets, Harlem River Intermodal Park could adapt quickly to changes in the marketplace.

Based on today's transportation marketplace, the primary market segments most likely to be served by Harlem River Intermodal Park are:

- Bulk commodities
- Refrigerated and consumer goods
- Solid waste (outbound)

These segments are discussed on the following pages.

The Market Opportunity

Bulk Commodity Transfer

Bulk commodities move most economically by rail from the point of production to the point of consumption. New York City is a major consumption point. It has:

- Major consumer markets for lumber, brick, cement, salt, paper, and food products
- A major market for plastic pellets used by small companies for injection molding
- Major markets for flour, oils, syrups, and sugars used by bakers and small food manufacturers

However, market research shows that today most bulk commodities arrive in New York City by truck. Tenants operating at Harlem River Intermodal Park would be able to receive bulk commodities in railcar lots, transload them to trucks, and offer delivery to customers throughout New York City in virtually any quantity at substantial savings.

Market research from the summer of 1988 shows that Harlem River Intermodal Park could handle 13,000 truckloads of bulk commodities during its first year of operation and more than 33,000 truckloads during its third year.

Network Operators

Network operators represent a new type of transportation company that can combine the advantages of new intermodal technologies, such as the RoadRailer, with the flexibility brought about by regulatory reform. Some network operators, such as American President Companies, provide an integrated rail network that operates as a coordinated entity transcending traditional rail boundaries. Network operators contract for railroad and truck capacity to match specific markets and traffic lanes that go beyond the traditional markets of individual railroads. Network operators view Harlem River Intermodal Park as a perfect terminal location for two reasons: its proximity to New York's Hunts Point Produce Terminal and its central location in New York City's huge consumer market.

The Refrigerated Food Market

Of the refrigerated meat, produce, and frozen foods that arrive in New York City each year, more than 87 percent arrives in long-distance trucks. Less than 2 percent arrives in refrigerated boxcars, and only about 10 percent arrives via piggyback service. Even the refrigerated food that arrives via piggyback service must be trucked from New Jersey railroad yards across congested Hudson River bridges and, thus, for all practical purposes arrives in New York City by truck.

Hunts Point Produce Terminal, the New York area's largest receiver of produce, meat, and frozen foods, is located less than five miles from the site of Harlem River Intermodal Park. Drayage costs from the Park to Hunts Point would be approximately \$120 per trailer lower than drayage costs between New Jersey railroad yards and Hunts Point. Market research shows that network operators using Harlem River Intermodal Yard could deliver door-to-door for less than operators using piggyback service via New Jersey and that about 15,000 trailers of refrigerated food a year could move via Harlem River Intermodal Park, once clearance improvements are completed.

The Market Opportunity

Consumer Goods

The New York area is the nation's largest market for consumer goods. Network operators or other intermodal operators (employing RoadRailer or other emerging intermodal technologies) target large flows of short-haul or light-loading goods (such as cereals and paper goods) that currently move almost exclusively by truck. Network operators consolidate such movements into trainload lots or, in some cases, provide trainload service from a single plant to market. Because of the huge size of its consumer goods market, New York is a very attractive terminal site for network operators. For example, one plant in the eastern United States ships 60 truckloads of disposable diapers to the New York metropolitan area every day. New York operators estimate that, due to Harlem River Intermodal Park's ideal central location in the New York City market, 7,500 truckloads of consumer goods could be handled there in the first year of operation. By the third year, with the proposed Oak Point Link completed, intermodal operators estimate this volume could grow to as many as 30,000 truckloads.

The Market Opportunity

Solid Waste

Until recently, municipalities generally disposed of solid waste (including construction debris) by placing it in landfills located within their boundaries or nearby. New York City placed most of the 28,000 tons of solid waste it generates each day in a landfill on Staten Island. Recently, however, landfills near cities have begun to be exhausted and municipalities have begun to ship their solid waste hundreds of miles to rural landfills. Solid waste from New York City currently is being transported to landfills in Ohio.

As it has begun to move longer distances, solid waste has come to fit the traditional railroad carload traffic profile:

- Heavy loading

- Relatively low value

- Moving long distances in large quantities

- Not time-sensitive

New York City recently raised rates on the 9,000 tons of commercial solid waste that New York businesses generate daily to encourage the diversion of this solid waste to rural landfills. Additional quantities of solid waste and ash from recycling plants are expected to become available for shipment by railroad during the 1990s. Market research shows that, due to lower trucking costs, a solid waste operation based at Harlem River Intermodal Park could save \$600 per carload compared with an identical operation in New Jersey and \$3,000 per carload compared with the cost of continuing to dump the solid waste at Staten Island under the newly increased rates. This research suggests that 3,000 carloads of solid waste could be shipped from Harlem River Intermodal Park during the first year of operation and that the volume could increase to 9,000 carloads by the third year.

What's the Bottom Line?

The strengths of the proposed Harlem River Intermodal Park are its location and its flexibility.

Real estate professionals say that the keys to success in business are location, location, and location. Harlem River Intermodal Park would be located in the heart of New York City, the largest consumer market in the United States. Its central location would make it the ideal base for distribution throughout the New York area, and its location east of the Hudson would allow shippers to avoid the delay and expense of crossing the congested Hudson River bridges to reach railyards in New Jersey. The site of the Harlem River Intermodal Park is less than five miles from Hunts Point Produce Terminal, the largest receiver of produce, meats, and frozen food in New York City. Finally, Harlem River Intermodal Park would be located on Conrail, with direct daily service to Conrail's hub at Albany, and within blocks of two major expressways.

As an intermodal park, with a variety of independent tenants serving niche markets, Harlem River Intermodal Park would have the flexibility to adjust quickly to changes in transportation technologies and markets. Unlike a single-use facility, which can become obsolete, an intermodal park can keep up with the marketplace by attracting new tenants and providing space for existing successful tenants to grow.

V. The Public Benefits

Will Harlem River Intermodal Park Help the Public?

Yes! On the basis of market conditions in mid-1988 and the assumed relationship between NYDOT and the operator, the proposed Harlem River Intermodal Park will:

- Reduce transportation costs, which ultimately are paid by businesses and consumers in New York. For some commodities, Harlem River Intermodal Park could cut transportation costs by up to \$900 per car, resulting in an annual savings of \$6.5 million for New York shippers and consumers by the third year of operation.
- Create new jobs and tax revenues. Harlem River Intermodal Park could create 420 person-years of new work for its employees, its tenants' employees, draymen, and others by its third year of operation. Spending for goods and services by the Park and its tenants will indirectly create new jobs elsewhere in New York as well. By the third year of operation, it is estimated that Harlem River Intermodal Park will create \$28 million a year in spending for goods and services, \$10.3 million in direct wages, and nearly \$1.4 million in state and local taxes.
- Create jobs during its construction. It will cost an estimated \$16.2 million to construct the common and tenant facilities at Harlem River Intermodal Park. This will generate 410 person-years of work, \$10.4 million in direct wages, \$32 million in spending for goods and services, and nearly \$1.6 million in state and local taxes.
- Remove more than 87,000 trucks a year from Hudson River bridges by the third year of operation, provided that the Oak Point clearance program is completed and network operators locate at the facility.

NYDOT fully supports the concept of a privatized Harlem River Park. However, given the many public benefits of an intermodal park, NYDOT would be willing to work with the developer to forge the public/private partnership required to support the Park in the most efficient manner possible.

VI. Economics of Harlem River Intermodal Park

This section discusses the economics of Harlem River Intermodal Park. The projections, developed in the summer of 1988, reflect one potential configuration of the Park. Actual expenses and revenues will, of course, depend on the actual tenants and prevailing economic conditions, and the projections should be updated as part of a developer's business plan. NYDOT will provide interested parties with copies of the Harlem River Yard privatization analysis, which offers important data for potential developers.

Estimated Annual Operating Costs

The initial estimate of the annual operating cost of Harlem River Intermodal Park is \$1.05 million. This cost should not vary significantly with volume through the yard since individual tenants will cover operating expenses at each of the leased facilities.

Category	Yearly Cost (thousands of 1988 dollars)	Comments
Labor (e.g., security and maintenance)	\$ 600	Includes round-the-clock security guards, but no gate personnel; maintenance includes foreman and four crew members
Administration	150	A manager and one secretary
Materials and supplies	300	
Utilities	100	
Other	200	
Total	<u>\$1,050</u>	

Estimated Construction Costs

Based on preliminary engineering estimates for a representative tenant configuration, the cost of constructing the *common* facilities at Harlem River Intermodal Park will be \$11 million. Improvements required by tenants would be considered leaseholds and financed independently of the common facility. Construction is expected to be completed in one year.

Category	Estimated Cost (thousands of dollars)	Comments
Designing and engineering	\$1,000	10 percent of construction, including contingencies
Earth work	900	Assumes existing buildings removed prior to project
Track work	4,100	Includes 31,000 feet of track, grade crossings, and crossovers
Entrance gate and administration building	900	15,000-square-foot building
Maintenance and repair building	300	4,500-square-foot building
Other		
Equipment	50	One scale
Roads/paving	1,100	8,400 feet at \$130 per foot, 20,000-square-foot parking lot
Utilities/drainage	1,100	Domestic water, municipal water, and site drainage
Lighting	200	7 poles
Fencing	400	7,700-foot perimeter; 12-foot-high security fence
Contingencies	900	10 percent of construction
Total	<u>\$11,000</u>	

Economics of Harlem River Intermodal Park

Revenues

Given the estimated \$11 million in construction debt and \$1.05 million in annual operating expense, the breakeven point for Harlem River Intermodal Yard will be influenced by the interest rate paid by the developer. The breakeven points for two representative cases are shown below:

<i>Case</i>	<i>Breakeven Revenues</i>
Private financing (assumed 10 percent)	\$3.25 million
Quasi-public financing (assumed 8.25 percent municipal bonds)	\$2.25 million

The developer is expected to base tenants' rents and usage fees on market conditions, and thus both are expected to vary from tenant to tenant. For analysis, however, revenues are shown below in terms of dollars per trailerload handled. (In the preliminary financial analysis all changes were based on trailerloads. Other approaches such as basing charges on rail carloads or having "take or pay" user fee levels would be acceptable.) For comparison, a typical gate charge in the New York area today is \$19 per trailer, and the average saving per trailer achieved by using Harlem River Intermodal Park is estimated to be \$60.

Breakeven Revenues			
(dollars required per trailer/container handled)			
<i>Case</i>	<i>Year 1</i>	<i>Year 3</i>	<i>Year 10</i>
Private financing	\$71	\$25	\$21
Quasi-public financing	\$49	\$17	\$15
Trailers/containers assumed	46,000	132,300	153,160

Financial Projections

NYDOT and its consultants prepared financial projections in the summer of 1988 based on information available at that time and reflecting prevailing economic conditions and interest rates.

Certain key assumptions were made:

- The initial cost of the intermodal park would be \$11 million and would be financed through the issuance of municipal bonds.
- Demand was forecast for key future years on the basis of prevailing market conditions:

	Trallerload Equivalents
Year 1	0
Year 2	46,000
Year 4	132,300
Year 10	153,160

- Year 4 was assumed to be the first full year of full-capacity operations at the intermodal park.
- Revenue was assumed to grow at a constant annual rate of 2.68 percent between Year 4 and Year 20.

Economics of Harlem River Intermodal Park

- Mid-1988 prevailing market conditions were used to estimate operating expenses of \$1,050,000 for full-capacity operations in Year 4.

Labor	\$600,000
Administration	\$150,000
Supplies	\$300,000

- For Years 4 through 20, base-year labor and administrative costs were considered to be fixed; incremental labor was assumed to grow at a constant annual rate equivalent to 75 percent of the revenue growth rate; and incremental administration and supply costs were assumed to grow at a constant annual rate equivalent to 25 percent of the revenue growth rate.
- Depreciation was assumed to be constant and interest expense decreased each year according to the bond amortization schedule.
- These projections indicated that:
 - The Harlem River Yard project had a 20-year internal rate of return of 15 percent.
 - Payback would be achieved during the eleventh year of operation.
 - Cash flows would be positive at the end of Year 4.

Economics of Harlem River Intermodal Park

- Additional financial evaluations will be required because actual financial performance and projections will be influenced by prevailing market conditions, including:
 - Final relationship between NYDOT and the operator
 - Interest rates
 - Competitive environment



Attachment 2
HARLEM RIVER YARD
NYC - SOUTH BRONX
Spring 1989 Aerial Photography

Executive Summary

Study Objectives

- In 1988, the New York State Department of Transportation (NYDOT) commissioned Temple, Barker & Sloane, Inc. (TBS) to study the potential for privatizing the Harlem River Yard (HRY), which ten years earlier had been chosen as the site for a regional intermodal facility.

- The purpose of the study was to provide NYDOT with a plan that would:
 - Minimize the need for additional state funding to complete HRY construction
 - Maximize private participation in HRY's development and operation
 - Provide for the best possible use of HRY in the short to medium term

Contents

Study Objectives

Recommended Role: Intermodal Park

Study Methodology

Study Assumptions

Findings

Recommended Role: Intermodal Park

- The study found a number of attractive roles open to HRY, though none of a size large enough to warrant a standalone operation. It was thus determined that the development of a multipurpose transportation terminal would maximize the potential for privatizing HRY. A state-of-the-art "intermodal park" could serve several emerging markets and technologies, including network operator, specialized unit train, and bulk carload transfer.

Description of Intermodal Park Concept

- An intermodal park is analogous to a multipurpose industrial park, a port, a shopping center, or an airport.
 - A "landlord" provides a set of common facilities and services, but does not directly provide transportation services.
 - Several "tenants" each provide a specific transportation service.
- An intermodal park is appropriate for serving a diversity of niche markets.
 - Each tenant can pursue its own objectives and market opportunities independently.
 - The landlord can provide a set of common services more efficiently than a tenant could by itself.
 - The park has the flexibility to reallocate resources as markets develop and change.

- Tenants typically compensate the landlord for use of the facilities through one or more of the following mechanisms:
 - Short-term leases
 - Long-term leases
 - User fees

- Short-term leases are often used in conjunction with ground storage applications.
 - Terms for one to five years, cancelable on 30-day notice
 - Rents usually based on what market will bear
 - Long-term objectives to cover property taxes, insurance, and management costs
 - Track rentals \$50 to \$200 per car length per month, one-year term

- Long-term leases are typically used in conjunction with major leasehold improvements.
 - They command higher rents based on market value and market forces.
 - Lease is usually for a 10- to 30-year term, depending on magnitude of leasehold improvement.
 - Lease is based on market value of land less value of leasehold improvements, if tenant is making improvements.
 - Leaseholder pays property taxes, all utilities, and insurance.
 - If landlord makes improvements to property (e.g., buildings, roads), the value of those improvements is factored into lease payments based on a reasonable capitalization period.
 - In all cases, landlords attempt to allocate common services costs (maintenance, security, utilities) to all tenants on a square-foot basis.
 - Lease is always based on area used, not on volume of traffic.

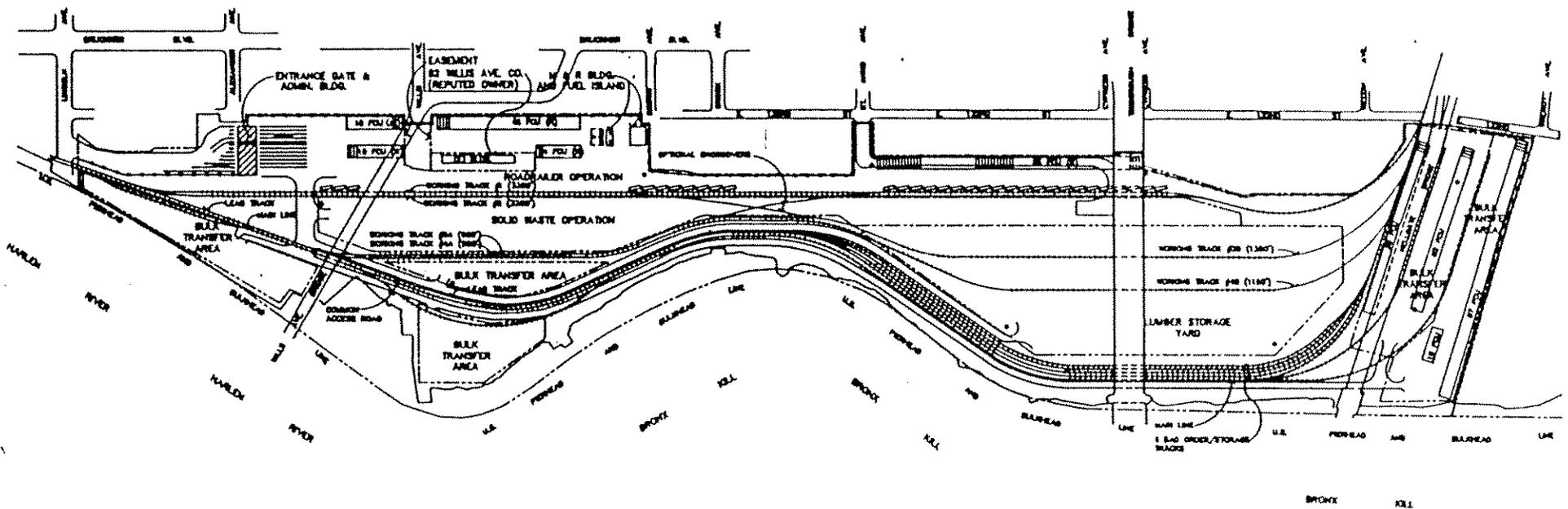
- User fees are also often charged.
 - A fee typically is charged per carload or trailerload using the facility.
 - Some common services are provided "as needed" (e.g., trailer lifts) and a user fee is appropriate to match revenues and costs.
 - Because most landlords prefer tenants to maximize throughput, they typically avoid heavy reliance on user fees since such a pricing structure rewards tenants who have low volume.

Conceptual Yard Layout

- Although the "niche nature" of the intermodal park makes it impossible to predict the exact combination of tenants, the conceptual yard layout below (Exhibit 1) shows how eight potential tenants – network operator, solid waste, lumber, food-grade bulk commodities, non-food grade bulk commodities, salt, aggregates, and cement – could occupy HRY.

Exhibit 1

Conceptual Yard Layout



Advantages of Developing an Intermodal Park at HRY

- The intermodal park concept would permit efficient site use because several compatible users could share facilities.
 - Refrigerated RoadRailers, 53-foot high-cube RoadRailers, and both hopper-car and TOFC solid waste trains could share common loading tracks, using common offices and separate parking areas.
 - Transloading facilities could "wrap around" firms using the common loading tracks, sharing a common switching lead, and using corners of the irregularly shaped HRY site.

- An intermodal park would take advantage of HRY's assets:
 - Proximity to Hunts Point Produce Terminal
 - Proximity to highways serving New York City and adjacent areas for distribution and gathering
 - Full utilization of HRY property

- An intermodal park would focus on diverting long-distance truck traffic to rail without diluting volume at existing intermodal facilities.

- The intermodal park could begin operations quickly, yielding early public benefits, and evolve further when Oak Point Link's completion permits better access to HRY.

- The intermodal park would give New York maximum flexibility to adapt to changing transportation markets:
 - Multipurpose facility avoids risk of depending on one role.
 - Mixed use permits experimentation as new technologies emerge and consumption patterns change.
 - Park can help resolve pressing transportation bottlenecks (e.g., NYC solid waste).

- The intermodal park would provide lower-cost transportation to New York consumers and small businesses and would assist in attracting job-creating small businesses to the Bronx.

- A successful intermodal park could also bring three important financial benefits to the State of New York:
 - *User savings*: A decrease in transportation costs for companies using the yard, a large proportion of which are New York companies
 - *Increased economic activity*: An increase in revenues generated by the New York State economy
 - *Construction expenditures*: One-time expenditures for construction of facilities

Estimate of Representative Volume for Intermodal Park

- The intermodal park concept has the advantage of being flexible. This flexibility makes it difficult, however, to predict exactly how much volume HRY will handle.

- In order to provide NYDOT with an overview of HRY's potential, TBS developed volume estimates for a reasonable scenario (Exhibit 2). In this scenario, TBS assumed that eight different tenants will use HRY. TBS estimates that by the third year these tenants will generate 45,000 trailerloads and 16,500 carloads of traffic per year.

Exhibit 2
Estimated HRY Volume

Tenant	Role	Year 1	Year 3
1. Network operator (trailerloads)			
Refrigerated goods	Refrigerated TOFC	7,500	15,000
Other	Network operator	7,500	30,000
Total		----- 15,000 ^a	----- 45,000 ^a
Transload users (carloads)			
2. Solid waste	Specialized unit train	3,000	9,000
3. Lumber	Bulk carload transfer	1,000	2,000
4. Food-grade bulk commodities	Bulk carload transfer	300	700
5. Nonfood-grade bulk commodities	Bulk carload transfer	200	500
6. Salt	Bulk carload transfer	200	800
7. Aggregates	Bulk carload transfer	1,000	2,500
8. Cement	Bulk carload transfer	300	1,000
Total		----- 6,000	----- 16,500

^aVolumes provided by potential network operators.

