FOI #16024

Olivencia, Mildred

From: CLech@mmmpc.com
Sent: Monday, May 18, 2015 2:14 PM
To: Olivencia, Mildred
Cc: Torres-Rojas, Genara; Van Duyne, Sheree; Ng, Danny
Subject: Freedom of Information Online Request Form

Information:

First Name: Christopher
Last Name: Lech
Company: Marrinan & Mazzola Mardon, P.C.
Mailing Address 1: 26 Broadway, 17th Floor
Mailing Address 2:
City: New York
State: NY
Zip Code: 10004
Email Address: CLech@mmmpc.com
Phone: 212425-3240
Required copies of the records: Yes

List of specific record(s):
Any lease agreements, sublease agreements, or any other type of contractual agreement between or among Port Authority of New York and New Jersey, Maher Terminals, LLC, ExpressRail System, Novelties Distribution Corporation, APM Terminals, Millennium Marine Rail, LLC, and any wholly-owned or partially-owned subsidiaries of the aforementioned parties, including any documents, charts, pictures, or exhibits depicting, illustrating, or describing the distribution, ownership, and specific boundary lines of the property at the Port Elizabeth andor Port Newark Marine Terminals.

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

July 8, 2015

Mr. Christopher Lech
Marrinan & Mazzola Mardon, P.C.
26 Broadway, 17th Floor
New York, NY 10004

Re: Freedom of Information Reference No. 16024

Dear Mr. Lech:

This is in response to your May 18, 2015 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy enclosed) for copies of any lease agreements, sublease agreements, or any other type of contractual agreement between or among Port Authority of New York and New Jersey, Maher Terminals, LLC, ExpressRail System, Novelties Distribution Corporation, APM Terminals, Millennium Marine Rail, LLC, and any wholly-owned or partially-owned subsidiaries of the aforementioned parties, including any documents, charts, pictures, or exhibits depicting, illustrating, or describing the distribution, ownership, and specific boundary lines of the property at the Port Elizabeth andor Port Newark Marine Terminals.

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/16024-LPA.pdf. Paper copies of the available records are available upon request.

Please be advised that all other material responsive to the request are available on the following Port Authority's websites: http://www.panynj.gov/corporate-information/pdf/port-lease-apm.pdf and http://www.panynj.gov/corporate-information/pdf/port-lease-maher-terminals.pdf

Please be advised that no documents were found for ExpressRail System and Novelties Distribution Corporation.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,

Danny Ng
FOI Administrator

Enclosure

4 World Trade Center, 18th Floor
150 Greenwich Street
New York, NY 10007
T: 212 435 7348 F: 212 435 7555

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

MAHER TERMINALS, INC.

Dated as of September 1, 2001

MLPF 4473.1

THIS AGREEMENT OF LEASE, made as of the 1st day of September, 2001, by and between THE PORT AUTHORITY of NEW YORK and NEW JERSEY (hereinafter called "the Port Authority") a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office and place of business at One World Trade Center, New York, New York 10048, and MAHER TERMINALS, INC., a New Jersey corporation (hereinafter called "the Lessee") with an office and place of business at One Journal Square Plaza, Jersey City, New Jersey 07306, whose representative is M. Brian Maher,

WITNESSETH, That:

The Port Authority and the Lessee, for an in consideration of the covenants and mutual agreements hereinafter contained, do hereby agree as follows:

ARTICLE I. The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at the Elizabeth-Port Authority Marine Terminal (sometimes hereinafter called "the Facility"), in the City of Elizabeth, County of Union and State of New Jersey, the following described premises:

> the open area and the enclosed spaces shown in diagonal crosshatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A",

together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located or to be located therein or thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential property.

ARTICLE II. The term of the letting shall commence at 12:01 o'clock A.M. on September 1, 2001 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on August 31, 2015.

ARTICLE III. The Lessee shall pay a basic rental as set forth in Special Endorsements No. 2 and No. 3 hereto.

ARTICLE IV. The Lessee shall use and occupy the premises for the following purposes only, and for no other purpose whatsoever:

As set forth in Special Endorsement No. 1 hereto.

ARTICLE V. The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 30) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

TITLE	NUMBER	DATE
Services	Standard Endorsement No. L5.1	10/6/75
Elizabeth-Port Authority Marine Terminal	Standard Endorsement No. L19.11	10/6/73
Insurance	Standard Endorsement No. L21.1	3/25/82
Abatement	Standard Endorsement No. L27.4	10/6/68
Special Endorsements		
Space Plan - Exhibit A		
Schedule naming Rules, Regulations, Rates and Charges applying at Port Authority Marine Terminals - Exhibit R		

ARTICLE VI. The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee hereto have executed these presents as of the date first above written.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ATTEST:

Daniel D. Bergstein
Secretary
The Port Authority of NY & NJ

By _____
RICHARD M. LARRABEE
Title DIRECTOR, PORT COMMERCE DEPT.
(Seal)

MAHER TERMINALS, INC.

ATTEST:

Secretary

By _____

Title: Chairman and Chief Executive Officer
(Corporate Seal)

APPROVED:
FORM TERMS

TERMS AND CONDITIONS

SECTION 1. *Ingress and Egress*

The Lessee shall have the right of ingress and egress between the premises and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area, whether within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in any streets, ways and walks near the premises.

SECTION 2. *Governmental and Other Requirements*

(a) The Lessee shall procure from all governmental authorities having jurisdiction of the operations of the Lessee hereunder, all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations.

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

SECTION 3. *Rules and Regulations*

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Lessee thereof by either delivery of a copy, or by publication in a newspaper published in the Port of New York District or by making a copy available at the office of the Secretary of the Port Authority.

(c) No statement or provision in the said Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

SECTION 4. *Method of Operation*

(a) In the performance of its obligations hereunder and in the use of the premises the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the premises or at the Facility and within twenty four hours remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or others on the premises with the consent of the Lessee.

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the premises and the Lessee shall remove from the premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. The receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof.

(c) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Facility.

(d) The Lessee shall not commit any nuisance or permit its employees or others on the premises with its consent to commit or create or continue or tend to create any nuisance on the premises or in or near the Facility.

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the premises or the Facility or any part thereof.

(f) The Lessee shall not cause or permit to be caused or produced upon the premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases vapors or odors.

(g) The Lessee shall not do or permit to be done any act or thing at the Facility which shall or might subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the premises or any part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and, if the premises are located in New York, of the Insurance Services Office of New York, or, if the premises are located in New Jersey, of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating

to construction by the Lessee, make any and all structural and non-structural improvements, alterations or repairs of the premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction.. If by any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

(j) From time to time and as often as required by the Port Authority, the Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and fire-fighting equipment on the premises whether furnished by the Port Authority or by the Lessee. The Lessee shall keep all fire-fighting and fire extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

SECTION 5. *Signs*

(a) Except with the prior consent of the Port Authority, the Lessee shall not erect, maintain or display any advertising, signs, posters or similar devices at or on the premises or elsewhere at the Facility.

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Lessee on the premises or elsewhere on the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the premises and the Facility to the same condition as at the commencement of the letting. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every sign or piece of advertising and so to restore the premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

SECTION 6. *Indemnity*

The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the premises by the Lessee or by others with its consent or out of any other acts or omissions of the Lessee, its officers and employees on the premises or elsewhere at the Facility, or out of the acts or omissions of others on the premises with the consent of the Lessee, including claims and demands of the party from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

SECTION 7. *Maintenance and Repair*

(a) The Lessee shall at all times keep the premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Lessee located in or on the premises.

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the premises which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers, employees or of other persons on or at the premises with the consent of the Lessee.

(c) With respect to all parts of the premises, including, but without limitation thereto, such of the following as are or may be during the term of the letting located in or on the premises; fences, the exterior and interior of the building walls the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and unpaved areas, glass of every kind, and the utility, mechanical,

electrical and other systems, the Lessee shall take the same good care of the premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the premises or adversely affect the efficient or the proper utilization of any part of the premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (the exterior of the building, areas of joint or common use and areas visible to the general public to be painted in colors which have been approved by the Port Authority), and, except under circumstances as set forth in paragraph (a) of Section 8 of these Terms and Conditions, the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the premises, all of which shall be in quality equal to the original in materials and workmanship and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) The obligation of the Lessee as set forth in paragraphs (b) and (c), of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; *provided, however*, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

SECTION 8. *Casualty*

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the premises with its consent) so as to render it untenantable in whole or substantial part, then

(1) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence, and the rental hereunder shall be abated as provided in this Agreement, for the period from the occurrence of the damage to the completion of the repairs or rebuilding, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(2) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage or if one or more of the structures or buildings which are a part of the premises or the entire premises require rebuilding, then the Port Authority shall have options: (i) to proceed with due diligence to repair or to rebuild as necessary or (ii) to terminate the letting as to the damaged structure or structures, building or buildings or portion thereof only; or (iii) to cancel this Agreement and terminate the letting as to the entire premises; and the rental payable under this Agreement shall be abated, as provided in this Agreement, either, as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination, for the area or areas involved.

(b) "Substantial part" shall mean for the purpose of this Section at least twenty-five percent (25%) of the usable floor space in the structure or building or part thereof comprising the premises, or, if there is more than one structure or building on the premises, at least twenty-five percent (25%) of the aggregate usable floor space comprising the premises in all of the structures and buildings covered by insurance.

(c) The parties hereby stipulate that if the premises are in New Jersey neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the premises are in New York, neither the provisions of Section 227 of the Real Property Law of New York nor those of any other similar statute shall extend or apply to this Agreement.

(d) In the event of damage to or a partial or total destruction of the premises, the Lessee shall within five days of the occurrence commence to remove all of its damaged property and all debris thereof from the premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand.

SECTION 9. *Assignment and Sublease*

a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof.

(b) The Lessee shall not sublet the premises or any part thereof.

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of subdivisions (a) or (b) of this Section or if the premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right to this Agreement or letting or who occupies the premises and shall apply the net amount collected to the rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in subdivisions (a) and (b) of this Section nor an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as tenant, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein.

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the premises or any portion thereof for any purpose other than as provided in Article IV of this Agreement.

SECTION 10. *Condemnation*

(a) In any action or other proceeding by any governmental agency or agencies for the taking for a public use of any interest in all or part of the premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Lessee shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee.

(b) In the event that all or any portion of the premises is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the premises so required. Such termination shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the premises so required upon the effective date of such termination in the same condition as that required for the delivery of the premises upon the date originally fixed by this Agreement for the expiration of the term of the letting. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery

by the Lessee nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be an eviction of the Lessee or a breach of this Agreement or be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise.

(c) In the event that the taking or conveyance covers the entire premises, or in the event that the letting is terminated with respect to the entire premises pursuant to paragraph (b) of this Section, then this Agreement shall, as of the date possession is taken by such agency or agencies from the Port Authority, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the said date were the original date of expiration hereof.

(d) In the event that the taking or conveyance covers a part only of the premises, or in the event that the letting is terminated pursuant to paragraph (b) of this Section with respect to a part only of the premises, then the letting as to such part shall, as of the date possession thereof is taken by such agency or agencies, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the term of the letting had on that date expired, and the basic rental shall be abated as provided hereinafter.

(e) In the event that the taking or conveyance or the delivery by the Lessee or taking by the Port Authority pursuant to paragraph (b) of this Section covers fifty percent (50%) or more of the total usable area of the premises including both open and enclosed space, then the Lessee and the Port Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

SECTION 11. *Construction by the Lessee*

Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any other construction work on the premises or alter, modify, or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made with or without such consent and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, or within sixty (60) days after expiration or earlier termination of the term of the letting, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

SECTION 12. *Additional Rent and Charges*

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the basic rental as set forth in Article III hereof.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should

the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof shall likewise be *prima facie* evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" in this Agreement shall mean and include: (1) Payroll costs, including contributions to the Retirement System, or the cost of participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation and authorized absence pay; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) 30% of the sum of the foregoing.

SECTION 13. *Rights of Entry Reserved*

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the premises for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise.

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed necessary or advisable and, from time to time, to construct or install over, in or under the premises new systems or parts thereof, and to use the premises for access to other parts of the Facility otherwise not conveniently accessible; *provided, however*, that in the exercise of such rights of access, repair, alteration or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

(c) In the event that any property of the Lessee shall obstruct the access of the Port Authority, its employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, the Lessee shall move such property, as directed by the Port Authority, in order that the access may be had to the system or part thereof for its inspection, maintenance or repair, and, if the Lessee shall fail to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(d) Nothing in this Section shall or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the premises and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises nor for any injury or damage to the premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the acts of the Port Authority).

(e) At any time and from time to time during ordinary business hours within the three (3) months next preceding the expiration of the letting, the Port Authority, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same and during such three- month period the Port Authority may place and maintain on the premises, the usual "To Let" signs, which signs the Lessee shall permit to remain without molestation.

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the premises, the Port Authority may immediately enter and alter, renovate and redecorate the premises.

(g) The exercise of any or all of the foregoing rights by the Port Authority or others shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

SECTION 14. *Limitation of Rights and Privileges Granted*

(a) The premises are let to the Lessee and the Lessee takes the same subject to all the following: (i) easements. restrictions, reservations, covenants and agreements if any, to which the premises may be subject, rights of the public in and to any public street (ii) rights, if any, of any enterprise, public or private which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the municipality and State in which the premises are located, (iii) permits, licenses, regulations and restrictions, if any, of the United States, the municipality or State in which the premises are located, or other governmental authority

(b) No greater rights or privileges with respect to the use of the premises or of the facility or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted.

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a building or buildings, if any are included in the premises, (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the premises.

SECTION 15. *Prohibited Acts*

(a) Unless otherwise expressly permitted so to do, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the premises of any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation, dispensing or sale of food, beverages tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, or of any equipment or device for the furnishing to the public of service of any kind, including therein, without limitation thereto, telephone pay-stations.

(b) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the premises; *provided, however,* that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machine installed except at the sole discretion of the Port Authority.

SECTION 16. *Termination*

(a) If any one or more of the following events shall occur, that is to say:

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if the Lessee is a corporation, by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within thirty (30) days after the filing thereof; or

(4) The letting or the interest of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(5) The Lessee, if a corporation, shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(6) If the Lessee is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

(7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee, and such possession or control shall continue in effect for a period of fifteen (15) days; or

(8) The Lessee shall voluntarily abandon, desert or vacate the premises or discontinue its operations at the premises or at the Facility or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the premises, regardless of the fault of the Lessee; or

(9) Any lien shall be filed against the premises because of any act or omission of the Lessee and shall not be discharged within twenty (20) days; or

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required hereunder when due to the Port Authority; or

(11) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this agreement, on its part to be kept, performed or observed, within ten (10) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

(b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the commencement of the letting, the Lessee shall not be entitled to enter into possession of the premises, and the Port Authority, upon the occurrence of any such event, or at any time thereafter, during the continuance thereof, by twenty-four (24) hours' notice, may cancel the interest of the Lessee under this agreement, such cancellation to be effective upon the date specified in such notice.

(c) No acceptance by the Port Authority of rentals, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the Port Authority to terminate the letting. No waiver by the Port Authority of any default on the part of the Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

(d) The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Lessee, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

SECTION 17. *Right of Re-entry*

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 16 of these Terms and Conditions, have the right to re-enter the premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

SECTION 18. *Waiver of Redemption*

The Lessee hereby waives any and all rights to recover or regain possession of the premises and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains possession of the premises in any lawful manner.

SECTION 19. *Survival of the Obligations of the Lessee*

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 16 of these Terms and Conditions, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 17 of these Terms and Conditions, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Article II hereof, and the amount or mounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) an account of the Lessee's rental obligations, shall be the sum of the following:

(1) The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of a 30-day month; and

(2) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the demised premises, for legal expenses, boiler insurance premiums, if any, putting the premises in order including without limitation, cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

SECTION 20. *Reletting by the Port Authority*

The Port Authority, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon any re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions, may occupy the premises or may relet the premises and shall have the right to permit any person, firm or corporation to enter

upon the premises and use the same. Such reletting may be of part only of the premises or of the premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions have the right to repair and to make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the said premises or portion thereof during the balance of the term of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port Authority may itself during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

SECTION 21. *Remedies to Be Nonexclusive*

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

SECTION 22. *Surrender*

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the same condition as at the commencement of the letting, reasonable wear arising from use of the premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such removal. If the Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first, to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

SECTION 23. *Acceptance of Surrender of Lease*

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Lessee. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the Port Authority, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

SECTION 24. *Notices*

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing (which shall include a telegram when delivered to the telegraph company), and all such notices

and requests shall be telegraphed or personally delivered to the party or to the duly designated officer or representative of such party or delivered to an office or residence of such party, officer or representative during regular business hours, or delivered to the residence of such party, officer or representative or delivered to the premises, or forwarded to him or to the party at the office or residence address by registered mail. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office, the address of which is set forth on the first page of this Agreement, as their respective offices where notices and requests may be served.

(b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address. If any notice is sent by telegraph, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice by the telegraph company to the addressee or at the address thereof.

SECTION 25. *General*

(a) Wherever in this Agreement the Lessee agrees or is required to do or has the right to do, any act or thing, the following shall apply:

(1) If the Lessee is a corporation, its obligation shall be performed by it and its rights shall be exercised only by its officers and employees or

(2) If the Lessee is a partnership, its obligations shall be performed and its rights shall be exercised by its partners and employees only or

(3) If the Lessee is an individual, his obligations shall be performed and his rights shall be exercised by himself and his employees only;

(4) None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons firms or corporations doing business with it or using or on or at the premises with its consent.

(b) If more than one individual or other legal entity is the Lessee under this Agreement, each and every obligation hereof shall be the joint and several obligation of each such individual or other legal entity.

(c) Unless otherwise stated in Article IV on page 2 of this Agreement, the rights of user thereby granted to the Lessee with respect to the premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

(d) The Lessee's representative, hereinbefore specified in this Agreement, (or such substitute as the Lessee may hereafter designate in writing) shall have full authority to act for the Lessee in connection with this Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

(e) The Section headings in these Terms and Conditions and in the endorsements, if any, attached hereto are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(f) All payments required of the Lessee by this Agreement shall be made at the office of the Treasurer of the Port Authority, One World Trade Center, New York, New York 10048, or to such other officer or address as may be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly prorated.

(g) This Agreement does not constitute the Lessee the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint adventure is hereby created, notwithstanding the fact that all or a portion of the rental to be paid hereunder may be determined by gross receipts from the operations of the Lessee hereunder.

(h) The phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, motors, cables, fixtures and other equipment.

(i) All designations of time herein contained shall refer to the time-system then officially in effect in the municipality wherein the premises are located.

SECTION 26. *Premises*

(a) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the premises or the suitability thereof for the operations permitted on the premises by this Agreement. The Lessee, prior to the execution of this Agreement, has thoroughly examined the premises and has found them to be in good order and repair and determined them to be suitable for the Lessee's operations hereunder. Without limiting any obligation of the Lessee to commence operations hereunder at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the Lessee's operations hereunder so that there is possibility of injury or damage to life or property and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

(b) The Port Authority shall not be liable to the Lessee, or to any person, for injury or death to any person or persons whomsoever, or damage to any property whatsoever at any time in the premises or elsewhere at the Facility, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, gas, steam, or electricity, whether the same may leak into, or fall, issue, or flow from any part of the Facility, or from any other place or quarter.

(c) If permission is given to the Lessee to enter into the possession of the premises or to occupy space other than the premises prior to the date specified in Article II as the commencement of the term of the letting, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the premises, the date of such possession shall be the date of commencement of the term hereunder.

SECTION 27. *Postponement*

If the Port Authority shall not give possession of the premises on the date fixed in Article II for the commencement of the term, by reason of the fact that the premises or any part thereof are in the course of construction,

repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the term shall in any wise affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any wise to extend the term beyond the date stated in Article II for expiration. However, the rent shall not commence until possession of the premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Article II for commencement of the term then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof.

SECTION 28. *Force Majeure*

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors). Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption.

(b) The Port Authority shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefor shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Port Authority as a public agency.

(c) No abatement, diminution or reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

SECTION 29. *Brokerage*

The Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Agreement.

SECTION 30. *Non-liability of Individuals*

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent, or employee thereof, shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

(a) The Port Authority agrees to grant (if requested so to do by the Lessee), to suppliers of water, gas, electricity and telephone service operating in the vicinity a right of way or rights of way under the Facility from the streets outside of the Facility to the premises for the sole purpose of supplying such service or services to the Lessee. No such right of way shall include the right to use any system, equipment or portion thereof constructed or owned by or leased to the Port Authority.

