

DECLARATION OF RESTRICTIONS

Port of Indiana-Jeffersonville

April 15, 1991

This DECLARATION OF RESTRICTIONS (the "Restriction") is made this 15th day of April, 1991, by the PORTS OF INDIANA, a body corporate and politic existing under the laws of the State of Indiana, and is adopted by the Ports of Indiana for the purpose of imposing on users and occupants of the Port of Indiana-Jeffersonville (the "Port") certain requirements to insure that the real estate and facilities of the Port are employed in the best way which will mutually benefit said users and occupants and the citizens of the State of Indiana.

1. The Port: The real estate and facilities, which are the subject matter of these Restrictions is the real property known as the Port of Indiana-Jeffersonville, located in the City of Jeffersonville, Clark County, Indiana.

2. Affected Entities: All persons, firms, partnerships and corporations, hereinafter separately referred to as an "affected entity", who own, lease or shall hereafter acquire any interest in any portion of the Port shall be bound by these Restrictions (such portion referred to herein as the "affected property"). Any heir, devisee, legatee, personal representative, successor or assign of any affected entity shall also be bound by these Restrictions.

3. Use of Affected Property by Affected Entity: The affected property shall be used by an affected entity for the following purposes only: industrial manufacturing, warehousing or distribution. The affected property shall not be used for any retail purpose except for the sale by the affected entity of a product manufactured on the affected property or such other retail use as allowed by the Ports of Indiana in the exercise of its sole and absolute discretion. The affected property shall not be used or occupied for any of the following purposes (a) residential (b) commercial incineration, (c) junk yard, (d) rubbish, garbage or trash dump, (e) outside storage, (f) commercial excavation of building or construction materials, (g) distillation of bones, (h) dumping, disposal, incineration or reduction of junk, rubbish, garbage, sewage, offal, dead animals or refuse. (i) fat rendering (j) stockyard or slaughter of animals, or (k) smelting of iron, tin, zinc or other ores.

4. Construction of Improvements: The affected entity may construct improvements upon the affected property so long as such construction complies with these Restrictions. All proposed construction must be reviewed by the Ports of Indiana or its nominee in accordance with Section 17 hereof and prior to contracts being let by the affected entity for such construction, written approval of the plans and specifications therefore must be obtained from the Ports of Indiana or its nominee as provided in Section 17 hereof. The review of such plans and specifications by the Ports of Indiana or its nominee shall be for the purpose and benefit of the Ports of Indiana only and the Ports of Indiana makes no warranties or representations as to the suitability or soundness of such plans and specifications. All proposed construction must comply with the plans and specifications approved by the Ports of Indiana or its nominee. Prior to any construction, the affected entity shall deliver to the Ports of Indiana or its nominee copies of all permits required by any governmental entity for such construction.

5. Compliance with Laws: The affected entity shall comply with all rules and regulations promulgated by the Ports of Indiana for the operation of and navigation at the Port as well as the applicable ordinances of the City of Jeffersonville and Clark County, and the laws and titles and regulations of the State of Indiana and the United States of America.

6. Lot and Building Size: No part of the affected property shall be leased or sold to an affected entity, which is less than three (3) acres in size. No building or buildings shall exceed one-half (1/2) of the total ground area of the affected property leased or sold to an affected entity.

7. Set-Back Requirements: No building, structure or improvement shall be located within seventy-five (75) feet of any road or street, nor within twenty-five (25) feet of any property line. The following structures and improvements are specifically excluded from these set-back requirements: (a) roof overhangs, provided written approval thereof is obtained from the Port Engineer in advance of construction, (b) steps and walks, (c) paved parking areas and associated curbing except that such areas shall not be located within ten (10) feet of any public road or street, (d) fences except that no fence shall be located within ten (10) feet of any public road or street, (e) landscaping, (f) planters not to exceed three (3) feet in height, (g) railroad spur tracks, switches and bumpers provided that written approval for their location is obtained from the Port Engineer in advance of construction, and (h) utility service lines.