Summary of Operating Options

- TBS assumes that NYDOT will want to retain its ownership in HRY. Maintaining ownership of HRY should ensure that the parcel will be used for transportation purposes and that the objectives of NYDOT will be pursued.

- Operating HRY as an intermodal park could involve three or more types of entities to fulfill five different tasks (Exhibit 3).

Exhibit 3

HRY Tasks

Task	Description of Task	Primary Entity	Secondary Entities
Ownership	Hold title to land, retaining limited control over activities	Owner	
Development	Plan, finance, and construct the basic services at HRY	Landlord	Owner
Marketing	Identify, select, and sell to potential tenants	Landlord	Owner, Conrail
Operations (common)	Provide common services that support the operations of tenants	Landlord	Owner
Transportation service	Develop, market, and operate a transportation service	Tenant	Conrail

■ Implementation of an intermodal park would require four major actions:

-- Acceptance of final privatization plan

-- Determination of NYDOT role

-- Selection of landlord

-- Startup planning

Study Methodology

- As an initial step in the study, TBS identified six potential roles for HRY that warranted in-depth study:
 - Traditional long-haul TOFC
 - Refrigerated long-haul TOFC inbound with appropriate backhaul outbound
 - The Montreal corridor, including both TOFC and international containers
 - Network operators (i.e., an intermodal operator with a network that overlays traditional railroad boundaries)
 - Specialized unit trains
 - Bulk carload transfer

- With assistance from NYDOT, TBS developed a list of screening criteria (Exhibit 4) to evaluate the potential roles:
 - Market viability
 - Physical constraints
 - Local area development
 - Rail competition
 - Conrail support
 - State investment

- In analyzing market viability, the most critical of the criteria, TBS:
 - *Gauged market perceptions of HRY* through more than 200 interviews with shippers, developers, operators, government officials, and industry experts.
 - *Assessed the current east-of-Hudson market* through an analysis of current freight movements to and from major intermodal markets in the Upper Midwest and Western United States
 - *Evaluated modal economics* by comparing realistic door-to-door costs for traditional long-haul HRY intermodal service to existing New Jersey intermodal service

Exhibit 4

Screening Criteria

Criteria	Performance Measure	Importance of Criteria	TBS Comments
Stage 1 — Opportunity Evaluation			
1. Market Viability <ul style="list-style-type: none"> Market viability — probability of long-term viable operation 	High, Medium, Low	High	The most important criteria; measurement based on market size, modal economics, and market perceptions
2. Physical Constraints <ul style="list-style-type: none"> Land area requirements <ul style="list-style-type: none"> a. Fits within current space b. Fully utilizes available space Clearance requirements <ul style="list-style-type: none"> a. Is 17 ft 6 in. adequate? b. Is 15 ft 6 in. adequate? 	Yes or No Yes or No Yes or No Yes or No	High Medium High Low	NYDOT strongly prefers to not add more land to HRY Clearance beyond 17 ft 6 in. will be available long-term, but would be expensive now; clearances beyond 15 ft 6 in. only available once OPL is complete
3. Local Area Development <ul style="list-style-type: none"> Number of jobs created — qualitative assessment Support and development of local industry — qualitative assessment 	High, Medium, Low High, Medium, Low	Low Low	Number of direct jobs not likely to vary significantly, between roles If operation has market viability (Criteria #1), TBS believes local industry will be supported
4. Rail Competition <ul style="list-style-type: none"> Increased rail competition <ul style="list-style-type: none"> a. Intermodal competition (motor carrier versus rail) b. Rail-to-rail competition 	Yes or No Yes or No	High Low	A key objective of the project is to reduce the area's dependence on trucks Little importance to improve rail-to-rail competition
5. Conrail Support <ul style="list-style-type: none"> Likelihood of Conrail support 	High, Medium, Low	High	A role not ultimately supported by Conrail is less likely to be viable
Stage 2 — Public Financing Evaluation			
6. State Investment <ul style="list-style-type: none"> Additional capital investment required Financial return to NYDOT — qualitative assessment 	Yes or No High, Medium, Low	High Low	Overall goal is to develop the yard by private investment with no further state investment, if possible Exact measures to be determined later

Study Assumptions

- In evaluating the potential roles for the HRY and their financial implications, a number of assumptions were made:
 - Cost comparisons were based on initial HRY operations and current NJ operations.
 - Only Conrail service would be available to HRY.
 - The Oak Point Link would be completed in three years.
 - The existing transportation and energy policies would remain in effect.
 - The time horizon was relatively short – one to five years – rather than long-term.
 - Interest rates would remain stable.

Findings

Characteristics of the East-of-Hudson Market

- **Size.** The size of the current East-of-Hudson market (that portion of the New York Business Economic Area [BEA] located east of the Hudson River) for traditional long-haul TOFC is significantly less than the 6.3 million 40-foot freight container equivalents (FCEs) of containerizable freight entering and leaving the New York BEA.
 - Only 1.4 million FCEs, 22 percent of total volume, move to or from the prime intermodal areas (Upper Midwest, Mid-South, Mountain, and West), the geographic regions that are most likely to benefit from HRY.
 - Only 40 percent of this traffic, or 560,000 FCEs, moves in or out of East-of-Hudson (Exhibit 5). East-of-Hudson includes New York City, Long Island, Westchester County, and western portions of Connecticut. All of this traffic could have short-term potential for HRY.
 - Only 12 percent of this traffic, or 65,000 FCEs, moves via intermodal. If HRY could match or improve on the competitor economics of the North Jersey terminals, this traffic could be captured by HRY in the short term.

- **Balance.** The balance of inbound to outbound intermodal flow is significantly better West-of-Hudson than East-of-Hudson. New Jersey Intermodal terminals currently maintain a balance of 1.15 to 1. Current intermodal traffic between East-of-Hudson markets and the prime intermodal regions has a balance of 3.3 to 1. This balance has a major effect on HRY's economics as well as on the ability to operate the terminal as a traditional intermodal facility.

Exhibit 5

**Summary of East-of-Hudson Volume to and from
Upper Midwest and Western United States**

	Inbound		Outbound		Ratio of Inbound to Outbound	Total	
	FCEs In Thousands	Percentage of Total	FCEs In Thousands	Percentage of Total		FCEs In Thousands	Percentage of Total
Rail carload	39	11.7%	0.4	0.2%	100	39	6.9%
Truckload	213	63.8	178	78.1	1.2	391	69.6
LTL	32	9.6	35	15.4	0.9	67	11.9
Intermodal	50	15.0	15	6.6	3.3	65	11.6
Total of four modes	334	100.0%	228	100.0%	1.5	562	100.0%

Source: TBS analysis; 1985 Transearch.

Modal Economics

- HRY's ability to benefit East-of-Hudson shippers depends largely on the relative costs of three primary transportation alternatives available to the region's shippers and receivers:
 - Intermodal using HRY
 - Intermodal using New Jersey terminals
 - Direct truckload

- As shown in Exhibit 6, relative costs between HRY intermodal and New Jersey intermodal are a function of several important factors.

- The relative costs of truck versus either intermodal option depend largely on the length of haul. Short hauls typically favor truck, and intermodal economics are typically most positive on longer hauls.

Exhibit 6

Factors Influencing Intermodal Costs

Factor	Which route does factor favor?	Importance of factor (qualitative)
Drayage		
Distance/time	HRV	Medium-high
Volume	New Jersey	Potentially high
Linehaul		
Load balance	New Jersey	High
Technology	New Jersey ¹	High
Mileage	HRV	Low
Density/volume	New Jersey	Low
State-owned track	HRV	Low

¹ Assuming current New York State policy for achieving 20 ft., 6 in. clearance.

Potential for Traditional TOFC

- To the extent that intermodal traffic to New Jersey is carried using RoadRailers or double-stack, HRY does not have a door-to-door cost advantage in the Chicago and Los Angeles corridors using any technology (Exhibit 7).

Exhibit 7

***Modal Economics: Cost Ratio by Technology of HRY
Versus New Jersey Using Double-Stack***

HRY Intermodal Technology	Chicago Corridor	Los Angeles Corridor
Conventional	121	147
RoadRailer	107	118
Lightweight	114	135
Double-stack ¹	103	110
Double-stack to Albany, then lightweight	112	115

¹Unfeasible in near term, given current vertical clearances to HRY.

- To the extent that intermodal traffic to New Jersey continues to be carried using conventional TOFC, HRY only has a door-to-door advantage if advanced technology is used for movements East-of-Hudson (Exhibit 8).
 - From Chicago using RoadRailer, HRY has a 5 percent cost advantage over conventional TOFC to New Jersey.
 - From Los Angeles using RoadRailer, HRY has a 7 percent cost advantage.
 - From Los Angeles to Albany using double-stack and from Albany to HRY using lightweight, HRY has a 9 percent advantage.
 - These advantages are somewhat greater for loads to the Bronx, where drayage costs are lower.

Exhibit 8

***Modal Economics: Cost Ratio by Technology of HRY
Versus New Jersey Using Conventional TOFC***

HRY Intermodal Technology	Chicago Corridor	Los Angeles Corridor
Conventional	108	116
RoadRailer	95	93
Lightweight	102	106
Double-stack ¹	92	87
Double-stack to Albany, then lightweight	100	91

¹Unfeasible in near term, given current vertical clearances to HRY.

- When comparing like technologies, HRY never has a cost advantage over New Jersey (Exhibit 9).

Exhibit 9

Ratio of HRY to New Jersey Costs by Technology and Routes

Intermodal Technology	Chicago	Los Angeles	Montreal
Conventional TOFC	1.08	1.16	1.02
RoadRailer	1.05	1.12	1.01
Lightweight TOFC	1.06	1.15	1.01
Double-stack	1.03	1.05	1.00

- As negative as these economics are, other factors could make them even worse. TBS did not specifically include two factors that could potentially work against HRY:
 - Lower volumes at HRY as they affect drayage costs
 - Lower density on the HRY-Selkirk line, leading to higher per-unit maintenance costs
- TBS also did not specifically include the lack of trackage fees from Poughkeepsie to HRY. TBS believes this advantage is outweighed by the disadvantages listed above.

Evaluation of Potential Roles

- Exhibit 10 provides a summary of TBS's evaluation of the potential roles for HRY.

- TBS's analysis ruled out two of the potential roles:
 - Because of its poor competitive economics, *traditional long-haul TOFC* does not appear to be a viable service for HRY.

 - Service on the *Montreal corridor* has poor potential for HRY because (1) the market is small, (2) Montreal-based shippers showed little interest in such a service, and (3) trucking would be a lower-cost alternative.

- The other four potential roles--refrigerated long-haul TOFC, network operators, specialized unit trains, and bulk carload transfer--were given high ratings. None of these roles, however, would be of a sufficient scale to make full use of HRY's land, and none therefore warrants a standalone operation at HRY.

Exhibit 10

Summary of Evaluation of Potential Roles

Potential Roles	Stage 1 Criteria (Importance)	Physical Constraints					Local Area Development		Increased Rail Competition		Likelihood of Conrail Support	Overall Rating	Stand-alone Role
		Market Viability	Fits Within Space	Fully Utilizes Space	Clears 17 ft 6 in.	Clears 15 ft 6 in.	Number of Jobs Created	Support of Local Industry	Inter-modal	Rail-to-rail			
		(High)	(High)	(Medium)	(High)	(Low)	(Low)	(Low)	(High)	(Low)			
1. Traditional long-haul TOFC	Low	Yes	No	Yes	No ¹	Low	Low	Yes	No	Low	Low	Yes	
2. Refrigerated long-haul TOFC	High	Yes	No	Yes	No ¹	Low	Low	Yes	No	High	High	No	
3. Montreal corridor — TOFC	Low	Yes	No	Yes	No ¹	Low	Low	Yes	No	High	Low	No	
4. Network operators	Medium	Yes	Possibly	Yes	Possibly	Low	Low	Yes	Yes	Medium	Medium	No	
5. Specialized unit trains	High	Yes	No	Yes	Possibly	Low	Low	Yes	No	High	High	No	
6. Bulk carload transfer	High	Yes	No	Yes	Yes, except Plate C	Low	Low	Yes	Yes (potentially)	High	High	No	

¹ Today's standard technology does not clear; however, alternatives do exist.

ATTACHMENT 4

CONTEMPLATED FORMAT FOR HARLEM RIVER YARD LEASE AGREEMENT

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CONTEMPLATED FORMAT FOR HARLEM RIVER YARD LEASE AGREEMENT

The proposer is encouraged to submit a long-term financially sound plan for the development and use of the Harlem River Yard, consistent with the matters set forth in this Request for Proposals. Consequently, the Department cannot mandate in the RFP a form agreement, setting forth all of the terms and conditions the Department envisions that will be included in the Agreement.

However, in order to advise proposers of certain matters that should be addressed, the following "SAMPLE LEASE AGREEMENT" is set forth for consideration.

Proposers should review each item designated as an "ARTICLE" in the "SAMPLE AGREEMENT", and, as appropriate, state acceptance or provide specific comments in the Part II submittal required under this RFP. The title of each "ARTICLE" is an indication that the Department will require that such matter be addressed in the lease agreement. The material under each "ARTICLE", if within quotation marks, is actual lease language proposed by the Department. Material not in quotation marks is informational.

SAMPLE LEASE AGREEMENT

FOR

HARLEM RIVER YARD

"This AGREEMENT OF LEASE, made as of _____ 1989, between the NEW YORK STATE DEPARTMENT OF TRANSPORTATION ("Department"), an agency of the government of the State of New York having an office at Building 5, State

Office Campus, 1220 Washington Avenue, Albany, New York 12232, and
_____ ("Tenant"), a corporation organized under the laws of
the State of New York (or under the State of _____ and authorized
to conduct business in the State of New York), having an office at
_____."

RECITALS

The following recitals are contemplated:

- (a) Department owns the Leased Premises,...
- (b) Department is desirous of development and operation of Leased Premises in the public interest as a transportation related facility consistent with the terms and conditions set forth herein,...
- (c) Tenant is desirous of developing and operating leased premises as set forth herein,...
- (d) Parties are desirous of entering into agreement for purposes herein,...
- (e) Parties have reached an understanding,...
- (f) "NOW, THEREFORE, in consideration of the premises ..." etc.

ARTICLE I

LEASED PREMISES

"The Leased Premises shall consist of;

"An area of approximately 95 acres located generally along the Harlem River in southern Bronx County, New York, more particularly described and shown in the four Acquisition Maps attached hereto. Generally, the leased premises are bounded on the west by Lincoln Avenue, on the north by 132nd Street; on the east by an imaginary extension of the center line of Walnut Avenue to the Bronx Kill, and on the south by the U.S. Pierhead and Bulkhead line in the Bronx Kill and Harlem River. Approximately five acres of the leased premises are under water.

"In connection with the Leased Premises, the Department warrants that on December 27, 1982, the Department acquired title by appropriation pursuant to Section 30 of the Highway Law and other statutes by filing with the County Clerk of the County of Bronx the said Acquisition Maps. The Tenant acknowledges that it has examined said notice and maps and that the Leased Premises are subject to the terms and conditions thereof, including, but not limited to, seven specific easements which were reserved from the said appropriation. Tenant further acknowledges that it is aware of all matters of record concerning the Leased Premises.

"The Leased Premises shall also include all improvements now or hereafter constructed on the Leased Premises, except as may be specifically excluded by the terms of this Lease Agreement."

ARTICLE II

DEVELOPMENT OF LEASED PREMISES

This ARTICLE is open to proposal and negotiation consistent with the RFP. It should describe the development concept in sufficient detail for reasonable evaluation, including generally a complete description of the planned improvements, construction schedules, railroad track alignment, roadways, business operations planned, and rail usage contemplated. Essentially, the proposer should describe what it will do in terms of development and use or operations, how it will be accomplished, and when it will be completed.

ARTICLE III

TERM OF LEASE

This provision is open to proposal and negotiation, although a long-term lease is contemplated.

ARTICLE IV

RENT

Subject to negotiation. Payment terms are obviously important, and proposer is advised that a provision for late payment will be required.

ARTICLE V

ASSIGNMENT, SUBLETTING AND MORTGAGES

The offeror is encouraged to be imaginative and innovative in maximizing private funds to make its proposal possible. Consequently, proposer has a wide latitude in proposing various financing schemes including, but not limited to, assignments, subleases and mortgages.

The Department will require protection of all previous and future public funding, and to the extent necessary, the proposer is advised that an adequate provision for liquidation or buy out, or similar provision, will be required.

ARTICLE VI

CONDITION OF PREMISES

The Department will make no warranty as to the condition of the Leased Premises. The Tenant will be required to acknowledge that it has inspected the Leased Premises and accepts the Leased Premises in its present condition.

ARTICLE VII

ROADWAYS

The Tenant shall have the financial responsibility to design and construct all necessary roadways, and should make adequate provision for the operation and maintenance of the roadways. The Department will not provide any roadways, and, the Tenant is responsible for coordinating all necessary matters involving roadways with the City of New York. The issue of public v. private roadways shall be a negotiation item.

ARTICLE VIII

UTILITIES

The Department shall have no obligation to Tenant with respect to the provision of public utilities or similar items, including, but not limited to, power, heat, communication, water, sewage, or lighting. Provisions for utilities are to be addressed by proposers in their Technical and Management Submittal (see Section IV. Proposed Format and Contents, item 5. Development, Operations and Marketing Plans, B. Operations).

ARTICLE IX

TRACKS

The design, construction and maintenance of railroad tracks with the exception of the Oak Point Link mainline within the Leased Premises is the sole responsibility of the tenant and should be addressed in the proposal.

ARTICLE X

GOVERNMENT PERMITS, CERTIFICATION AND APPROVALS

The Tenant shall be solely responsible for securing any required governmental compliances or approvals for the project, including, but not limited to, compliances, approvals, permits or certifications under applicable federal, state, or local laws relating to environmental requirements, building codes, zoning, and similar types of laws. Although the Department will cooperate with the Tenant in providing available information, the Department will not assume the role of an applicant before any government body. Proposers should consider, among other things, what government approvals would be required for its proposal.

ARTICLE XI

IMPOSITIONS

The proposer should provide for the payment of all impositions which may be levied against the Leased Premises and provide for the payment thereof, and

should also provide for a system of deposits for such impositions to insure that timely and adequate payment is made, and should further provide protection for the Department that would preclude the possibility of any lien or other encumbrances being placed upon the Leased Premises for failure to pay impositions.

ARTICLE XII

INSURANCE

The developer must provide or cause to be provided adequate insurance to protect the Department, the Leased Premises, and all improvements upon the Leased Premises at all times throughout the term of the lease. Therefore, at a minimum, the premises and improvements must be adequately insured so that if damaged or destroyed by, for example, fire, water, flood, earthquake or any other event normally insured against, the proceeds of the insurance will be available to restore the Leased Premises without expenditure of public monies. Since the nature and type of development is not known at this time, the limits of the insurance coverage cannot be further addressed. The Department will also require comprehensive public liability insurance against liability for bodily injury, death and property damaged in an amount adequate to protect itself for such claim. Although the amount of insurance is subject to negotiation, the Department believes that at a minimum, there should be a \$10 million combined single limit for liability for liability for bodily injury death and property damage with the aggregate limit of \$20 million. An automobile liability policy may also be required, as will any insurance obligations mandated by law. The tenant should address insurance provisions

in its Part II proposal and address the issue of the Department's liability during construction, during the operation of the development, and should also address the issue of liability for the use of the roadways to be constructed.

ARTICLE XIII

DEPARTMENT LIABILITY

INDEMNIFICATION

The Department anticipates the inclusion of the following, or similar clauses in the lease agreement.

"The Department shall not in any event whatsoever be liable for any injury or damage to tenant or to any other person happening on, in or about the leased premises and its appurtenances, or for any injury or damage to the leased premises or to any property belonging to tenant or any other person which may be caused by any fire or breakage or by the use, misuse or abuse of the leased premises and improvements, including but not limited to any of the common areas within the buildings or other improvements, equipment, elevators, hatches, openings, installations, stairways, hallways or other facilities, or the streets or sidewalk areas within the leased premises or which may arise from any other cause whatsoever, ...

"The Department shall not be liable to the tenant or any other person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of the tenant or of any other person or to the premises caused by or resulting from gasoline, oil, steam, gas, electricity, hurricane, tornado, flood, wind or some other storm or disturbance, or water, rain, or snow which may leak or flow from the street, sewer, gas mains or sub-surface area or from any part of the leased premises or leakage of the gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporate hereditaments by anybody, or caused by any public or quasi-public work, ..."

A clause relating to the use of insurance proceeds will be required. An indemnification clause under which tenant indemnifies the Department for all liability for injury, damage to property, or other damages occurring on or as a result of the use of the Leased Premises will be required.

ARTICLE XIV

INGRESS AND EGRESS

The proposer should address this issue in its proposal and the Department anticipates various options depending upon many factors, for example, whether the roadways in part or in total are public.