(b) The Lessee shall promptly pay all water bills covering its own consumption. Such payment shall include any factor which may have been included by the appropriate governmental authority as a sewer-rent or other charge for the use of a sewer system. In the event that any such water bill shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments at any time so made shall constitute an additional item of rental, payable to the Port Authority upon demand. Where sewage is contained in tanks periodically cleaned by a contractor paid by the Port Authority the Lessee shall pay such portion of the contract charge as may be reasonably determined by the Port Authority, on demand.

(c) Unless the Port Authority has expressly undertaken to heat the enclosed portions of the premises, if any, the Lessee agrees to heat the enclosed portions of the premises to a sufficient temperature so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

(d) If any federal, state, municipal or other governmental body, authority or agency, or any public utility, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the premises or to any tenant, lessee, occupant or user thereof, or to the structures or buildings which, or a portion or portions of which, are included in the premises, (including but not limited to any sewer-rent or other charge for the use of a sewer system or sysems), the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, pay, in accordance with such notice, such charge, fee, rent or assessment or such increase thereof (or the portion thereof allocated by the Port Authority to the premises or to the operations of the Lessee under this Agreement) either directly to the governmental body, authority or agency, or to the public utility, or directly to the Port Authority, as such notice may direct. All payments to be made by the Lessee hereunder shall constitute items of additional rental.

(e) No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder or shall be or be construed to be an eviction of the Lessee, or shall constitute grounds for any diminution or abatement of the rental or rentals payable under this Agreement, or grounds for any claim by the Lessee for damages, consequential or otherwise.

(f) In the event any one or more structures within or attached to the premises but not accessible directly from the enclosed portion of the premises is or are in use as a valve-room or valve-rooms for a sprinkler system, the same shall not be deemed a portion of the premises hereunder, and the Lessee shall afford access thereto through and across the premises at all times as required by the Port Authority for itself or its contractors, with or without tools, equipment, parts and supplies.

Standard Endorsement No. L 5.1

Services

All Facilities

10/6/75

(a) As used in this Agreement:

(1) "Elizabeth-Port Authority Marine Terminal", "Elizabeth-Port Authority Piers", "Facility", or "marine terminal" shall mean the land and premises in the City of Elizabeth, in the County of Union and State of New Jersey, title to which was vested in the Port Authority by an Order Vesting Title in and Directing Delivery of Possession to The Port of New York Authority dated March 14, 1958, filed March 17, 1958 in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-7065-56, in the case of The Port of New York Authority, plaintiff, vs. Edward J. Grassmann, et al., defendants, the lands title to which was so conveyed having been described fully in the Second Amended Complaint filed in the said case on May 16, 1957, and lands contiguous or adjacent thereto within the County of Union which may have been heretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes.

(2) "Letting" shall include any extension of the letting under this Agreement, whether made by agreement or by operation of law.

(3) "Manager of the Facility", "Facility Manager" or "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager or in the Superintendent of the Facility by this Agreement; but until further notice from the Port Authority to the Lessee, it shall mean the Manager (or the Acting Manager) Port Authority Marine Terminals-New Jersey for the time being, or his duly designated representative or representatives.

(b) The rights of the Port Authority in the Facility are those acquired by it pursuant to the order described in subparagraph (1) of paragraph (a) of this Standard Endorsement, together with those which may be acquired by any subsequent order or orders, deed or deeds, leases or other instruments transferring or assigning additional adjacent property, and no greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power thereunder to grant.

(c) No designation in this Agreement of any area as a street, highway, roadway or other comparable characterization, whether or not by name, shall be or be deemed to be an admission, recognition or acknowledgment of any public or private rights in the area so designated, or as a dedication for or a consent to any public or private use of the same. All use in this Agreement of names and designations in connection with such areas is merely for the purpose of fixing geographical locations.

(d) This Agreement and the letting hereunder are subject and subordinate to all mortgages which may now or hereafter affect the premises or the Facility and to all renewals, modifications, consolidations, replacements and extensions thereof, and the Lessee agrees to execute any instrument which may be deemed necessary or desirable further to effect the subordination of this Agreement and the letting hereunder to any and all such mortgages.

(e) Without in anywise limiting the obligations of the Lessee as elsewhere stated in this Agreement, the Lessee shall be liable to the Port Authority for all damage done to the Facility or to any part thereof or to any property of the Port Authority thereon through any act or omission of those in charge of or operating any vessels, steamers, barges, lighters, other floating equipment or any trucks, other vehicles or other transportation equipment, while any such is at, coming to, or leaving the premises.

(f) The Port Authority covenants and agrees that as long as it remains the owner of the premises, the Lessee, upon paying all rentals hereunder and performing all the covenants, conditions and provisions of this Agreement on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the premises free of any act or acts of the Port Authority except as expressly permitted in this Agreement.

(g) If by the provisions of Article IV or by other express provision in this Agreement the Lessee is authorized to use the premises to store for distribution items of merchandise or other materials (whether for the account of the Lessee or of others, as may be specifically provided elsewhere in this Agreement) such storage shall be substantially for merchandise and materials waterborne to the Facility or intended to be waterborne from the Facility, except that as specifically authorized from time to time by the Port Authority, the Lessee may store non-waterborne items, the handling of which is necessary as an incident to its business at the premises. "Waterborne to (or from) the Facility" shall mean and include all shipments consigned to or from the Facility which reach or leave the Port of New York by water carrier.

(a) The Lessee in its own name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, shall cover the operations of the Lessee under this Agreement, and shall be effective throughout the term of the letting.

SCHEDULE

	Policy	Minimum Limit
(1)	Commercial general liability insurance (to include contractual liability endorsement)	
	(i) Bodily-injury liability: For injury or wrongful death to one person: For injury or wrongful death to more than one person in any one occurrence:	$10,000,000.00 $10,000,000.00
	(ii) Property-damage liability: For all damages arising out of injury to or destruction of property in any one occurrence:	$10,000,000.00
	(iii) Products liability:	$ _____
(2)	Automotive liability insurance:	
	(i) Bodily-injury liability For injury or wrongful death to one person: For injury or wrongful death to more than one person in any one occurrence:	$2,000,000.00 $2,000,000.00
	(ii) Property-damage liability: For all damages arising out of injury to or destruction of property in any one occurrence:	$2,000,000.00
(3)	Plate and mirror glass insurance, covering all plate and mirror glass in the premises, and the lettering, signs, or decorations, if any, on such plate and mirror glass:	$ _____
(4)	Boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	$ _____
(5)	"Additional Interest" policy of boiler and machinery insurance, covering all boilers, pressure vessels and machines operated by the Lessee in the premises:	$ _____
(6)	Garagekeepers' legal liability:	$ _____

(b) The Port Authority shall be named as an additional insured in any policy of liability insurance required by this Endorsement, unless the Port Authority shall, at any time during the term of the letting under this Agreement, direct otherwise in writing, in which case the Lessee shall cause the Port Authority not to be so named.

(c) In any policy of insurance on property other than that of the Lessee required by this Endorsement, the Port Authority shall be named as the owner except that as to property as to which the Port Authority is itself a lessee, the Port Authority shall be named as the lessee and the owner shall be named as the owner. Each shall be endorsed substantially as follows:

> "Loss, if any, under this policy, as to the interest of the owner and as to the interest of the Port Authority of New York and New Jersey, shall be adjusted solely with the Port Authority and all proceeds under this policy shall be paid solely to the Port Authority."

(d) Any "Additional Interest" policy of boiler and machinery insurance required by this Endorsement shall provide protection under Sections 1 and 2 only of the Insuring Agreements of the form of policy approved for use as of the date hereof by the Insurance Rating Board, New York, New York.

(e) As to any insurance required by this Endorsement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority within ten (10) days after the execution of this Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the term of the letting under this Agreement, as the same may be form time to time extended. If at any time any of the policies shall be or become unsatisfactory to the Port Authority as to form or substance, of if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

(f) Each policy of insurance required by this Endorsement shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(a) If at any time the Lessee shall become entitled to an abatement of basic rental under the provisions of this Agreement or otherwise, such abatement shall be computed as follows:

(1) For each square foot of usable open area the use of which is denied to the Lessee, at the annual rate of $1.79*

(2) For each square foot of usable covered area the use of which is denied to the Lessee, at the annual rate of $1.79*

(b) If no rates are filled in above then the abatement of basic rental shall be made on an equitable basis, giving effect to the amount and character of the area the use of which is denied the Lessee, as compared with the entire area of such character included in the premises.

(c) If an exemption amount is fixed in this Agreement, it shall be reduced in the same proportion as the total basic rental is abated.

(d) For the purposes of this Endorsement, the number of square feet of covered area shall be computed as follows: by measuring from the inside surface of outer building walls to the surface of the public area side, or of the non-exclusive area side, as the case may require, of all partitions separating the area measured from adjoining areas designated for the use of the public or for use by the Lessee in common with others, and to the center of partitions separating the area measured from adjoining area exclusively used by others; no deduction will be made for columns, partitions, pilasters or projections necessary to the building and contained within the area measured. Permanent partitions enclosing elevators shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks and any vertical shafts have the same relation to the area measured as do outer building walls.

(e) In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted (actually or constructively) and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it will pay at the times and in the manner herein provided, the full basic rental less only an abatement thereof computed in accordance with the above.

* for the period commencing on September 1, 2001 and continuing through August 31, 2003, the rate thereafter to be adjusted during the term of the letting proportionately to the adjustment in basic rental in accordance with the provisions of Special Endorsement No. 3 hereto.

SPECIAL ENDORSEMENTS

1. The Lessee shall use the premises for the following purposes only, and for no other purpose whatsoever: (a) the receipt, handling, and storage predominately of cargo housed in containers, and also of non-containerized cargo, transported or to be transported by seagoing vessels permitted to be berthed in the "Berthing Area" (as such term is defined in Section 1(a) of Lease No. EP-249 between the parties and dated as of October 1, 2000 and hereinafter called "the Terminal Lease"), and the storage of ships' stores, supplies and gear on or from such seagoing vessels and other craft permitted to be berthed in the Berthing Area; (b) the parking of motor vehicles and of trailers and semi-trailers owned or operated by the Lessee or by the employees of the Lessee or by persons doing business with it at the Facility for the purposes set forth in this Special Endorsement; (c) the storage and repair of cargo containers, chassis, other cargo-handling equipment, and necessary amounts of dunnage used in the operations of the Lessee under this Agreement and the Terminal Agreement; and (d) such office space (with related automobile parking) incidental to and necessary for the foregoing operations of the Lessee.

2. The Lessee shall pay to the Port Authority an annual rental (hereinafter called "the basic rental") during the period from September 1, 2001 through August 31, 2015 at the rate of Two Million Four Hundred Three Thousand Eight Hundred Ten Dollars and Sixty-nine Cents ($2,403,810.69) per annum, payable in advance in equal monthly installments of Two Hundred Thousand Three Hundred Seventeen Dollars and Fifty-six Cents ($200,317.56) on September 1, 2001 and on the first day of each calendar month thereafter during such period. The basic rental set forth in this Special Endorsement shall be adjusted during the term of the letting in accordance with the provisions of Special Endorsement No. 3 to this Agreement.

3. (a) As used in paragraph (b) of this Special Endorsement:

(1) "Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor.

(2) "Base Period" shall mean the calendar month of August, 2001.

(3) "Adjustment Period" shall mean, as the context requires, the calendar month of August, 2003 and the calendar month of August in each calendar year which thereafter occurs alternately during the term of the letting under this Agreement.

(4) "Anniversary Date" shall mean, as the context requires, September 1, 2003 and each anniversary of such date which thereafter occurs alternately during the term of the letting under this Agreement.

(5) "Percentage Increase" shall mean the percentage of increase in the Index on each Anniversary Date equal to a fraction the numerator of which shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period and the denominator of which shall be the Index for the Base Period.

(b) Commencing on each Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the expiration date of the term of the letting under this Agreement, as the case may be, both dates inclusive, in lieu of the basic rental set forth in Special Endorsement No. 2 hereto the Lessee shall pay a basic rental at a rate per annum equal to the greater of:

(1) the sum obtained by adding to the basic rental set forth in Special Endorsement No. 2 hereto the product obtained by multiplying such basic rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date, or

(2) the basic rental payable immediately prior to such Anniversary Date including all amounts included therein as a result of prior adjustments thereof pursuant to the provisions of this paragraph, or

(3) the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule A" opposite the respective Anniversary Date.

Notwithstanding any other provision of this Agreement, the basic annual rental that shall be payable pursuant to Special Endorsement No. 2 hereto and this Special Endorsement commencing with each Anniversary Date and continuing through to the day preceding the following Anniversary Date, or the expiration date of the term of the letting under this Agreement, as the case may be, both dates inclusive, shall in no event exceed the amount set forth in the Schedule annexed to this Agreement, hereby made a part hereof, and marked "Schedule B" opposite the respective Anniversary Date. For example, if the Percentage Increase for the calendar month of August, 2003 is shown to be five percent (5%) then the basic annual rental payable under Special

Endorsement No. 2 hereto and this Special Endorsement for the two-year period commencing September 1, 2003 shall be $2,403,810.69 plus five percent (5%) thereof or $2,524,001.22, but if (1) said increase is shown to be three percent (3%) then the basic annual rental for that two-year period shall be $2,500,924.64, and if (2) said increase is shown to be ten percent (10%) then the basic annual rental for that two-year period shall be $2,599,961.64.

(c) In the event the Index to be used in computing any adjustment referred to in paragraph (b) of this Special Endorsement is not available on the effective date of such adjustment; the Lessee shall continue to pay the basic rental at the annual rate then in effect subject to retroactive adjustment at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index. In the event the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) shall hereafter be converted to a different standard reference base or otherwise revised or the United States Department of Labor shall cease to publish the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine.

If after an adjustment in basic rental shall have been fixed for any period, the Index used for computing such adjustment shall be changed or adjusted, then the rental adjustment for that period shall be recomputed and from and after notification of the change or adjustment, the Lessee shall make payments based upon the recomputed rental and upon demand shall pay any excess in the basic rental due for such period as recomputed over amounts theretofore actually paid on account of the basic rental for such period. If such change or adjustment results in a reduction in the basic rental due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the basic rental as recomputed for that period and amounts of basic rental actually paid.

If any adjustment of basic rental referred to in paragraph (b) of this Special Endorsement is effective on a day other than the first day of a calendar month, there shall be

payable in advance on the effective date of rental adjustment an installment of basic rental equal to 1/12th of the increment of annual basic rental as adjusted multiplied by a fraction, the numerator of which shall be the number of days from the effective date of the rental adjustment to the end of the calendar month in which the rental adjustment was effective and the denominator of which shall be the number of days in that calendar month.

4. Abatement of basic rental, if any, to which the Lessee may be entitled shall be computed in accordance with the provisions of Standard Endorsement No. L27.4 attached hereto and hereby made a part hereof.

5. (a) The policy of commercial general liability insurance required by Standard Endorsement No. L21.1 to this Agreement (i) shall include a contractual liability endorsement covering the Lessee's indemnity obligations under this Agreement; (ii) without limiting any other provision of the Agreement, shall include the Port Authority as an additional insured for purposes of both premises operations and completed-operations; (iii) shall not exclude claims arising out of or in connection with operations conducted within fifty feet of railroad property; and (iv) shall include coverage for the Lessee's liability for physical loss or damage to cargo in the Lessee's care, custody or control. If the Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage. The policy of automobile liability insurance required by said Standard Endorsement No. L21.1 shall cover all owned, non-owned and hired vehicles. (b) In addition to the policies of insurance required under said Standard Endorsement No. L21.1, the Lessee in its own name as assured shall secure and pay the premium or premiums for a policy of Environmental Liability Insurance, with a minimum combined single limit coverage for bodily injury and property damage for both gradual and sudden occurrences of $5,000,000.00. (c) Each policy of insurance required by said Standard Endorsement No. L21.1 and the policies of Protection and Indemnity Insurance and of Environmental Liability Insurance shall contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

6. Notwithstanding anything contained in Special Endorsement No. 5 to this Agreement or in Standard Endorsement No. L21.1 annexed to this Agreement, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the limits set forth in said Special Endorsement No. 5 or said Standard Endorsement No. L21.1 to commercially reasonably amounts and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority.

7. The Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policy of insurance in the limit set forth below, which policy shall be effective during the term of the letting under this Agreement:

(1) All risk property damage insurance covering the full replacement cost of any property owned, leased, or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the premises, except for any personal property owned by the Port Authority. Full replacement cost shall be determined by the Port Authority. No omission on the part of the Port Authority to make such determination shall relieve the Lessee of its obligations to maintain the appropriate insurance under this Special Endorsement. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New Jersey, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination and boiler and machinery hazards and risks (if said coverage regarding nuclear property losses and contamination is or becomes available).

(2) Unless otherwise directed by the Port Authority, the property damage insurance policy required by this Special Endorsement shall name the Port Authority and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide that loss,

if any, shall be adjusted with and payable to the Port Authority. As to any insurance required by this Special Endorsement, a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority simultaneously with the delivery of an executed copy of this Agreement by the Lessee. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective term hereof. If at any time the policy required by this Special Endorsement shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

The proceeds of insurance from coverages secured in accordance with this Special Endorsement shall be made available to the Lessee and shall be applied by the Lessee strictly and solely to the repair, replacement, or rebuilding of the premises as elsewhere provided in this Agreement.

8. The Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the Standard Form of "All Risk" insurance policy insuring the full replacement value of all of the Lessee's trade fixtures, equipment and other personal property. The Port Authority shall not be liable to the Lessee for loss or damage caused by any risk covered by said policy of insurance. Said policy of insurance shall be subject to the provisions of paragraph (e) of Standard Endorsement No. L21.1 to this Agreement, and shall contain an endorsement waiving any rights of subrogation of the insurer against the Port Authority.

9. The Lessee acknowledges that the premises are located on a former landfill facility and that hazardous wastes

and substances, including but not limited to polyclorinated biphenyl contaminated waste oil, have been located at the premises (which hazardous wastes and substances are hereinafter called "the Existing Wastes"). The Lessee agrees that in its use and occupancy of and in the conduct of its operations at the premises: (a) the Lessee shall make every effort not to conduct or allow any activity that causes or results in any penetration, breakage, cracking or other damage to the paved surface of the premises, and in the event that any said damage shall occur to said paved surface, the Lessee shall repair or replace the same with extreme promptness; (b) except as set forth in the immediately succeeding sentence of this paragraph, the Lessee shall in no event engage in or allow any removal, excavation or disruption of the landfill or soil at the premises; and (c) the Lessee shall make every effort not to conduct or allow any other activity that causes or results in any exacerbation of the condition of the premises with respect to the Existing Wastes. The Lessee shall be permitted to remove, excavate or disrupt the landfill or soil at the premises solely on the following conditions (which removal, excavation and/or disruption is hereinafter called "the Excavation Work"): (aa) the Lessee shall obtain the consent of the Port Authority for the performance of any of the Excavation Work, and the performance of the Excavation Work shall be subject to the terms and conditions of the Lease and an approved Construction Application which the Lessee shall prepare and submit to the Port Authority and to such further procedures, requirements and directions as the Port Authority shall determine; (bb) the Lessee shall obtain any required approval of any governmental entity, including without limitation the New Jersey Department of Environmental Protection, having jurisdiction over the performance of the Excavation Work and shall perform the Excavation Work in accordance with any laws, rules, regulations, requirements, orders or directives of any such governmental entity or entities; and (cc) the Lessee shall pay all of the costs and expenses of, arising out of, or resulting from, the performance of the Excavation Work, including without limitation all costs of the disposal of any soil and of obtaining any governmental permits or other governmental authorizations applicable to the performance the Excavation Work. Without limiting the generality of any provisions of this Agreement, and subject to the provisions of Special Endorsement No. 11 hereto, the Lessee shall maintain and repair the paved surface of the premises in accordance with any laws, rules, regulations, requirements, orders or directives of any governmental entity, including without limitation the New Jersey Department of Environmental Protection, that may at any time apply to said paved surface during the term of the letting.

SPECIAL ENDORSEMENTS

10. Without limiting the generality of any provisions of this Agreement, including without limitation the provisions of Section 13 of the Terms and Conditions hereof, the Port Authority, by its officers, employees, agents, representatives and contractors, shall have the right at any time and from time to time during the term of the letting to enter upon the premises for the purpose of conducting environmental testing and/or environmental remediation. Said environmental testing may include, without limitation, soil borings, the establishing and maintenance of wells for the testing or monitoring of groundwater, and the gathering and removal of soil or groundwater from the premises. The Lessee shall make available such portion or portions of the premises for such period or periods that the Port Authority shall determine to be necessary for the performance of said environmental testing and/or environmental remediation, and the Lessee shall not damage or disrupt or allow any damage to or disruption of any wells, equipment or other devices employed in said environmental testing, and further the Lessee shall conduct its operations on the premises in such a way so as not to interfere with the performance of any of said environmental testing or environmental remediation. All of the rights of the Port Authority under this paragraph may be made available to any third party designated by the Port Authority acting in its sole discretion. Without limiting the generality of any provisions of this Agreement, including without limitation the provisions of Section 13(g) of the Terms and Conditions hereof, the exercise of any or all of the foregoing rights by the Port Authority or others shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

11. Without limiting the generality of any provisions of this Agreement, the Lessee shall not dispose of, release or discharge, nor permit anyone to dispose of, release or discharge any hazardous waste or substance on or from the premises or at the Facility. Any hazardous waste or substance disposed of, released or discharged by the Lessee or permitted by the Lessee to be disposed of, released or discharged on or from the premises or at the Facility shall, upon notice by the Port Authority to the Lessee and subject to the provisions of Section 11 of the Terms and Conditions hereof, be completely removed and/or remediated by the Lessee. Further, the Lessee undertakes and agrees that it shall be obligated to comply with the requirements of all environmental laws, rules, regulations, requirements, orders and directives of any governmental entity which may pertain or apply to its operations or to its use and occupancy of the premises under this Agreement. The obligations of the Lessee

pursuant to this Special Endorsement shall survive the expiration or termination of this Agreement.