8. Storage Requirements: All Materials and equipment shall be toted in completely enclosed buildings or shall otherwise be screened by such walls, fences and landscaping as may be determined by the Port Engineer to be adequate to appropriately screen such materials and equipment from areas outside the affected property.

9. Landscaping: Each affected entity shall landscape the affected property. Each affected entity shall maintain its landscaping in a safe, clean and attractive condition. If the Ports of Indiana finds any affected entity deficient in this regard, it may give notice of such deficiency to the affected entity. The affected entity shall correct the deficiency within ten (10) days after receipt of said notice. If the affected entity fails to correct the deficiency within said time period, the Ports of Indiana shall have the right to enter the affected property and take the necessary action to correct said deficiency. The Ports of Indiana shall also have the right to charge the affected entity reasonable charges for correcting said deficiencies and it shall also have the right to collect said charges through legal proceedings.

10. Trees: Each affected entity shall exert its best efforts to preserve the natural beauty of the affected property and, in this regard, it shall not needlessly destroy or remove live trees other than those trees in an area designated and approved for construction.

11. Off-Street Parking: No parking or loading shall be permitted on any public or private road or street or at any other place other than paved parking or loading areas provided in accordance with the following requirements and each affected entity shall be responsible for insuring compliance by its employees and visitors. All off-street parking areas shall be located at least ten (10) feet from any public road or street and at least five (5) feet from any property line. However, no more than fifty (50) percent of the front yard may be used for parking. All driveways and parking areas shall be constructed with a hard surfaced pavement and shall include adequate drainage facilities to dispose of all storm water. Off-street parking areas shall be used for the parking of passenger vehicles or commercial and other vehicles incident to the business conducted on the affected property. No commercial repair work or any service of any kind shall be conducted on such parking areas. Any area lighting shall be arranged in order that the direct source of lighting is away from public roads and streets and adjacent premises. Areas utilized for parking shall be screened, modulated or interrupted from the view of public roads and streets and adjacent premises. This shall be accomplished by employing one or more of the following methods as long as the vision within twenty (20) feet of any intersecting road, street or drive is not obstructed: (a) lineal masses of shrubs — this method requires the use of shrubs which will achieve a height from four (4) to six (6) feet within three (3) years. A minimum size of five (5) gallons is required; (b) lineal or grouped masses of major scale trees — this method requires use of trees which will ultimately provide foliage which is visible above the roof line of the buildings on the affected property; (c) lineal or grouped masses of smaller scale trees — this method requires the use of trees which will ultimately provide foliage or shade patterns on either horizontal or vertical planes; (d) parking lot trees — this method requires one (1) tree for each twenty-five (25) parking stalls (minimum sizes shall be not less than three [3] inches in diameter measured two [2] feet above the ground); and (e) berming — this method requires berming to an

elevation of not less than four (4) feet nor more than six (6) feet on all sides exposed to public roads or streets or adjacent premises. Any such berm shall be planted in grass.

12. Loading and Unloading: At least one (1) loading and unloading space shall be provided by each affected entity. Such spaces shall not be located in the front yard and shall not encroach into any set-back area unless each encroachment is approved in writing by the Ports of Indiana in advance. Any loading dock shall be set back and screened to minimize its view from any public road or street. No loading dock shall be located closer than seventy-five (75) feet to any public road or street unless such location is approved in writing by the Ports of Indiana in advance.

13. Construction and Appearance: All improvements constructed on the affected property shall conform to all applicable building codes and safety standards in effect at the time of such construction or thereafter. No building shall be constructed with wooden frames. All walls shall be of masonry construction or of such other materials as may be considered by the Ports of Indiana or its nominee to be equal to or better than masonry in strength, fire resistance, durability or appearance. Front walls and one-third of each side-wall nearest the front wall (the side wall to be divided into thirds vertically), shall be finished with face brick, stone, precast concrete or such other materials which in the opinion of the Ports of Indiana or its nominee is equal to or better than these materials in strength, fire resistance, appearance and durability. All buildings constructed on corner lots shall be considered to have two fronts. When walls other than front walls, as described above, are constructed of light-weight aggregate or concrete block, unless such walls are finished in stucco, granite or equivalent, the joints shall be rubbed down and covered sufficiently with standard waterproofing paint. Exterior walls of sheet or corrugated iron, steel or aluminum will be permitted only upon specific approval in writing by the Ports of Indiana or its nominee in advance.