ARTICLE XV

RIGHT OF INSPECTION
OF LEASED PREMISES AND RECORDS

The Tenant must insure that the Department and its employees (as well as any other governmental body and the employees thereof exercising a valid governmental purpose), will have the right to enter upon the Leased Premises to inspect or perform such governmental function at all reasonable times. In addition, the Department and its employees must have full right and access to examine and expect all records of the Tenant, and any sub-tenant assignee or similar entity, when the Department considers it necessary in order to address the matters set forth in this lease agreement, wherever such records may be kept and maintained, provided, however, that all such records must be kept and maintained within the State of New York or be available to be timely transported to the State of New York on demand for such inspection and examination. Such records would include but would not be limited records necessary to audit or compute monies owed to Department. Also, the Lease Agreement should prescribe the operating and financial reporting requirements. To the extent that compensation owed to the Department is in any way based upon the financial condition or performance of the Tenant, sub-tenant, assignee, etc., the Department will require appropriate financial reports.

ARTICLE XVI

TERMINATION BY THE DEPARTMENT

The Department will require a provision guaranteeing its right to terminate the Agreement upon a default or other breach of the Agreement. The Department proposes the following provision.

"Each of the following shall be deemed a default of the Lease and a breach of this Agreement:

"If any rental (or other compensation, imposition, fee or other monies due under this Lease Agreement) required by this Agreement to be paid to the Department shall not be paid when due, and such default shall continue for a period of ten (10) days after written notice by the Department to the Tenant specifying the items in default, and shall continue thereafter for a further period of five (5) days after a second notice from the Department to the Tenant which shall specify the items in default, and, in addition, shall state the Department's intention to terminate this Lease by reason of such default;
or

"The institution of proceedings in bankruptcy against the Tenant, provided however, that the Tenant may avoid such termination if the petition is dismissed or stayed by appeal within ninety (90) days after the institution thereof; or

"The filing of a petition requesting the court to take jurisdiction of the Tenant or its assets under any provisions of the Federal Reorganization

Act which, if it is an involuntary petition, is not dismissed within ninety, (90) days after the institution thereof; or

"The filing of a request for the appointment of a receiver or trustee of the Tenant's assets by a court of competent jurisdiction, which if the request is not made by the Tenant, is not rejected within ninety (90) days after being made, or the request for the appointment of a receiver or trustee of the Tenant's assets by a voluntary agreement, the Tenant's creditors.

"The default by the Tenant in the performance of any covenant or condition required to be performed by the Tenant, and the failure of the Tenant to remedy such default for a period of thirty (30) days after receipt from the Department of written notice (except as otherwise provided above) which shall specify the items in default and, in addition, shall state the Department's intention to terminate this Lease by reason of such default, or in the case of a default which cannot with due diligence be cured within said thirty (30) day period and Tenant fails to proceed within said thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with due diligence pursuant to a written schedule mutually agreed upon by the Department and the Tenant.

"If the Department shall exercise its option to terminate this Agreement upon the Tenant's failure to cure or remedy any default hereunder prior to the expiration of the applicable grace periods, this Lease shall expire and all of Tenant's rights and interest hereunder shall terminate upon the expiration of the time specified in the Department's notice as if such date were the last date of the Lease term, and the Tenant shall then immediately quit and

surrender the leased premises to the Department, including any and all buildings or other improvements erected thereon. At such point, the Department may enter into or repossess the leased premises and the Tenant hereby waives the service of notice of intention to reenter or to institute legal proceedings to that end.

"Notwithstanding the provisions of this Article, the rights of the Department hereunder are subject to (any specific provisions to the contrary in any other Article of this Agreement).

"Failure by the Department to take any authorized action upon default by the Tenant of any other terms, covenants or conditions required to be performed, kept and observed by the Tenant, shall not be construed to be, or act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by the Tenant. Acceptance of rentals (or other compensation) by the Department from the Tenant, or performance by the Department under the terms hereof, for any period or periods after a default by the Tenant of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Tenant, shall not be deemed a waiver or estoppel of any right on the part of the Department to cancel this Agreement for any subsequent failure by the Tenant to so perform, keep or observe any of said terms, covenants or conditions."

ARTICLE XVII

REPAIRS

Tenant will be required to maintain and repair the Leased Premises.

ARTICLE XVIII

CHANGES, ALTERATIONS, REMOVALS AND ADDITIONS

The Department is aware of the need of the Tenant to retain flexibility to modify the development during the term of the Agreement and therefore, the proposer should fully address this issue. The Department intends to retain approval rights for all substantial changes made to buildings, facilities, equipment, roadways, track and other appurtenances.

ARTICLE XIX

FORUM SELECTION

"All controversies that may arise directly or indirectly in connection with or in relation to this Agreement must be instituted before the Supreme Court of the State of New York with venue set in Albany County or the United States District Court, Northern District of New York, unless the Laws of the State of New York or the United States otherwise mandate, and the Tenant expressly renounces or waives any rights to the contrary.

Other Articles:

The proposer is advised that it is the current intention of the Department to require that the Lease Agreement also contain articles with standard language protecting the Department and/or tenant, commonly referred to as:

- (a) Notices (written)
- (b) Surrender of End of Term
- (c) Entire Agreement
- (d) Invalidity of Certain Provisions
- (e) Quiet Enjoyment
- (f) No Discrimination
- (g) No Illegal Use or Occupancy
- (h) Discharge of Liens
- (i) Rights to Perform other Party's Covenants
- (j) Subordination
- (k) Minority/Women-owned Enterprise Participation Plan

APPENDIX B

LEASED PREMISES

All that piece or parcel of property hereinafter designated as Parcel No. 62, situate in the Borough and County of The Bronx, City and State of New York, as shown on the accompanying map and described as follows:

PARCEL NO. 62

Beginning at a point in the Northerly Pierhead and Bulkhead line of the Harlem River, where it is intersected by the Easterly line of Lincoln Avenue; thence from said point of beginning along said Easterly line of Lincoln Avenue $N0^{\circ}-01'-39''E$, 216.64 ft., thence along the dividing line between lands of Gerosa Haulage, reputed owner on the North and Penn Central Transportation Company, reputed owner on the south, the following nine (9) courses and distances; one (1), $S52^{\circ}-23'-21''E$, 81.93 ft. to a point of curvature, two (2), on a curve to the left having a radius of 25.12 ft., an arc length of 11.78 ft. to a point of tangency, three (3), $S79^{\circ}-15'-21''E$, 65.10 ft., four (4), $S89^{\circ}-51'-41''E$, 29.88 ft., five (5), $S3^{\circ}-03'-01''E$, 1.00 ft., six (6), $N89^{\circ}-59'-39''E$, 111.09 ft., seven (7), $N49^{\circ}-19'-39''E$, 23.02 ft., eight (8), $N89^{\circ}-59'-39''E$, 165.65 ft., nine (9), $N0^{\circ}-01'-39''E$, 129.08 ft. to a point in the centerline of E. 132nd Street as shown on Section 1 of the Record Map of the Borough of The Bronx, thence along said centerline $N89^{\circ}-59'-39''E$, 86.34 ft. to a point in the prolongation of the westerly line of Alexander Avenue, thence along the same, $S0^{\circ}-01'-39''W$, 30.00 ft. to a point in the southerly line of the above mentioned E. 132nd Street, thence along said southerly line $N89^{\circ}-59'-39''E$, 30.00 ft. to a point in the centerline of E. 132nd Street, above mentioned, thence along the same $N89^{\circ}-59'-39''E$, 613.00 ft. to a point in the prolongation of the westerly line of Willis Avenue, thence along the same $S0^{\circ}-01'-39''W$, 30.00 ft. to a point in the southerly line of E. 132nd Street, above mentioned, thence along the same $N89^{\circ}-59'-39''E$, 100.00 ft. to a point in the prolongation of the easterly line of Willis Avenue, thence along the same, $N0^{\circ}-01'-39''E$, 30.00 ft. to the centerline of E. 132nd Street, above mentioned, thence along the same $N89^{\circ}-59'-39''E$, 819.99 ft. to a point in the prolongation of the westerly line of Brown Place, thence along the same $S0^{\circ}-01'-39''W$, 30.00 ft. to a point in the southerly line of E. 132nd Street, above mentioned, thence along the same $N89^{\circ}-59'-39''E$, 30.00 ft. to a point in the dividing line between Penn Central Transportation Co., reputed owner on the west and New York City Industrial Development Agency, reputed owner on the east, thence along said dividing line $S0^{\circ}-01'-39''W$, 180.52 ft. thence partially along the above and partially along St. Anne's Realty Corp., reputed owner, the following five (5) courses and distances, one (1), $N89^{\circ}-59'-39''E$, a distance of 2.76 ft. to a point of curvature then, two (2), on a curve to the right, having a radius of 944.42 ft., an arc length of 380.90 ft. to a point of tangency, three (3), $S66^{\circ}-53'-51''E$, 231.11 ft., four (4), $N89^{\circ}-59'-39''E$, 201.69 ft., five (5), $N0^{\circ}-01'-39''E$, 347.00 ft. to a point in the southerly line of E. 132nd Street, above mentioned, thence along the same the following three (3) courses and distances, one (1), $N89^{\circ}-59'-39''E$, 5.00 ft., two (2), $N89^{\circ}-45'-37''E$, 70.00 ft., three (3), $N89^{\circ}-57'-39''E$, 5.00 ft. to a point in the dividing line between lands of Penn Central Transportation Co., reputed owner on the west and Gibraltar Corporation of

— 100.00 ft. to a point in the prolongation of the easterly line of Alexander Ave., thence along the same $N0^{\circ}-01'-39''E$

America, reputed owner on the east, thence along said dividing line the following two (2) courses and distances; one (1), $S0^{\circ}-01'-39''W$, 124.00 ft., two (2), $N89^{\circ}-57'-39''E$, 923.00 ft. to a point in the westerly line of the Triborough Bridge approach, thence along said westerly line $N0^{\circ}-01'-39''E$, 14.00 ft. to a point in the southerly line of lands of New Jersey Steel Corp., reputed owner, thence along the same $N89^{\circ}-57'-39''E$, 114.00 ft. to a point in the westerly line of 780 East 132nd Street Company, reputed owner, thence along the same the following eleven (11) courses and distances, one (1), $S0^{\circ}-01'-39''W$, 52.69 ft., two (2), $S73^{\circ}-42'-21''E$, 423.61 ft., three (3), $N70^{\circ}-36'-40''E$, 31.83 ft., four (4), $N89^{\circ}-57'-39''E$, 337.38 ft. to a point of curvature, five (5), on a curve to the left having a radius of 185.00 ft., an arc length of 37.35 ft. to a point of compound curvature, six (6), on a curve to the left having a radius of 182.00 ft., an arc length of 67.67 ft. to a point of compound curvature, seven (7), on a curve to the left having a radius of 216.20 ft., an arc length of 47.49 ft., eight (8), $N45^{\circ}-29'-38''W$, 2.00 ft., nine (9), $N44^{\circ}-30'-22''E$, 15.40 ft. to a point of curvature, ten (10), on a curve to the left having a radius of 742.50 ft., an arc length of 160.57 ft., eleven (11), $N0^{\circ}-02'-21''W$, 74.09 ft. to a point in the southerly line of East 132nd Street, thence along the same the following two (2) courses and distances; one (1), $N89^{\circ}-57'-39''E$, 105.75 ft., two (2), $S81^{\circ}-35'-28''E$, 419.87 ft. to the northwest corner of lands of New York City Transit Authority, reputed owner, thence along the westerly line of the same and continuing on a prolongation of said line, $S17^{\circ}-30'-42''W$, 1104.71 ft. to a point in the northerly Pierhead and Bulkhead line of the Bronx Kills, said line being established October 18, 1890, thence along said Pierhead and Bulkhead line the following nine (9) courses and distances; one (1), $N88^{\circ}-39'-20''W$, 1423.78 ft., to a point of curvature, two (2), on a curve to the right having a radius of 866.24 ft., an arc length of 584.55 ft. to a point of tangency, three (3), $N51^{\circ}-18'-52''W$, 281.73 ft. to a point of curvature, four (4), on a curve to the left having a radius of 700.91 ft., an arc length of 685.39 ft. to a point of compound curvature, five (5), on a curve to the left having a radius of 2104.42 ft., an arc length of 665.30 ft. to a point of tangency, six (6), $S54^{\circ}-32'-43''W$, 302.61 ft. to a point of curvature, seven (7), on a curve to the right having a radius of 401.30 ft., an arc length of 502.20 ft. to a point of tangency, eight (8), $N53^{\circ}-45'-11''W$, 652.21 ft. to a point of curvature, nine (9), on a curve to the left having a radius of 4471.00 ft., an arc length of 793.18 ft. to the point or place of beginning.

The above described parcel is a portion of property reserved and excepted from a conveyance between Penn Central Transportation Company and Consolidated Rail Corporation in document No. PC-CRC-RP-103 and recorded in the Bronx County Register's Office as Reel 379, page 641, December 19, 1978.

Excepting from the above described, a piece or parcel of land conveyed by a Quitclaim Deed between New York, New Haven and Hartford Railroad Company and 82 Willis Avenue Corp. dated 1/9/63 and recorded in the County of The Bronx Register's Office on 1/14/63 in Liber 2514, page 215.

Subject to:

A permanent right, privilege and easement, to pass and repass on foot and with vehicles on, over and across and to install, repair, replace, utilize and maintain service and utility lines on, over, under, and across a strip of land 80 ft. in width, being the southeasterly 80 ft. width of Willis Avenue extended as conveyed by a Quitclaim Deed between New York, New Haven and Hartford Railroad Company and 82 Willis Avenue Corp., dated 1/9/63 and recorded in the County of The Bronx Register's Office on 1/14/63 in Liber 2514, page 215, and bounded and described as follows:

Beginning at a point in the prolongation of the easterly line of Willis Avenue, said point being $S0^{\circ}-01'-39''W$, a distance of 30.00 ft. from the intersection of said easterly line with the centerline of E. 132nd Street, thence along said easterly line of Willis Avenue $S0^{\circ}-01'-39''W$, 186.14 ft. thence through lands N/F of Penn Central Corporation, reputed owner, the following five courses and distances: one (1), $S89^{\circ}-59'-39''W$, 5.32 ft., two (2), $N80^{\circ}-22'-21''W$, 58.56 ft., three (3), $N0^{\circ}-01'-39''E$, 10.80 ft., four (4), $N71^{\circ}-54'-41''W$, 17.82 ft., five (5), $N0^{\circ}-01'-39''E$, 160.00 ft. to the southerly line of E. 132nd Street, thence along the same, $N89^{\circ}-59'-39''E$, 80.00 ft. to the point or place of beginning, being 14,212 square feet, more or less.

ALSO

Subject to the public utility easement rights of the City of New York as its interest may appear as set forth in grant dated 10/20/05 by the City of New York, grantor to Harlem River and Port Chester Railroad Company, grantee recorded in the Office of the Clerk of New York County on the 21st day of October, 1905 in Liber 62 of Deeds at page 42, and in Liber 49 of Deeds at page 1, affecting the area shown on the above map and designated as UTILITY RIGHT OF WAY which easement rights are hereby and hereafter restricted and limited as follows:

The owner of such easement rights above referred to and affecting Parcel No. 62 above, may continue to enjoy and exercise the permanent right, privilege and easement to transmit water and sewage, and for such purposes construct, reconstruct, maintain and operate a pipe line system consisting of such easements, conduits, sleeves, pipes, valves, manholes, vents, and appurtenances as may be deemed necessary by the owner of such easement for the proper operation or improvement thereof; providing no manhole, vent or other structure shall be placed at or above the surface of the ground within 15 feet of the centerline of the proposed railroad, and further providing, that no change in the grade or in the alignment or location of such pipe line facilities shall be made or additional facilities constructed, which will interfere with the railroad and its appurtenances or other facilities of the State of New York.

Such easement shall be exercised in and to, under and across, all that piece or parcel of property hereinafter designated as UTILITY RIGHT OF WAY situate in the Borough and County of The Bronx, City and State of New York, as shown on the accompanying map and described as follows:

UTILITY RIGHT OF WAY

(1) Beginning at the point of intersection of the prolongation of the westerly line of Alexander Avenue with the southerly line of E. 132nd Street, thence along said southerly line of E. 132nd Street $N89^{\circ}-59'-39''E$, 100.00 ft. thence $S0^{\circ}-01'-39''W$, 655± ft. to the Pierhead and Bulkhead line of the Harlem River, thence along the same on a curve to the left having a radius of 4471.00 ft., an arc length of 125± ft., thence $N0^{\circ}-01'-39''E$, 585± ft. to the point or place of beginning, being 61,600 square feet, more or less.

ALSO

Subject to the permanent easement rights of the City of New York for the Willis Avenue Bridge approach, as its interest may appear as set forth in a certain condemnation proceeding, which award was confirmed on May 31, 1901 and filed in the Supreme Court, New York County of June 3, 1901.

Such easement shall be exercised in, to and across, all that piece or parcel of property hereinafter designated as BRIDGE APPROACH RIGHT OF WAY, situate in the Borough and County of The Bronx, City and State of New York, as shown on the accompanying map and described as follows:

BRIDGE APPROACH RIGHT OF WAY

(2) Beginning at the point of intersection of the prolongation of the westerly line of Willis Avenue with the southerly line of E. 132nd Street, thence along said southerly line of E. 132nd Street $N89^{\circ}-59'-39''E$, 90.33 ft., thence $S31^{\circ}-00'-07''W$, 946.02 ft. to a point in the Pierhead and Bulkhead line of the Harlem River, thence along the same $N53^{\circ}-45'-11''W$, 100.42 ft., thence $N31^{\circ}-00'-07''E$, 911.74 ft. to the centerline of E. 132nd Street, thence along the same $N89^{\circ}-59'-39''E$, 8.33 ft. to the prolongation of the westerly line of Willis Avenue, thence $S0^{\circ}-01'-39''W$, 30.00 ft. to the point or place of beginning, being 91,600 square feet, more or less.

ALSO

Subject to the public utility easement rights of the City of New York as its interest may appear as set forth in grant dated 10/20/05 by the City of New York, grantor to Harlem River and Port Chester Railroad Company, grantee recorded in the Office of the Clerk of New York County on the 21st day of October, 1905 in Liber 62 of Deeds at page 42, and in Liber 49 of Deeds at page 1, affecting the area shown on the above map and designated as UTILITY RIGHT OF WAY which easement rights are hereby and hereafter restricted and limited as follows:

The owner of such easement rights above referred to and affecting Parcel No. 62 above, may continue to enjoy and exercise the permanent right, privilege and easement to transmit water and sewage, and for such purposes construct, reconstruct, maintain and operate a pipe line system consisting of such easements, conduits, sleeves, pipes, valves, manholes, vents, and appurtenances as may be deemed necessary by the owner of such easement for the proper operation or improvement thereof; providing no manhole, vent or other structure shall be placed at or above the surface of the ground within 15 feet of the centerline of the proposed railroad, and further providing, that no change in the grade or in the alignment or location of such pipe line facilities shall be made or additional facilities constructed, which will interfere with the railroad and its appurtenances or other facilities of the State of New York.

Such easement shall be exercised in and to, under and across, all that piece or parcel of property hereinafter designated as UTILITY RIGHT OF WAY situate in the Borough and County of The Bronx, City and State of New York, as shown on the accompanying map and described as follows:

(3) A strip of land 80 ft. in width, beginning at the point of intersection of the prolongation of the westerly line of Brook Avenue with the northerly line of property N/F of Penn Central Corporation, reputed owner, thence along said northerly property line on a curve to the right having a radius of 944.42 ft., an arc length of 84± ft., thence $S0^{\circ}-01'-39''W$, 360± ft. to the Pierhead and Bulkhead line of the Harlem River, thence along the same, on a curve to the left having a radius of 2104.42 ft., an arc length of 85± ft., thence $N0^{\circ}-01'-39''E$, 410± ft. to the point or place of beginning, being 28,500 square feet, more or less.

ALSO

Subject to the public utility easement rights of the City of New York as its interest may appear as set forth in grant dated 10/20/05 by the City of New York, grantor to Harlem River and Port Chester Railroad Company, grantee recorded in the Office of the Clerk of New York County on the 21st day of October, 1905 in Liber 62 of Deeds at page 42, and in Liber 49 of Deeds at page 1, and as extended by Agreement dated 6/11/73 and recorded in the Office of the Register of the County of The Bronx 9/20/73 in Reel 224, page 711, affecting the area shown on the above map and designated as UTILITY RIGHT OF WAY which easement rights are hereby and hereafter restricted and limited as follows:

The owner of such easement rights above referred to and affecting Parcel No. 62 above, may continue to enjoy and exercise the permanent right, privilege and easement to transmit water and sewage, and for such purposes construct, reconstruct, maintain and operate a pipe line system consisting of such easements, conduits, sleeves, pipes, valves, manholes, vents, and appurtenances as may be deemed necessary by the owner of such easement for the proper operation or improvement thereof; providing no manhole, vent or other structure shall be placed at or above the surface of the ground within 15 feet of the centerline of the proposed railroad, and further providing, that no change in the grade or in the alignment or location of such pipe line facilities shall be made or additional facilities constructed, which will interfere with the railroad and its appurtenances or other facilities of the State of New York.