12. The provisions of Sections 2, 4, 6, 7, and 19(b)(2) of the Terms and Conditions of this Agreement and of Special Endorsement No. 11 to this Agreement shall not apply to the Existing Wastes; provided, however, that the provisions of said Sections and Special Endorsement shall apply to the Existing Wastes in the event that any disposal of, release or discharge of the Existing Wastes or any portion thereof on or from the premises or at the Facility is caused by or results from the acts or omissions of the Lessee or of others on the premises or at the Facility with its consent; and further provided, that, the provisions of said Sections and Special Endorsement shall apply to the Existing Wastes to the extent that the presence of the Existing Wastes does not impose any additional cost or expense upon the Lessee with respect to its compliance with the provisions of said Sections or Special Endorsement.

13. The Port Authority shall have the right to temporarily terminate the letting of portions of the premises under this Agreement up to a total of six (6) acres at any one time, without cause, at any time and from time to time during "the Port Redevelopment Period", as such term is hereinafter defined, upon thirty (30) days' written notice to the Lessee (each of which portion of the terminated premises is hereinafter individually called "the Temporarily Surrendered Space"). The aforesaid notice shall designate the exact size, location and configuration of the Temporarily Surrendered Space and the effective date of the termination. Termination under the provisions of this Special Endorsement shall have the same effect as if the effective date of termination stated in the aforesaid notice were the date of expiration of the term of the letting of the Temporarily Surrendered Space under this Agreement. The Lessee shall provide to the Port Authority and/or any designee of the Port Authority a fully adequate right of entry through the premises under this Agreement for the purpose of ingress and egress at all times between the Temporarily Surrendered Space and such pedestrian or vehicular ways used in common with others having rights of passage within the Facility and providing access to the premises as the Port Authority shall determine from time to time acting in its sole discretion. The Temporarily Surrendered Space shall be returned to the leasehold on or before the end of "the Port Redevelopment Period", upon thirty (30) days' written notice from the Port Authority to the Lessee, and upon the effective date stated in said notice the Temporarily Surrendered Space shall be and become part of the premises under this Agreement, subject to and in accordance with all the terms, provisions, covenants and conditions hereof, including without

limitation the escalated basic rental as provided for in Special Endorsement No. 3 hereto. Without limiting the generality of any provision of this Agreement, the Lessee shall be entitled to an abatement of the basic rental payable under the provisions of Special Endorsements No. 2 and No. 3 hereto for the period from the effective date of the termination of the Temporarily Surrendered Space to the effective date of its return to the leasehold as set forth in the immediately preceding sentence, with said abatement to be computed in accordance with the provisions of Standard Endorsement No. L27.4 hereto. For purposes of this Agreement, "the Port Redevelopment Period" shall mean the period commencing on September 1, 2001 and ending on December 31, 2007; provided, however, that any notice of termination under this Special Endorsement may be given by the Port Authority to the Lessee on or before August 2, 2001, such that the premises under this Agreement on the commencement of the term of the letting on September 1, 2001 may be reduced by up to six (6) acres in accordance with the provisions of this Special Endorsement.

14. (a) The Lessee shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) In addition to and without limiting the foregoing, it is hereby agreed that the Lessee, in connection with its continuing operation, maintenance and repair of the premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Facility, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within sixty (60) days after the commencement of the Term to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes as the Port Authority and the Lessee may agree upon from

time to time. The Lessee throughout the Term shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to, annual reports. The obligations imposed on the Lessee under this paragraph shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(c) "Minority" as used herein includes: (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); (ii) Hispanic (all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race); (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(d) In the implementation of this Special Endorsement the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Special Endorsement, as effectuating the provisions of this Special Endorsement. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Special Endorsement to the extent that such duplication or conflict exists.

(e) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

(f) Nothing in this Special Endorsement shall grant or be deemed to grant to the Lessee the right to make any agreement or award for concessions or consumer services at the Facility.

15. The Lessee shall have the right to install, maintain and operate or permit the installation, maintenance and

operation on the premises of vending machines or devices designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind, whether or not included in the above categories, and shall also have the right to install, maintain and operate or permit the installation, maintenance and operation on the premises of a small kitchen, for the benefit of officers and employees of the Lessee and their families and business guests of such officers and employees, and which machines and kitchen shall be operated at no profit to the Lessee and shall be installed, maintained and/or operated either directly by the Lessee or by an independent contractor(s) of the Lessee who has/have received a permit or permits from the Port Authority so to do; provided, however, that in the event any operation permitted under this Special Endorsement violates health regulations and upon notice of termination of such operation from the Port Authority, the Lessee or the independent contractor(s), as the case may be, shall immediately cease such operation as specified in said notice. The Lessee agrees that the aforesaid installation(s) shall be performed subject to the terms and conditions of the Lease and an approved Construction Application which the Lessee shall prepare and submit to the Port Authority.

16. If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Special Endorsement, with respect to such unpaid amount.

Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Special Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 16 of the Terms and Conditions of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Special Endorsement shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

17. Prior to the execution of this Agreement by either party hereto, the following changes were made in the Terms and Conditions of this Agreement:

(a) The phrase "or (iii) to cancel this Agreement and terminate the letting as to the entire premises;" appearing in the fifth and sixth lines of paragraph (a)(2) of Section 8 thereof was deleted therefrom.

(b) The following clause was inserted following the word "conveyance" appearing in the sixth line of Section 10 thereof:

> ", except for the possible claim to an award for trade fixtures installed by the Lessee and/or an award for moving expenses if (i) such claim is then allowed by law and (ii) such award is made separate and apart from the award made or to be made to the Port Authority in such proceeding and any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority;"

(c) The following clause was inserted following the word "premises" appearing as the last word in the last line of paragraph (c) of Section 14 thereof:

> "(except to the extent required for the placement of lights and utilities, the placement and operation of equipment (excluding container cranes) on the premises and the movement and storage of containers, chassis and other cargo). If any construction or

installation is performed under this Agreement or on the premises hereunder, the height thereof above ground shall be as determined solely by the Port Authority."

(d) Paragraphs (a) and (b) of Section 15 thereof were deleted therefrom and the following paragraphs were inserted in lieu thereof:

"(a) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the drainage and sewerage system, water system, communications system, fuel system, electrical, fire-protection system, sprinkler system, alarm system, fire hydrants and hoses and other systems, if any, installed or located on, under, or in the premises.

(b) The Lessee shall not dispose of nor permit any one to dispose of any waste material (whether liquid or solid) by means of the toilets, manholes, sanitary sewers or storm sewers in the premises or on the Facility except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority.

(c) The Lessee shall not operate any engine or any item of automotive equipment in any enclosed space on the premises unless such space is adequately ventilated and unless such engine or item of automotive equipment is equipped with a proper spark arresting device which has been approved by the Port Authority.

(d) The Lessee shall not fuel or defuel its automotive vehicles or other equipment in the enclosed portions of the premises without the prior approval of the Manager of the Facility.

(e) The Lessee shall not keep or store in the premises, explosives, inflammable liquids or solids or oxidized materials or use any cleaning materials having a harmful corrosive effect on any part of the premises.

SPECIAL ENDORSEMENTS

(f) The Lessee shall not use or permit the use of any truss or structural supporting member of the building or roof or any part thereof for the storage of any material or equipment, or to hoist, lift, move or support any material or equipment or other weight or load, by means of said trusses or structural supporting members unless said trusses or structural supporting members are specifically designed for such use.

(g) The Lessee shall not fuel or defuel equipment in the enclosed portions of the premises without prior approval of the Manager of the Facility."

(e) The phrase "as at the commencement of the letting, reasonable wear arising from use of the premises to the extent permitted elsewhere in this Agreement, excepted" following the word "condition" appearing in the third line of paragraph (a) of Section 22 thereof was deleted and the following phrase was inserted in lieu thereof:

"required by the provisions of Section 7(b) hereof regarding the condition of the premises at the expiration or termination of the letting hereunder"

Initialled:

For the Port Authority

For the Lessee

SCHEDULE A

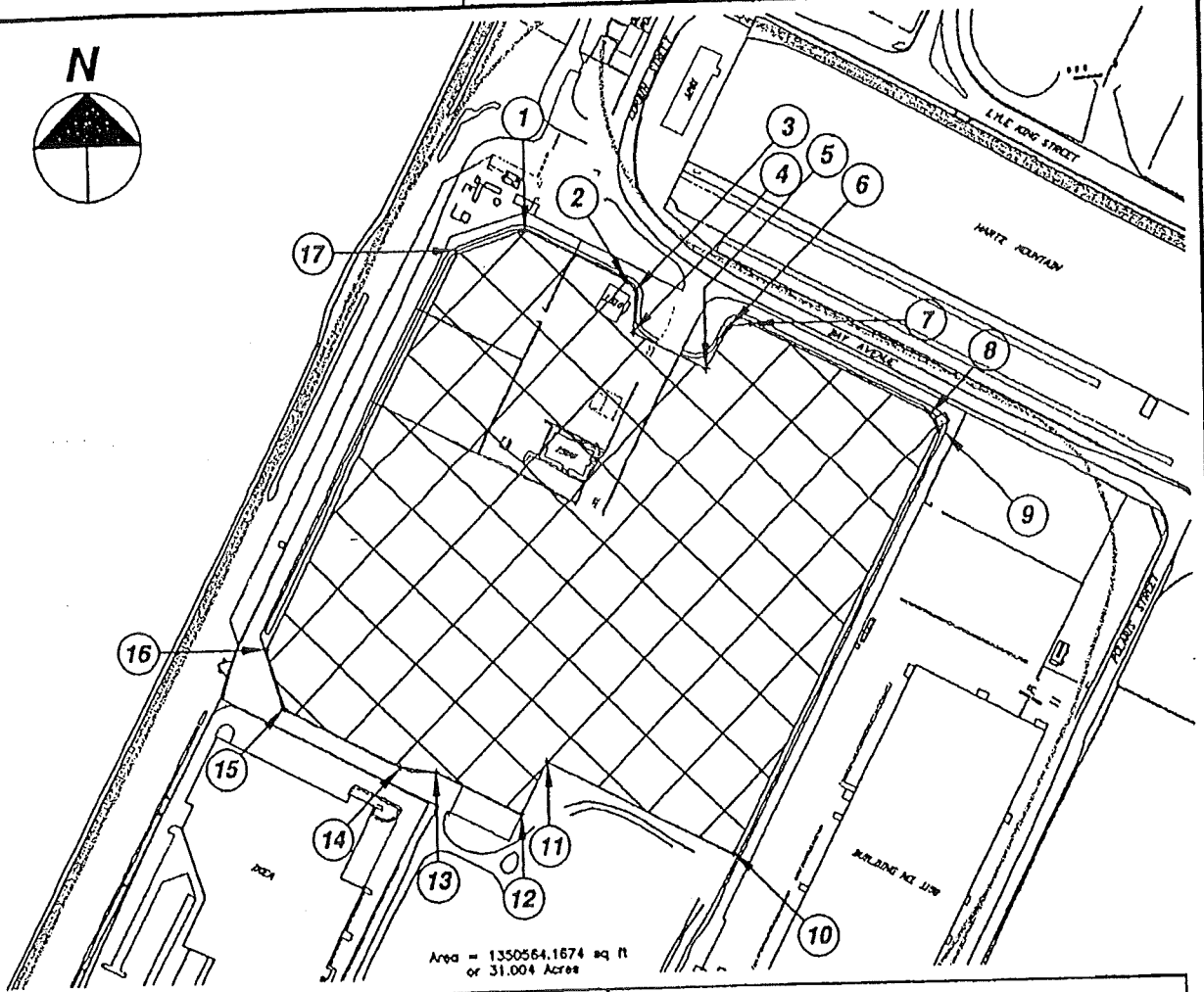
September 1, 2003	2,500,924.64
September 1, 2005	2,601,962.00
September 1, 2007	2,707,081.26
September 1, 2009	2,816,447.35
September 1, 2011	2,930,231.82
September 1, 2013	3,048,613.18

SCHEDULE B

September 1, 2003	2,599,961.64
September 1, 2005	2,812,118.51
September 1, 2007	3,041,587.38
September 1, 2009	3,289,780.91
September 1, 2011	3,558,227.04
September 1, 2013	3,848,578.36

Maher Terminals, Inc.

EP-251



Metes and Bounds: (using NAD27 coordinate system)

Pnt. No.	Dist.	Bearing	N	E
1			672913.05	2138388.55
	265.47'	S 62°30'01" E		
2			672790.47	2138624.03
	29.78'	S 42°20'20" E		
3			672768.45	2138644.09
	96.99'	S 4°52'52" W		
4			672671.81	2138635.83
	188.35'	S 62°30'01" E		
5			672584.83	2138802.91
	112.15'	N 30°41'44" E		
6			672681.27	2138860.15
	46.78'	N 85°33'33" E		
7			672684.89	2138906.79
	465.52'	S 62°30'01" E		
8			672469.94	2139319.72
	41.71'	S 26°55'17" E		
9			672432.75	2139338.60
	1080.14'	S 27°29'34" W		

Pnt. No.	Dist.	Bearing	N	E
10			671474.59	2138839.97
	482.88'	N 62°30'01" W		
11			671697.56	2138411.65
	133.83'	S 27°29'59" W		
12			671578.85	2138349.85
	220.33'	N 62°37'24" W		
13			671680.17	2138154.20
	81.68'	N 80°14'59" E		
14			671694.00	2138073.70
	301.68'	N 62°25'03" W		
15			671833.69	2137806.30
	141.18'	N 16°22'38" W		
16			671969.14	2137766.49
	1006.06'	N 27°29'34" E		
17			672861.59	2138230.93
	165.71'	N 71°55'11" E		
			returning to point # 1	

Initialed:

For the PORT AUTHORITY

For the Lessee

A

PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Aug. 31, 2001

Form - All-Purpose Ack. N.Y. (rev 9/1/99)

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

On the 25TH day of MAY in the year 2001, before me, the undersigned, a Notary Public in and for said state, personally appeared RICHARD M. LARRABEE DIRECTOR, PORT COMMERCE DEPT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Millie Dominguez
(notarial seal and stamp)

MILLIE DOMINGUEZ
Notary Public, State of New York
No. 01DO6051708
Qualified In Bronx County
Commission Expires December 04, 2002

STATE OF New Jersey)
) ss.
COUNTY OF Hudson)

On the 25th day of April in the year 2001, before me, the undersigned, a Notary Public in and for said state, personally appeared M. Brian Maher, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara J. Wurz
(notarial seal and stamp)

Barbara J. Wurz
Notary Public, State of New Jersey
Registered in Essex County
My Commission Expires July 25, 2001

Port Authority Lease No. EP-251
Supplement No. 1

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of April 19, 2007, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and MAHER TERMINALS LLC,

WITNESSETH, That:

WHEREAS, heretofore and as of September 1, 2001, the Port Authority and Maher Terminals, Inc. entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union and State of New Jersey; and

WHEREAS, heretofore and on or about December 31, 2006, Maher Terminals, Inc. was merged into a corporation of the same name and such corporation was converted into a limited liability company (hereinafter called "the Lessee"); and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

NOW, THEREFORE, for and in consideration of the mutual agreements hereinafter contained the Port Authority and the Lessee hereby agree as follows:

1. (a) Effective as of 11:59 o'clock P.M. on the "Surrender Date" (as such term is defined in subparagraph (h) of this paragraph), the Lessee has granted, bargained, sold, surrendered and yielded up and does by these presents grant, bargain, sell, surrender and yield up to the Port Authority, its successors and assigns, forever, that part of the premises let to the Lessee constituting the "Surrendered Area" (as such term is defined in subparagraph (f) of this paragraph), and the term of years with respect thereto under the Lease as herein amended yet to come and has given, granted and surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by the Lease as herein amended with respect to the Surrendered Area all to the intent and purpose that the said term under the Lease as herein amended and the said rights, rights of renewal, licenses, privileges and options may be wholly merged, extinguished and

Leasing Files

Port Authority Lease No. EP-251
Supplement No. 1

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of April 19, 2007, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and MAHER TERMINALS LLC,

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WHEREAS, heretofore and on or about December 31, 2006, Maher Terminals, Inc. was merged into a corporation of the same name and such corporation was converted into a limited liability company (hereinafter called "the Lessee"); and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

NOW, THEREFORE, for and in consideration of the mutual agreements hereinafter contained the Port Authority and the Lessee hereby agree as follows:

1. (a) Effective as of 11:59 o'clock P.M. on the "Surrender Date" (as such term is defined in subparagraph (h) of this paragraph), the Lessee has granted, bargained, sold, surrendered and yielded up and does by these presents grant, bargain, sell, surrender and yield up to the Port Authority, its successors and assigns, forever, that part of the premises let to the Lessee constituting the "Surrendered Area" (as such term is defined in subparagraph (f) of this paragraph), and the term of years with respect thereto under the Lease as herein amended yet to come and has given, granted and surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by the Lease as herein amended with respect to the Surrendered Area all to the intent and purpose that the said term under the Lease as herein amended and the said rights, rights of renewal, licenses, privileges and options may be wholly merged, extinguished and

determined on the Surrender Date with the same force and effect as if the said term were in and by the provisions of the Lease as herein amended originally fixed to expire on such date; to have and to hold the same unto the Port Authority, its successors and assigns forever.

(b) The Lessee hereby covenants on behalf of itself, its successors and assigns that (i) it has not done or suffered and will not do or suffer anything whereby the Surrendered Area, or the Lessee's leasehold therein, has been or shall be encumbered, as of the Surrender Date in any way whatsoever; (ii) the Lessee is and will remain until the Surrender Date the sole and absolute owner of the leasehold estate in the Surrendered Area and of the rights, rights of renewal, licenses, privileges and options granted by the Lease as herein amended with respect thereto and that the same are and will remain until the Surrender Date free and clear of all liens and encumbrances of whatsoever nature; and (iii) the Lessee has full right and power to make this Agreement.

(c) All promises, covenants, agreements and obligations of the Lessee with respect to the Surrendered Area under the Lease as herein amended or otherwise which under the provisions thereof would have matured upon the date originally fixed in the Lease as herein amended for the expiration of the term thereof, or upon the termination of the Lease as herein amended prior to the said date, or within a stated period after expiration or termination, shall, notwithstanding such provisions, mature upon the Surrender Date and shall survive the partial surrender provided for in this paragraph.

(d) The Lessee has released and discharged and does by these presents release and discharge the Port Authority from any and all obligations on the part of the Port Authority to be performed under the Lease as herein amended with respect to the Surrendered Area for that portion of the term subsequent to the Surrender Date. The Port Authority does by these presents release and discharge the Lessee from any and all obligations on the part of the Lessee to be performed under the Lease as herein amended with respect to the Surrendered Area for that portion of the term subsequent to the Surrender Date; it being understood that nothing herein contained shall release, relieve or discharge the Lessee from any liability for rentals or for other charges that may be due or become due to the Port Authority for any period or periods prior to the Surrender Date, or for breach of any other obligation on the Lessee's part to be performed under the Lease as herein amended for or during such period or periods or maturing pursuant to subparagraph (c) of this paragraph.

(e) In consideration of the making of this Agreement by the Port Authority, the Lessee hereby agrees to terminate its occupancy of the Surrendered Area and to deliver actual physical possession of the same to the Port Authority on or before the Surrender Date in the condition required by the Lease as herein amended upon surrender. The Lessee further agrees that it will remove from the Surrendered Area its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such removal. If the Lessee shall fail to remove such property on or before the Surrender Date, the Port Authority may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first, to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

(f) The term "Surrendered Area" shall mean all or a part of the premises shown in diagonal crosshatching and designated as "Area of Partial Surrender (permanent)" on the sketch attached hereto, hereby made a part hereof and marked "Exhibit PS-1". The determination of whether the Surrendered Area shall constitute all of such area or part of it, and in the latter case the size, location and configuration thereof, shall be made by the Port Authority acting in its sole discretion. The Port Authority shall provide the Lessee with written notice prior to the Surrender Date of the Port Authority's determination of the Surrendered Area and if the Surrendered Area is less than all of the space designated as Area of Partial Surrender (permanent) on Exhibit PS-1 annexed hereto, the Port Authority and the Lessee shall enter into an agreement supplementary to the Lease as herein amended containing a space exhibit showing the Surrendered Area.