14. Utility Easements: All utility easements shall be kept free of all buildings and structures and the removal of any obstruction by a utility company shall in no way obligate the utility company in damages or to restore the obstruction to its original condition. Approval in hardship cases will be considered after written application to the Ports of Indiana or its nominee providing no feasible alternative exists.

15. Performance Standards: Each affected entity shall comply with the following performance standards:

(a) Fire and Explosion Hazards: All activities shall be carried on only in structures which conform to the standards of the National Board of Fire Underwriters— concerning the plant operation and storage of explosive raw materials, fuels, liquids and finished products.

(b) Radioactivity: All activities located on the affected property shall comply with Title 10. Chapter 1. Part 20. Code of Federal Regulations. Standard for Protection Against Radiation’.

(c) Smoke, Fumes, Gases, Dust, Odors: Each affected entity shall comply with all applicable laws, ordinances, governmental rules and governmental regulations relating to the emission of smoke, fumes, gas, dust or odors. Without limitation of the foregoing, such emissions shall at all times be in compliance with applicable air pollution control and occupational safety and health laws, ordinances, rules and regulations adopted by any governmental authority having jurisdiction.

(d) Vibration: No affected entity shall permit any level of vibration which is in violation of any applicable law, ordinance, governmental rule or governmental regulation pertaining to occupational safety and health, noise pollution or similar provisions. There shall be no vibration which would violate any applicable building code, law, ordinance, governmental rule or governmental regulation or which would be likely to endanger or threaten the structural integrity of any improvements constructed upon the affected property or other property located within the

Port.

(e) Noise: There shall be no operational industrial noise measured from any point on the property line of the affected property on which the industrial operation is located which shall exceed the values given in the following table in any octave band of frequency. The sound pressure level shall be measured with a Sound Level Analyzer that conforms to specifications published by the “American Standard Sound Level Meters for Measurements of Noise and Other Sounds” Z-24.3-1994 American Standards Association, Inc., New York, New York and “American Standard Specifications for an Octave Bank Filter Set for the Analysis of Noise and Other Sounds” Z-24-10-1953, American Standards Association Inc., New York. New York.

<u>Frequency Band in Cycles Per Second</u>	<u>Sound Pressure Level Decibels</u>
0-75	65
75-150	50
150-300	44
300-600	38
600-1200	35
1200-2400	32
2400-4800	29
Above 4800	26

(f) Liquid or Solid Wastes: The discharge of industrial wastes into a stream or open or closed drain is prohibited. All methods of sewage and industrial waste treatment and disposal shall be approved by the Indiana Stream Pollution Control Board. More specifically, all sanitary and process liquid waste must be discharged into the sanitary sewer system. The volume, quality and strength of all liquid waste shall be discharged into the sewer in strict accordance with applicable regulations and ordinances.

(g) Site Drainage: No driveways, walks, parking areas, etc., may be constructed across any drainage ditch, channel or swale without providing adequate culverts or waterway openings for natural drainage. Such culverts, etc., shall provide the minimum waterway opening and shall be at the proper gradient as established by the Ports of Indiana. No rain and storm water run-off or such drainage as root water, street pavement and surface water caused by natural precipitation or ground water from footing or foundation drains or other sub—surface water drainage shall at any time be discharged into or permitted to flow into the sanitary sewer system, which shall be a separate sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned storm water, surface and sub-surface sewer system.

16. Signs: Signs are permitted on the affected property as hereinafter regulated, provided that no sign shall be permitted which is not accessory to the business conducted on the affected property and then only if the following requirements are complied with:

(a) Business signs may be erected providing the sum area of all signs does not exceed two (2) square feet per foot of building frontage. The total area of business signs shall not exceed 100 square feet. Such signs shall be attached to the principal building and shall not extend more than five (5) feet above the roofline.