Such easement shall be exercised in and to, under and across, all that piece or parcel of property hereinafter designated as UTILITY RIGHT OF WAY situate in the Borough and County of The Bronx, City and State of New York, as shown on the accompanying map and described as follows:

UTILITY RIGHT OF WAY

(4) A strip of land 80 ft. in width beginning at the point of intersection of a prolongation of the westerly line of St. Ann's Avenue with the southerly line of E. 132nd Street, thence along said southerly line of E. 132nd Street the following three (3) courses and distances; one (1), $N89^{\circ}-59'-39''E$, 5.00 ft., two (2), $N89^{\circ}-45'-37''E$, 70.00 ft., three (3), $N89^{\circ}-57'-39''E$, 5.00 ft., thence $S0^{\circ}-01'-39''W$, 318.67 ft. to a point of curvature, thence on a curve to the right having a radius of 270.00 ft., an arc length of 128.73 ft. to a point of tangency, thence $S27^{\circ}-20'-39''W$, 181.92 ft. to a point in the Pierhead and Bulkhead line of the Harlem River, thence along the same on a curve to the left having a radius of 700.91 ft., an arc length of 81.35 ft., thence $N27^{\circ}-20'-39''E$, 196.42 ft. to a point of curvature, thence on a curve to the left having a radius of 190.00 ft., an arc length of 90.59 ft. to a point of tangency thence $N0^{\circ}-01'-39''E$, 318.33 ft. to the point or place of beginning, being 49,400 square feet, more or less.

ALSO

Subject to the easement rights of others as their interest may appear as set forth in grant dated 5/12/36 by the New York, New Haven and Hartford Railroad Company, grantor to the City of New York, grantee recorded in the Office of the Clerk of the County of The Bronx on the 10th day of August, 1936 in Liber 942 of Deeds at page 381, affecting the area shown on the above map and designated as SEWER RIGHT OF WAY which easement rights are hereby and hereafter restricted and limited as follows:

The owner of such easement rights above referred to and affecting Parcel No. 62 above, may continue to enjoy and exercise the permanent right, privilege and easement to transmit sewage, and for such purposes construct, reconstruct, maintain and operate a sewer tunnel system consisting of such easements, conduits, sleeves, pipes, valves, manholes, vents, and appurtenances as may be deemed necessary by the owner of such easement for the proper operation or improvement thereof; providing no manhole, vent or other structure shall be placed at or above the surface of the ground within 15 feet of the centerline of the proposed railroad, and further providing, that no change in the grade or in the alignment or location of such sewer facilities shall be made or additional facilities constructed, which will interfere with the railroad and its appurtenances or other facilities of the State of New York.

Such easement shall be exercised in and to, under and across, all that piece or parcel of property hereinafter designated as SEWER RIGHT OF WAY situate in the Borough and County of The Bronx, City and State of New York, as shown on the accompanying map and described as follows:

SEWER RIGHT OF WAY

(5) Beginning at a point in the northerly line of lands of Penn Central Transportation Co., reputed owner, said point being $S0^{\circ}-01'-39''W$, 124.00 ft., and $N89^{\circ}-57'-39''E$, 315.16 ft. from the point of intersection of the prolongation of the easterly line of St. Ann's Avenue with the southerly line of E. 132nd Street, thence along said northerly line of lands N/F of Penn Central Corporation, reputed owner, $N89^{\circ}-57'-39''E$, 25.52 ft., thence $S11^{\circ}-36'-11''E$, 915.15 ft. to a point in the Pierhead and Bulkhead line of the Harlem River, thence along the same, on a curve to the right having a radius of 866.24 ft., an arc length of 30.17 ft., thence $N11^{\circ}-36'-11''W$, 903.37 ft. to the point or place of beginning, being 22,700 square feet, more or less.

ALSO

Subject to the perpetual easement rights of the City of New York, et al, as their interest may appear as set forth in grant dated 9/27/35 by New York, New Haven and Hartford Railroad Company, grantor to the City of New York and the Triborough Bridge and Tunnel Authority, grantee recorded in the Office of the Clerk of the County of The Bronx on the 23rd day of October, 1935 in Liber 923 of Deeds at page 308; affecting the area shown on the above map and designated as BRIDGE RIGHT OF WAY, situate in the Borough and County of The Bronx, City and State of New York as shown on the accompanying map and described as follows:

Survey notes on file at New York
 State Department of Transportation
 Regional Office No. 11 located
 at New York , New York.
 TRN 201
 CC L 379 P 641

TAX MAP BLOCK 2260 LOT 62
 2543 1
 2583 2

BRIDGE RIGHT OF WAY

(6) Beginning at the point of intersection of the easterly line of the Triborough Bridge with the Pierhead and Bulkhead line of the Harlem River, thence along said Pierhead and Bulkhead line, N88°-39'-20"W, 114.04 ft. to the westerly line of the Triborough Bridge, thence along the same the following fifteen (15) courses and distances; one (1) N0°-01'-39"E, 16.37 ft., two (2), N89°-58'-21"W, 7.50 ft., three (3), N0°-01'-39"E, 1.42 ft., four (4), N89°-58'-21"W, 4.35 ft., five (5), N44°-58'-21"W, 29.61 ft., six (6), N0°-01'-39"E, 3.28 ft., seven (7), N45°-01'-39"E, 28.20 ft., eight (8), S89°-58'-21"E, 5.35 ft., nine (9), N0°-01'-39"E, 2.42 ft., ten (10), S89°-58'-21"E, 7.50 ft., eleven (11), N0°-01'-39"E, 77.38 ft., twelve (12), N89°-58'-21"W, 4.00 ft., Thirteen (13), N0°-01'-39"E, 16.50 ft., fourteen (14), S89°-58'-21"E, 4.00 ft., fifteen (15), N0°-01'-39"E, 814.68 ft., thence N89°-57'-39"E, 114.00 ft. to the easterly line of the Triborough Bridge, thence along the same the following fifteen (15) courses and distances; one (1), S0°-01'-39"W, 814.81 ft., two (2), S89°-58'-21"E, 4.00 ft., three (3), S0°-01'-39"W, 16.50 ft., four (4), N89°-58'-21"W, 4.00 ft., five (5), S0°-01'-39"W, 77.38 ft., six (6), S89°-58'-21"E, 7.50 ft., seven (7), S0°-01'-39"W, 2.42 ft., eight (8), S89°-58'-21"E, 5.35 ft., nine (9), S44°-58'-21"E, 28.20 ft., ten (10), S0°-01'-39"W, 3.28 ft., eleven (11), S45°-01'-39"W, 29.61 ft., twelve (12), N89°-58'-21"W, 4.35 ft., thirteen (13), S0°-01'-39"W, 1.42 ft., fourteen (14), N89°-58'-21"W, 7.50 ft., fifteen (15), S0°-01'-39"W, 18.99 ft. to the point or place of beginning, being 111,700 square feet, more or less.

ALSO

Subject to the perpetual easement rights of the former New York Connecting Railroad Company as its interest may appear as set forth in grant dated 9/22/08 by the New York, New Haven and Hartford Railroad Company, grantor to the New York Connecting Railroad Company, grantee recorded in the Office of the Clerk of the County of The Bronx on the 17th day of December, 1908 in Liber 63 of Deeds at page 229, and by Deed from the Stuyvesant Real Estate Company to the New York Connecting Railroad Company dated 8/10/08, affecting the area shown on the above map and designated as BRIDGE RIGHT OF WAY, situate in the Borough and County of The Bronx, City and State of New York, as shown on the accompanying map and described as follows:

BRIDGE RIGHT OF WAY

(7) Beginning at the point of intersection of the easterly line of said railroad bridge with the Pierhead and Bulkhead line of the Bronx Kill, thence along the same N88°-39'-20"W, 101.04 ft. to the westerly line of said railroad bridge, thence along the same the following six (6) courses and distances; one (1), N19°-31'-32"E, 105.92 ft., two (2), S70°-28'-28"E, 16.00 ft., three (3), N19°-31'-32"E, 923.23 ft., four (4), S70°-28'-28"E, 0.50 ft., five (5), N19°-31'-32"E, 107.35 ft., six (6), on a curve to the left having a radius of 1233.50 ft., an arc length of 38.63 ft. to the southerly line of E. 132nd Street, thence along the same S81°-35'-23"E, 59.71 ft. to the easterly line of the railroad bridge; thence along the same the following three (3) courses and distances; one (1), S19°-31'-32"W, 1080.41 ft., two (2), S70°-28'-28"E, 16.00 ft., three (3), S19°-31'-32"W, 74.39 ft. to the point or place of beginning, being 77,400 square feet, more or less.

Subject also to:

1. All the right, title and interest, if any, of public corporations, public service corporations and other governmental bodies, agencies and subdivisions, their respective successors and assigns, as their interest may appear, in and to said property for the purpose of constructing, reconstructing, maintaining and operating facilities for the transmission and distribution of electricity, messages by means of electricity, fluids and gases.
2. The rights, if any, of others as their interest may appear, in public pipelines and sewer lines within the limits of said property.
3. The rights, if any, of municipalities and the public in and to the use of the public streets, bridges, roads and highways within the limits of said property.
4. All existing rights to use the streams, rivers, and waters running through or over the appropriated premises.

Bearings shown hereon refer to the monument system of the Borough of The Bronx and are in the Tenth Avenue Meridian.

I hereby certify that this is an accurate description and map made from an accurate survey, prepared under my direction.

Date Nov. 19 1982



[Signature]
ANDREWS & CLARK, INC.
P. E. No. 037, L. S. No. 008

I hereby certify that the property described and mapped above is necessary for this project and the acquisition thereof is recommended.

Date Nov. 24 1982

[Signature] P.E.
J. Zaimes
Director of Engineering and Operations
Region II



NEW YORK STATE DEPARTMENT OF TRANSPORTATION
DESCRIPTION AND MAP FOR THE ACQUISITION OF PROPERTY

FULL FREIGHT ACCESS PROGRAM
SOUTH BRONX - OAK POINT LINK
HARLEM RIVER YARD
OWASCO RIVER RAILWAY, INC.
DELBAY CORPORATION
CONSOLIDATED RAIL CORPORATION
(Reputed Owners)

Total Area = 96.009 ± Acres

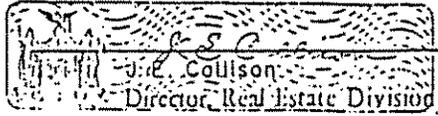
Map No. 46
Parcel No. 62

Description and map of property which is deemed necessary by the Commissioner of Transportation to be acquired by appropriation in the name of the People of the State of New York, in law subject to the reservations described above for purposes connected with the transportation system of the State of New York, pursuant to Section 14D of the Transportation Law and Section 30 of the Highway Law as authorized by Chapter 50 of the Laws of 1982 and the Eminent Domain Procedure Law.

There is excepted from this appropriation all the right, title and interest, if any, of the United States of America, in or to said property.

Pursuant to statute set forth above and the authority delegated to me by official order of the commissioner of transportation, the above description and map are hereby officially approved; and said description and the original tracing of this map are hereby officially filed in the office of the department of transportation.

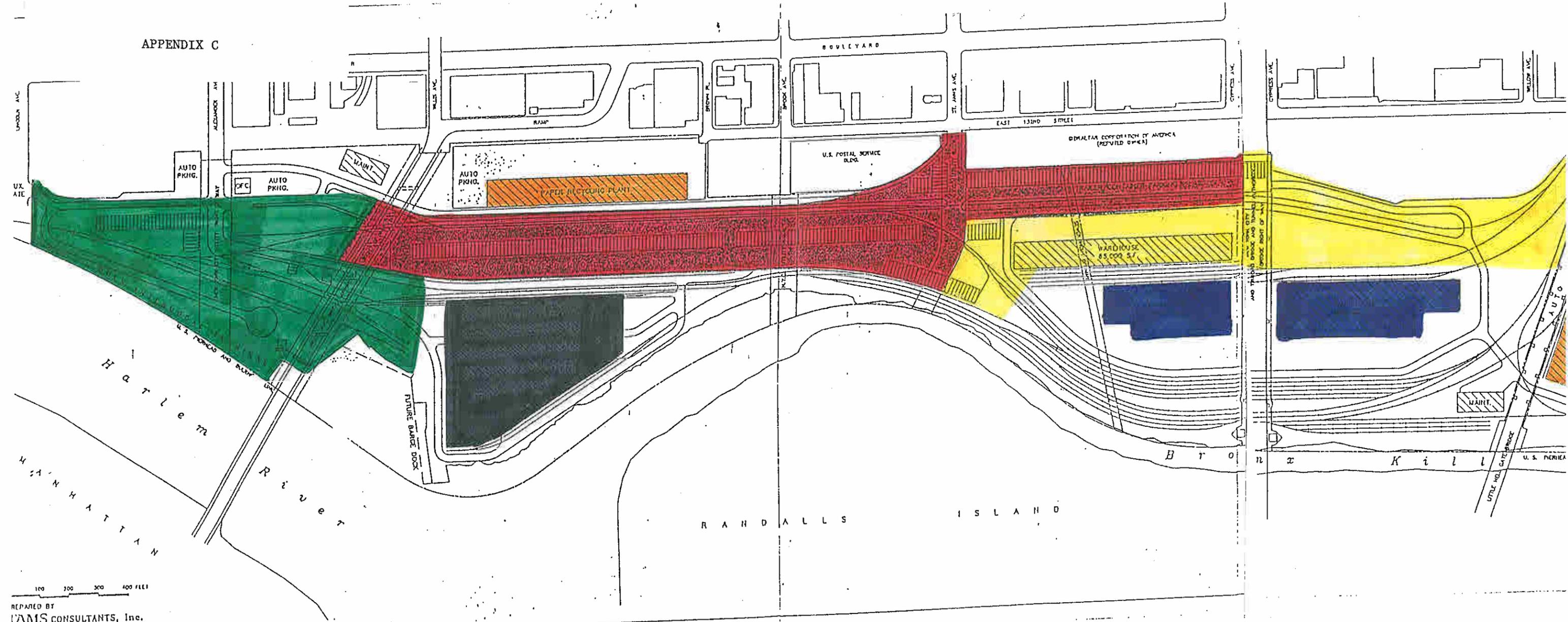
Date December 10 1982



I have compared the foregoing copy of description and map with the original thereof, as filed in the office of the department of transportation and I do hereby certify the same to be a true and correct copy of said original and of the whole thereof

[Signature]
Real Estate Division

APPENDIX C



100 200 300 400 FEET
 PREPARED BY
 WAMS CONSULTANTS, Inc.

- INTERMODAL TERMINAL AREA PHASE I.
- INTERMODAL TERMINAL AREA PHASE II
- BULK TERMINAL AREA
- GENERAL WAREHOUSING
- PAPER RECYCLING & REFRIGERATED WAREHOUSING
- MUNICIPAL SOLID WASTE

Temple, Barker & Sloane, Inc.

APPENDIX D

Harlem River Yard Privatization Study

Executive Summary

Prepared for

**State of New York
Department of Transportation**

April 1989

Harlem River Yard Privatization Study

Executive Summary

Prepared for

**State of New York
Department of Transportation**

Prepared by

Temple, Barker & Sloane, Inc.
33 Hayden Avenue
Lexington, Massachusetts 02173
(617) 861-7580

April 1989

Contents

Study Objectives

Recommended Role: Intermodal Park

Study Methodology

Study Assumptions

Findings

Recommended Role: Intermodal Park

- The study found a number of attractive roles open to HRY, though none of a size large enough to warrant a standalone operation. It was thus determined that the development of a multipurpose transportation terminal would maximize the potential for privatizing HRY. A state-of-the-art "intermodal park" could serve several emerging markets and technologies, including network operator, specialized unit train, and bulk carload transfer.

Description of Intermodal Park Concept

- An intermodal park is analogous to a multipurpose industrial park, a port, a shopping center, or an airport.
 - A "landlord" provides a set of common facilities and services, but does not directly provide transportation services.
 - Several "tenants" each provide a specific transportation service.
- An intermodal park is appropriate for serving a diversity of niche markets.
 - Each tenant can pursue its own objectives and market opportunities independently.
 - The landlord can provide a set of common services more efficiently than a tenant could by itself.
 - The park has the flexibility to reallocate resources as markets develop and change.

- Tenants typically compensate the landlord for use of the facilities through one or more of the following mechanisms:
 - Short-term leases
 - Long-term leases
 - User fees

- Short-term leases are often used in conjunction with ground storage applications.
 - Terms for one to five years, cancelable on 30-day notice
 - Rents usually based on what market will bear
 - Long-term objectives to cover property taxes, insurance, and management costs
 - Track rentals \$50 to \$200 per car length per month, one-year term

- Long-term leases are typically used in conjunction with major leasehold improvements.
 - They command higher rents based on market value and market forces.
 - Lease is usually for a 10- to 30-year term, depending on magnitude of leasehold improvement.
 - Lease is based on market value of land less value of leasehold improvements, if tenant is making improvements.
 - Leaseholder pays property taxes, all utilities, and insurance.
 - If landlord makes improvements to property (e.g., buildings, roads), the value of those improvements is factored into lease payments based on a reasonable capitalization period.
 - In all cases, landlords attempt to allocate common services costs (maintenance, security, utilities) to all tenants on a square-foot basis.
 - Lease is always based on area used, not on volume of traffic.

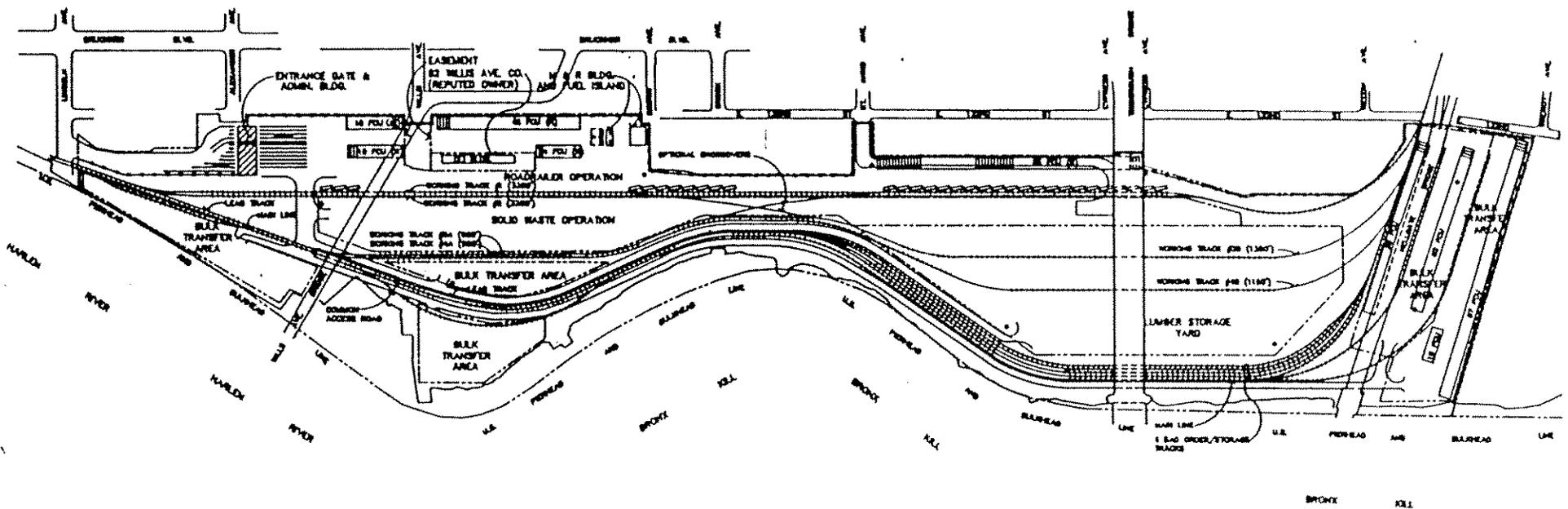
- User fees are also often charged.
 - A fee typically is charged per carload or trailerload using the facility.
 - Some common services are provided "as needed" (e.g., trailer lifts) and a user fee is appropriate to match revenues and costs.
 - Because most landlords prefer tenants to maximize throughput, they typically avoid heavy reliance on user fees since such a pricing structure rewards tenants who have low volume.

Conceptual Yard Layout

- Although the "niche nature" of the intermodal park makes it impossible to predict the exact combination of tenants, the conceptual yard layout below (Exhibit 1) shows how eight potential tenants – network operator, solid waste, lumber, food-grade bulk commodities, non-food grade bulk commodities, salt, aggregates, and cement – could occupy HRY.

Exhibit 1

Conceptual Yard Layout



Advantages of Developing an Intermodal Park at HRY

- The intermodal park concept would permit efficient site use because several compatible users could share facilities.
 - Refrigerated RoadRailers, 53-foot high-cube RoadRailers, and both hopper-car and TOFC solid waste trains could share common loading tracks, using common offices and separate parking areas.
 - Transloading facilities could "wrap around" firms using the common loading tracks, sharing a common switching lead, and using corners of the irregularly shaped HRY site.