(g) The Port Authority and the Lessee agree that from and after the Surrender Date, the basic rental payable under the Lease shall be abated at the annual rate equal to the product obtained by multiplying (1) the number of square feet constituting the Surrendered Area by (2) the abatement rate applicable thereto from time to time under Special Endorsement No. L27.4 annexed to the Lease.

(h) The term "Surrender Date" shall mean the date set forth in written notice given by the Port Authority to the

Lessee as the date that the Surrendered Area is required in connection with the performance of work on the ExpressRail Elizabeth second lead track and/or the Bay Avenue relocation project (hereinafter called "the Rail Work").

2. (a) The Lessee hereby grants to the Port Authority, its employees, agents, representatives, contractors, subcontractors and designees a right of entry and exclusive occupancy and possession of all or a portion of that part of the premises let to the Lessee constituting "the Temporarily Surrendered Area" (as such term is defined in subparagraph (b) of this paragraph) for its use by the Port Authority in connection with the performance of the Rail Work (which right of entry and exclusive occupancy and possession of said portion of the premises is hereinafter called "the Temporary Surrender"). The Temporary Surrender shall commence on "the Temporary Surrender Date" (as such term is defined in subparagraph (c) of this paragraph) and shall terminate on the date set forth in written notice given by the Port Authority to the Lessee as the date that the Temporarily Surrendered Area is no longer of use in connection with the performance of the Rail Work (which date, as so determined, is hereinafter called "the Exit Date"). The Lessee shall be entitled to an abatement of the basic rental payable under the Lease at the annual rate equal to the product obtained by multiplying (1) the number of square feet constituting the Temporarily Surrendered Area by (2) the abatement rate applicable thereto from time to time under Special Endorsement No. L27.4 annexed to the Lease commencing on the Temporary Surrender Date and continuing through the Exit Date, except that if the Temporary Surrender Date shall be a day other than the first day of a calendar month then the monthly abatement amount allowable for the month in which the Temporary Surrender Date shall occur shall be prorated based on the number of days from the Temporary Surrender Date through the last day of the month in which the Temporary Surrender Date shall occur, and if the Exit Date shall be a day other than the last day of a calendar month then the monthly abatement amount allowable for the month in which the Exit Date shall occur shall be prorated based on the number of days from the first day of the month in which the Exit Date shall occur through the Exit Date. Nothing contained in this agreement shall or shall be deemed to create any obligation on the part of the Port Authority to perform any or all of the Rail Work.

(b) The term "Temporarily Surrendered Area" shall mean all or a part of the premises shown in diagonal hatching and designated as "Areas of temporary Partial Surrender" on Exhibit PS-1 annexed hereto. The determination of whether the Temporarily Surrendered Area shall constitute all of such area or part of it, and in the latter case the size, location and

configuration thereof, shall be made by the Port Authority acting in its sole discretion. The Port Authority shall provide the Lessee with written notice prior to the Temporary Surrender Date of the Port Authority's determination of the Temporarily Surrendered Area and if the Temporarily Surrendered Area is less than all of the space designated as Areas of temporary Partial Surrender on Exhibit PS-1 annexed hereto, the Port Authority and the Lessee shall enter into an agreement supplementary to the Lease as herein amended containing a space exhibit showing the Temporarily Surrendered Area.

(c) The term "Temporary Surrender Date" shall mean the date set forth in written notice given by the Port Authority to the Lessee as the date that the Temporarily Surrendered Area is required in connection with the performance of the Rail Work.

(d) During the period of the Temporary Surrender, the Temporarily Surrendered Area shall be and be deemed to be removed from the premises under the Lease as herein amended, and the Lessee shall not have the obligations set forth in the Lease as herein amended with respect to the Temporarily Surrendered Area during the period of the Temporary Surrender including, without limitation, responsibility for the activities thereon by the Port Authority or by third parties. Nothing set forth in the immediately preceding sentence shall limit in any way the rights of the Port Authority under law with respect to the Lessee apart from such rights as shall arise directly from the Lease as herein amended.

(e) During the period of the Temporary Surrender, the Port Authority shall install and maintain such fencing and/or other devices to secure the boundaries of the Temporarily Surrendered Area and the remainder of the premises as shall be reasonably required for the safety of persons and property at the premises.

3. In addition to the rights granted to the Port Authority under paragraphs 1 and 2 of this Agreement, the Port Authority shall perform such work in the Temporarily Surrendered Area as it shall determine in its sole discretion for the purpose of relocating the entry area to the premises in connection with the Rail Work (which relocation work is hereinafter called "the Entry Relocation Work"). The Entry Relocation Work shall be performed by the Port Authority in substantial conformity with the nine (9) pages of the Port Authority's plans attached hereto and hereby made a part hereof, entitled "EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE", dated 11/13/2006, and bearing the following drawing numbers: S003, T012, T013, C017, C018, C033, C034, C055 and C056.

4. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect.

5. The Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation or execution of this Agreement.

6. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

7. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed these presents as of the date first above written.

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By _____
RICHARD M. LARRABEE

(Title) DIRECTOR, PORT COMMERCE DEPT.

(Seal)

WITNESS:

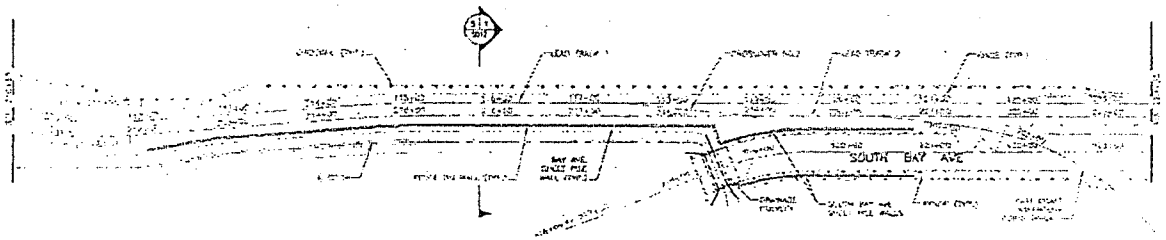
MAHER TERMINALS LLC

_____
Secretary

By _____

(Title) Chief Executive Officer

APPROVED:
FORM | TERMS



KEY PLAN

0 60 120
SCALE IN FEET

NOTES:

1. FOR STRUCTURAL NOTES AND ABBREVIATIONS, SEE DWGS. [illegible] AND S002
2. FOR GEOTECHNICAL NOTES, SEE DWGS. [illegible] AND [illegible]
3. FOR FENCE AND DITCH, SEE DWG. [illegible]
4. FOR GENERAL, SEE TRAFFIC DWGS.

THE PORT AUTHORITY OF NY & NJ

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

STRUCTURAL

EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

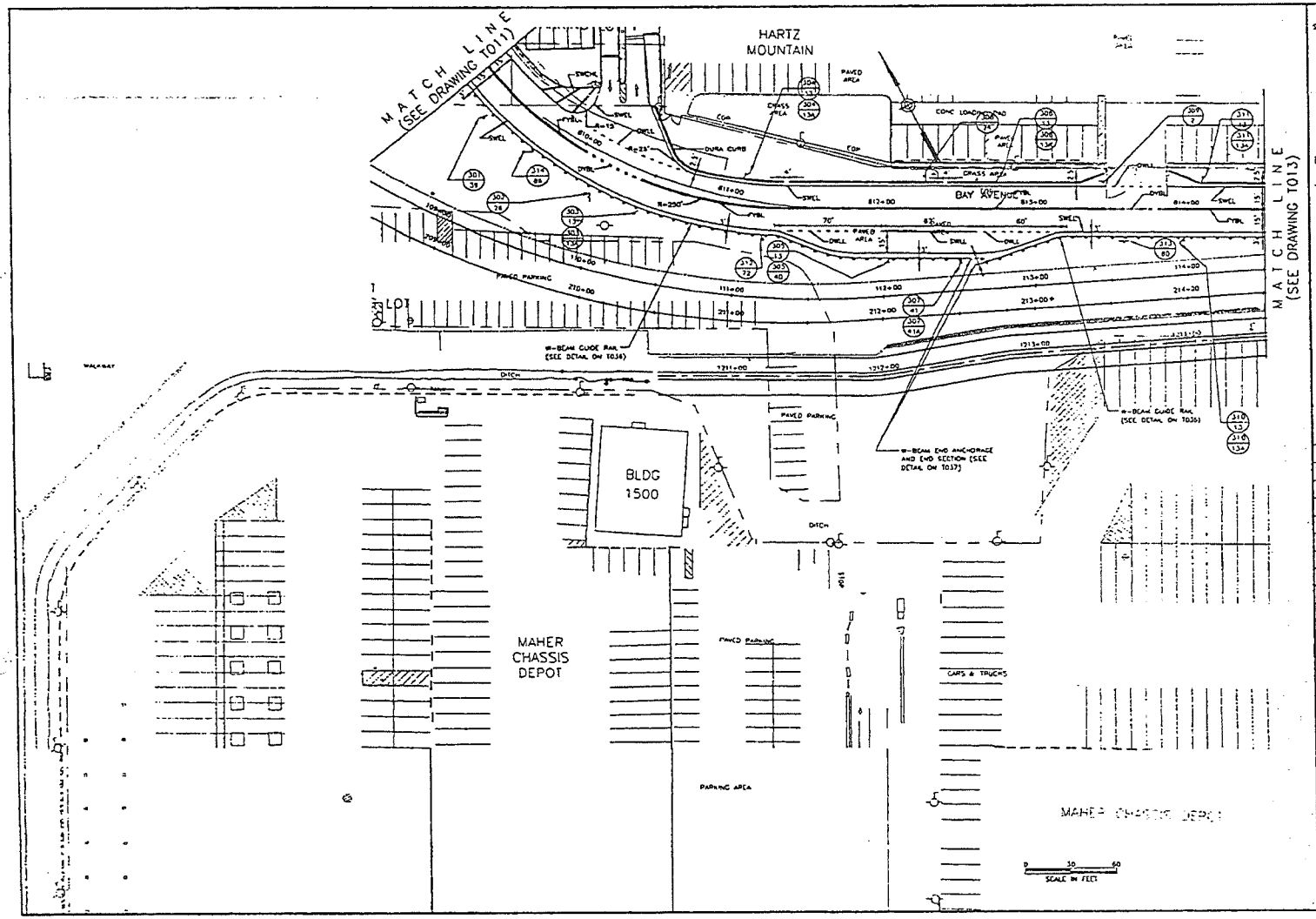
BAY AVE KEY PLAN

A.STACHULA H.BLAKE T.WONG

Date NOVEMBER 15, 2006

EP-384.061

S003



Sheet of

THE PORT AUTHORITY OF NY & NJ

CHIEF TRAFFIC ENGINEER

No	Date	Revision	Approved

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

TRAFFIC

Title

EXPRESSRAIL – ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

SIGNING, PAVEMENT MARKING, AND GUIDE RAIL PLAN SHEET 3 OF 9

This drawing subject to conditions in contract, all inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

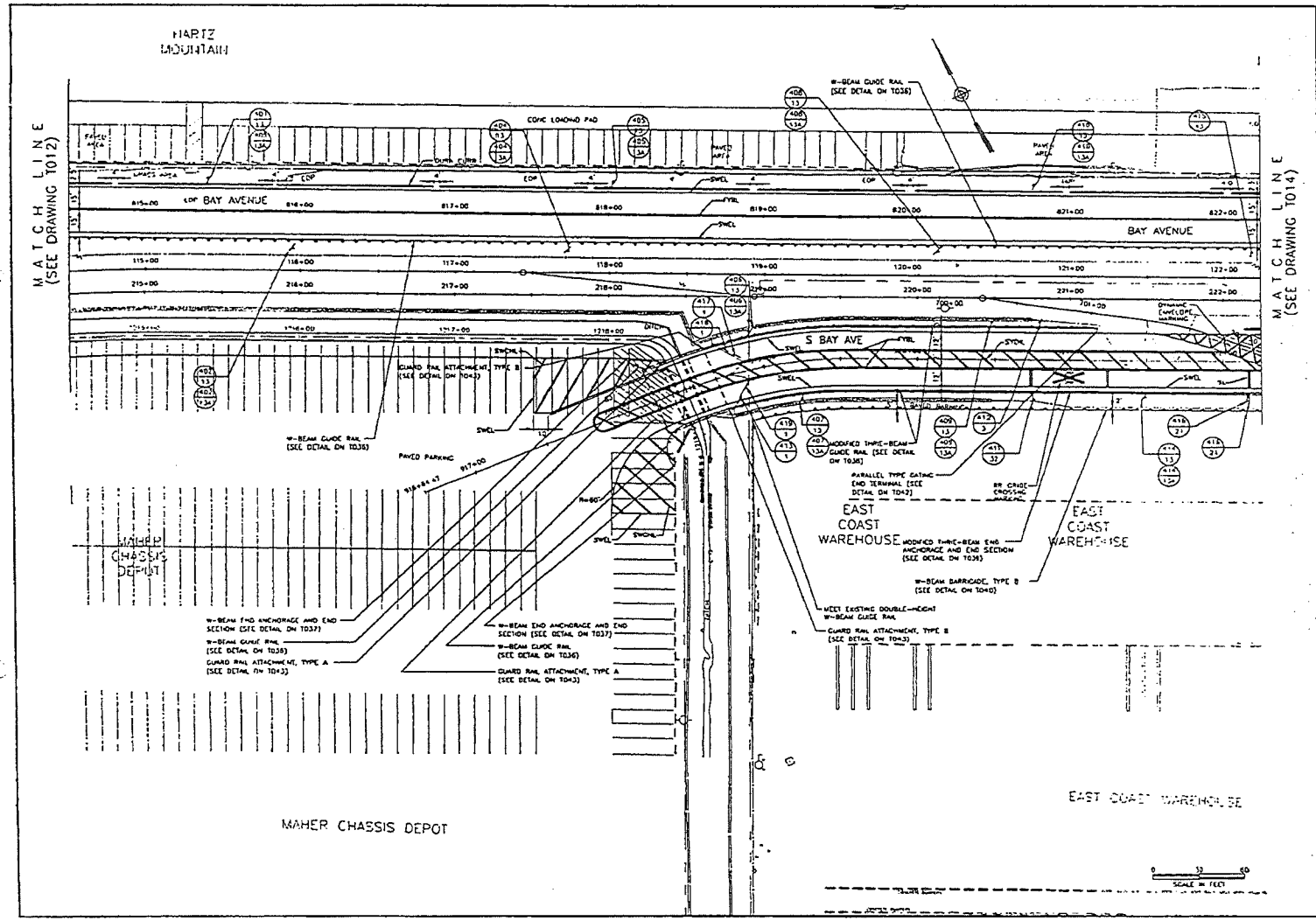
WWM	PCH	KJS
Designed by	Drawn by	Checked by

Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number T012

PDF 07255000



THE PORT AUTHORITY OF NY & NJ

CHIEF TRAFFIC ENGINEER

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

TRAFFIC

Title

EXPRESSRAIL – ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

SIGNING, PAVEMENT MARKING, AND GUIDE RAIL PLAN SHEET 4 OF 9

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

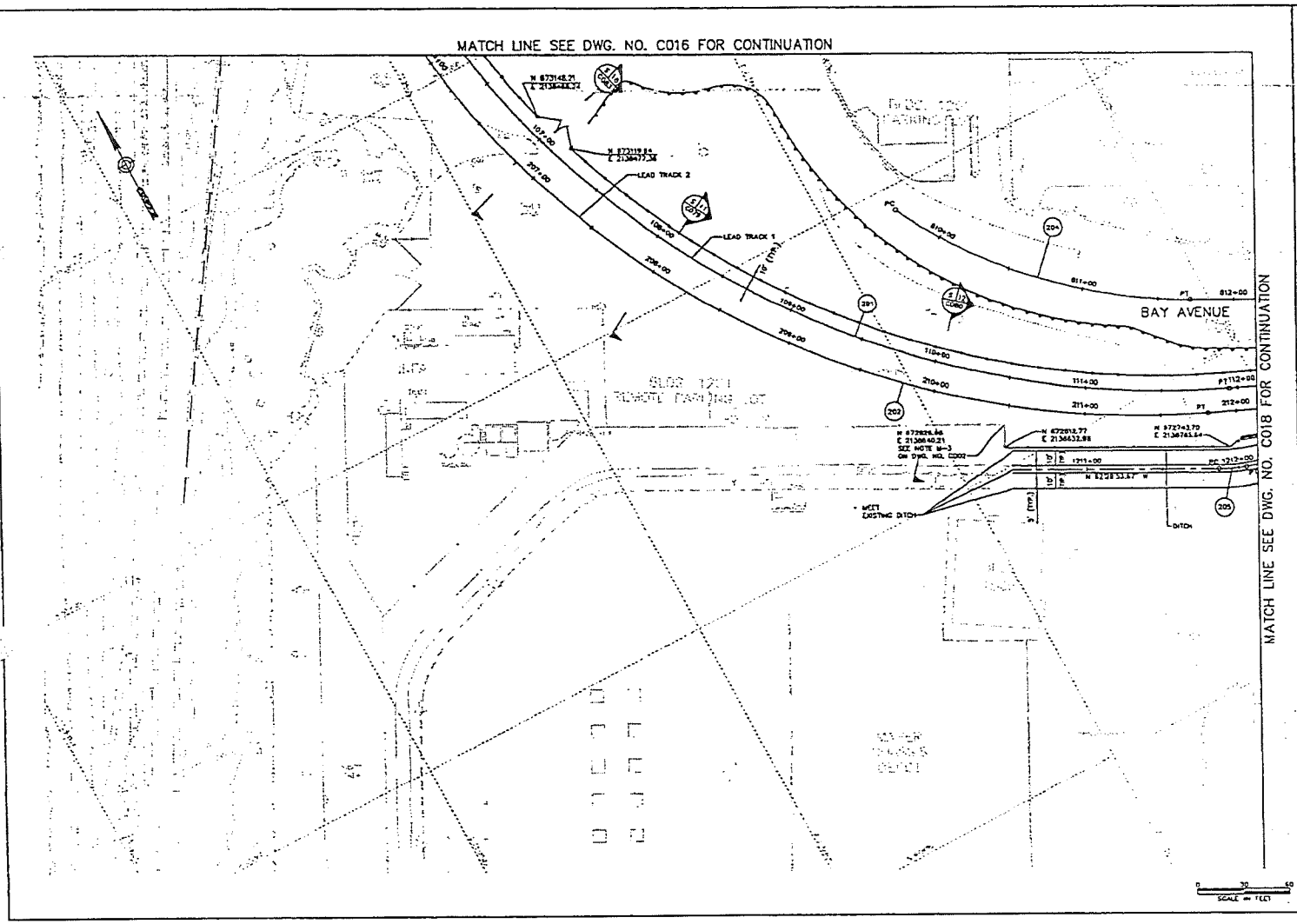
Designed by	Drawn by	Checked by
WMM	PCH	KJS

Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number T013

PCF 02253000



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THE PORT AUTHORITY OF NY & NJ