(b) In addition to building signs, each affected property may have one freestanding nameplate sign which is accessory to the business conducted on the affected property. Any freestanding nameplate sign as permitted by this section must meet all of the following requirements:

- (1) The height shall not exceed six (6) feet.
- (2) No freestanding nameplate sign shall be nearer than five (5) feet from any public street or road or property line.
- (3) The area of the sign shall not exceed nine (9) square feet.
- (4) In the event there is more than one occupant in the business building, each occupant is entitled to one (1) nameplate sign attached to the freestanding sign provided. However, each such nameplate shall be of uniform dimensions and lettering, and no nameplate sign shall exceed nine (9) square feet in area.
- (c) No sign shall be lighted by means of flashing or intermittent illumination.
- (d) On a corner lot, within the triangular area formed by the center lines of public streets or roads, and a line drawn between points on the center lines of each public street or road at a distance of ninety (90) feet from the center line of the intersection, there shall be no sign or obstruction of vision in excess of 3-1/2 feet in height above the center lines of the pavements at these points.

17. Site Plan Approval: Prior to construction or alteration of any building or improvement on an affected property, two (2) sets of site plans and specifications for such building, structure, improvements or alteration shall be submitted to the Ports of Indiana or its nominee and written approval of such plans by the Ports of Indiana or its nominee shall be proof of compliance with these restrictions: provided, however, that if the Ports of Indiana or its nominee fails to approve or disapprove such plans and specifications within twenty (20) business days after such plans have been submitted to it, such approval shall not be required. Site plans shall contain the following information:

- (a) The site plans shall be drawn to a scale not greater than one-inch equals fifty (50) feet and shall show the following:
 - (1) All lot line dimensions.
 - (2) Building setback, side and rear yard distances.
 - (3) Location of all proposed buildings.
 - (4) Location of off-street parking areas with dimensions showing parking spaces, access drives, traffic circulation and the location and description of any lighting in connection with the parking area. This includes the location and dimensions of all loading and unloading docks and area.
 - (5) Location and description of all proposed signs.
 - (6) Type of surface paving and curbing.
 - (7) Storm drainage facilities and means of disposal of storm water.
 - (8) All landscaping, fences, walls, or similar facilities to be provided.

(9) The location of all structures within 300 feet of the premises.

(10) The specific types of material to be used in construction.

(b) If the site plan is rejected by the Ports of Indiana or its nominee, the applicant shall remedy any and all elements in the plan prior to further consideration.

18. Taxes: The affected entity shall be responsible for and pay and discharge when due, any and all municipal, state and federal taxes, assessments, levies and other such charges, general and specific, ordinary and extraordinary, of whatever name, nature, and kind, that may be charged against the affected property and the affected entity's improvements, additions, fixtures or otherwise, and any and all other manner of tangible property which may from time to time be placed or stored on the affected property. Nothing herein shall be construed as limiting or otherwise preventing the affected entity from contesting or otherwise challenging such taxes for or on any account or reason in a proper form and manner as prescribed by the applicable law.

19. Risk of Loss. Disclaimers. Indemnification and Insurance: The affected entity shall bear the risk of loss and damage to the affected property. The affected entity agrees and acknowledges that the Ports of Indiana and its Ports of Indianaers, officers and employees shall not be responsible for any loss, injury, death or damages which may happen to the person or property of the affected entity or of its officers, employees, licensees, invitees, customers, contractors, subcontractors or others upon the affected property. The affected entity shall indemnify, defend and hold the Ports of Indiana and its Ports of Indianaers, officers and employees harmless from all claims and suits for loss of or damage to property, and injuries to or death of persons and from all judgments recovered therefore, and for expenses in defending said claims or suits, including reasonable court costs and litigation expenses caused by any act or omission of the affected entity and/or its officers, employees or others and not contributed to by the fault or negligence of the Ports of Indiana or its Ports of Indianaers, officers or employees. The affected entity agrees that all work done on the affected property shall be at the sole risk of the affected entity, including any loss arising or resulting from the condition of the affected property. The affected entity understands that no representations have been made by the Ports of Indiana concerning the condition of the affected property or its suitability for any use or purpose whatsoever. The affected entity shall procure and maintain at its sole cost and expense, insurance, in its name and in the name of the Ports of Indiana, of the following kinds and amounts:

(a) Workers Compensation: The affected entity shall maintain such workers compensation insurance as will comply with all applicable statutes, and provide employer's liability coverage with a minimum limit of \$1,000,000. Coverage shall be included for the United States Longshoremen's and Harbor Workers' Act.