- An intermodal park would take advantage of HRY's assets:
 - Proximity to Hunts Point Produce Terminal
 - Proximity to highways serving New York City and adjacent areas for distribution and gathering
 - Full utilization of HRY property

- An intermodal park would focus on diverting long-distance truck traffic to rail without diluting volume at existing intermodal facilities.

- The intermodal park could begin operations quickly, yielding early public benefits, and evolve further when Oak Point Link's completion permits better access to HRY.

- The intermodal park would give New York maximum flexibility to adapt to changing transportation markets:
 - Multipurpose facility avoids risk of depending on one role.
 - Mixed use permits experimentation as new technologies emerge and consumption patterns change.
 - Park can help resolve pressing transportation bottlenecks (e.g., NYC solid waste).
- The intermodal park would provide lower-cost transportation to New York consumers and small businesses and would assist in attracting job-creating small businesses to the Bronx.
- A successful intermodal park could also bring three important financial benefits to the State of New York:
 - *User savings*: A decrease in transportation costs for companies using the yard, a large proportion of which are New York companies
 - *Increased economic activity*: An increase in revenues generated by the New York State economy
 - *Construction expenditures*: One-time expenditures for construction of facilities

Estimate of Representative Volume for Intermodal Park

- The intermodal park concept has the advantage of being flexible. This flexibility makes it difficult, however, to predict exactly how much volume HRY will handle.
- In order to provide NYDOT with an overview of HRY's potential, TBS developed volume estimates for a reasonable scenario (Exhibit 2). In this scenario, TBS assumed that eight different tenants will use HRY. TBS estimates that by the third year these tenants will generate 45,000 trailerloads and 16,500 carloads of traffic per year.

Exhibit 2
Estimated HRY Volume

Tenant	Role	Year 1	Year 3
1. Network operator (trailerloads)			
Refrigerated goods	Refrigerated TOFC	7,500	15,000
Other	Network operator	7,500	30,000
Total		----- 15,000 ^a	----- 45,000 ^a
Transload users (carloads)			
2. Solid waste	Specialized unit train	3,000	9,000
3. Lumber	Bulk carload transfer	1,000	2,000
4. Food-grade bulk commodities	Bulk carload transfer	300	700
5. Nonfood-grade bulk commodities	Bulk carload transfer	200	500
6. Salt	Bulk carload transfer	200	800
7. Aggregates	Bulk carload transfer	1,000	2,500
8. Cement	Bulk carload transfer	300	1,000
Total		----- 6,000	----- 16,500

^aVolumes provided by potential network operators.

Summary of Operating Options

- TBS assumes that NYDOT will want to retain its ownership in HRY. Maintaining ownership of HRY should ensure that the parcel will be used for transportation purposes and that the objectives of NYDOT will be pursued.

- Operating HRY as an intermodal park could involve three or more types of entities to fulfill five different tasks (Exhibit 3).

Exhibit 3

HRY Tasks

Task	Description of Task	Primary Entity	Secondary Entities
Ownership	Hold title to land, retaining limited control over activities	Owner	
Development	Plan, finance, and construct the basic services at HRY	Landlord	Owner
Marketing	Identify, select, and sell to potential tenants	Landlord	Owner, Conrail
Operations (common)	Provide common services that support the operations of tenants	Landlord	Owner
Transportation service	Develop, market, and operate a transportation service	Tenant	Conrail

■ Implementation of an intermodal park would require four major actions:

-- Acceptance of final privatization plan

-- Determination of NYDOT role

-- Selection of landlord

-- Startup planning

Study Methodology

- As an initial step in the study, TBS identified six potential roles for HRY that warranted in-depth study:
 - Traditional long-haul TOFC
 - Refrigerated long-haul TOFC inbound with appropriate backhaul outbound
 - The Montreal corridor, including both TOFC and international containers
 - Network operators (i.e., an intermodal operator with a network that overlays traditional railroad boundaries)
 - Specialized unit trains
 - Bulk carload transfer

- With assistance from NYDOT, TBS developed a list of screening criteria (Exhibit 4) to evaluate the potential roles:
 - Market viability
 - Physical constraints
 - Local area development
 - Rail competition
 - Conrail support
 - State investment

- In analyzing market viability, the most critical of the criteria, TBS:
 - *Gauged market perceptions of HRY* through more than 200 interviews with shippers, developers, operators, government officials, and industry experts.
 - *Assessed the current east-of-Hudson market* through an analysis of current freight movements to and from major intermodal markets in the Upper Midwest and Western United States
 - *Evaluated modal economics* by comparing realistic door-to-door costs for traditional long-haul HRY intermodal service to existing New Jersey intermodal service

Exhibit 4

Screening Criteria

Criteria	Performance Measure	Importance of Criteria	TBS Comments
Stage 1 — Opportunity Evaluation			
1. Market Viability <ul style="list-style-type: none"> Market viability — probability of long-term viable operation 	High, Medium, Low	High	The most important criteria; measurement based on market size, modal economics, and market perceptions
2. Physical Constraints <ul style="list-style-type: none"> Land area requirements <ul style="list-style-type: none"> a. Fits within current space b. Fully utilizes available space Clearance requirements <ul style="list-style-type: none"> a. Is 17 ft 6 in. adequate? b. Is 15 ft 6 in. adequate? 	Yes or No Yes or No Yes or No Yes or No	High Medium High Low	NYDOT strongly prefers to not add more land to HRY Clearance beyond 17 ft 6 in. will be available long-term, but would be expensive now; clearances beyond 15 ft 6 in. only available once OPL is complete
3. Local Area Development <ul style="list-style-type: none"> Number of jobs created — qualitative assessment Support and development of local industry — qualitative assessment 	High, Medium, Low High, Medium, Low	Low Low	Number of direct jobs not likely to vary significantly, between roles If operation has market viability (Criteria #1), TBS believes local industry will be supported
4. Rail Competition <ul style="list-style-type: none"> Increased rail competition <ul style="list-style-type: none"> a. Intermodal competition (motor carrier versus rail) b. Rail-to-rail competition 	Yes or No Yes or No	High Low	A key objective of the project is to reduce the area's dependence on trucks Little importance to improve rail-to-rail competition
5. Conrail Support <ul style="list-style-type: none"> Likelihood of Conrail support 	High, Medium, Low	High	A role not ultimately supported by Conrail is less likely to be viable
Stage 2 — Public Financing Evaluation			
6. State Investment <ul style="list-style-type: none"> Additional capital investment required Financial return to NYDOT — qualitative assessment 	Yes or No High, Medium, Low	High Low	Overall goal is to develop the yard by private investment with no further state investment, if possible Exact measures to be determined later

Study Assumptions

- In evaluating the potential roles for the HRY and their financial implications, a number of assumptions were made:
 - Cost comparisons were based on initial HRY operations and current NJ operations.
 - Only Conrail service would be available to HRY.
 - The Oak Point Link would be completed in three years.
 - The existing transportation and energy policies would remain in effect.
 - The time horizon was relatively short – one to five years – rather than long-term.
 - Interest rates would remain stable.

Findings

Characteristics of the East-of-Hudson Market

- **Size.** The size of the current East-of-Hudson market (that portion of the New York Business Economic Area [BEA] located east of the Hudson River) for traditional long-haul TOFC is significantly less than the 6.3 million 40-foot freight container equivalents (FCEs) of containerizable freight entering and leaving the New York BEA.
 - Only 1.4 million FCEs, 22 percent of total volume, move to or from the prime intermodal areas (Upper Midwest, Mid-South, Mountain, and West), the geographic regions that are most likely to benefit from HRY.
 - Only 40 percent of this traffic, or 560,000 FCEs, moves in or out of East-of-Hudson (Exhibit 5). East-of-Hudson includes New York City, Long Island, Westchester County, and western portions of Connecticut. All of this traffic could have short-term potential for HRY.
 - Only 12 percent of this traffic, or 65,000 FCEs, moves via intermodal. If HRY could match or improve on the competitor economics of the North Jersey terminals, this traffic could be captured by HRY in the short term.

- **Balance.** The balance of inbound to outbound intermodal flow is significantly better West-of-Hudson than East-of-Hudson. New Jersey Intermodal terminals currently maintain a balance of 1.15 to 1. Current intermodal traffic between East-of-Hudson markets and the prime intermodal regions has a balance of 3.3 to 1. This balance has a major effect on HRY's economics as well as on the ability to operate the terminal as a traditional intermodal facility.

Exhibit 5

**Summary of East-of-Hudson Volume to and from
Upper Midwest and Western United States**

	Inbound		Outbound		Ratio of Inbound to Outbound	Total	
	FCEs In Thousands	Percentage of Total	FCEs In Thousands	Percentage of Total		FCEs In Thousands	Percentage of Total
Rail carload	39	11.7%	0.4	0.2%	100	39	6.9%
Truckload	213	63.8	178	78.1	1.2	391	69.6
LTL	32	9.6	35	15.4	0.9	67	11.9
Intermodal	50	15.0	15	6.6	3.3	65	11.6
Total of four modes	334	100.0%	228	100.0%	1.5	562	100.0%

Source: TBS analysis; 1985 Transearch.

Modal Economics

- HRY's ability to benefit East-of-Hudson shippers depends largely on the relative costs of three primary transportation alternatives available to the region's shippers and receivers:
 - Intermodal using HRY
 - Intermodal using New Jersey terminals
 - Direct truckload

- As shown in Exhibit 6, relative costs between HRY intermodal and New Jersey intermodal are a function of several important factors.

- The relative costs of truck versus either intermodal option depend largely on the length of haul. Short hauls typically favor truck, and intermodal economics are typically most positive on longer hauls.

Exhibit 6

Factors Influencing Intermodal Costs

Factor	Which route does factor favor?	Importance of factor (qualitative)
Drayage		
Distance/time	HRV	Medium-high
Volume	New Jersey	Potentially high
Linehaul		
Load balance	New Jersey	High
Technology	New Jersey ¹	High
Mileage	HRV	Low
Density/volume	New Jersey	Low
State-owned track	HRV	Low

¹ Assuming current New York State policy for achieving 20 ft., 6 in. clearance.

Potential for Traditional TOFC

- To the extent that intermodal traffic to New Jersey is carried using RoadRailers or double-stack, HRY does not have a door-to-door cost advantage in the Chicago and Los Angeles corridors using any technology (Exhibit 7).

Exhibit 7

***Modal Economics: Cost Ratio by Technology of HRY
Versus New Jersey Using Double-Stack***

HRY Intermodal Technology	Chicago Corridor	Los Angeles Corridor
Conventional	121	147
RoadRailer	107	118
Lightweight	114	135
Double-stack ¹	103	110
Double-stack to Albany, then lightweight	112	115

¹Unfeasible in near term, given current vertical clearances to HRY.

- To the extent that intermodal traffic to New Jersey continues to be carried using conventional TOFC, HRY only has a door-to-door advantage if advanced technology is used for movements East-of-Hudson (Exhibit 8).
 - From Chicago using RoadRailer, HRY has a 5 percent cost advantage over conventional TOFC to New Jersey.
 - From Los Angeles using RoadRailer, HRY has a 7 percent cost advantage.
 - From Los Angeles to Albany using double-stack and from Albany to HRY using lightweight, HRY has a 9 percent advantage.
 - These advantages are somewhat greater for loads to the Bronx, where drayage costs are lower.

Exhibit 8

***Modal Economics: Cost Ratio by Technology of HRY
Versus New Jersey Using Conventional TOFC***

HRY Intermodal Technology	Chicago Corridor	Los Angeles Corridor
Conventional	108	116
RoadRailer	95	93
Lightweight	102	106
Double-stack ¹	92	87
Double-stack to Albany, then lightweight	100	91

¹Unfeasible in near term, given current vertical clearances to HRY.

- When comparing like technologies, HRY never has a cost advantage over New Jersey (Exhibit 9).

Exhibit 9

Ratio of HRY to New Jersey Costs by Technology and Routes

Intermodal Technology	Chicago	Los Angeles	Montreal
Conventional TOFC	1.08	1.16	1.02
RoadRailer	1.05	1.12	1.01
Lightweight TOFC	1.06	1.15	1.01
Double-stack	1.03	1.05	1.00

- As negative as these economics are, other factors could make them even worse. TBS did not specifically include two factors that could potentially work against HRY:
 - Lower volumes at HRY as they affect drayage costs
 - Lower density on the HRY-Selkirk line, leading to higher per-unit maintenance costs
- TBS also did not specifically include the lack of trackage fees from Poughkeepsie to HRY. TBS believes this advantage is outweighed by the disadvantages listed above.

Evaluation of Potential Roles

- Exhibit 10 provides a summary of TBS's evaluation of the potential roles for HRY.

- TBS's analysis ruled out two of the potential roles:
 - Because of its poor competitive economics, *traditional long-haul TOFC* does not appear to be a viable service for HRY.

 - Service on the *Montreal corridor* has poor potential for HRY because (1) the market is small, (2) Montreal-based shippers showed little interest in such a service, and (3) trucking would be a lower-cost alternative.

- The other four potential roles--refrigerated long-haul TOFC, network operators, specialized unit trains, and bulk carload transfer--were given high ratings. None of these roles, however, would be of a sufficient scale to make full use of HRY's land, and none therefore warrants a standalone operation at HRY.

Exhibit 10

Summary of Evaluation of Potential Roles

Potential Roles	Stage 1 Criteria (Importance)	Physical Constraints					Local Area Development		Increased Rail Competition		Likelihood of Conrail Support	Overall Rating	Stand- alone Role
		Market Viability	Fits Within Space	Fully Util- izes Space	Clears 17 ft 6 in.	Clears 15 ft 6 in.	Number of Jobs Created	Support of Local Industry	Inter- modal	Rail-to- rail			
		(High)	(High)	(Medium)	(High)	(Low)	(Low)	(Low)	(High)	(Low)			
1. Traditional long-haul TOFC	Low	Yes	No	Yes	No ¹	Low	Low	Yes	No	Low	Low	Yes	
2. Refrigerated long-haul TOFC	High	Yes	No	Yes	No ¹	Low	Low	Yes	No	High	High	No	
3. Montreal corridor — TOFC	Low	Yes	No	Yes	No ¹	Low	Low	Yes	No	High	Low	No	
4. Network operators	Medium	Yes	Possibly	Yes	Possibly	Low	Low	Yes	Yes	Medium	Medium	No	
5. Specialized unit trains	High	Yes	No	Yes	Possibly	Low	Low	Yes	No	High	High	No	
6. Bulk carload transfer	High	Yes	No	Yes	Yes, except Plate C	Low	Low	Yes	Yes (poten- tially)	High	High	No	

¹ Today's standard technology does not clear; however, alternatives do exist.

APPENDIX E

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING made this 6th day of September, 1990, between the New York State Department of Transportation (hereinafter "Department") with its offices located in the Department of Transportation Building, State Office Campus, 1220 Washington Avenue, Albany, New York 12232 and the Harlem River Yard Ventures, Inc., with its offices located at Building 6, East Road, Rotterdam Industrial Park, Schenectady, New York 12306.

WHEREAS, the Department instituted a public process for the selection of a developer to develop and construct a parcel of land in the County of Bronx, New York, primarily as an intermodal transportation facility, such premises commonly referred to as the Harlem River Yard, and

WHEREAS, Harlem River Yard Ventures, Inc. has been selected as the preferred party to develop and construct the said facility, and

WHEREAS, the parties are negotiating and expect to timely and successfully complete negotiations for a long term lease agreement by which Harlem River Yard Ventures, Inc. will develop, construct and operate the Harlem River Yard, and

WHEREAS, the parties agree that prior to construction on the site,

it is necessary to determine whether there exists on the premises deposits of harmful or toxic materials which could substantially impair development and/or construction on the premises, and

WHEREAS, Harlem River Yard Ventures, Inc. has retained TAMS Consultants, Inc. (TAMS) to perform site assessment service these include, among other things an "initial site assessment," and as a result of such assessment, TAMS has prepared a "scope of work" designed for the purpose of testing the site for the existence, location and identification of potential harmful or toxic substances, and

WHEREAS, The Department has reviewed and concurred in the said "scope of work" prepared by TAMS, and

WHEREAS, Harlem River Yard Ventures, Inc. has funded the "initial site assessment" in the amount of \$14,500.00, and

WHEREAS, the estimated cost for the "scope of work" is \$120,000.00, and

WHEREAS, the parties now seek to provide for the performance of the additional work in a timely manner and determine as between themselves the responsibility for payment for the work.

NOW, THEREFORE, the parties agree as follows:

10/91 14:28 A 110 200 3000

1. Definitions. "TAMS" shall mean TAMS Consultants, Inc. an environmental and engineering consultant firm located in the TAMS Building, 655 Third Avenue, New York, New York 10017.

"Phase I" shall mean the assessment to determine site contaminations previously undertaken by TAMS and described as "Phase I" in Attachment A, hereto.

"Phase II" shall be the scope of work prepared by TAMS and described as "Phase II" in Attachment A.

2. Harlem River Yard Ventures, Inc. acknowledges that it has totally compensated TAMS for "Phase I" in the amount of \$ 14,500.00 and agrees to provide a maximum of \$ 120,000.00 to TAMS as compensation for "Phase II", and that it will direct TAMS to perform the "Phase II" work immediately upon the execution of this Memorandum of Understanding.

3. The parties acknowledge that development and construction of the Harlem River Yard cannot begin without the performance of the work described in "Phase II", and that it is in the mutual interest of the parties that "Phase II" be undertaken immediately. The lease commencement shall be upon the full execution of the lease. The rent commencement date shall be at the completion of "Phase II".

4. Harlem River Yard Ventures, Inc. will not undertake physical construction of the premises without the information to be developed by "Phase II", and is negotiating with the Department under the assumption

that "Phase II" will be completed before it undertakes construction on the premises.

5. The parties acknowledge that information developed in "Phase II" could substantially affect the project, and could, induce one or both of the parties to seek to terminate negotiations, or amend the proposed project.

6. The parties acknowledge that if conditions are discovered that will substantially impair the contemplated development negotiations could either terminate or negotiations taking into account these discovered conditions would commence.

7. The parties acknowledge that were the Department itself to contract for the work described in Phase II, the work could not be begin for some months thus delaying the development of the Harlem River Yard with serious adverse financial and other consequences to each.

8. The Department agrees as follows: If the parties successfully conclude negotiations and contract for the development and construction of the premises by Harlem River Yard Ventures, Inc., the said contract will contain a provision, by which, Harlem River Yard Ventures, Inc. will, at the time the first payments are due to the Department, be granted a credit against such payments in the amount of \$134,500, or the actual amount paid to TAMS for "Phase I" and "Phase II" which ever is less, in compensation for actual payments made by Harlem River Yard Ventures, Inc. to TAMS for "Phases I and II".

9. The parties agree that in the event that negotiations are not successful, and that no contract is entered into between them for the development and construction of the premises, the Department will have no obligation whatsoever to compensate Harlem River Yard Ventures, Inc. for any payments made to TAMS for "Phases I and II", however, this clause shall not denigrate any legal rights which Harlem River Yard Ventures Inc. may have.

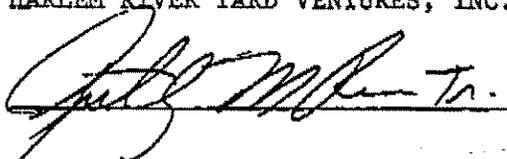
10. All results and information developed of any type by TAMS in its performance of the work performed under "Phases I and II" will be made available to both parties.

11. All modifications to this Memorandum of Understanding shall be in writing and signed by both parties.

HARLEM RIVER YARD VENTURES, INC.