CHIEF ENG. ENGINEER

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

CIVIL

Title

EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

ALIGNMENT PLAN -3-

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

JC/GP/LH M.FERNANDEZ E.LAPRAZABAL

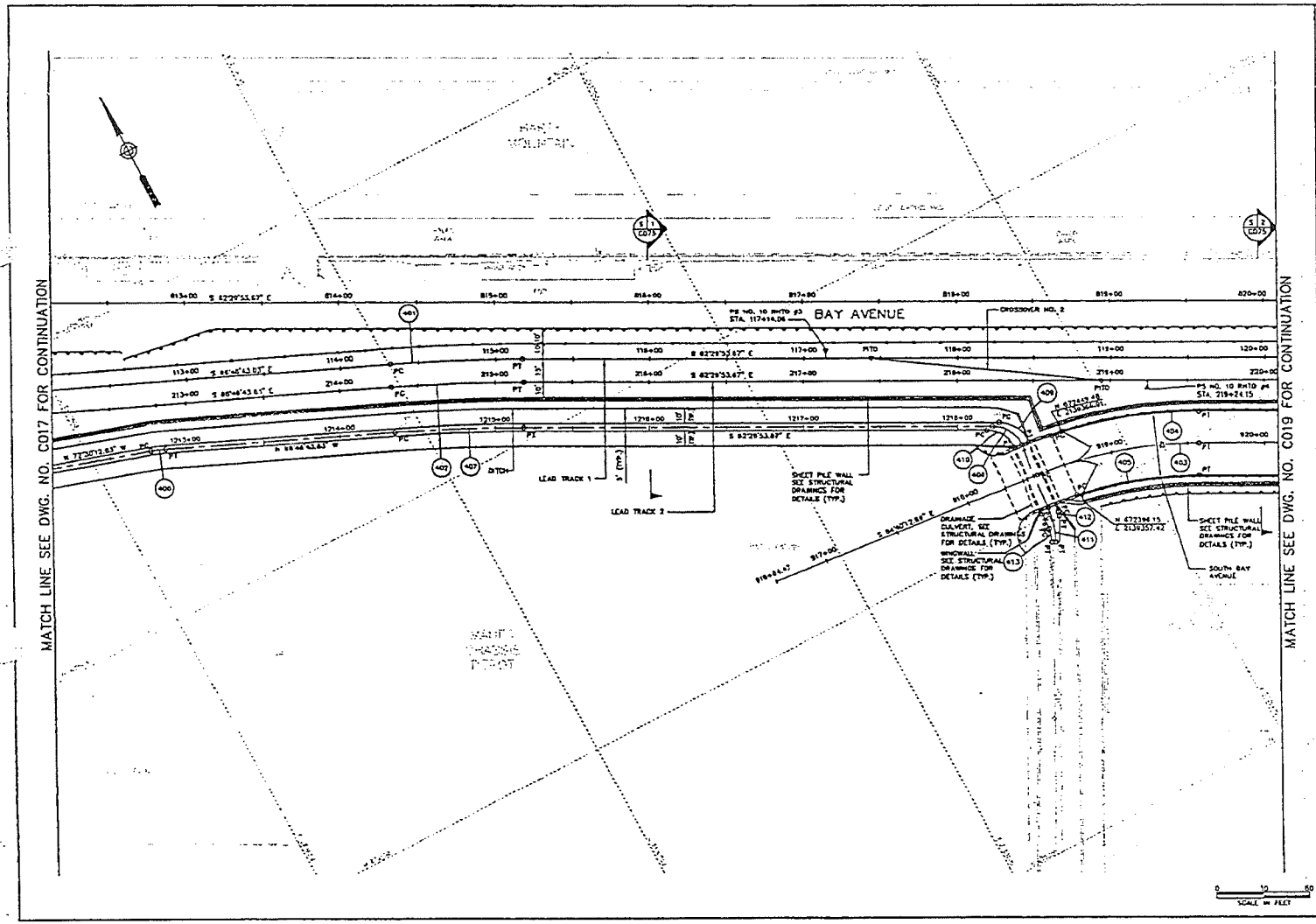
Designed by Drawn by Checked by

Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number C017

Proj 02255000



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THE PORT AUTHORITY OF NY & NJ

CHIEF ENG. ENGINEER

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

CIVIL

Title

EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

ALIGNMENT PLAN -4-

This drawing subject to conditions in contract, an instrument, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

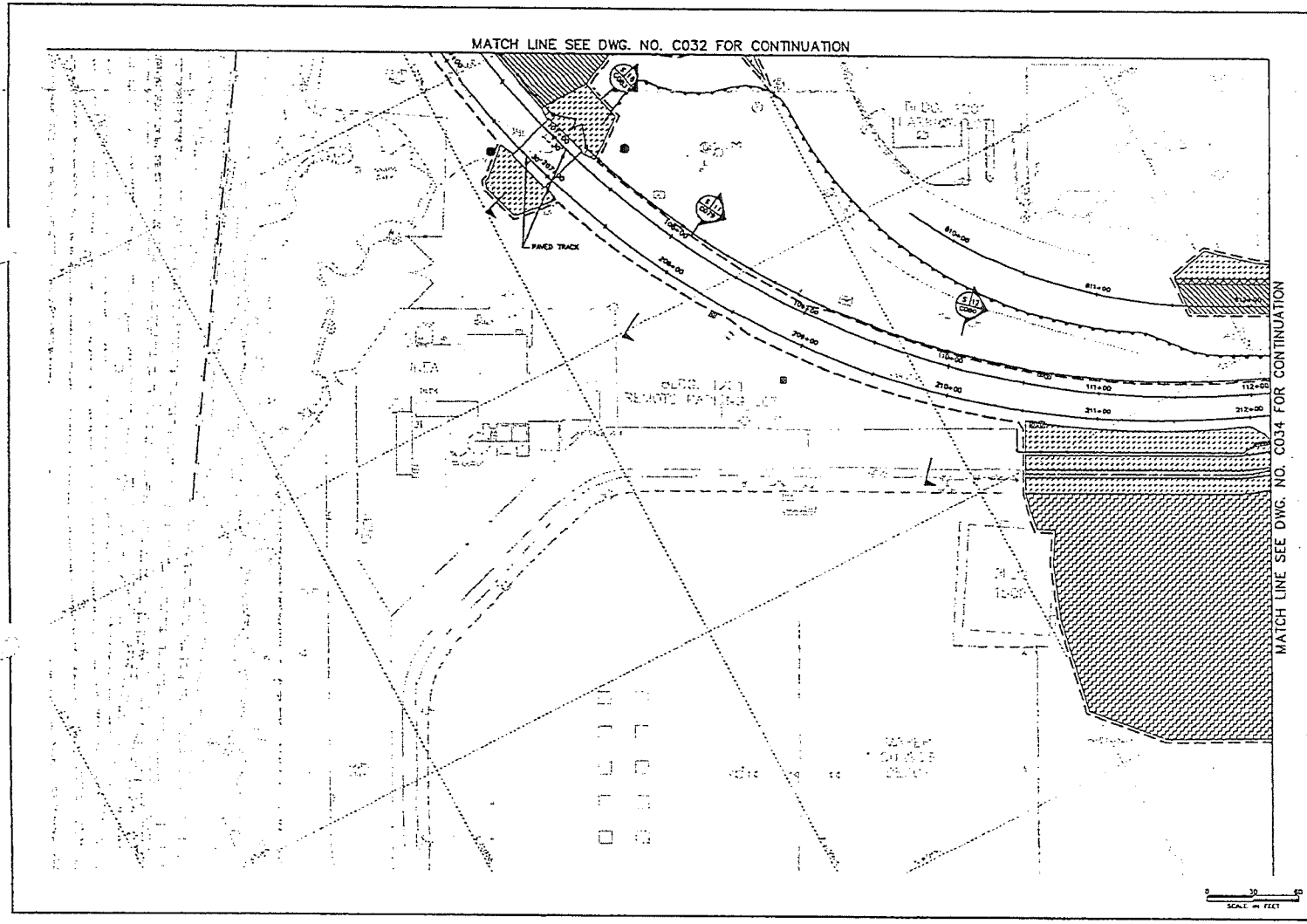
JC/CP/LH W.FERNANDEZ C.LARRAZABAL

Designed by Drawn by Checked by

Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number C018



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THE PORT AUTHORITY OF NY & NJ

CHIEF CIVIL ENGINEER

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

ELIZABETH
PORT AUTHORITY
MARINE TERMINAL

CIVIL

Title

EXPRESSRAIL - ELIZABETH
LEAD TRACKS AND
SOUTH BAY AVENUE

PAVING PLAN
-3-

This drawing subject to conditions of contract, all covenants, notes, designs and methods herein are reserved to Port Authority and may not be used without its written consent

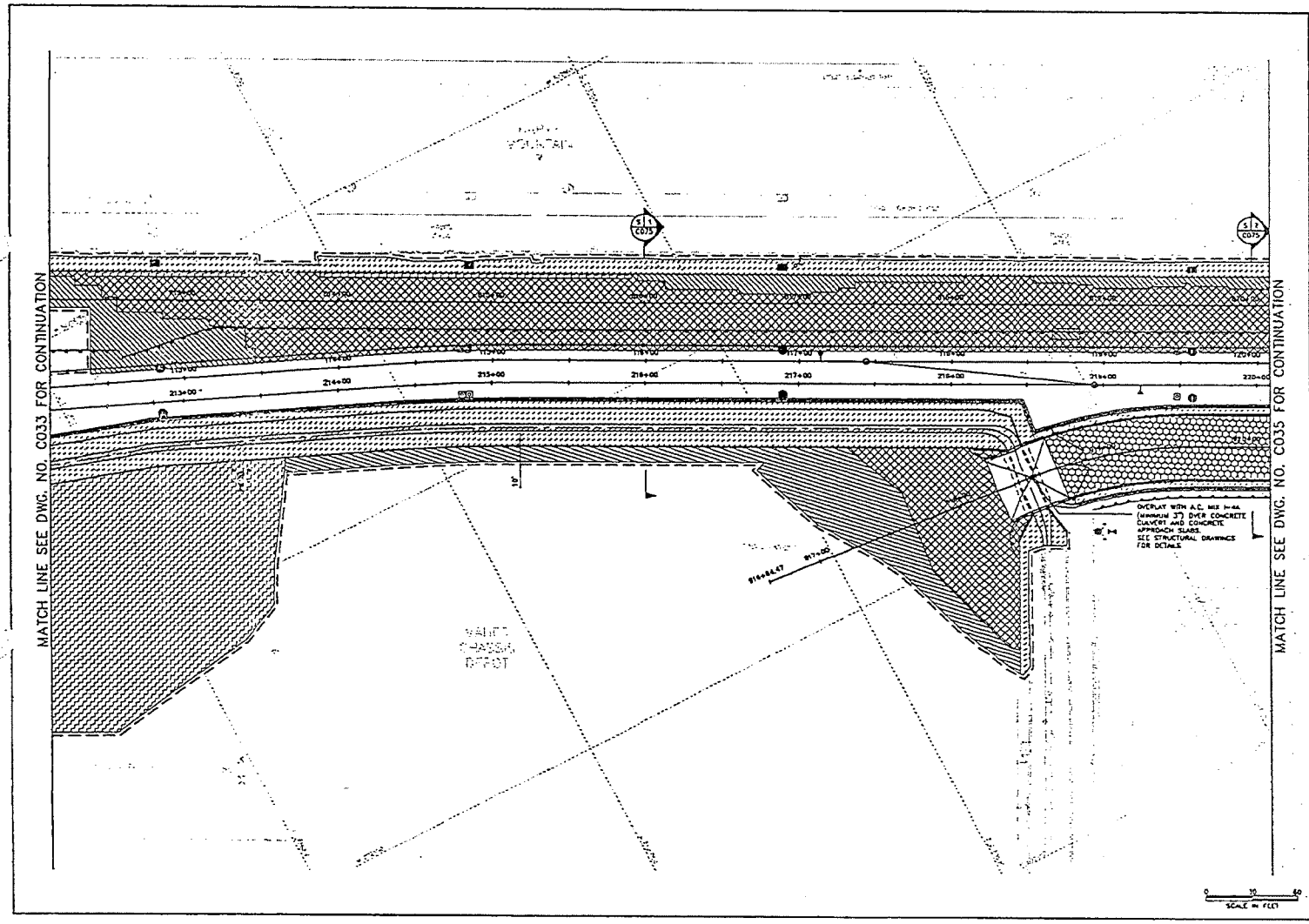
J.CHAVEZ M.FERNANDEZ E.LAMAZABAL
Designed by Drawn by Checked by

Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number C033

POP 92254000



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THE PORT AUTHORITY OF NY & NJ

CHIEF CIVIL ENGINEER

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

CIVIL

Title

EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

PAVING PLAN -4-

This drawing subject to conditions of contract, all inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

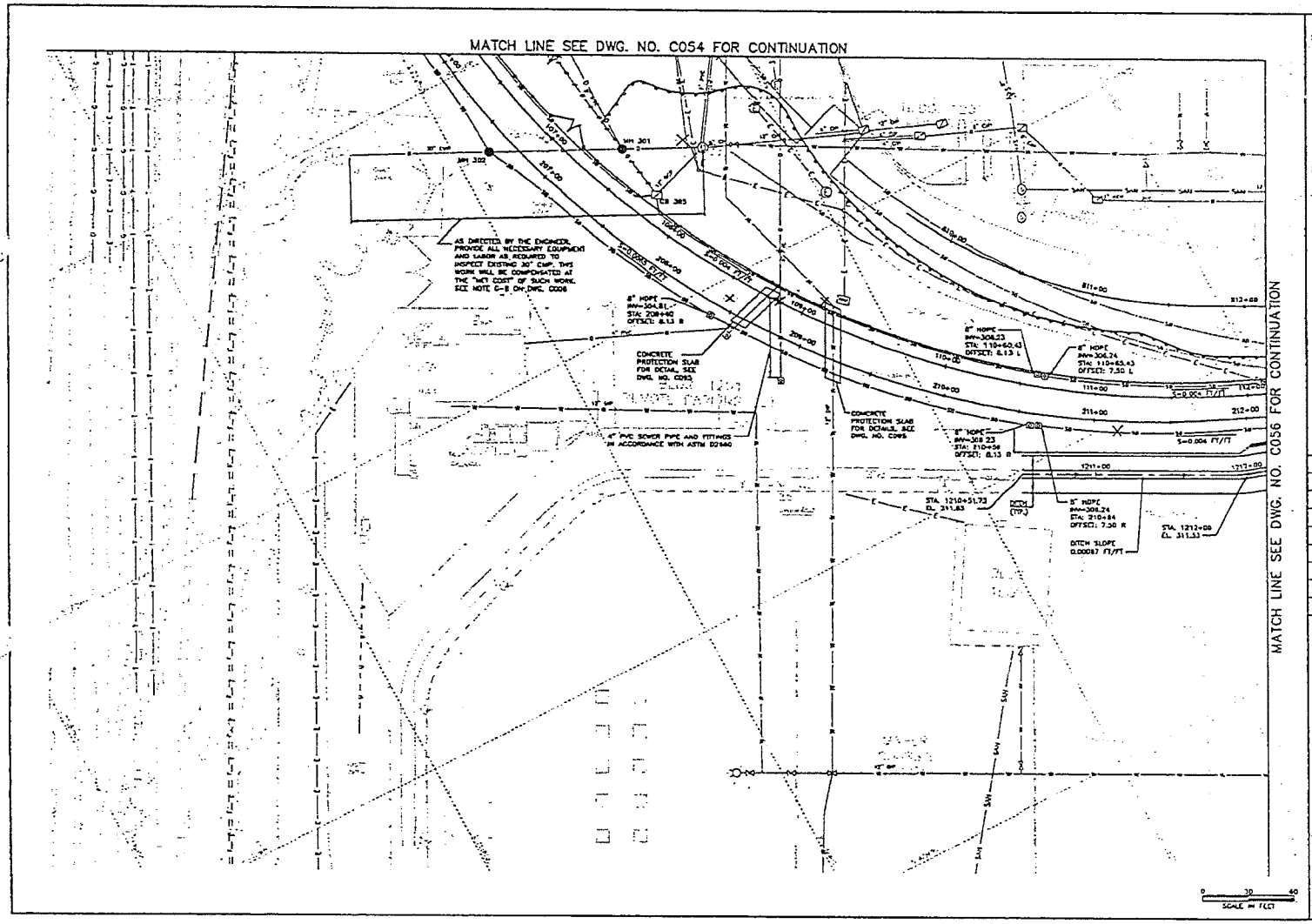
Designed by	Drawn by	Checked by
J.CHAVEZ	C.PHOLMX W.FERNANDEZ	E.LARRAZABAL

Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number C034

PO# 02250600



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THE PORT AUTHORITY OF NY & NJ

CHIEF CIVIL ENGINEER

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

CIVIL

Title

EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

UTILITIES PLAN -3-

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

J.CHAVEZ, T.HUANG, M.FERNANDEZ, E.LARRAZABAL

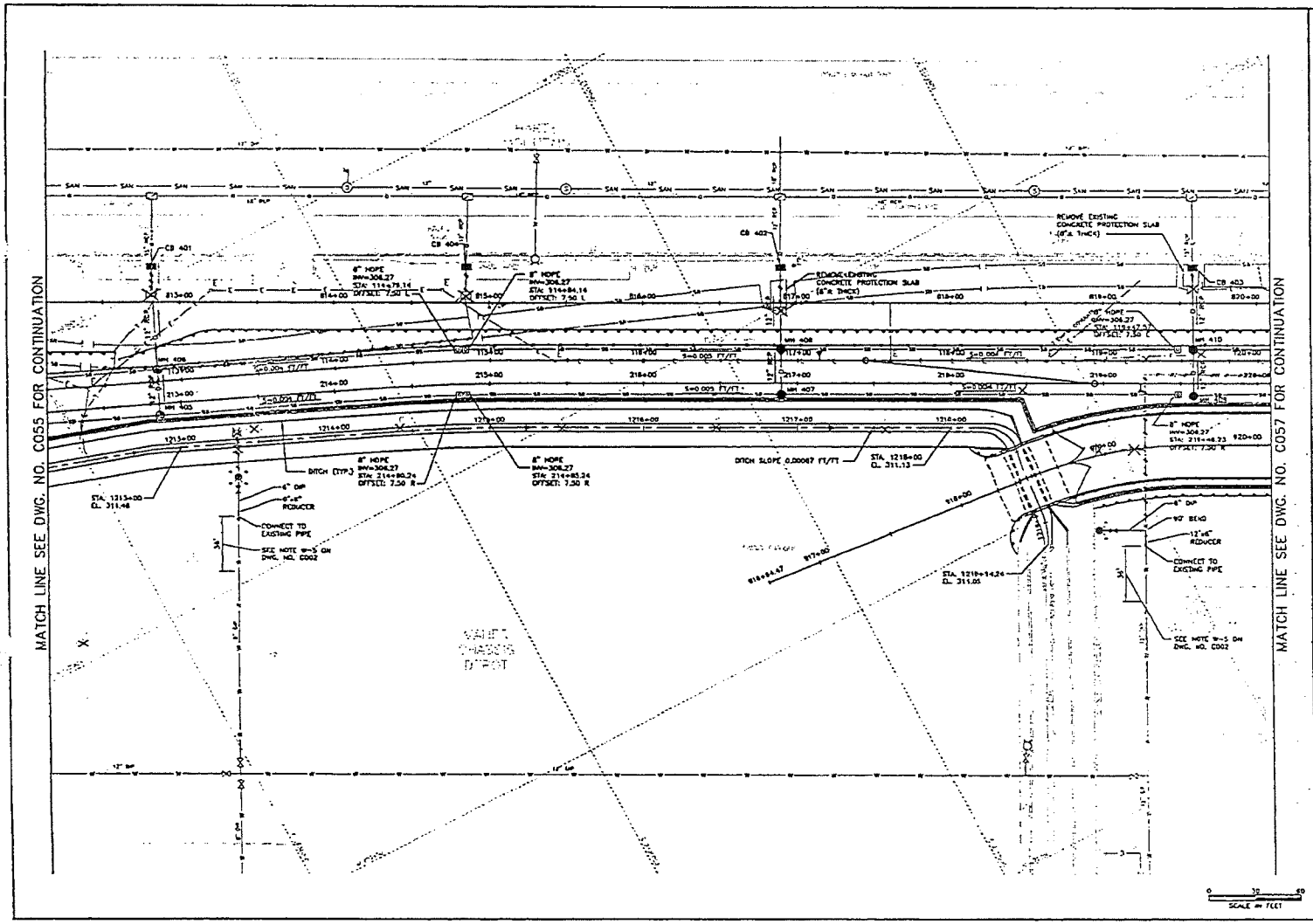
Designed by Drawn by Checked by

Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number C055

PO# 02255000



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THE PORT AUTHORITY OF NY & NJ

CHIEF ENG. ENGINEER

No	Date	Revision	Approved

ENGINEERING DEPARTMENT

ELIZABETH PORT AUTHORITY MARINE TERMINAL

CIVIL

Title

EXPRESSRAIL - ELIZABETH LEAD TRACKS AND SOUTH BAY AVENUE

UTILITIES PLAN -4-

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.