(b) Comprehensive and General Liability: The affected entity shall maintain comprehensive and general liability insurance covering the premises, operation, independent contractors, products/completed operations, and contractual liability hazards, subject to the following minimum limits:

Bodily injury, Including Death	\$1,000,000 each person \$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence \$1,000,000 aggregate operations \$1,000,000 aggregate protective \$1,000,000 aggregate product \$1,000,000 aggregate contractual

Contractual liability insurance must be included to cover the hold harmless agreements between the affected entity and the Ports of Indiana.

(c) **Comprehensive Automobile Liability:** The affected entity shall maintain comprehensive automobile liability insurance covering all owned, hired and non-owned vehicles subject to the following minimum limits:

Bodily Injury Liability	\$1,000,000 each person
Including Death	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence

(d) **Wharfinger's Liability:** The affected entity shall maintain wharfinger's liability insurance to cover loss or damage sustained by self-propelled and non-self propelled vessels and their cargoes while such property is in its care, custody or control at the landing and mooring facilities on the Port, subject to the following minimum limit:

- (1) \$1,000,000 for any one casualty or series of casualties arising from the same cause.
- (2) Include coverage for loss or damage resulting from loading and unloading operations performed by or for the affected entity.
- (3) Include coverage for loss or damage to other property now owned by the affected entity including vessels while approaching, at, and departing from the landing and mooring facilities, also for loss of life or bodily injury if arising out of the foregoing operations.
- (4) Add the Ports of Indiana as an additional insured.
- (5) Include a provision to the effect that the Ports of Indiana shall not be stopped from recovery against the named insured under this policy due to the Ports of Indiana being covered as an additional insured.

(e) **Umbrella Excess Liability:** An umbrella policy is not required. However, if the affected entity has an umbrella excess liability policy with a limit of \$1,000,000 or more, it shall be permissible to reduce the limits for paragraphs (a), (b), (c) and (d) to whatever primary limits are required by the umbrella policy.

(f) The affected entity shall submit to the Ports of Indiana two (2) copies of insurance policies in a form that will acknowledge all of the insurance as required herein. The comprehensive general liability policy must state specifically that contractual liability coverage is provided for the indemnity provision. All policies must state that thirty (30) days advance written notice will be given to the Ports of Indiana in the event of cancellation or material change in the insurance.

Each affected entity shall, in the event of damage or loss to any improvement on the affected property, proceed promptly to repair or reconstruct such improvements in a manner consistent with the original construction or clear the affected property of all debris and return it to substantially the condition it existed prior to construction of the improvements.

20. **Use of Harbor:** The affected entity shall pay to the Ports of Indiana for the use by the affected entity of the harbor, docks, wharves, railroad tracks and appendant facilities thereto the charges therefor as set forth in the applicable published tariff of the Ports of Indiana. For the purpose of this section, the phrase "use by the affected entity" shall mean not only by it but also by its customers or suppliers or by vessels and vehicles owned or chartered in connection with the delivery or transportation of materials, goods or products to and from the affected property.

The affected entity shall also abide by the Harbor Tariff and Harbor Regulations subject to the unqualified and unconditional right of the Ports of Indiana to change, amend, or revise said tariff and to increase or decrease the rates and charges specified therein. The affected entity agrees that the billing for said charges shall be determined by the Ports of Indiana on the basis of records kept by the Ports of Indiana, and any exception thereto by the affected entity shall require documentation by the affected entity reasonably satisfactory to the Ports of Indiana. The Ports of Indiana shall maintain said harbor, docks, wharves, railroad tracks and appendant facilities in good order and repair.