Dated:

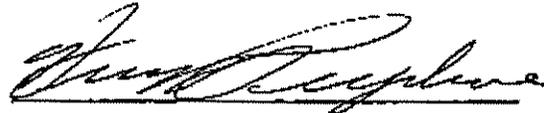
By:



NEW YORK STATE DEPARTMENT OF
TRANSPORTATION

Dated:

By:



APPENDIX F

CONR 335-11 (9/89)

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$5,000 (\$20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 139-d of the State Finance Law. If this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

CONR 335-21 (9/89)

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4)

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:**

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.**

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.**

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

CONR 335-31 (9/89)

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN: In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b" and "c", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it be registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

APPENDIX B
ESD GENERAL PROJECT PLAN



New York State
Urban Development
Corporation

1515 Broadway
New York, NY 10036-8960
212/930-0200

Charles A. Gargano
Chairman of the Board,
and Chief Executive Officer

FOR CONSIDERATION
September 20, 1995

TO: The Directors

FROM: Charles A. Gargano

SUBJECT: New York (Bronx County) - Harlem River Yard
Intermodal Transportation and Distribution Center
Civic Project

REQUEST FOR: Adoption of Proposed Modified General Project
Plan; Authorization to Hold a Public Hearing
Thereon Pursuant to Section 16(2) of the UDC Act

MODIFIED GENERAL PROJECT PLAN

I. Project Summary

Grant Recipient: Harlem River Yard Ventures, Inc., a joint
venture of the Galesi Group and the Hunts
Point Terminal Produce Cooperative located
at:
Galesi Group
110 East 59th Street
New York, NY 10022
(212) 755-3700
Contact: Anthony M. Riccio, Jr.,
Senior Vice President

Site: 96-acre parcel owned by the New York State
Department of Transportation on the Harlem
River at the southern terminus of the Oak
Point Rail link

Project
Description: A grant to develop rail track infrastructure
and other improvements for an intermodal rail
freight facility

UDC Investment: \$3,500,000 grant

UDC Project No.: C208G

Anticipated
Appropriation
Source:

The Port Authority Industrial Development
Bank, Regional Development Facility Fund,
authorized by the Governors Agreement of June
1983

Project Team:	Project Manager	R. Fleischmann
	Legal	M. Buscarello
	Design & Construction	L. Ford
	Environmental	J. Jeffries
	Affirmative Action	E. Rivera
	Project Finance	P. Waldt

II. Project Cost and Financing Sources

Phase I

Estimated
Project Costs:

Construction	\$ 7,551,239
Contingency	755,124
Intermodal Equipment	750,000
Engineering Design	575,000
Construction Inspection	300,000
UDC/EDC Owners' Rep	<u>125,000</u>
Total:	<u>\$10,056,363</u>

Financing
Sources:

UDC - Grant	\$ 3,500,000
New York City EDC	3,500,000
Harlem River Yard Ventures, Inc.	<u>3,056,363</u>
Total:	<u>\$10,056,363</u>

Phase II

Estimated
Project Costs:

Grading, Drainage and Pavement	\$1,956,312
Water Supply	224,355
Sanitary	563,265
Utilities	883,791
Rail and Intermodal Yard	1,688,650
Miscellaneous Construction	486,600
Engineering, Construction Inspection and Owner's Representation	<u>750,000</u>
Total:	<u>\$6,552,973</u>

Phase II
Financing
Sources:

Harlem River Yard Ventures, Inc.	<u>\$6,552,973</u>
Total	<u>\$6,552,973</u>

III. Project Description

A. Background

On July 20, 1994, the Directors adopted findings pursuant to the State Environmental Quality Review Act ("SEQRA"), affirmed the General Project Plan, and authorized the making of a grant in connection with the Harlem River Yard Intermodal Transportation and Distribution Center Civic Project in the South Bronx (the "Project"). The Project involves the development of the 96-acre Harlem River Rail Yard (the "Yard") for intermodal transportation facilities and commercial or industrial development by Harlem River Yard Ventures, Inc. ("HRYV" or the "Developer") pursuant to a 99-year ground lease from the New York State Department of Transportation ("NYSDOT"), owner of the site. HRYV has developed a land use plan (the "Plan") for the Yard which is contained in a Final Environmental Impact Statement ("FEIS") dated 12/93. Under the Plan, at full build-out, approximately 28 acres of the site will be devoted to use as an intermodal rail/truck terminal; the balance of the site may be used for municipal solid waste and paper recycling, general warehousing, refrigerated warehousing, wholesale distribution, and other specified industrial uses.

The General Project Plan approved by the Directors contemplated a two-phased approach to development of the Yard and addressed only Phase I of the Project: the construction of infrastructure sufficient to create a complete stand-alone rail freight facility on the western portion (approximately 64 acres) (see attached site plan) that would accommodate the development of up to two commercial development lots. The cost for Phase I of the Project is estimated to be \$10,056,363.

A grant of up to \$3.5 million in funds from the Port Authority of New York & New Jersey Industrial Development Bank, to be administered by UDC, was authorized and is being made available for the development of rail track infrastructure and other improvements for the intermodal rail freight facility. A matching grant of \$3.5 million for the non-rail portion of the infrastructure is also being made by the City of New York (the "City") through its Economic Development Corporation ("EDC"). The Developer is responsible for the balance of the Project cost. The Developer's obligation for the balance of the infrastructure cost is backed by the guaranty of Rotterdam Ventures, Inc., an

affiliated entity whose net worth is sufficient to support the guaranty.

Commencement of Phase I was delayed by a lawsuit brought against NYSDOT and HRYV by certain individuals and groups objecting to the lease and the Plan. A ruling by the New York State Supreme Court on March 16, 1995 held the lease and Plan to be invalid. However, this ruling was overturned on August 10, 1995, by the Appellate Division in a unanimous decision.

B. The Proposed Modification

The City and EDC have asked UDC to exercise its power under Section 16 of the UDC Act to override certain provisions of the New York City Zoning Resolution (the "Zoning Resolution") which otherwise arguably would apply to non-rail development at the Yard. These provisions, which are more fully discussed below, would require (1) the issuance of a special permit by the New York City Planning Commission ("CPC") with respect to any commercial development at the Yard and (2) the issuance of a variance by the Board of Standards and Appeals ("BSA") in connection with a proposed development at the site by the Bronx Community Paper Company, Inc. ("BCPC"), also discussed below.

The City, EDC, HRYV and BCPC have indicated that compliance with these provisions of the Zoning Resolution would place the Yard at a serious competitive disadvantage, jeopardize the Project, and compromise the City's ability to implement its industrial retention strategy. Given the substantial public review to which the Plan is already subject, and the delay and uncertainty to which the Project has been exposed because of the litigation which was ultimately found to be without merit, UDC staff concur that compliance with the provisions of the Zoning Resolution specified below is infeasible and impracticable.

The General Project Plan, therefore, is proposed to be modified to contemplate an override of these provisions. The Project will be developed in conformance with the Modified General Project Plan, the FEIS, and any supplemental environmental impact statement ("SEIS") prepared in connection with the Project, and the review processes set forth in the UDC Act, SEQRA, and any other applicable law, in lieu of the provisions of the Zoning Resolution specified below. The General Project Plan is also being amended to include the entire 96-acre site, or Phases I and II of the proposed development, for purposes of the zoning override. No additional UDC investment is being requested in connection with the inclusion of the Phase II development in the General Project Plan.

Phase II, consisting of approximately 31 acres or the eastern portion of the Yard, will undergo the same type of infrastructure improvements as Phase I. These include rail

installation; roadway construction; parking areas for both automobiles and trailers; curbs and sidewalks; storm and sanitary sewers, water mains, and utilities. The cost for Phase II is estimated to be \$6,552,973. As in the case of Phase I, Rotterdam Ventures, Inc., an affiliate of HRYV, has committed to back HRYV in case it does not secure sufficient financing for all of Phase II's infrastructure construction costs.

Section 42-462 (Special Use Permit)

Section 42-462 of the Zoning Resolution limits as-of-right development in a non-discontinued rail or railroad or transit right-of-way or yard to uses accessory to the railroad or transit right-of-way or yard and requires a special permit from CPC pursuant to Section 74-681 of the Zoning Resolution for any non-railroad development in such rail or railroad or transit right-of-way or yard. Under a conservative interpretation of the Zoning Resolution, the commercial development planned for the Yard and analyzed in the FEIS would not qualify as uses accessory to the railroad uses at the site and, therefore, would not be permitted at the site without a special permit issued by CPC.

The issuance of a special permit by CPC is a discretionary land use approval which, under Sections 197(c) *et. seq.* of the New York City Charter, may be granted only by means of the public review process known as the Uniform Land Use Review Procedure ("ULURP"). ULURP involves (i) preparation and filing of an application with the Department of City Planning ("DCP"); (ii) administrative review by DCP staff to determine whether the application contains sufficient information for intelligent public review; (iii) certification of the application by CPC when the application is sufficiently complete to commence the formal public review process; (iv) a public hearing within 30 days before and non-binding recommendation by the local Community Board; (v) review and non-binding recommendation within 30 days by the affected Borough President; (vi) a public hearing before and formal determination within 60 days by CPC; and (vii) possibly, a public hearing before a committee of, and a formal determination within 50 days by, the City Council. The Mayor may veto approvals and disapprovals by the City Council, subject to a Council override by a 2/3 vote.

The duration of the formal, post-certification phase of the public review process is limited to seven months by the Charter. However, the duration of pre-certification review is not constrained by formal time limits and can range from five months to over two years, depending on the project. Certification of completeness of the application generally requires the submission of site-specific plans that are typically not available until a land disposition agreement for a particular site is substantially completed. The need to undertake ULURP after a lease agreement has been resolved for each development site will put the Yard at

a serious competitive disadvantage, particularly after the delay and uncertainty introduced by the litigation referred to above.

Because of the dearth of large, buildable commercial sites within New York City, the Harlem River Yard presents an unusual opportunity for the City to attract and retain major industrial businesses. The length and complexity of the review process described above and the intense regional competition for industry create strong incentives for potential tenants to locate elsewhere. UDC's zoning override is needed to enable the City to effectively market this site which is a key component of the City's industrial retention strategy.

While facilitating such commercial activity, however, the Yard-wide special use override would not eliminate public review. The Project already has undergone public review under the UDC Act and SEQRA, including local public hearings. For these reasons, the Directors are requested to authorize the override of Section 42-462 of the New York City Zoning Resolution with respect to any proposed commercial use for the Yard consistent with those uses analyzed in the FEIS, including any SEIS prepared in connection with Yard development.

Sections 42-282 and 42-283 (Steam Emission)

BCPC has selected a parcel in the Phase II portion of the Yard for development of a new, state-of-the-art facility that will de-ink and recycle waste paper. Conceived to take advantage of the enormous amount of high quality waste paper discarded by the dense office population of New York City, BCPC will be the first large-scale urban recycling plant to actually manufacture clean pulp. Upon completion, BCPC will become a major paper de-inking plant that will produce 470 dry tons per day of high-grade market pulp. This potential project has received much favorable national attention. Under separate action on November 17, 1994, the UDC Directors approved a \$400,000 Urban and Community Development Targeted Area Development grant for certain development-related costs of the BCPC facility. At this time, HRYV and BCPC have entered into lease negotiations, pending in part, on the zoning overrides described below.

Since the BCPC project emerged after the completion of the FEIS and therefore was not analyzed, an SEIS is being prepared in connection with the proposed use. The SEIS, required by NYSDOT in its 5/94 record of decision ("ROD"), is to provide a detailed project-specific air quality analysis for emissions from the de-inking facility. Where the original conclusion in the FEIS is still valid, findings are summarized and affirmed in the SEIS. Where conclusions were not reached or have changed, the SEIS will present the complete new analysis.

Sections 42-282 and 42-283 of the Zoning Resolution, respectively, provide that excessive humidity in the form of steam or moist air may not be perceptible at or beyond any "lot line" or "district boundary". The BCPC facility, described above, will emit steam which arguably may not conform to the referenced provisions of the Zoning Resolution and, therefore, would not be permitted on the site without a variance from BSA. The steam emission will pose no health hazard, will be disclosed in the SEIS, and is not expected to be deemed a significant, adverse environmental impact.

The public review process for variances under the jurisdiction of BSA involves (i) the preparation and filing of an application for completeness by the BSA; (ii) administrative review of the application for completeness by the BSA; (iii) a public hearing before and non-binding recommendation by the local Community Board; and (iv) a public hearing before and decision by the BSA. Ordinarily, this process takes between six and twelve months.

The timing of the BCPC facility is critical to its success. Commitments from paper suppliers, buyers of BCPC's product, and potential financial investors are all contingent upon a completion by 1997. The length and complexity of the BSA variance make completing the facility by 1997 virtually impossible. Under these circumstances, compliance with Sections 42-282 and 42-283 of the Zoning Resolution is not feasible or practicable. The Directors are therefore being requested to authorize an override of these provisions of the Zoning Resolution in connection with the proposed BCPC facility.

IV. Environmental Review

Pursuant to SEQRA, NYSDOT, as owner of the property, acted as lead agency for the environmental review of the project which concluded in the FEIS and the ROD. UDC was an involved agency in that review.

The ROD specified that the general land use plan as proposed and analyzed in the FEIS was approved except that further review would be required once a specific waste paper recycling facility was proposed. Such analysis would concentrate on air quality impacts. An SEIS has been prepared and approved by NYSDOT for the BCPC project and, once again, UDC has been an involved agency in the process. Pursuant to SEQRA, a public hearing regarding the draft SEIS has been scheduled for October 26, 1995. This will be followed by a public comment period and the preparation of a final SEIS. Once NYSDOT has issued its SEQRA determination, UDC staff will request the UDC Directors to issue its SEQRA findings.

V. Affirmative Action

UDC's Affirmative Action Program will apply. The project sponsor will be required to achieve 20% Minority/Women Business Enterprise participation as well as an overall 20% minority and female workforce participation on this Project.

VI. Requested Actions

The Directors are requested to adopt the proposed modified general project plan and to authorize the holding of a public hearing pursuant to Section 16 (2) of the UDC Act.

VII. Attachments

Site Plan

UDC's Directors Materials dated May 19, 1994

UDC's Directors Materials dated July 20, 1994

Resolutions



New York State
Urban Development
Corporation

1515 Broadway
New York, NY 10036-8960
212/930-0200

Vincent Tese
Chairman of the Board,
and Chief Executive Officer

FOR CONSIDERATION

May 19, 1994

TO: The Directors

FROM: Vincent Tese

SUBJECT: New York (Bronx County) - Harlem River Yard
Intermodal Transportation and Distribution
Center - Civic Project

REQUEST FOR: Civic Project Findings; Authorization to Adopt of
Proposed General Project Plan; Authorization to
Hold a Public Hearing

GENERAL PROJECT PLAN

I. Project Summary

Grant Recipient: Harlem River Yards Ventures, Inc., a joint
venture of the Galesi Group, which is a
private developer and the Hunts Point
Terminal Produce Cooperative, which is a
privately owned food distribution center,
located at:

Galesi Group
110 East 59th Street
New York, NY 10022
(212)-755-3700
Contact: Anthony M. Riccio, Jr., Senior Vice
President

Site: 96-acre parcel on the Harlem River at the
southern terminus of the Oak Point Rail link

**Project
Description:** A grant to develop rail track infrastructure
and other improvements for an intermodal rail
freight facility

UDC Investment: \$3,500,000 in State funds contained in the

Port Authority of New York and New Jersey
("PA") Industrial Development Bank to be
administered by UDC

**Anticipated
Appropriation
Source:**

The Regional Development Facility Fund of the
PA, authorized by the Governors Agreement of
June 1983

**Commitment
Expiration Date:**

UDC's commitment will expire 12 months after
PACB approval of the project unless a project
agreement is executed by that time.

UDC Project No.: C208G

Project Team:

Project Manager	B. Resnicow
Legal	M. Buscarello
Design & Construction	L. Ford
Environmental	R. Shatz
Affirmative Action	G. Whyte

II. Project Cost and Financing Sources

**Estimated
Project Costs:**

Construction	\$7,551,239
Contingency	755,124
Intermodal Equipment	750,000
Engineering Design	575,000
Construction Inspection	300,000
UDC/EDC Owners' Rep	125,000

Total: \$10,056,363

**Financing
Sources:**

UDC - Grant	\$3,500,000
New York City EDC	3,500,000
Developer's Equity	3,056,363

Total: \$10,056,363

III. Project Description

A. Background

Planning studies conducted by the New York State Department
of Transportation ("NYSDOT") in the late 1980s indicated that the
Harlem River Yards, located in the South Bronx adjacent to the

Oak Point Link to the west and north, should be developed as an intermodal transport facility, but that associated commercial development would be required to make the project feasible. The study also concluded that the development and operation of this intermodal park, including not only infrastructure construction but also marketing, leasing and operation of the facility, could be effected best by a private entity, although NYDOT would retain ownership of the site.

After a public RFP process, NYSDOT entered into a 99-year ground lease with Harlem River Yard Ventures, Inc. ("HRYV") for the 96-acre site. Under the terms of this lease, HRYV must develop the site in conformance with the Preliminary Land Use Plan that is included in the Environmental Impact Statement (EIS).

HRYV is a joint venture which is 95% owned by the Galesi Group and 5% owned by the Hunts Point Terminal Produce Cooperative. The Galesi Group is a group of subsidiary businesses active in distribution and warehousing, residential and commercial real estate, and telecommunications, owned or controlled by Francesco Galesi and having a stated net worth in excess of \$250 million. The Hunts Point Terminal Produce Cooperative is a produce distribution center that has approximately 70 members and is the largest employer in the South Bronx.

Under the Preliminary Land Use Plan, at full build-out, approximately 28 acres of the site are to be developed as an intermodal terminal (rail/truck); the balance of the site may be used for municipal solid waste and paper recycling, general warehousing, refrigerated warehousing and other uses. The intermodal terminal will have a "throughput" capacity of 100,000 containers or trailers per year. When construction is complete, the intermodal facility will have two parallel working tracks, each approximately 2,800 feet long. Yard areas are planned both north and south of the working tracks and container storage along the northern boundary of the yard.

The project will be constructed in two phases: the \$10,056,363 budget above is for Phase I; Phase II is estimated to cost an additional \$7 million. The UDC project under consideration here is Phase I only, which will result in the construction of a complete stand-alone rail freight facility which can be used in conjunction with the development of up to two commercial development lots. Phase II will continue this development and will add two to three additional commercial development sites.

Following a September 1, 1993 request from Governor Cuomo, the PA authorized a \$3.5 million grant from the Regional Economic Development Fund to UDC for the development of the Harlem River

Yard rail track infrastructure and the intermodal terminal facility. It was intended that UDC would administer these funds.

This grant is to be made in conjunction with a \$3.5 million grant from the City of New York, through the NYC Economic Development Corporation ("EDC"), to HRYV to fund the "non-rail" portions of the infrastructure, i.e., roads, street lighting, utilities, sanitary and storm sewers. The funds from these two grants are to be disbursed on a concurrent basis. Because the scope of work to be funded by the State and the scope of work to be funded by the City overlap and will not necessarily proceed at equal rates, EDC will hire an Owner's Representative to oversee the construction on a regular basis and to review disbursement requisitions and associated construction invoices; the cost of this consultant will be deducted equally from the EDC and UDC grant amounts.

B. The Project

Harlem River Yards is strategically located at the intersection of several major thoroughfares of truck, rail, and water routes. The site serves as the landfall of the Oak Point Link "water route" which is being constructed to modernize and improve freight access to markets east of the Hudson River. Adjacent to the site are the Major Deegan and Bruckner Expressways, and the three bridges that connect the site to New York City and Long Island (Triborough, Willis Avenue, and Little Hell Gate).

The intermodal terminal will be operated in conjunction with Conrail. NYSDOT has indicated that the Oak Point Link, which will provide the 19' clearance required for modern rail cars, will be operational by September 1995. At that time, rail freight will enter the western end of the site for truck distribution or direct distribution to facilities located on-site. If the Oak Point Link were delayed, the Harlem River Yard site could still operate although rail freight would have to enter the site by a more circuitous route from the east with clearance restrictions.

As planned, in addition to the intermodal rail terminal, the site may eventually accommodate:

- dry/refrigerated warehouses (180,000 sf on 8 acres)
- the New York City Wholesale Flower Market (170,000 sf on 5-7 acres)
- a solid waste transfer station (87,500 sf on 5 acres)
- a bulk transfer/team track (5 acres)
- a to be specified use, possibly warehouse (18-19 acres)

The development of the Harlem River Yard will bring a major

infusion of capital and active businesses to the South Bronx, creating between 770 to 800 jobs at full operation. From the larger perspective of consumers and businesses in the New York region, the project will result in savings in transportation costs and consequent reduction of total operational costs and final prices of products, making New York businesses more competitive. Finally, as rail transport becomes a viable alternative for freight that is currently entering New York City by truck, regional congestion and pollution will be reduced.

Currently, the HRYV has active negotiations under way with Shaffer Food Distribution, Inc. and Gallo Wines Distribution, Inc., both of which have pressing relocation needs. Both these tenants will construct their own leasehold improvements. To accommodate their schedules, HRYV intends to commence construction on Phase I site infrastructure July 1994, with planned occupancy by September 1995. They recognize that interim financing will be required to cover the period before the grant funds become available.

Funding of this project will be contingent on the HRYV executing a financable lease for a minimum development of 150,000 sf. HRYV will also have to demonstrate the funding source for its equity contribution.

V. Plant Closing Policy

UDC's policy of prior notification with respect to any substantial reduction of workforce during the term of UDC's financial assistance will not apply because UDC's assistance is not in the form of a loan, loan guarantee, or interest subsidy.

V. Employment-Related Interest Adjustments

UDC's Employment-Related Interest Adjustment Policy will not apply as UDC's financial assistance is in the form of a grant.

VI. Disadvantaged Workers' Equity Program

The UDC Disadvantaged Worker's Equity Program will not apply because the project will not result in the direct creation of jobs.

VII. Statutory Basis (Civic Project Findings)

A. Pursuant to Section 10(d)(1), (2), (3), and (4) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), the Project meets the following criteria:

- (1) That there exists in the area in which the project is to be located, a need for the educational, cultural, recreational, community, municipal,

public service or other civic facility to be included in the project;

This project will be part of a rail-truck network that will allow freight transport to enter and leave the New York City area to the west by rail, thereby eliminating a portion of the truck traffic from the Hudson River crossings and the Cross Bronx Expressway. This more efficient transport should also reduce costs to area businesses and consumers, making New York City more competitive as location for new and existing businesses.