J.CHAVEZ L.HUANG M.FERNANDEZ E.LARRAZABAL

Designed by Drawn by Checked by

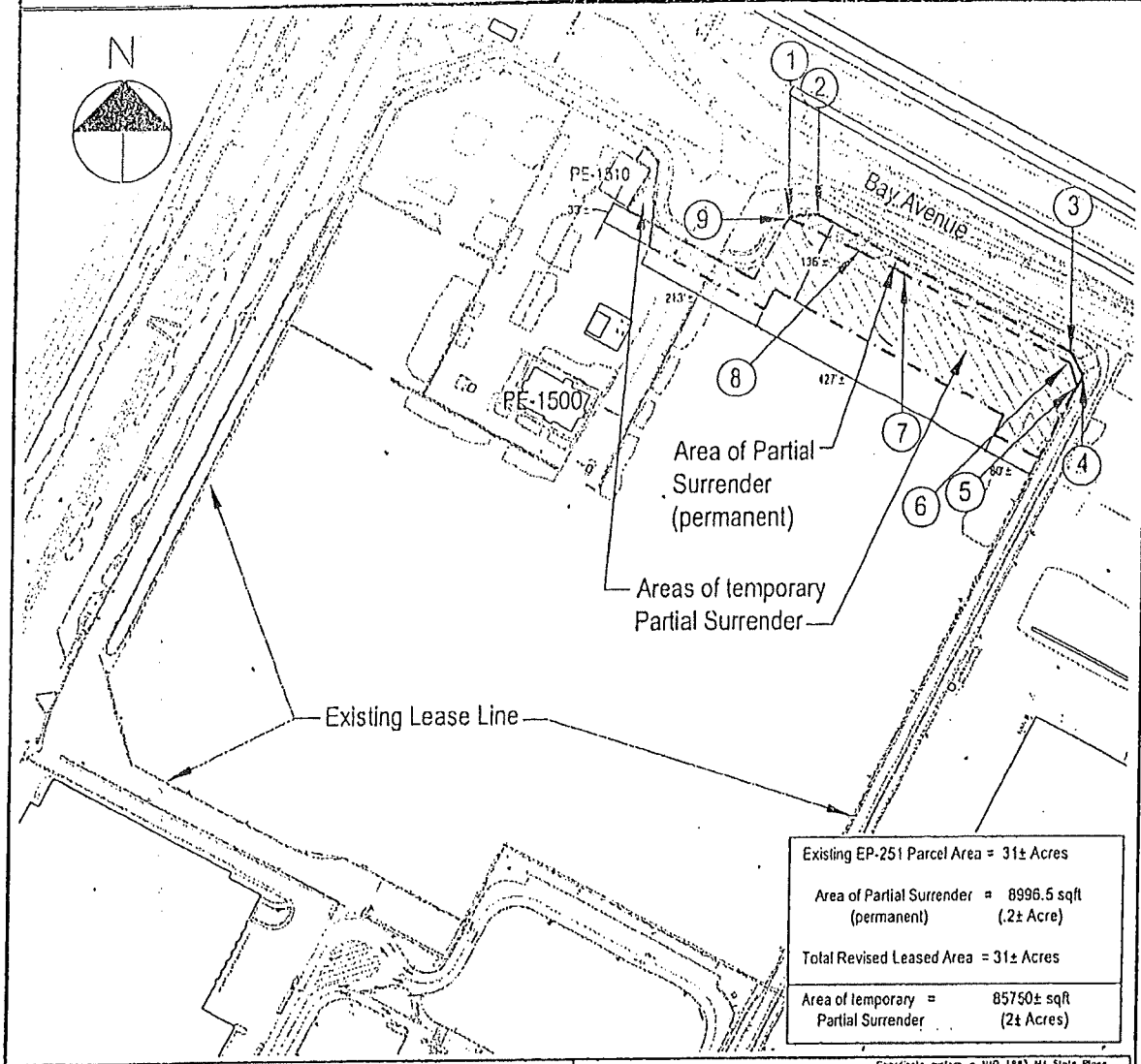
Date NOVEMBER 13, 2006

Contract Number EP-384.061

Drawing Number C056

PO# 02250000

MAHER TERMINALS, INC. | EP-251



Existing EP-251 Parcel Area =	31± Acres
Area of Partial Surrender (permanent) =	8996.5 sqft (.2± Acre)
Total Revised Leased Area =	31± Acres
Area of temporary Partial Surrender =	85750± sqft (2± Acres)

Metes and Bounds:

Coordinate system = NAD 1983 NJ State Plane

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			672461.40	584861.41
	46.78'	N 85°40'12" E		
2			672464.93	584908.05
	465.48'	S 62°23'34" E		
3			672249.22	585320.54
	41.70'	S 26°48'26" E		
4			672212.00	585339.34
	18.37'	S 27°36'03" W		
5			672195.72	585330.83
	39.19'	N 18°44'14" W		
6			672232.83	585318.25
	301.49'	N 62°23'24" W		
7			672372.56	585051.09
	398.09'	N 62°25'23" W		
8			672407.93	584976.83
	127.60'	N 66°40'15" W		
9			672458.46	584859.66
	3.42'	N 30°47'55" E		
			(return to point 1)	

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

PS-1

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : April 19, 2007

Form - All-Purpose Ack. N.Y. (rev 9/1/99)

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

On the 15th day of October in the year 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared RICHARD M. LARRABEE DIRECTOR, PORT COMMERCE DEPT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lucy Ambrosino
(notarial seal and stamp)

LUCY AMBROSINO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01AM6101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV. 3, 2011

STATE OF New Jersey)
) ss.
COUNTY OF Union)

On the 11th day of September in the year 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared Basil Maha & Scott Schley, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Virginia S. Kochan
(notarial seal and stamp)

VIRGINIA S. KOCHAN
Notary Public, State of New Jersey
Registered in Union County
My Commission Expires Aug. 12, 2011

This Space for Port Authority Use Only
:Number PEP-063 :

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
225 Park Avenue South
New York, New York 10003

SPACE PERMIT

The Port Authority of New York and New Jersey (hereinafter called the "Port Authority") hereby grants to the Permittee hereinafter named permission to use and occupy the following described space (hereinafter called the "Space") at the Port Authority Facility hereinafter named, for the purposes hereinafter specified, in accordance with the Terms and Conditions hereof and the endorsements annexed hereto; and the Permittee agrees to pay the fees hereinafter specified and to perform all other obligations imposed upon it in the Terms and Conditions and endorsements.

1. FACILITY: ELIZABETH – PORT AUTHORITY MARINE TERMINAL

2. PERMITTEE: MILLENNIUM MARINE RAIL, L.L.C., a New Jersey limited liability company.

3. PERMITTEE'S ADDRESS: Attention: M. Brian Maher
Four Connell Drive
4th Floor
P.O. Box 618
Berkeley Heights, New Jersey 07922

With a copy for information purposes only to:

APM Terminals North America, Inc.
Attention: Chief Financial Officer
6000 Carnegie Boulevard
Charlotte, North Carolina 28209

4. PERMITTEE'S REPRESENTATIVES: Nicholas Taro, John Loepprich, Joseph Curto and Randall Mosca .

5. SPACE: Approximately 67 acres of area shown in dash and dotted line on a sketch attached hereto, hereby made a part hereof, and marked "Exhibit A". The Port Authority and the Permittee hereby agree that the Space constitutes non-residential real property.

6. PURPOSES: For: (i) the operation and management of the new Expressrail as a public, multi-user marine container rail interchange terminal; (ii) the ingress and egress of railroad cars and locomotives to and from areas adjacent to the Space; (iii) the receipt and delivery of containerized waterborne freight which has arrived or will be departing by vessel through the Port of New York and New Jersey, to and from such railroad cars and (iv) such other purposes as may be approved by the Facility Manager in writing.

7. FEES: See Special Endorsement No. 1.

8. EFFECTIVE DATE: As provided in Section 1 of the Terms and Conditions except as such date may be postponed pursuant to Special Endorsement No. 10.

9. EXPIRATION: August 31, 2014, unless terminated or revoked prior to the stated expiration date, or any mutually agreed upon extended extension date, as appropriate, in accordance with the Terms and Conditions and Endorsements.

10. ENDORSEMENTS: 10.4, 11.1, 17.1, 18.1, 19.12, 22.1 and Special.

Dated as of: September 1, 2004

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

By _____
RICHARD M. LARRABEE
(Title) DIRECTOR, PORT COMMERCE DEPT.

MILLENNIUM MARINE RAIL, L.L.C.
(Permittee)

By Maher Terminals, Inc.

By _____

(Title) Exec. V.P. C.O.S.

MILLENNIUM MARINE RAIL, L.L.C.
(Permittee)

By APM Terminals North America, Inc.

By _____

(Title) Sr. Vice President

APPROVED:
FORM TERMS

ExpressRail

TERMS AND CONDITIONS

1. (a) The permission hereby granted shall take effect on October 1, 2004, as such date may be changed pursuant to Special Endorsement No. 10 below.

(b) If any one or more of the following events shall occur that is to say:

(1) The Permittee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors; or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Permittee shall be adjusted bankrupt or an order shall be made approving a petition filed by any of its creditors or, if the Permittee is a corporation, by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Permittee and shall not be dismissed within thirty (30) days after the filing thereof; or

(4) The interest of the Permittee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, except as provided in Special Endorsement 24 ; or

(5) Subject to the provisions of subparagraph (b)(4) above, the Permittee, if a corporation, shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(6) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Permittee, and such possession or control shall continue in effect for a period of fifteen (15) days; or

(7) The Permittee shall voluntarily abandon, desert or vacate the Space or discontinue its operations at the Space or, after exhausting or abandoning any right of further appeal, the Permittee shall be prevented for a period of forty-five (45) days by action of any governmental agency, from conducting its operations at the Space, regardless of the fault of the Permittee; or

(8) Any lien shall be filed against the Space because of any act or omission of the Permittee and shall not be discharged within thirty (30) days; or

(9) The Permittee shall fail duly and punctually to pay the fees or to make any other payment required hereunder when due to the Port Authority; or

(10) The Permittee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this agreement, on its part to be kept, performed or observed, within ten (10) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Permittee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by ten (10) days' notice revoke this Permit, such revocation to be effective upon the date specified in such notice. Such right of revocation and the exercise thereof shall be and operate as a conditional limitation.

(c) Revocation or termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of such revocation or termination.

2. (a) As used in this Permit, the term "Executive Director" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the Executive Director by this Permit; but until further notice from the Port Authority to the Permittee, it shall mean the Executive Director of the Port Authority for the time being, or his duly designated representative or representatives.

(b) As used in this Permit, the terms "Facility Manager" and "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the Facility Manager or his or her duly designated representative.

(c) No acceptance by the Port Authority of fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Permittee shall be deemed a waiver of any right on the part of the Port Authority to this Permit. No waiver by the Port Authority of any default on the part of the Permittee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Permittee shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

3. (a) Except as provided in paragraph (b) below, the rights granted hereby shall be exercised by the Permittee acting only through the medium of its officers and employees. The Permittee shall not assign, transfer, mortgage or otherwise encumber this Permit, the Building (as such term is defined below) or any other improvements of the Port Authority on the Space or any

of the rights or privileges granted under this Permit or enter into any contract requiring or permitting the doing of anything under this Permit by an independent contractor, without the prior written approval of the Port Authority.

(b) Notwithstanding the provisions of paragraph (a) above, the Permittee may: (i) use contractors in the performance of its obligations to maintain and repair the Space and the equipment thereon and to supply watching and other services, including, coopering, clerking and extra labor functions at the Space or to assist it with (but not to be responsible for performing) any other of the Permittee's obligations under this Agreement; and (ii) use contractors in the performance of any and all of its obligations if such contractors would be a permitted transferee (without prior Port Authority consent) of a security or interest in Permittee as provided in Special Endorsement 24. No contractor which is not a permitted transferee (without prior Port Authority consent) of a security or interest in the Permittee as provided in Special Endorsement 24 shall participate in the active management, direction, administration, executive action and overhead functions involved in the operations of the Permittee. The Permittee shall be fully responsible to the Port Authority for the acts and omissions of all such contractors and their officers, agents, representatives, employees and persons on the Space with their consent to the same extent as if the same were the employees of the Permittee. None of the provisions of this paragraph shall be taken to alter, amend or diminish any obligation of the Permittee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Space with its consent.

4. This Permit does not constitute the Permittee the agent or representative of the Port Authority for any purpose whatsoever.

5. The operations of the Permittee, its employees, invitees and those doing business with it, shall be conducted in an orderly and proper manner. The Port Authority shall have the right to object to the Permittee regarding the demeanor, conduct and appearance of the employees and invitees of the Permittee and of those doing business with it, whereupon the Permittee will take all steps necessary to remove the cause of the objection.

6. The Permittee shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the rules and regulations of the Port Authority now in effect, and such further reasonable rules and regulations which may from time to time during the effective period of this Permit, be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance of the Facility, including the Space, or for the safe and efficient operation of the Facility, including the Space. The Port Authority agrees that, except in cases of emergency, it shall give notice to the Permittee of every rule and every regulation hereafter adopted by it at least five (5) days before the Permittee shall be required to comply therewith.

7. (a) The Permittee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the Space by the Permittee or by its officers, agents, employees, or representatives,

contractors, subcontractors or their employees, or by others on the Space with the consent of any of the foregoing persons, or out of any other acts or omissions of the Permittee, its officers, agents or employees on the Space or elsewhere at the Facility, or out of the acts or omissions of others on the Space with the consent of the Permittee, including claims and demands of the party, if any, from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

(b) If so directed, the Permittee shall at its own expense defend any suit based upon any such claim or demand (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, its Commissioners, officers, agents or employee, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(c) The Permittee in its own name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedule set forth below. Each such policy shall be maintained in at least, the limit fixed with respect thereto, shall cover the operations of the Permittee under this Permit and shall be maintained throughout the effective period of this Permit.

SCHEDULE

	Policy	Minimum Limit
(1)	Commercial general liability insurance	
(i)	Bodily-injury liability: For injury or wrongful death to one person	$10,000,000.00
	For injury or wrongful death to more than one person in any one occurrence	$10,000,000.00
(ii)	Property-damage liability: For all damages arising out of injury to or destruction of property in any one occurrence	$10,000,000.00
(2)	Commercial automobile liability insurance:	
(i)	Bodily-injury liability: For injury or wrongful death to one person	$ 5,000,000.00
	For injury or wrongful death to more than one person in any one occurrence	$ 5,000,000.00

(ii) Property-damage liability:
For all damages arising out of injury to or destruction of property in any one occurrence $ 5,000,000.00

(d) The policy of commercial general liability insurance required hereunder: (i) shall include coverage of completed operations and premises-operations in the amount set forth, above; (ii) shall not exclude property damage to any property in the care, custody or control of any party insured under such policy; (iii) shall include a contractual liability endorsement covering the Permittee's indemnity obligations under this Permit and (iv) shall name the Port Authority as an additional insured. The policy of commercial automobile liability insurance required by this paragraph shall include all owned, non-owned and hired vehicles. In addition, the Permittee shall take out and maintain Workers' Compensation and Employers' Liability Insurance, including coverage for U.S. Longshoremen's and Harbor Workers' Compensation Act. Each policy of liability insurance required by this Special Endorsement shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority, and each such policy of insurance shall provide or contain an endorsement providing that the protections afforded the Permittee thereunder with respect to any claim or action against the Permittee by a third person shall pertain and apply with like effect with respect to any claim or action against the Permittee by the Port Authority and against the Port Authority by the Permittee, but such endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured.

(e) In addition to the policies of insurance required by paragraph (a) of this Section, the Permittee in its own name as assured shall secure and pay the premium or premiums for all risk property damage insurance to be effective during the effective period of this Permit and covering the full replacement cost of any property now or in the future used by the Permittee under this Permit, including without limitation, the Building (as such term is defined below) under this Permit. Full replacement cost shall be determined by the Port Authority from time to time. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New York, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of floods and earthquake. The proceeds of insurance policies required hereunder actually received by the Port Authority (see paragraph (c) below) shall be made available to the Permittee as necessary to cover costs and expenses incurred by the Permittee in connection with its obligations of repair and replacement under this Permit undertaken in connection with damage for which such proceeds have been paid.

(f) In every policy of insurance on property other than that of the Permittee required by this Section, the Port Authority shall be named as the Owner. Each such policy shall be endorsed substantially as follows:

> "Loss, if any under this policy, as to the interest of the Owner shall be adjusted solely with the Port Authority and all proceeds under this policy shall be paid solely to the Port Authority."

(g) As to insurance of any type whatsoever required or permitted by any provision of this Permit, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority at least fifteen (15) days prior to the effective date of this Permit. In the event any binder is delivered, it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified, without giving ten (10) days written advance notice thereof to the Port Authority. Any renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective period under this Permit. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority, the Permittee shall promptly obtain one or more new and satisfactory policies in replacement.

8. (a) If the Space, including the Building (as such term is defined below) and other improvements and personal property furnished by the Port Authority, or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty, the Permittee shall promptly remove all debris resulting from such damage from the Space, and to the extent, if any, that the removal of debris under such circumstances is covered by insurance, the proceeds thereof shall be made available to and be used by the Permittee for such purpose.

(b) If the Space, including the Building and other improvements and personal property furnished by the Port Authority, or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty but not rendered untenantable or unusable for a period of ninety (90) days, the Space shall be repaired with due diligence in accordance with the plans and specifications for the same as they existed prior to such damage by and at the expense of the Permittee unless otherwise directed by the Port Authority in writing, and if such damage is covered by insurance, the proceeds thereof shall be made available to and be used by the Permittee for such repairs.

(c) If the Space, including the Building and other improvements and personal property furnished by the Port Authority, or any part thereof, shall be destroyed or so damaged by fire, the elements, the public enemy or other casualty as to be unusable for ninety (90) days, or if within ninety (90) days after such damage or destruction the Permittee notifies the Port Authority in writing that in its opinion the same will be unusable for ninety (90) days then: The Permittee, unless otherwise directed by the Port Authority in writing, shall proceed with due diligence to make the necessary repairs or replacements to restore the Space, including the Building and other improvements and personal property furnished by the Port Authority in

accordance with the plans and specifications therefor as the same existed prior to such damage or destruction; or with the approval in writing of the Port Authority make such other repairs, replacements or changes as may be desired by the Permittee. If such damage or destruction was covered by insurance, the proceeds thereof shall be made available to and used by the Permittee for such restoration.

(d) The obligation of the Permittee to repair or replace shall be limited to the amount of the insurance proceeds provided the Permittee has carried insurance to the extent and in accordance with Section 7 of the Terms and Conditions of this Permit.

(e) The parties hereby stipulate that neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Permit.

9. (a) All personal property (including trade fixtures) which is installed by the Permittee in or on the Space pursuant to this Permit, removable without material damage to the Space, shall be deemed to be and remain the property of the Permittee. All such personal property, provided the Permittee shall install sufficient replacements therefor if such personal property is necessary to operate the Space in accordance with the terms and provisions hereof (in which event removal shall be permitted during the last seven (7) days of the effective period of permission under this Permit), may at the Permittee's option be removed by the Permittee from the Space at any time during the effective period of this Permit. Furthermore, all such property of the Permittee shall, unless otherwise agreed in writing by the parties hereto, be removed by the Permittee on or before the expiration or earlier revocation or termination of the effective period of this Permit. If the Permittee shall fail to remove its property on or before the expiration or earlier revocation or termination of the effective period of this Permit, the Port Authority may remove such property to a public warehouse for deposit or retain the same in its own possession, and in either event may dispose of the same as waste material or sell the same as waste material or sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale; second to any sums owed by the Permittee to the Port Authority, with any balance remaining to be paid to the Permittee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Permittee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Permit, the Permittee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise.

(b) Without limiting the obligations of the Permittee stated elsewhere in this Permit, the Permittee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority for which it is responsible, located or to be located in or on the Space, and shall promptly replace or repair, the same within twenty (20) days after such loss, theft or damage; and the Permittee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or

earlier revocation of this Permit in the same condition as at the commencement of this Permit, reasonable wear not materially affecting the efficient use and functioning of the same, excepted.

10. The Permittee will have the right to install, maintain or operate, or permit the installation, maintenance or operation on the Space of any vending-machine or device designed to dispense or sell food, beverages to officers and employees of the Permittee and their families and to business guests and invitees of such officers and employees.

11. No signs, posters or similar devices shall be erected, displayed or maintained by the Permittee in view of the general public in or on the Space or the Facility without the written approval of the Facility Manager; and any not approved by the Facility Manager may be removed by the Port Authority at the expense of the Permittee.

12. The representative of the Permittee hereinbefore specified (or such substitute as the Permittee may hereafter designate in writing) shall have full authority to act for the Permittee in connection with this Permit, and to do any act or thing to be done hereunder, and to execute on behalf of the Permittee any amendments, or supplements to this Permit or any extension thereof and to give and receive notices hereunder.

13. (a) All notices and requests given or required to be given to or by either the Port Authority or the Permittee, except as otherwise expressly provided herein, shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party; or (ii) delivered to an office of such party, officer or representative during regular business hours; or (iii) delivered to the residence of such party, officer or representative at any time; or (iv) if directed to the Permittee, delivered to the Space at any time; or (v) forwarded to such party, officer or representative at the office or residence address by registered or certified mail, or delivered to such party at such address by "Federal Express" or similar courier service. The Permittee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Permittee designates M. Brian Maher as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Permittee designates Four Connell Drive, 4th Floor, Berkeley Heights, New Jersey 07922, as their respective offices where notices and requests may be served. Copies of all notices and requests to the Permittee shall also be sent, for information purposes only, to: APM Terminals North America, Inc., Attention: Chief Financial Officer , 6000 Carnegies Boulevard, Charlotte, North Carolina 28209.

(b) If any notice is mailed or delivered, the giving of such notice shall be completed upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address.