The Ports of Indiana does not guarantee that said docks will sustain specific weights per square foot in excess of the following load limits:

(a) the allowable loading in relation to distance from the face of the tied back wall shall be as follows:

<u>Distance From Face</u>	<u>Allowable Load Pounds Per Square Feet</u>
At face	1,000
5 Feet	1,240
10 Feet	1,590
15 Feet	2,110
20 Feet	2,940
25 Feet	4,370
30 Feet	7,160

As the distance above 30 feet increases, the loading in pounds per square based on the bearing pressure, which the dock surface can take.

(b) the allowable loading in relation to distance from the edge of the cell shall be as follows:

<u>Distance from Face of Cell</u>	<u>Allowable Load-- Pounds Per Square Foot</u>
At Face	5,600
5 Feet	7,800
10 Feet	11,600
15 Feet	19,200

(This chart assumes that the distance from the edge of the cell is at all locations where the outside of the cell is not backfilled.)

The affected entity shall indemnify and save harmless the Ports of Indiana from any damage which the Ports of Indiana shall sustain by reasons of collapse or damage resulting from the affected entity's loading of said docks over said load limits.

21. Right of Inspection: The affected entity shall allow the Ports of Indiana or its authorized representative to enter the affected property at all reasonable hours for the purpose of inspecting the same and the buildings, structures and improvements thereon and for the purpose of posting notices thereon, but the Ports of Indiana shall not exercise this right in such a way as to interfere unreasonably with the conduct of the affected entity's business thereon.

22. Corps of Engineers' Permit Requirements: The affected entity shall conform to all rules, regulations and conditions set forth by the United States Army Corps of Engineers permit number 79-062 issued to the Ports of Indiana on June 29, 1979, and any amendments, changes or requirements imposed thereafter in connection with said permit. Any fine, fee, charge or loss imposed on the Ports of Indiana by virtue of any violation of such rules, regulation or condition

by the affected entity shall be the sole responsibility of the affected entity and it shall indemnify, defend and hold the Ports of Indiana harmless from the same. In addition, the affected entity shall immediately quit and desist from such violation.

23. Recapture: If, after the expiration of one (1) year from the date of execution of a lease agreement or purchase agreement by an affected entity and the Ports of Indiana, such affected entity shall fail to begin, in good faith, the construction of such affected entity's principal building on its affected property, the Ports of Indiana shall have the right to cancel said lease or purchase agreement and regain possession of the affected property by tendering to the affected entity all rental or purchase payments made by the affected entity to the Ports of Indiana up to such tender by the Ports of Indiana. Upon the tender of said amounts the lease or purchase agreement shall automatically terminate without further action by either party. If a memorandum of lease or other document describing said lease or purchase agreement has been filed of record, the Ports of Indiana may file an affidavit of record stating that the lease or purchase agreement has been terminated and the affected entity has no further rights and third parties may rely, without further inquiry, on such affidavit.

24. Notices: All notices under these Restrictions shall be sufficient if sent by certified mail with return receipt requested, postage prepaid and properly addressed.

25. Enforcement: The Ports of Indiana may enforce these Restrictions by injunctive process or may utilize any other legal or equitable remedy at the sole cost and expense of the affected entity violating these Restrictions (which cost and expense shall become a lien on the affected property subject to foreclosure). The failure of the Ports of Indiana to take action with respect to any breach or failure to comply with these Restrictions shall not be deemed to be a waiver of such Restrictions.

26. Amendments: The Ports of Indiana reserves the right to unilaterally make reasonable amendments to these Restrictions and such reasonable amendments shall be binding on all affected entities and their heirs, devisees, legatees, personal representatives, successors and assigns and all real estate within the Port, including each affected property. The Ports of Indiana as referred to herein shall mean any and all successors, assigns and entities of a like nature taking over the functions of the Ports of Indiana and the State of Indiana.

IN WITNESS WHEREOF, the Ports of Indiana has executed these Restrictions as of the date first above written.

PORTS OF INDIANA

Attest:

Arthur D. Hopkins
Secretary-Treasurer

By: _____
R. Louie Gonzalez, Chairman