- (2) That the project shall consist of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes;

Approximately 28% of the site will be devoted to an intermodal transport facility. The funding provided by the State will be used to cover a part of the costs of infrastructure for this purpose.

- (3) That such project will be leased to or owned by the State or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been, or will be, made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of the project;

The NYSDOT owns the site. The developer's rent payment to NYSDOT is based on a portion of its gross revenues from the site with a fixed minimum payment beginning in the sixth year; in the event of a default, either in the payment of rent or adequate maintenance of the site, the leasehold will revert to the state.

- (4) That the plans and specifications assure or will assure adequate light, air, sanitation and fire protection.

The Project meets all applicable zoning requirements and will be in compliance with local building codes. The property is zoned M3-1, a mixed-use commercial designation which allows for the proposed development. The plans and specifications will assure adequate light, air, sanitation and fire protection.

B. Pursuant to Section 10 (g) of the Act, the Project meets the following criterion:

that there are no families or individuals to be

displaced from the Project area.

The Project site is located entirely in an abandoned rail freight yard.

VIII. Design and Construction

HRYV, the developers of the Harlem River Yard project, advises that Phase I of this project will consist of installation of rail, construction of roadways and parking area for both cars and trailers, curbs, sidewalks, installation of storm and sanitary sewers, water mains, utilities and sewage lift stations. Phase I, when completed, will enable the developer to start operation of the Intermodal Transportation and Distribution Center. It will also allow HRYV to lease one or several of the proposed building sites to leasehold tenants for development.

UDC's Design and Construction Department ("D&C") has reviewed the draft plans, the preliminary construction cost estimate and proposed construction schedule, prepared by TAMS Consultants, Inc. ("TAMS").

TAMS is the engineering firm that prepared the design and that will be responsible for construction inspection and certification. TAMS was selected based upon prior working experience with the Galesi Group and all fees are negotiated. D&C has not worked with TAMS before. TAMS is a worldwide firm and is qualified to perform this type of work.

Upon review of the plans submitted, the proposed grading indicates that portions of the site will be below the 100 year floodplain. HRYV has proposed that the leaseholder take the necessary steps to prevent flooding of any constructed buildings. HRYV will give the leaseholder a copy of the grading plan and floodplain map to analyze and develop his own building elevations.

The preliminary estimated construction cost is \$8,306,363 which includes a ten (10) percent contingency. The preliminary cost estimate is acceptable to D&C. HRYV will solicit proposals from various construction firms and select the lowest responsible bidder. HRYV has advised D&C that they are considering bonding.

The engineering fee for design is \$575,000 (6.92%) which includes \$60,000 for borings. The construction inspection fee is \$300,000 (3.61%). These fees are acceptable to D&C for a project of moderate complexity. Also included in the overall estimate is a fee for a UDC/EDC Owner's Representative (\$125,000).

D&C will review plans, specifications, bid tabulations and the selection of construction firms. D&C will approve monthly

invoices and all change orders during construction. At completion of construction, D&C will verify that work has been satisfactorily completed and that the required certifications are received.

IX. Environmental Review

A Final Environmental Impact Statement ("FEIS") has been prepared by NYSDOT as the lead agency pursuant to the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. UDC has reviewed the FEIS, as an involved agency, and expects to issue SEQRA findings to conclude the environmental process after NYSDOT has filed their record of decision.

X. Affirmative Action

UDC's Affirmative Action Program will apply. The Project sponsor will be required to achieve 25% Minority/Women Business Enterprise participation as well as an overall 25% minority and female workforce participation on this project.

XI. Requested Actions

The Directors are requested to make findings pursuant to Section 10 (d) (1), (2), and (3) and 10 (g) of the Act; to adopt the proposed general project plan; and to authorize the holding of a public hearing pursuant to Section 16 (2) of the Act.

Based on the foregoing, I recommend approval of the requested actions.

XIII. Attachments

Site Plan
Resolutions

eddir\resnicow\harlriv

REEL: 41001-001

RESTRICTIVE COVENANT and other undertakings (the "Restrictive Declaration") dated as of December 15, 1995 made by HARLEM RIVER YARD VENTURES, INC. ("HRYV"), a New York corporation, having its principal office c/o The Galesi Group, Building 6, East Road, Rotterdam, New York 12306, for the benefit of THE CITY OF NEW YORK (the "City"), a municipal corporation of the State of New York, having an address at City Hall, New York, New York 10007.

WITNESSETH

WHEREAS, the State of New York (the "State") is the owner of certain real property located in the Borough of the Bronx, City of New York formally known as the Harlem River Yard (the "Rail Yard"); and

WHEREAS, the State, acting by and through the New York State Department of Transportation ("DOT") initially planned, in 1982, to develop the Rail Yard as an all trailer-on-flat car (TOFC) freight terminal; and

WHEREAS, DOT, after numerous attempts to facilitate the implementation of a TOFC freight terminal determined that there was a lack of market interest in developing an all-TOFC facility; and

WHEREAS, DOT, after further study, determined that a multi-use facility at the Rail Yard, including an intermodal facility with complementary revenue-generating uses would be necessary to attract private development of the Rail Yard and fulfill DOT's objectives of (1) providing a rail network which would allow modern boxcars to serve New York City; (2) providing an alternative to truck traffic on already congested roads and bridges; and (3) providing economic development benefits to the City of New York and the South Bronx by

retaining and securing industrial users in the Rail Yard (the "Project Objectives"); in order to implement these objectives, DOT issued a Request for Proposal ("RFP") in June, 1989 which HRYV responded to by proposing a plan containing uses including a multi-use intermodal rail transportation facility, general and refrigerated warehousing, solid waste transfer facility, and paper recycling uses; and

WHEREAS, DOT, along with the Port Authority of New York and New Jersey (the "Port Authority") and the New York City Department of Ports and Trade, selected HRYV as the developer and operator of the Rail Yard; and

WHEREAS, the State, acting by and through DOT, as landlord, and HRYV, as tenant, entered into a lease dated as of August 6, 1991 (the "Lease"), demising an approximately 96 acre parcel of the Rail Yard and the improvements thereon, as further described in Exhibit A attached hereto (the "Premises"), for the purpose of permitting HRYV to develop and manage the Premises principally as an intermodal transportation and distribution center containing industrial and other permitted uses (the "Project"); and

WHEREAS, the Project includes, among other elements, an approximately 28 acre intermodal rail terminal facility with a capacity of at least 70,000 units (container or trailer) per year (the "Intermodal Area") as shown on Exhibit B (hereinafter defined), plus trackage connecting the intermodal facility to the Hunts Point Food Distribution Market, and points east of the Hudson River including additional rail trackage providing a connection

between the Highbridge Yards to the west and points east (the "Through Track"), an approximately five (5) acre solid waste transfer facility, an approximately thirty (30) acre paper recycling facility located in three (3) principal structures and other adjacent buildings containing approximately 1,000,000 square feet of floor area, which would include waste paper sorting and storage, deinking, warehousing and storage, pulping and paper manufacturing (the "Recycling Facility") and an approximately twelve (12) acre newspaper production facility containing approximately 250,000 square feet of floor area, all as further described in the site plan, dated November, 1995 and attached hereto as Exhibit B (the "Development Plan"); and

WHEREAS, HRYV has sought funding from the City to construct certain rail and infrastructure improvements (the "Improvements") required in connection with the development of the Project; and

WHEREAS, the City has determined that the Project will serve a public purpose; and

WHEREAS, the City and the New York City Economic Development Corporation ("EDC") entered into an Amended and Restated Maritime Contract dated as of June 30, 1994 (as amended from time to time), pursuant to which the City has provided EDC with up to \$3,500,000 of City capital budget funds (the "EDC Funding") for use in constructing the Improvements; and

WHEREAS, EDC and New York State Urban Development Corporation, doing business as the Empire State Development Corporation ("ESDC"), entered into a funding agreement (the "Agreement"), dated

as of April 19, 1995, as amended September 6, 1995, with HRYV pursuant to which EDC has agreed to provide the EDC Funding and ESDC has agreed to provide funding in connection with the Project; and

WHEREAS, on September 20, 1995 ESDC adopted a proposed Modified General Project Plan (the "Modified Plan") for the Premises pursuant to the New York State Urban Development Corporation Act of 1968, as amended; and

WHEREAS, the Modified Plan provides for the override of certain provisions of the Zoning Resolution of the City of New York (the "Zoning Resolution") with respect to certain areas within the Premises (the "Override Areas"), including an override of Section 42-462 of the Zoning Resolution to permit the development of uses not accessory to a railroad right-of-way or yard without obtaining a special permit pursuant to Section 74-681 of the Zoning Resolution (the "ESDC Override") which uses otherwise comply with the provisions of the Zoning Resolution except with respect to the Recycling Facility for which an override of Sections 42-282 and 42-283 of the Zoning Resolution also is being exercised; and

WHEREAS, the purpose of the ESDC Override is, among other things, to facilitate development of the Premises as a multi-use intermodal transportation/distribution center, including compatible industrial and storage uses in accordance with the Lease; and

WHEREAS, the City and EDC support the ESDC Override as integral to the implementation of the Project and EDC's industrial retention strategy; and

WHEREAS, the City and EDC wish to ensure that any development in the Override Areas is compatible and consistent with the Project Objectives and will not result in excessive bulk and density on any portion of the Premises or cause overutilization of the adjacent street system (hereinafter described) or materially interfere with the operation of the Intermodal Area or Through Track as contemplated in the Development Plan and any Revised Development Plan; and

WHEREAS, to ensure such development, as an alternative to the City's Uniform Land Use Review Procedure that would be required in the absence of the ESDC Override, HRYV, the City and EDC agree that it is desirable to provide for the review and approval by the City of any development within the Override Areas that is a material modification from the Development Plan.

NOW, THEREFORE, in consideration of the City's and EDC's continuing support for the ESDC Override, and for other valuable consideration, HRYV, on behalf of itself and its successors in interest to the Premises, hereby covenants and agrees to be bound by the following terms and provisions with respect to the Premises:

1. HRYV covenants and agrees that it will not enter into any sublease or license or other agreement permitting a use or development in the Override Areas which materially modifies the Development Plan and will not itself use or develop or cause or permit to be used or developed any portion of the Override Areas in a manner which is a material modification from the Development Plan except as set forth in this Paragraph 1. If HRYV shall desire to

use or develop or cause or permit to be used and developed any portion of the Override Areas in a manner that materially modifies the Development Plan, HRYV agrees that no such use shall be undertaken, and no building permit shall be applied for or issued for any such use or development, until the City has reviewed and approved such use or development of the Premises in accordance with the following procedure:

- a) HRYV shall file a revised development plan for the Premises (the "Revised Development Plan") and shall provide a project description of any proposed new use or development, including its size, configuration, circulation pattern and function with the Mayor of the City (the "Mayor"), the President of EDC and the Chair of the New York City Planning Commission ("CPC") simultaneously with any submission to the State, DOT, or ESDC of a Revised Development Plan for the development of the Premises, or as soon as reasonably possible after HRYV elects to pursue an alternate development or use.
- b) Within 30 days of such filing, the CPC shall review the Revised Development Plan and shall file a report with the Mayor as to whether the proposed new use or development: (i) is compatible and consistent with the Project Objectives; (ii) does not materially interfere with the operation of the Intermodal Area and the Through Track as contemplated in the Development Plan, any Revised Development Plan and the Project Objectives;

(iii) results in development of a size and configuration where the bulk on any parcel is not excessive; and (iv) provides street transportation connections that are reasonably linked to the existing street grid patterns as described in the Final Environmental Impact Statement dated December, 1993, supplemented by a Final Supplemental EIS, dated January, 1996 (the "Environmental Studies") and does not increase traffic utilization in excess of the levels of service (LOS) set forth in the Environmental Studies. Such report shall include a recommendation as to whether the criteria set forth in (i) through (iv) are met and, if so, shall recommend the approval of the Revised Development Plan. At its election, the CPC may refer any Revised Development Plan and project description to the affected community board or boards and the Bronx Borough President for review, but any such referral shall not extend the period for review and report by CPC.

c) Within 20 days of receipt of the CPC report and recommendation, the Mayor shall approve, disapprove, or approve with modifications the proposed revised plan and project. If the Mayor approves any development or use with modifications, such use or development may proceed only as so modified.

d) Failure to take any action to approve, disapprove or approve with modification the Revised Development Plan

within the 50-day time period set forth in subparagraphs (b) and (c) hereof shall be deemed to be approval of the Revised Development Plan.

e) Any review undertaken by the City of any Revised Development Plan pursuant to Paragraph 1 of this Restrictive Declaration shall be considered a ministerial action pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR").

f) HRYV shall promptly provide such other information on the proposed use or development as may be reasonably requested by the CPC or the Mayor for the purposes of the review of the Revised Development Plan.

g) Notwithstanding the foregoing, HRYV shall not be required to follow the procedure set forth in subparagraphs (a)-(f) above when such proposed use or development of the Premises is an accessory use to a railroad right-of-way or yard, including warehouse and distribution uses accessory to a railroad right-of-way or yard within the meaning of Section 42-462 of the Zoning Resolution effective at the date of this Declaration.

2. HRYV further covenants and agrees that it shall require, as a condition of any leasehold, license, or other agreement pertaining to any portion of the Override Areas, that any such lessee, sublessee, licensee, or sublicensee of HRYV comply with the

applicable obligations contained herein, and shall include such requirements as a term of such lease, license or other agreement.

3. Anything to the contrary notwithstanding herein contained, (i) the City shall give HRYV written notice and twenty (20) days within which to cure any purported violation (a "Violation") of the covenants and agreements herein contained if any such Violation is related to the actions of HRYV or its employees, agents, or representatives (the "HRV Parties"), and (ii) in the event of a Violation related to the actions of any lessee, sublessee, licensee or other occupant of the Yard other than the HRYV Parties (each a "Defaulting Occupant"), the City shall also give HRYV written notice of such Violation and HRYV shall have thirty (30) days within which to attempt to cause such Defaulting Occupant to cure the Violation referred to in the aforesaid notice; provided, however, that if HRYV cannot with the exercise of commercially reasonable diligence cause such Violation to be cured within such thirty (30) day period, but HRYV during such thirty (30) day period commences and continues with diligence and continuity to take appropriate action to cause such Violation to be cured, then HRYV shall have such additional time as shall be reasonable under the circumstances within which to cure or cause to be cured such Violation. If HRYV fails or is unable to cure said Violation within the time described above and provides satisfactory proof to the City of its good faith efforts to cure the Violation, the City may enforce its remedies pursuant to Paragraph 4 herein against the party responsible for the Violation (the "Violating

Party"). HRYV acknowledges that a remedy available to the City in the event of a Violation which remains uncured beyond any applicable grace cure period described above includes, without limitation, having the City take any appropriate action to revoke any building permit or certificate of occupancy issued to the Violating Party or relating to the premises occupied by the Violating Party.

In the event that the holder of any mortgage or other security interest encumbering any leasehold, subleasehold or other interest in the Override Areas shall hereafter provide the City with a written notice specifying (i) the address to which the holder of such mortgage wants notices given by the City hereunder to be sent and (ii) the portion of the Override Areas encumbered by its mortgage, contemporaneously with sending HRYV any notice of a Violation relating to the premises encumbered by such mortgage, the City shall send a copy of such notice to such mortgagee. The City shall accept any curing of any Violation performed by any such mortgagee to the same extent as if such Violation were cured by any Violating Party.

4. Subject to the provisions of Paragraph 3 of this Restrictive Declaration, HRYV acknowledges that the City is the beneficiary of this Restrictive Declaration and has the right to enforce the terms and covenants of this Restrictive Declaration against HRYV or a Defaulting Occupant administratively or at law or equity, including but not limited to revoking, after notice and any opportunity to cure, any building permit or certificate of

occupancy issued in respect to a site(s) in the Premises which is the subject of the Violation or to seek injunctive relief.

5. No course of dealing on the part of the City or EDC or (except as expressly set forth herein) any failure on the part of the City or EDC to exercise any right shall operate as a waiver of such right or otherwise prejudice its powers and remedies. No right, power or remedy conferred upon or reserved to the City or EDC is intended to be exclusive of any other right, power or remedy. Every right, power and remedy shall be, to the extent permitted by law, cumulative and not exclusive and may be exercised from time to time and as often and at such time and in such order as the City or EDC may deem appropriate. The election of any right, power or remedy shall not be construed as an election or a waiver of any other right, power or remedy.

6. a) No officer, employee, director, member, agent or other person authorized to act on behalf of EDC or the City shall have any personal liability in connection with this Restrictive Declaration and the enforcement of the terms and provisions hereof.

b) No officer, employee, director, member, agent, shareholder, partner or other person authorized to act on behalf of HRYV or HRYV's mortgagees or subtenants shall have any personal liability in connection with this Restrictive Declaration and the violation or default of the terms and provisions hereof.

7. HRYV represents and warrants that it has the authority to enter into this Restrictive Declaration and that there are no restrictions of record or in the lease agreement with DOT

preventing the imposition of the restrictions, covenants, obligations or agreements of this Restrictive Declaration.

8. HRYV acknowledges that its obligations pursuant to this Restrictive Declaration are in addition to its obligations under a certain Restrictive Declaration dated as of 1995 regarding the Premises entered into by HRYV for the benefit of the City, EDC, ESDC and the Port Authority.

9. This Restrictive Declaration and the terms and provisions set forth herein may only be modified, amended or changed by an agreement in writing signed by HRYV and the City, acting by the Chair of the CPC, and the Deputy Mayor who is authorized to execute such an agreement. No waiver of any term, covenant or provision of this Restrictive Declaration shall be effective unless given in writing by the City, and if so given by the City shall only be effective in the specific instance in which given.

10. The terms of this Restrictive Declaration shall be construed in accordance with the laws of the State of New York.

11. HRYV, on behalf of itself and any of its successor(s) in interest to the Premises, hereby irrevocably and unconditionally waives any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Restrictive Declaration.

12. The covenants set forth herein shall bind HRYV, HRYV's successors in interest to the Premises and HRYV's agents, lessees, sublessees, licensees and sublicensees for as long as this Restrictive Declaration is in effect.

13. HRYV agrees to cause this Restrictive Declaration to be recorded against its leasehold interest in the Premises promptly but no later than 10 days prior to the commencement of any construction of improvements implementing the Development Plan or any Revised Development Plan in the office of the City Register for Bronx County at HRYV's expense and to have the recorded document (or certified copies thereof) returned to the following parties:

Mayor of the City of New York
City Hall
New York, New York 10007

City Planning Commission
22 Reade Street
New York, New York 10007
Attention: Chair

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attention: President

New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

In the event HRYV fails to so record and return this Restrictive Declaration, HRYV agrees that the City, acting through the Chair of the CPC, may record this Restrictive Declaration and HRYV shall promptly reimburse the City for the costs of such recording.

14. In the event that any covenant or restriction in this Restrictive Declaration be declared invalid or unenforceable, such covenant or restriction shall be severable and the remaining covenants and restrictions shall not terminate and shall remain in full force and effect.

IN WITNESS WHEREOF, HRYV has duly executed this Restrictive Declaration by having it signed by a duly authorized officer, and has caused its corporate seal to be hereunto affixed, on the day and year first above written.

HARLEM RIVER YARD VENTURES, INC.

By:

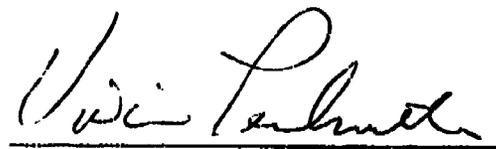
Title:

[Handwritten Signature]
Sr. Vice Pres.

1980.RESTCOV.004

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

On the 15th day of December, 1995, before me came ANTHONY M. RICCIO, JR. to me known, who, being by me duly sworn, did depose and say that he resides at 671 Carlton Road, Westfield, New Jersey 07090; that he is the Senior Vice President of Harlem River Yard Ventures, Inc., the corporation described in, and which executed, the above instrument; and that he signed his name thereto by order of the board of directors of said corporation.