14. The Permittee represents and warrants that no broker has been concerned in the negotiation of this Permit and that there is no broker who is or may be entitled to be paid a commission, in connection therewith. The Permittee shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons,

firms or corporations whatsoever for services in connection with the negotiation and execution of this Permit.

15. This Permit, including the attached endorsements and exhibits, if any, constitutes the entire agreement of the Port Authority and the Permittee on the subject matter. It may not be changed, modified, discharged, or extended, except by written instrument duly executed on behalf of the Port Authority and the Permittee. The Permittee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Permit.

The Permittee shall daily remove from the marine terminal by means of facilities provided by it all garbage, debris and other waste material (whether solid or liquid) arising out of or in connection with its operations hereunder, and any such not immediately removed shall be temporarily stored in a clean and sanitary condition, in suitable garbage and waste receptacles, the same to be made of metal and equipped with tight-fitting covers, to be of a design safely and properly to contain whatever material may be placed therein, and to be provided and maintained by the Permittee. The receptacles shall be kept covered except when filling or emptying the same. The Permittee shall exercise extreme care in removing such garbage, debris and other waste materials from the marine terminal. The manner of such storage and removal shall be subject in all respects to the continual approval of the Port Authority. No facilities of the Port Authority shall be used for such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the marine terminal.

STANDARD ENDORSEMENT NO. 10.4
GARBAGE REMOVAL
Marine Terminals
10/6/75

The Port Authority, by its officers, employees, representatives, contractors, licensees, and their employees, shall have the right for the benefit of the Port Authority, or the Permittee and/or for the benefit of others than the Permittee to maintain existing and future heating, water, gas, electricity, sewerage, drainage, fire protection sprinkler, ventilating, refrigerating, fuel and communication systems and other such service systems, including all tubes, pipes, lines, mains, wires, conduits and equipment on or about the Space and to enter upon the Space at all reasonable times and to make such repairs, replacements and alterations as may, in the opinion of the Port Authority, be deemed necessary or advisable, and, from time to time, to construct or install over, on, in or under the Space new tubes, pipes, lines, mains, wires, conduits and equipment, provided however, that the same shall be done so as to interfere as little as reasonably possible with the Permittee's operations.

Nothing contained in this Endorsement shall or shall be construed to impose upon the Port Authority any obligations so to maintain or to make repairs, replacements, alterations or additions or any liability for failure to do so.

STANDARD ENDORSEMENT NO. 11.1
MAINTENANCE OF SERVICE FACILITIES
All Facilities
7/21/49

The Permittee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Permittee's operations at the Facility which may be necessary for the Permittee's operations thereat.

The Permittee shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed, levied, exacted or imposed on its property or operation hereunder or on the gross receipts or income therefrom, and shall make all applications, reports and returns required in connection therewith.

The Permittee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to the Permittee's operations at the Facility.

The Permittee's obligations to comply with governmental requirements are provided herein for the purpose of assuring proper safeguards for the protection of persons and property at the Facility and are not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

STANDARD ENDORSEMENT NO. 17.1
LAW COMPLIANCE
All Facilities
8/29/49

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof shall be charged personally by the Permittee with any liability, or held liable to it, under any term or provision of this Permit, or because of its execution or attempted execution, or because of any breach thereof.

STANDARD ENDORSEMENT NO. 18.1
NO PERSONAL LIABILITY
All Facilities
06/01/50

(a) As used in this Permit:

(1) "Elizabeth-Port Authority Marine Terminal", "Facility", or "marine terminal" shall mean the land and premises in the City of Elizabeth, in the County of Union and State of New Jersey, title to which was vested in the Port Authority by an Order Vesting Title in and Directing Delivery of Possession to The Port of New York Authority dated March 14, 1958, filed March 17, 1958 in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-7065-56, in the case of The Port of New York Authority, plaintiff, vs. Edward J. Grassmann, et al., defendants, the lands title to which was so conveyed having been described fully in the Second Amended Complaint filed in the said case on May 16, 1957, and lands contiguous or adjacent thereto within the County of Union which may have been theretofore or may hereafter be acquired by the Port Authority to use for marine terminal purposes.

(2) "Manager of the Facility", "Facility Manager" or "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager or in the Superintendent of the Facility by this Agreement; but until further notice from the Port Authority to the Permittee, it shall mean the Manager (or the Acting Manager) Port Authority Marine Terminals-New Jersey for the time being, or his duly designated representative or representatives.

(b) The rights of the Port Authority in the Facility are those acquired by it pursuant to the order described in subparagraph (1) of paragraph (a) of this Standard Endorsement, together with those which may be acquired by any subsequent order or orders, deed or deeds or other instruments transferring or assigning additional adjacent property, and no greater rights are granted or intended to be granted to the Permittee hereunder than the Port Authority has power thereunder to grant.

(c) No designation in this Permit of any area as a street, highway, roadway or other comparable characterization, whether or not by name, shall be deemed to be an admission, recognition or acknowledgment of any public or private rights in the area so designated, or as a dedication for or a consent to any public or private use of the same. All use in this Permit of names and designations in connection with such areas is merely for the purpose of fixing geographical locations.

(d) This Permit is subject and subordinate to all mortgages which may now or hereafter affect the space or the Facility and to all renewals, modifications, consolidations, replacements and extensions thereof, and the Permittee agrees to execute any instrument which may be deemed necessary or desirable further to effect the subordination of this Permit to any and all such mortgages.

(e) Without in any wise limiting the obligations of the Permittee as elsewhere stated in this Permit, the Permittee shall be liable to the Port Authority for all damage done to the Facility or to any part thereof or to any property of the Port Authority thereon through any act or omission of those in charge of or operating any vessels, steamers, barges, lighters, other floating equipment or any trucks, other vehicles or other transportation equipment, while any such is at, coming to, or leaving the Space.

The Permittee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and The Fire Insurance Rating Organization of N.J., and any other body or organization exercising similar functions which may pertain or apply to the Permittee's operations hereunder. If by reason of the Permittee's failure to comply with the provisions of this Endorsement, any fire insurance, extended coverage or rental insurance rate on the marine terminal or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Permittee shall on demand pay the Port Authority that part of all fire insurance premiums paid or payable by the Port Authority which shall have been charged because of such violation by the Permittee.

The Permittee shall not do or permit to be done any act which,

(a) will invalidate or be in conflict with any fire insurance policies covering the marine terminal or any part thereof or upon the contents of any building thereon, or

(b) will increase the rate of any fire insurance, extended coverage or rental insurance on the marine terminal or any part thereof or upon the contents of any building thereon, or

(c) in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risks normally attendant upon the operations contemplated, by this Permit, or

(d) may cause or produce upon the marine terminal any unusual, noxious or objectionable smokes, gases, vapors or odors, or

(e) may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire-protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the marine terminal, or

(f) shall constitute a nuisance in or on the marine terminal or which may result in the creation, commission or maintenance of a nuisance in or on the marine terminal.

For the purpose of this Endorsement, "marine terminal" includes all structures located thereon.

STANDARD ENDORSEMENT NO. 22.1
PROHIBITED ACTS
NEW JERSEY MARINE TERMINALS
10/06/74

ExpressRail

SPECIAL ENDORSEMENTS

1. (a) The Permittee shall collect from users of the services provided by the Permittee at the Space and remit to the Port Authority, on a monthly basis, the intermodal container usage fee (without any billing-processing charge being added to this fee) based on the rates for such fee as set forth in the Port Authority 's FMC Schedule No. PA 10, which is subject to change from time to time.

(b) (i) The Permittee will not be required to remit to the Port Authority uncollected monies for any given 30-day billing cycle with respect to any specific user from the day the services were first provided by the Permittee to such user.

(ii) (x) The Permittee shall have the right to discontinue services to such delinquent user and in that event the Permittee will not be responsible to the Port Authority for such uncollected monies; unless subsequent to the discontinuance of services, the delinquent user would pay up the unpaid moneys, in that event the Permittee would promptly remit such uncollected monies to the Port Authority.

(y) If instead of discontinuing services to the delinquent user, the Permittee will choose to continue to provide services to such delinquent user, then the Permittee shall be responsible to the Port Authority for such uncollected monies and any future intermodal container usage fees.

(c) Subject to the provisions of subparagraphs (b)(i) and (ii) above, the fees due hereunder, together with a report of the volume of container usage activities during such calendar month and cumulatively during such Annual Period certified by a responsible officer of the Permittee, shall be due and payable on the thirtieth (30th) day of the month following the calendar month in which the Space is made available to the Permittee as provided in Section 1 of the Terms and Conditions and on the thirtieth (30th) day of each calendar month thereafter, provided, however, that if this Permit shall expire or be terminated or extended effective on a date other than the last day of a calendar month, the final payment of the fees and a final report as described above shall be due and payable within thirty (30) days after the effective date of expiration, termination or extension.

(d) Payment made hereunder shall be sent to the following address:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
P.O. BOX 95000-1517
PHILADELPHIA, PA. 19195-1517

or to such other address as may be hereafter substituted therefor by the Port Authority, from time to time, by notice to the Permittee.

2. (a) The Port Authority shall construct an approximately 10,000 square feet, two-story building (called the "Building" in this Permit) for office use on the Space.

(b) The Port Authority shall furnish properly ballasted railroad tracks and switches, light stanchions and electrical wiring for such stanchions on any expansions to the

Space and the Building, water pipes, sewer lines and fencing on the Space and on any expansions of the Space.

(c) The Permittee shall at all times keep the Space and the Building clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Permittee located in or on the Space and the Building.

(d) The Permittee shall repair, replace, rebuild and paint all or any part of the Space including the Building or of the Facility which may be damaged or destroyed by the acts or omissions of the Permittee or by those of its officers or employees, or of other persons on or at the Space and the Building with the consent of the Permittee.

(e) Throughout the period of permission under this Permit, the Permittee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever in the Space and the Building, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing the Permittee shall maintain and make repairs and replacements, structural or otherwise to all improvements located on the Space and the Building and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Space and the Building or the Permittee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of the following items: (1) paving, which shall mean maintenance paving, crack sealing, weed removal, repair of damaged or overstressed surfaces, manholes, catch basins, underground storm water pipes, and grate support systems. In addition, the Permittee shall be responsible for maintenance repairs, and damages, that are required above the structural concrete chamber of catch basins and manholes. Such repairs shall include the concrete brick collar, concrete collar, brick collar, asphalt concrete pavement, Portland cement concrete pavement, the frame and grate or manhole cover and silt bucket when and where applicable. For the purpose of manhole and catch basin repair, the top of the structural chamber shall be the top of the concrete slab that covers the vertical walls of the underground manhole structure, and for the purpose of catch basin and manhole repair, the top of the structural chamber shall be the top of the (cast-in-place or pre-cast) vertical walls of the underground catch basin and manhole structure; (2) scales; (3) rail track system, including rail, switches, turnouts, and rail foundations; (4) lights, light poles and light pole foundations; (5) sprinkler systems; (6) gas and electric from the meter (utility companies are responsible up to the meter); (7) the electrical system, equipment and fixtures, including, without limitation, lighting fixtures, switches, outlets, receptacles and other electrical devices and accessories, and all relamping and fuse replacement; (8) power switch mechanism; (9) compressed air system; (10) the plumbing system, fixtures and equipment, and all finished plumbing; (11) buildings and all parts thereof; (12) special loading devices, whether mechanical, electrical, hydraulic or otherwise; (13) fencing; (14) signs; (15) fire extinguishers; and (16) all painting. The Permittee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the Permit and all times during the period of permission, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the period of permission

hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the Building or other structures on the Space or adversely affect the efficient or the proper utilization of any part of the Space or the environmental condition thereof. The Permittee shall make frequent periodic inspections of the Space and shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by the Permittee shall be in quality and class not inferior to the original in materials and workmanship. With respect to anything originally supplied or installed by the Port Authority, the Permittee shall have the benefit of the warranty, if any, running to the Port Authority, to the extent assignment thereof does not impair or void the same.

(f) Except under circumstances as to which paragraph (b) of this Special Endorsement applies, upon receipt of notice that repair or replacement of such of the following as are located in or are a part of the Space is required: (1) the water distribution system up to the closer of twenty (20)feet from the exterior building walls of the building being serviced or the valve connection thereto, and (2) the underground sanitary systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the Space in a reasonably good condition for the operations of the Permittee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the Space to a better condition than that existing at the commencement of the effective period of permission of this Permit (or, in the case of improvements made during the effective period of permission under this Permit in as good condition as at the time of the installation or construction thereof). The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing, the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of the Permittee under any other provision of this Permit. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable.

3. (a) A principal purpose of the Port Authority in granting the permission under this Permit is to have available for maritime users of The Port Authority of New York and New Jersey the services which the Permittee is permitted to render hereunder, all for the better accommodation and convenience of the beneficiaries of such services and in fulfillment of the Port Authority's obligation to operate facilities for the use and benefit of the public.

(b) The Permittee agrees that it will conduct a prudent owner's operation and will furnish all fixtures, equipment, personnel (including licensed personnel as necessary), supplies, materials and other facilities necessary or proper therefor. The Permittee shall furnish all services hereunder on a fair and non-discriminatory basis.

4. (a) The Permittee shall not commit any nuisance or permit its employees or others on the Space with its consent to commit or create or continue or tend to create any nuisance on the Space or in or near the Facility.

(b) The Permittee shall not do or permit to be done any act or thing at the Space or the Facility which shall or might subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

(c) From time to time and as often as required by the Port Authority, the Permittee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and fire-fighting equipment on the Space and at the Building whether such system or equipment is furnished by the Port Authority or by the Permittee. The Permittee shall keep all fire-fighting and fire extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

(d) The Permittee shall accept the Space including the Building, the railroad track and switches and all other improvements and personal property of the Port Authority thereon in their present condition. The Permittee shall be responsible for snow removal. The Permittee shall not install any fixtures or make any additions or improvements in or additions to the Space except with the prior written approval of the Port Authority.

5. The Permittee shall have the right of ingress and egress between the Space and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways, to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a reasonably equivalent means of ingress and egress remains available to the Permittee. The Permittee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Permittee may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any way or other area whether within or outside the Facility. The Permittee shall not do anything which will interfere with the free access and passage of others to space adjacent to the Space or in any streets, ways and walks near the Space.

6. (a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Permittee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Permittee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Permit as a result of an act or omission of the Permittee contrary to the said conditions, covenants and agreements, the Permittee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties and the same may be added to the fees

thereafter due under this Permit, and each and every part of the same shall be and become a portion of the fees under this Permit, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fee set forth on the cover page of this Permit.

(b) For all purposes under this Special Endorsement and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be prima facie evidence against the Permittee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Permittee with cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof, shall likewise be prima facie evidence against the Permittee that the amount of such charge was necessary and reasonable.

(c) The term "costs" in this Special Endorsement shall mean and include; (i) payroll costs, including contributions to pension plans or systems, insurance costs, sick leave pay, holiday, vacation, and authorized absence pay; (ii) cost of materials and supplies used; (iii) payments to contractors; (iv) any other direct costs; and (v) thirty percent (30%) of the sum of the foregoing.

7. (a) The Port Authority shall, as an additional remedy upon the giving of a notice of revocation as provided in Section 1 of the Terms and Conditions of this Permit, have the right to re-enter the Space and every part thereof upon the effective date of revocation without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Permittee under this Permit and shall in no event constitute an acceptance of the surrender of the Space.

(b) The Permittee hereby waives any and all rights to recover or regain possession of the Space and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains possession of the Space in any lawful manner.

(c) No agreement for the mutual termination of this Permit shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Permittee. Except as expressly provided in this Special Endorsement, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the Port Authority, shall be deemed an acceptance of a mutual termination of this Permit.

8. The Permittee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Space or the suitability thereof for the operations permitted on the Space by this

SPECIAL ENDORSEMENTS

Permit. The Permittee, prior to the execution of this Permit, has thoroughly examined the Space and has found it to be in good order and repair and determined them to be suitable for the Permittee's operations hereunder. Without limiting any obligation of the Permittee to commence operations hereunder at the time and in the manner stated elsewhere in this Permit; the Permittee agrees that no portion of the Space will be used initially or at any time during the effective period of this Permit which is in a condition unsafe or improper for the conduct of the Permittee's operations hereunder so that there is possibility of injury or damage to life or property and the Permittee further agrees that before any use it will immediately correct any such unsafe or improper condition.

9. The Port Authority shall not be liable to the Permittee, or to any person, for injury or death to any person or persons whomsoever or damage to any property whatsoever at any time in the Space or elsewhere at the Facility, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, gas, steam or electricity, whether the same may leak into, or fall, issue, or flow from any part of the Facility, or from any other place or quarter.

10. If the Port Authority shall not give possession of the Space on the date fixed in Section 1 of the Terms and Conditions of this Permit for the commencement of the effective period of this Permit, by reason of the fact that the Space or any part thereof is in the course of construction, repair, alteration or improvement or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the effective period shall in any wise affect the validity of this Permit or the obligations of the Permittee hereunder, nor shall the same be construed to in any wise extend the effective period beyond the date stated in this Permit for expiration. However, the fee under this Permit shall not commence until possession of the Space is tendered by the Port Authority to the Permittee; such tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before December 31, 2004, then this Permit shall be deemed canceled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Permit, or a breach or alleged breach thereof.

11. (a) Neither the Port Authority nor the Permittee shall be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors.) Further, neither party shall be liable unless the failure, delay or interruption shall result from failure on the part of such party to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption, provided, however, that this provision shall not apply to failure by the Permittee to pay the fees specified hereunder and shall not apply to any other charges or money payments.

(b) The Port Authority shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefor shall be prohibited or rationed

by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Port Authority as a public agency.

(c) No abatement, diminution or reduction of the fees or other charges payable by the Permittee, shall be claimed by or allowed to the Permittee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Permit be affected by any such causes. In the event any occurrence described in the foregoing sentence shall result in the inability of the Permittee to operate at the Space for a period in excess of thirty (30) days the fees hereunder shall be abated from and after the thirtieth (30th) day after such occurrence for so long as the Permittee shall be unable to operate at the Space.

(d) The Port Authority shall be under no obligation to supply the Permittee with any utilities, including but not limited to water, gas, electricity, sewer service, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service.

(e) The Permittee shall promptly pay all water-bills covering consumption on the Space. In the event that any such water-bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier revocation or termination of the effective period under this Permit, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute a portion of the fee under this Permit, payable to the Port Authority on demand.

(f) If any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on the Port Authority, for any service, system or utility now or in the future supplied to or available at the Space, the Permittee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Permittee, pay, in accordance with any such notice, such charge, fee, rent or assessment or such increase thereof (or the portion thereof allocated by the Port Authority to the Space or to the operations of the Permittee under this Permit) either directly to the governmental body, authority or agency, or to the public utility or other entity, or directly to the Port Authority, as such notice may direct. All such payments shall constitute a portion of the fee payable under this Permit.

(g) No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve the Permittee of any of its obligations hereunder, or shall be or be construed to be a revocation or termination of this Permit, or shall constitute grounds for any diminution or

abatement of the fees payable under this Permit, or grounds for any claim by the Permittee for damages, consequential or otherwise.

(h) Without in any wise affecting the obligations of the Permittee elsewhere stated in this Permit, the Permittee shall, subject to the provisions of Special Endorsement No. 4 of this Permit, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility).

12. The Permittee shall maintain books and records of its operations at the Space including the numbers of marine containers and other objects processed. The Permittee shall provide to the Port Authority on a monthly basis on or before the twentieth (20) day of the following calendar month report summarizing such activity and such payments in such form as may be directed from time to time by the Port Authority. The Port Authority shall have the right from time to time during ordinary business hours by its agents, employees and representatives to audit and inspect such books, records and other data of the Permittee relating to the Space and the operations of the Permittee thereat, as the Port Authority acting in a non-arbitrary and non-capricious manner shall deem necessary to substantiate the Permittee's reports hereunder. The Permittee agrees to keep such books, records and other data within the Port of New York District, but the Permittee shall not be required to maintain any of such books, records and other data for more than two (2) years after the expiration date of this Permit.

13. (a) In addition to the intermodal container fee, the Permittee shall have the right to charge a handling fee and other fees to the users of the services provided at the Space, on an equitable and non-discriminatory basis, based upon the Permittee's schedule setting forth rules, regulations, and rates on containerized cargo moving via the ExpressRail facility. Volume discounts could be provided to all users on a non-discriminatory basis.

(b) The Permittee shall accept or deliver and load or unload containers to and from railcars at the ExpressRail facility during the Permittee's normal gate hours.

(c) The Permittee shall allow access to the Space to all railroads and outside shippers without a separate gate fee during the Permittee's normal gate hours. It is acknowledged that while a separate fee for the use of a gate (and the services related thereto including inspections and the issuance of an interchange receipt) may not be assessed by the Permittee, that the cost of operating a gate (including the services related thereto) shall be a legitimate component of the handling fee assessed with respect to all users.