NOTARY PUBLIC

VIVIAN PERLMUTTER
NOTARY PUBLIC, State of New York
No. 41-4620782
Qualified in Queens County
Certificate filed in New York County
Commission Expires Feb 28, 1997

EXHIBIT A

SCHEDULE A
CONTINUED

THENCE along said Southerly line North 89 degrees 59 minutes 39 seconds East, 100.00 feet to a point in the prolongation of the easterly line of Alexander Avenue;

THENCE along the same North 0 degrees 01 minutes 39 seconds East 30.00 feet to a point in the centerline of East 132nd Street, abovementioned;

THENCE along the same North 89 degrees 59 minutes 39 seconds East, 613.00 feet to a point in the prolongation of the Westerly line of Willis Avenue;

THENCE along the same South 0 degrees 01 minutes 39 seconds West, 30.00 feet to a point in the Southerly line of East 132nd Street, abovementioned;

THENCE along the same North 89 degrees 59 minutes 39 seconds East, 100.00 feet to a point in the prolongation of the Easterly line of Willis Avenue;

THENCE along the same, North 0 degrees 01 minutes 39 seconds East, 30.00 feet to the centerline of East 132nd Street, abovementioned;

THENCE along the same North 89 degrees 59 minutes 39 seconds East, 819.99 feet to a point in the prolongation of the Westerly line of Brown Place;

THENCE along the same South 0 degrees 01 minutes 39 seconds West, 30.00 feet to a point in the Southerly line of East 132nd Street, abovementioned;

THENCE along the same North 89 degrees 59 minutes 39 seconds East, 30.00 feet to a point in the dividing line between Penn Central Transportation Co., reputed owner on the west and New York City Industrial Development Agency, reputed owner on the East;

THENCE along said dividing line South 0 degrees 01 minutes 39 seconds West, 180.53 feet;

THENCE partially along the above and partially along St. Anne's Realty Corp., reputed owner, the following four (4) courses and distances:

continued...

one (1), North 89 degrees 59 minutes 39 seconds East, a distance of 2.76 feet to a point of curvature then, two (2), on a curve to the right, having a radius of 944.42 feet., an arc length of 176.68 feet to a point of tangency, three (3), North 89 degrees 59 minutes 39 seconds East, 609.34 feet, four (4) North 0 degrees 01 minutes 39 seconds East, 197.00 feet to a point in the Southerly line of East 132nd Street, abovementioned;

THENCE along the same the following three (3) courses and distances:

one (1), North 89 degrees 59 minutes 39 seconds East, 5.00 feet, two (2), North 89 degrees 39 minutes 37 seconds East, 70.00 feet, three (3), North 89 degrees 57 minutes 39 seconds East, 5.00 feet to a point in the dividing line between lands of Penn Central Transportation Co., reputed owner on the West and Gibraltar Corporation of America, reputed owner on the East, THENCE along said dividing line the following two (2) courses an distances:

one (1), South 0 degrees 01 minutes 39 seconds West, 124.12 feet, two (2), North 89 degrees 57 minutes 39 seconds East 923.00 feet to a point in the Westerly line of the Triborough Bridge approach;

THENCE along said westerly line North 0 degrees 01 minutes 39 seconds East, 14.00 feet to a point in the Southerly line of lands of New Jersey Steel Corp., reputed owner;

THENCE along the same North 89 degrees 57 minutes 39 seconds East, 114.00 feet to a point in the Westerly line of 780 East 132nd Street Company, reputed owner;

continued...

THENCE along the same the following ten (10) courses and distances; one (1), South 0 degrees 01 minutes 39 seconds West, 52.69 feet, two (2), South 73 degrees 42 minutes 21 seconds East, 423.61 feet, three (3), North 70 degrees 38 minutes 40 seconds East, 31.83 feet, four (4), North 89 degrees 57 minutes 39 seconds East, 337.36 feet to a point of curvature, five (5), on a curve to the left having a radius of 186.00 feet, an arc length of 37.35 feet to a point of compound curvature, six (6), on a curve to the left having a radius of 182.00 feet, an arc length of 67.67 feet to a point of compound curvature, seven (7), on a curve to the left having a radius of 216.20 feet, an arc length of 47.49 feet, eight (8), North 45 degrees 29 minutes 38 seconds West, 200 feet, nine (9), on a curve to the left having a radius of 742.50 feet, an arc length of 160.57 feet, ten (10) North 0 degrees 02 minutes 21 seconds West, 74.23 feet to a point in the Southerly line of East 132nd Street;

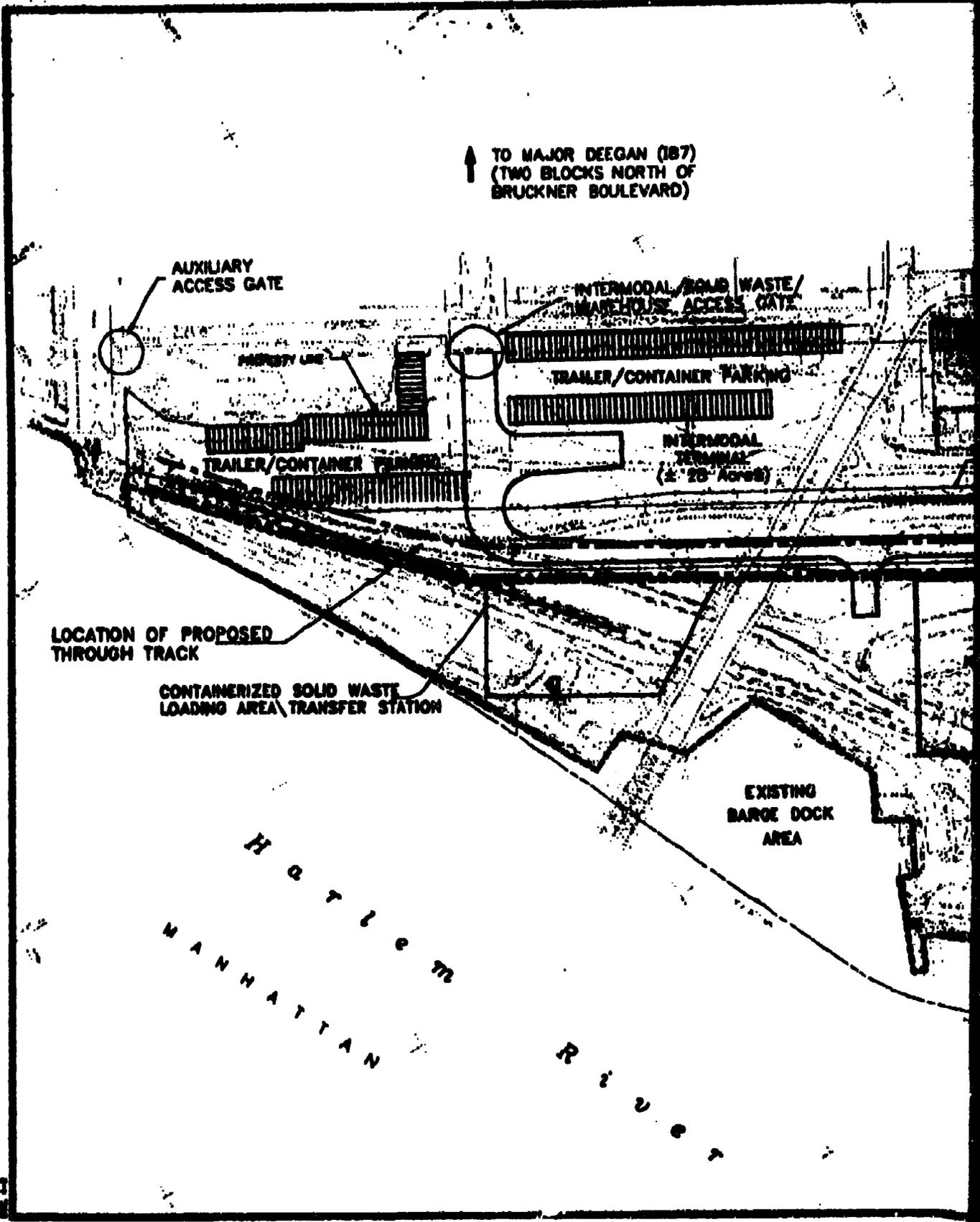
THENCE along the same the following two (2) courses and distances;

one (1), North 89 degrees 57 minutes 39 seconds East, 105.75 feet, two (2), South 81 degrees 35 minutes 28 seconds East, 419.87 feet to the Northwest corner of lands of New York City Transit Authority, reputed owner, THENCE along the Westerly line of the same and continuing on a prolongation of said line, South 17 degrees 30 minutes 42 seconds West, 1104.69 feet to a point in the Northerly Pierhead and Bulkhead line of the Bronx Kills, said line being established October 18, 1890. THENCE along said Pierhead and Bulkhead line the following nine (9), courses and distances:

one (1), North 88 degrees 39 minutes 20 seconds West, 1423.78 feet, to a point of curvature, two (2), on a curve to the right having a radius of 866.24 feet, an arc length of 564.55 feet to a point of tangency, three (3), North 51 degrees 18 minutes 52 seconds West, 281.73 feet to a point of curvature, four (4), on a curve to the left having a radius of 700.91 feet, an arc length of 585.38 feet to a point of compound curvature, five (5), on a curve to the left having a radius of 2104.42 feet, an arc length of 665.30 feet to a point of tangency, six (6), South 54 degrees 32 minutes 43 seconds West, 302.61 feet to a point of curvature, seven (7), on a curve to the right having a radius of 401.30 feet, an arc length of 502.20 feet to a point of tangency, eight (8), North 53 degrees 45 minutes 11 seconds West, 652.21 feet to a point of curvature, nine (9), on a curve to the left having a radius of 4471.00 feet, an arc length of 793.18 feet to the point or place of beginning.

REEL 415261627

↑ TO MAJOR DEEGAN (187)
(TWO BLOCKS NORTH OF
BRUCKNER BOULEVARD)



REEL 1015 215 Z

R A N D A L L S

28 ACRES	INTERMODAL TERMINAL
5 ACRES	SOLID WASTE TRANSFER
12 ACRES	NEWSPAPER PRODUCTION FACILITY (APPROX. 250,000SF)
30 ACRES	RECYCLED PAPER, SORTING, PULPING AND MANUFACTURING FACILITY (APPROX. 1,000,000SF)
12 ACRES	RAILROAD TRACK, ROADS OPEN SPACE
9 ACRES	LANDS UNDERWATER
APPROXIMATE LAND AREA USAGE	

ZONING OVERRIDE AREA

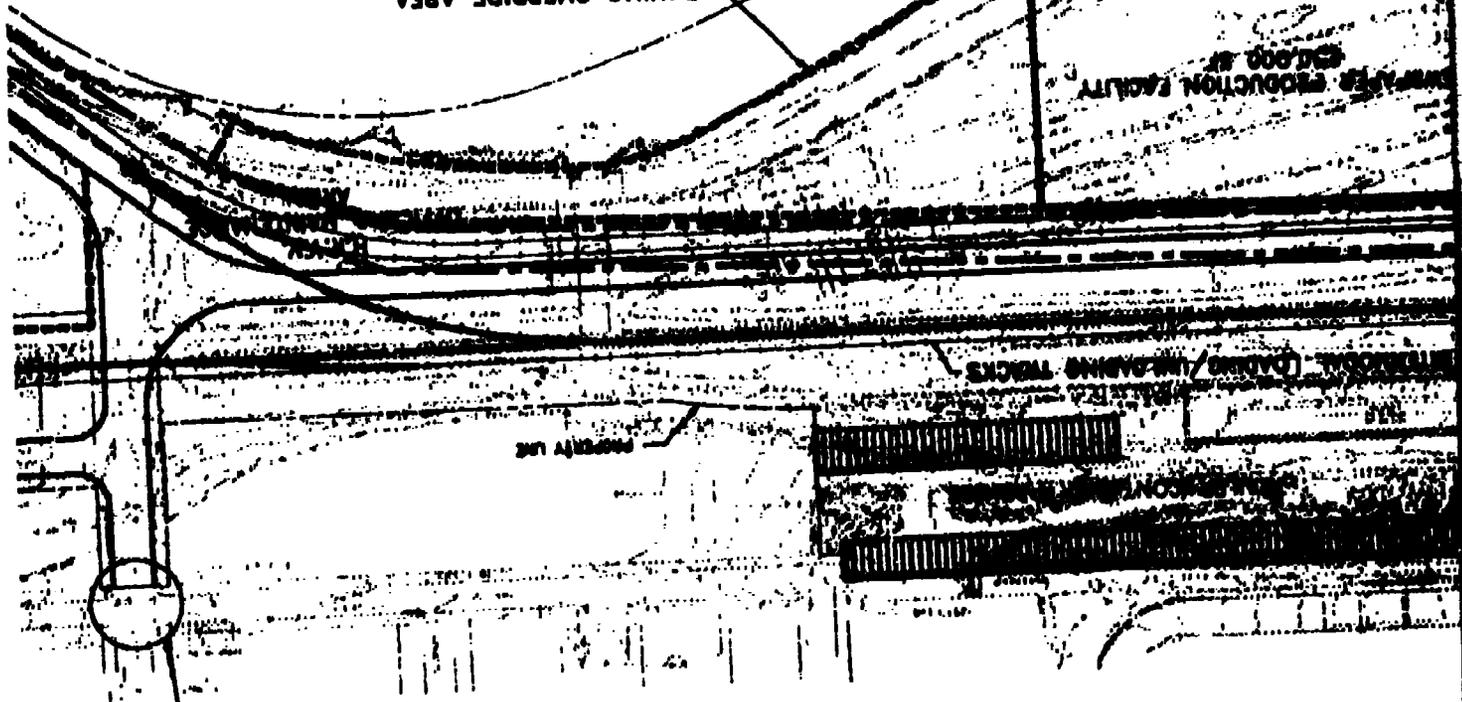
NEWSPAPER PRODUCTION FACILITY

INTERMODAL LOADING/UNLOADING TRACKS

WAREHOUSE & PAPER RECYCLING ACCESS GATE

BRUCKNER BOULEVARD

TO MAIN AND BRUCKNER (TWO BL) BRUCKNER

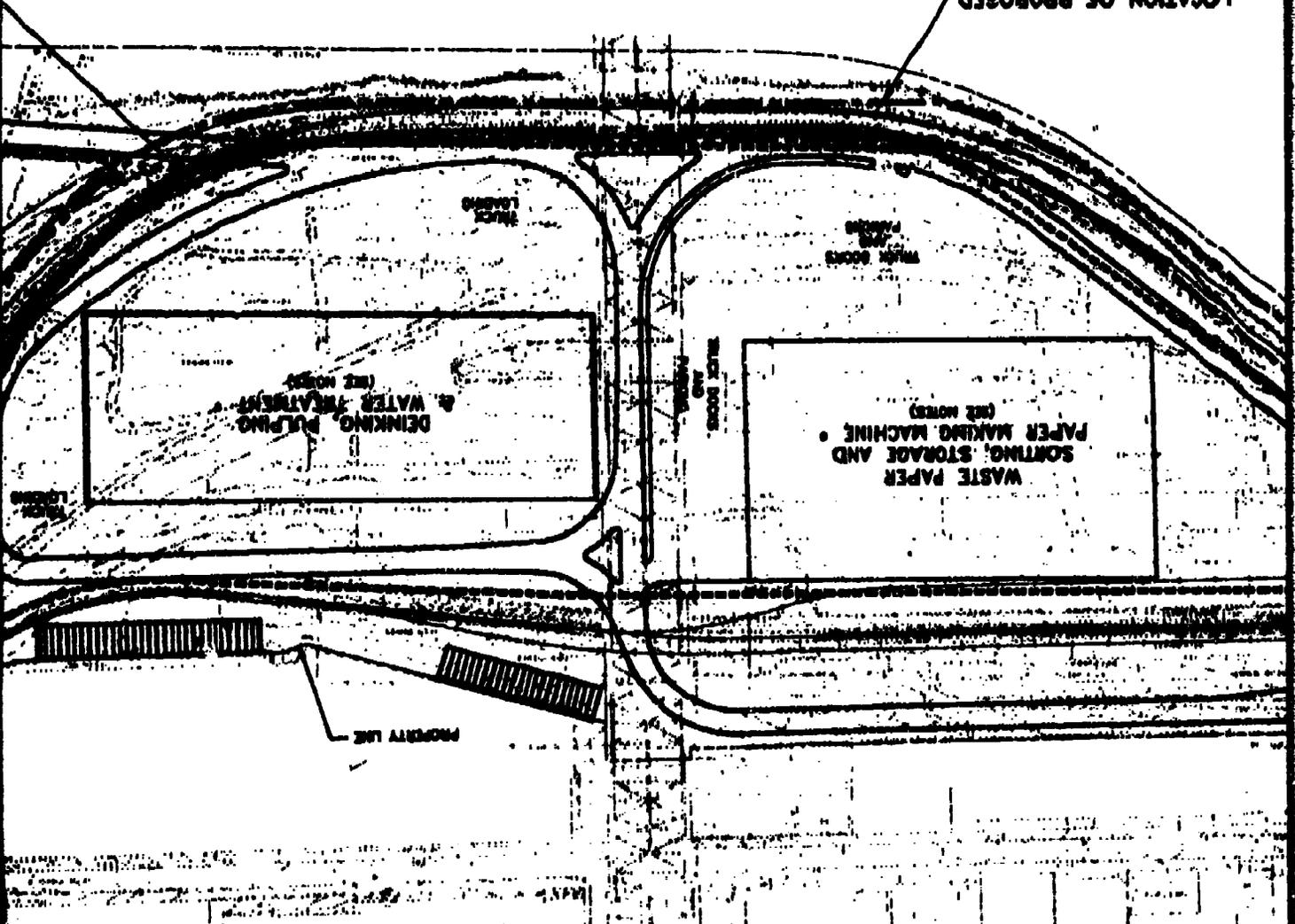


I S L A N D

- 1. BUILDING ENVELOPES ARE FOR ILLUSTRATIVE PURPOSES
- 2. LOCATION OF USES DESIGNATED WITH AN ASTERISK ARE INTERCHANGEABLE WITH EACH OTHER.

NOTES:

LOCATION OF PROPOSED THROUGH TRACK



DR DEGAN (87)
JONER EXPRESSWAY
LOCKS NORTH OF
ER BOULEVARD)

JAL

DATE NOV 1988

HARLE INTER

FOR PURPOSES ONLY
AN ASTERISK

ZONING OVERRIDE AREA

PROPERTY LINE

RECYCLED
PAPER
WAREHOUSE
AND
STORAGE
(SEE NOTES)

AUXILIARY ACCESS GATE



18110101031

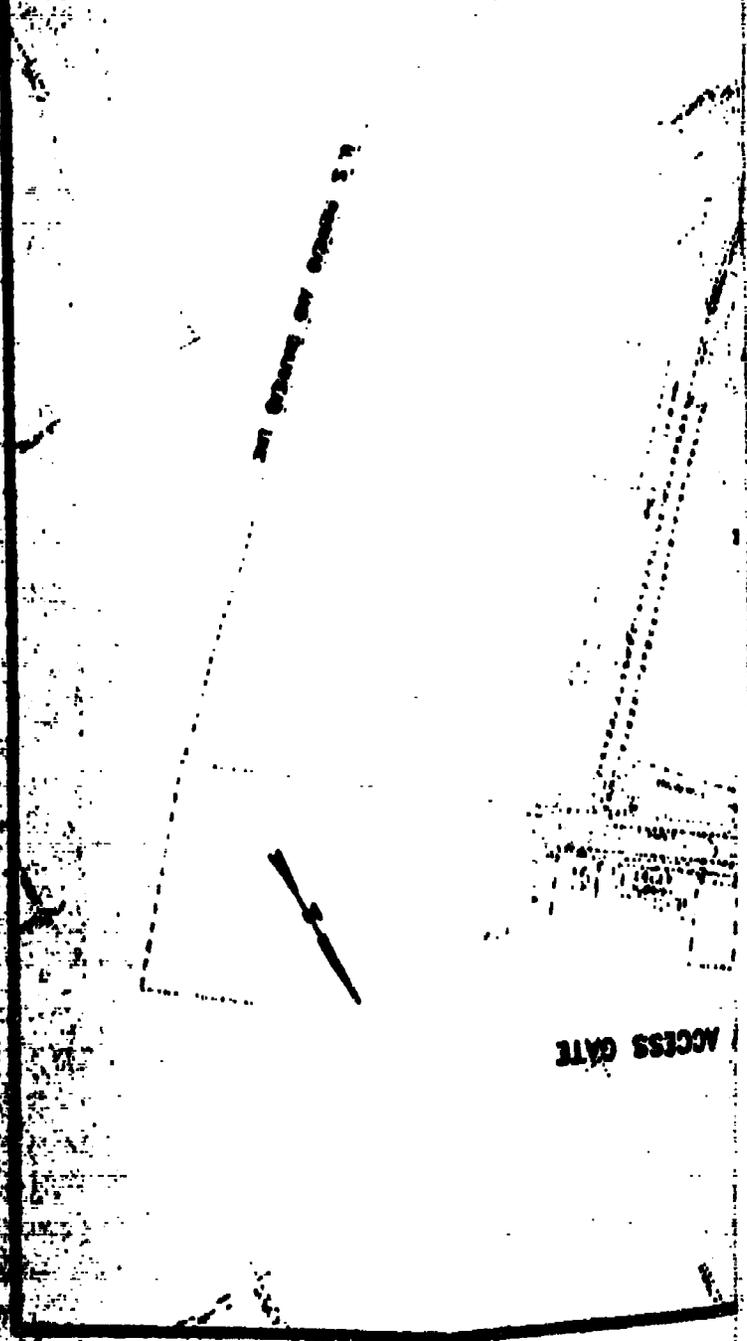
8

TAMS CONSULTANTS, INC.

DATE
NOV 1988

HARLEM RIVER YARD VENTURES INC.
INTERMODAL TRANSPORTATION AND
DISTRIBUTION CENTER
Development Plan

0 100 200 300 400 FEET



ACCESS GATE

APPENDIX C
ENVIRONMENTAL INFORMATION

To download a copy of Appendix C, please visit:

<http://esd.ny.gov/corporateinformation/rfps.html>