(d) The Permittee shall, at least 15 days prior to making any changes to the schedule of rates of the handling fee and other fees for services provided at the Space, forward to the Port Authority the new schedule for information purposes. Such new schedule shall be made available to the public by the Permittee in accordance with the requirements of applicable laws.

SPECIAL ENDORSEMENTS

(e) The Permittee shall have the right to suspend services to any railroads or other users for failure to pay the handling fee and other fees for services provided at the ExpressRail facility.

14. (a) It is understood and agreed that all railroads shall have the right (to be exercised in common with others now or in the future having rights of passage by rail) to use such of the existing railroad tracks located on lands owned or leased by the Port Authority (and as to which others shall not have been granted the exclusive use by lease, permit or other arrangement with the Port Authority,) as may be necessary for ingress and egress to and from Space subject to the following limitations and conditions:

(i) The foregoing right of use shall be subject to all times to the prior right of use by or on behalf of the United States;

(ii) The foregoing right of use shall be exercised in a manner which will not hamper, interfere with or prevent the reasonable use of the tracks by others for the passage of railroad cars, locomotives and tenders and for the ingress and egress of such cars and locomotives to areas adjacent to the Space made available to others by the Port Authority;

(iii) The Permittee shall not cause or permit the tracks to be obstructed, (except for the portion of track adjacent to the Space, and that portion for reasonable loading and unloading periods only), and shall comply with all rules and regulations of the Port Authority relating to the use of railroad tracks which are now in effect or which may hereafter be promulgated for the safe and efficient use of the Facility, and shall comply further with the directions of the Facility Manager relating to the use of railroad tracks;

(iv) The Port Authority shall have the right to remove or to relocate any track or tracks so long as a reasonably equivalent means of ingress and egress for all railroads remains available;

(v) The Port Authority shall not be liable for any inconvenience, delay or loss to the Permittee by reason of interruption of use by the railroads of any or all such railroad tracks, occasioned by causes or circumstances over which the Port Authority shall not have control;

(vi) The right of user granted hereby shall be subject to any existing or future agreements between the Port Authority and the railroads serving the Facility relating to the furnishing of service by such railroads, as the said agreements may from time to time be modified or amended.

15. Standard Endorsement No. 17.1 is amended by adding a new paragraph as follows:

SPECIAL ENDORSEMENTS

"The Permittee, at its expense, after notice to the Port Authority, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any legal requirement or tax provided that: (a) the Port Authority shall not be subject to civil or criminal penalty or to prosecution of a crime, nor shall the Facility or any part thereof be subject to being condemned or vacated, or subject to any lien or encumbrance, by reason of non-compliance or otherwise by reason of such contest; (b) before the commencement of such contest, the Permittee shall furnish to the Port Authority letter of credit or surety bond satisfactory to the Port Authority, in form, substance and amount, and shall indemnify the Port Authority against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); and (c) the Permittee shall keep the Port Authority regularly advised as to the status of such proceedings. The Port Authority shall be deemed subject to prosecution for a crime if the Port Authority or any of its Commissioners, officers, employees or agents is charged with a crime of any kind whatever unless such charge is withdrawn five (5) days before such party is required to plead or answer thereto."

16. (a) Subparagraph (a)(2) and paragraph (e) of Standard Endorsement No. 19.12 shall be deemed deleted therefrom.

(b) Standard Endorsement No. 19.12 is further amended by adding a new paragraph (d) as follows:

"(d) The foregoing subordination of the Permittee's interest under this Permit shall be contingent upon the Port Authority obtaining from the holder of such mortgage an agreement to the effect that so long as the Permittee is not in default in payment and performance of its obligations under this Permit beyond applicable notice and cure periods, the Permittee's possession of the Space shall not be disturbed by reason of a foreclosure of such mortgage."

17. The Permittee shall use its reasonable efforts to ensure labor harmony in its operations at the Space, to the end of avoiding and preventing strikes, walkouts, work stoppage, slowdowns, boycotts and other labor trouble and discord. The Permittee particularly recognizes the essential necessity of the continued and full operations at the Space.

18. The Permittee understands that construction of additional parts of the Facility will be ongoing during its operations and that relocation and movement in and out of operating areas will be required in order to provide for unimpeded construction at the Facility. The Permittee hereby agrees and commits to faithfully and promptly cooperate with such relocation and movement requirements. Upon 15-day prior notice from the Port Authority, the Permittee will move out of needed areas and the Permittee will move back into such areas upon 15-day prior notice from the Port Authority. The Port Authority agrees to conduct such construction in a manner so as to minimize interference with the operations of the Permittee on the Space.

19. The Port Authority and the Permittee have established the Performance Standards for the operations of the Permittee at the Space annexed hereto and hereby made a part

hereof and marked Exhibit B and the Port Authority will review the Permittee's compliance therewith in connection with any determination by the Port Authority of the eligibility of the Permittee for participation in any procurement process for the operation of the Space for the period following the expiration of this Permit.

20. If the Permittee should fail to pay any amount required under this Permit when due to the Port Authority, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Permit. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Special Endorsement with respect to such unpaid amount. Nothing in this Special Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Permit, including without limitation the Port Authority's rights set forth in this Special Endorsement or (ii) any obligations of the Permittee under this Permit. In the event that any late charge imposed pursuant to this Special Endorsement shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Permit shall be payable instead at such legal maximum.

21. (a) The Permittee shall have two (2) options to extend this Permit. Each option will be for a ten year period. At least 24 months prior to the expiration date of this Permit or of the first extension period, as the case may be, the Permittee will give written notice to the Port Authority to exercise its option to extend the Permit for an additional ten years, provided that the Permittee shall (i) not be then in default of payment of its monetary obligations under this Permit and (ii) have met the throughput requirements for year eight of 350,000 container lifts or for year eighteen of 600,000 container lifts, respectively. However, in the event the entire 18 tracks at the ExpressRail Elizabeth, and two (2) lead tracks and a minimum of 24,000 linear feet of support track, are not completed at the time the Permittee is required to give written notice to the Port Authority in year eight or year eighteen, then and in that event the throughput requirements specified in clause (ii) will be waived.

(b) The Port Authority shall have the right to review and adjust the security requirement under the Permit at each time the Permittee exercises its option to extend the Permit for an additional ten years.

SPECIAL ENDORSEMENTS

22. (a) The Permittee shall cause to be executed by Maher Terminals, Inc. and APM Terminals North America, Inc. simultaneously with the execution and delivery by the Permittee of this Permit to the Port Authority, a Contract of Guaranty in the form attached hereto and hereby made a part hereof, which Contract of Guaranty shall guarantee, up to a maximum amount of Two and One Half Million Dollars and No Cents ($2,500,000.00), the full, faithful and prompt performance of and compliance with, on the part of the Permittee, all of the terms, provisions, covenants and conditions of this Permit, and the Permittee shall keep and maintain said Contract of Guaranty in full force and effect. The existence of the contract of guaranty described in this Special Endorsement shall not limit or alter any other remedies of the Port Authority under this Permit, and the Port Authority may from time to time and at any time elect to pursue (or not to pursue) its rights under this contract of guaranty without thereby limiting, voiding or relinquishing any of its other rights or remedies under this Permit.

(b) The Permittee may at any time during the effective period of permission under this Permit offer to substitute the Contract of Guaranty by depositing with the Port Authority (and thereafter maintaining throughout the effective period of permission under this Agreement) either the sum of Two and a Half Million Dollars and No Cents ($2,500,000.00) in cash, or bonds of the United States of America, or of the State of New Jersey, or of the State of New York, or of The Port Authority of New York and New Jersey, having a market value of that amount, as security for the full, faithful and prompt performance of and compliance with, on the part of the Permittee, all of the terms, provisions, covenants and conditions of this Agreement on its part to be fulfilled, kept, performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Permittee may deposit such bond or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Permittee) in a manner satisfactory to the Port Authority. The Permittee may request the Port Authority to accept a registered bond in the Permittee's name and if acceptable to the Port Authority the Permittee shall deposit such bond together with a bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Permittee any expenses incurred by the Port Authority in re-registering a bond to the name of the Permittee shall be borne by the Permittee. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the deposit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Permittee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of the deposit itself shall cure any default or breach of this Agreement on the part of the Permittee. With respect to any bonds deposited by the Permittee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Permittee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice at public or private sale, all as determined by the Port Authority, together with the right to purchase the same at such sale free of all claims, equities or rights or redemption of the Permittee. The Permittee hereby waives all right to participate therein and all right to prior notice or demand of the amount or amounts of the claims or demands of the Port Authority against the Permittee. The proceeds of every such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not

limited to advertising or commission expenses) and then to the amounts due the Port Authority from the Permittee. Any balance remaining shall be retained in cash toward bringing the deposit to the sum specified above. In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the above-mentioned amount, the Permittee shall, on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times to the full amount above stated, and such additional deposits shall be subject to all the conditions of this Section. After the expiration or earlier termination of the letting under this Agreement as the said letting may have been extended, and upon condition that the Permittee shall then be in no wise in default under any part of this Agreement, as this Agreement may have been amended or extended (or both), and upon written request therefor by the Permittee, the Port Authority will return the deposit to the Permittee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Permittee of this Agreement or any part thereof. The Permittee agrees that it will not assign or encumber the deposit. The Permittee may collect or receive any interest or income earned on bonds and interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise; provided however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(c) In addition, the Permittee may also at any time during the effective period of permission under this Agreement offer to deliver to the Port Authority, as security for all obligations of the Permittee under this Agreement, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of Two and a Half Million Dollars and No Cents ($2,500,000.00). The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such letter of credit shall provide that it shall continue throughout the term of the letting under this Agreement and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter. Upon notice of cancellation of a letter of credit the Permittee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in accordance with paragraph (a) of this Section or another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under paragraph (a) of this Section. Failure to provide such a letter of credit at any time during the term of the letting, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit shall be deemed to be a breach of this Agreement on the part of the Permittee. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Permittee made thereafter, the Port Authority will return the security deposit, if any, theretofore made under and in accordance with the provisions of paragraph (a) of this Section. The Permittee shall have the same rights to receive such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the letting and fulfillment

of the obligations of the Permittee under this Agreement. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Permittee, on demand of the Port Authority and within two (2) days thereafter, shall bring the letter of credit back up to its full amount.

(d) For purposes of the provisions set forth in this Section, the Permittee hereby certifies that its I.R.S. Employer Identification No. is

23. Any two of the Permittee's representatives whose names appear in Item 4 on Page 1 of this Permit (or such substitutes as the Permittee may hereafter designate in writing) shall have the full authority to act for the Permittee in connection with this Permit and anything done or to be done hereunder, and to execute on the Permittee's behalf any amendments or supplements to this Permit or any extension thereof, provided that one of such representatives is designated by Maher Terminals, Inc. and the other representative is appointed by APM Terminals North America, Inc.

24. (a) The Permittee represents, knowing that the Port Authority is relying on the accuracy of such representation, that it is a privately held New Jersey limited liability company with its sole members being: Maher Terminals, Inc. and APM Terminals North America, Inc. The Permittee further represents that there are no other persons (which term shall include individuals, corporations, partnerships or other entities, hereinafter "Person" or "Persons") having a direct or indirect beneficial ownership of or in the Permittee.

(b) The Permittee recognizes the fact that a transfer of all of the securities or interests in the Permittee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or with respect to the identity of the parties in control of the Permittee, is for practical purposes a transfer or disposition of the rights obtained by the Permittee through this Agreement. The Permittee further recognizes that because of the nature of the obligations of the Permittee hereunder, the qualifications and identity of the Permittee and its security holders are of particular concern to the Port Authority. The Permittee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Permittee for the faithful performance of all obligations and covenants hereunder. Therefore, the Permittee agrees that, without the prior written approval of the Port Authority, which approval shall be given or withheld promptly, there shall be no transfer by any Person owning securities in the Permittee (an "Owner", which term shall be deemed to include successor Owner(s) of such securities or any part thereof or interest therein) to any other Person except as provided hereinafter; nor shall any Owner suffer any transfer to be made; nor shall there be or be suffered to be by the Permittee or by any Owner of securities therein, any other change in the ownership of such securities, or with respect to the identity of the Persons in control of the Permittee, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional new securities or classification of securities or otherwise, provided, however, prior Port Authority approval as aforesaid shall not be required for transfer of any securities or interest in the Permittee as follows:

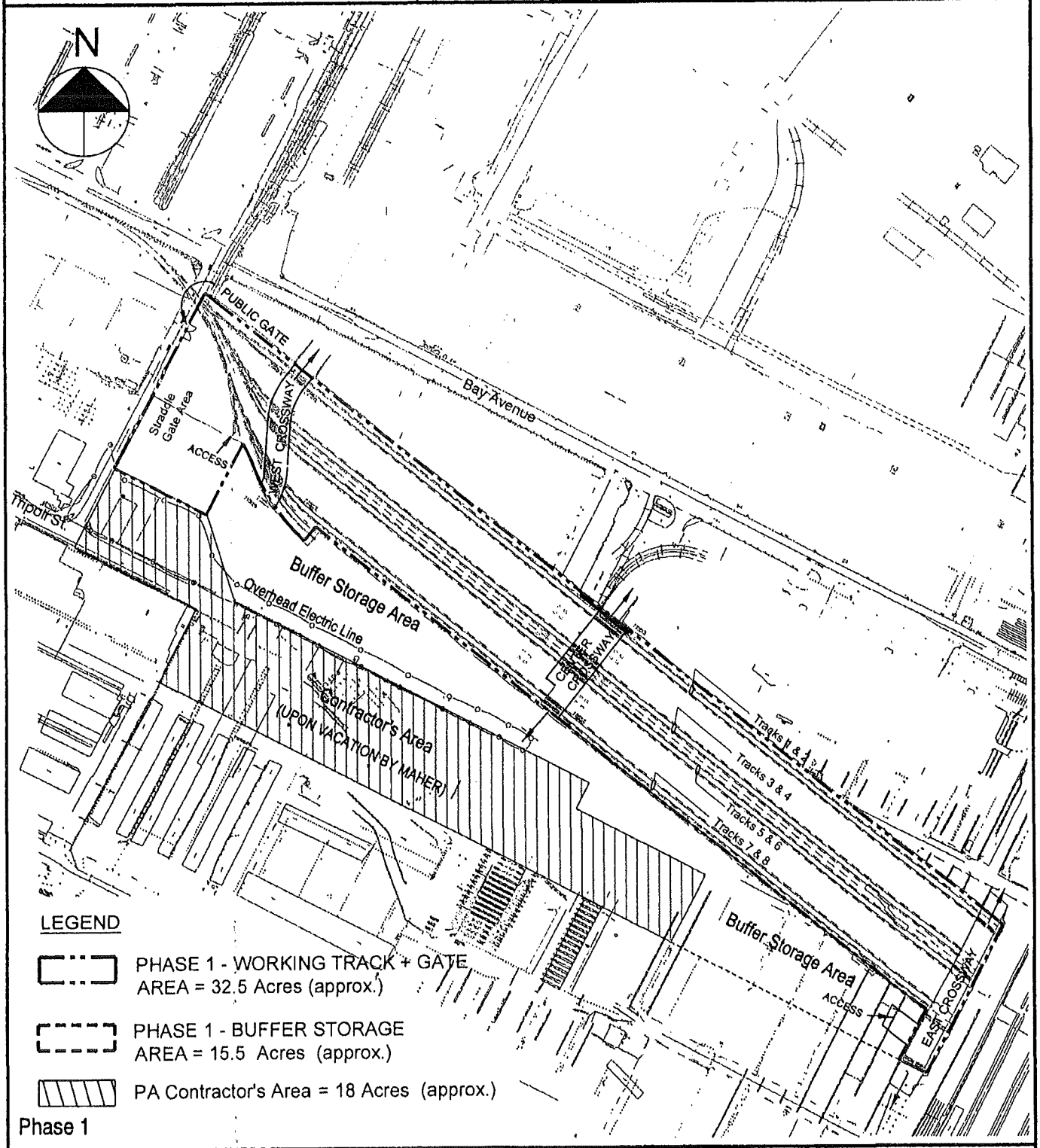
SPECIAL ENDORSEMENTS

(i) the securities or interests in the Permittee owned by APM Terminals North America Inc. pursuant to any transfer permitted by the provisions of Section 46 of that certain lease between the Port Authority and APM Terminals North America, Inc. dated January 6, 2000 and identified as EP-248.

(ii) the securities or interests in the Permittee owned by Maher Terminals, Inc. to any Permitted Transferees as such term is defined in Subsection 45.(b) of that certain lease by and between the Port Authority and Maher Terminals, Inc. dated October 1, 2000 and identified as EP-249.

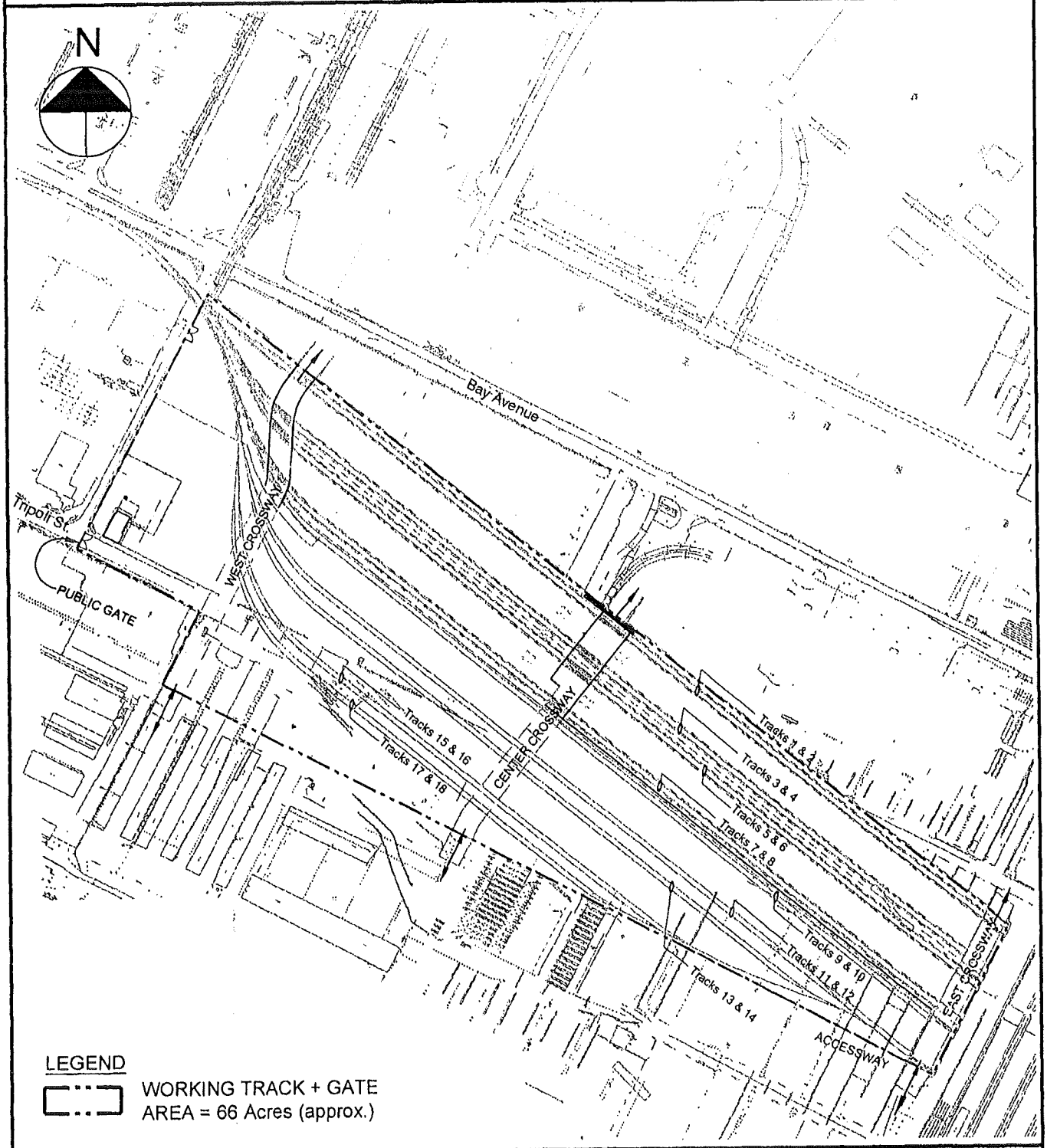
25. This Permit shall be governed in accordance with the laws of the State of New Jersey.

EXPRESSRAIL PERMIT	PEP-063	



Initialed: For the PORT AUTHORITY / For the Lessee	EXHIBIT : A	THE PORT AUTHORITY OF NY & NJ ELIZABETH - PORT AUTHORITY MARINE TERMINAL Date : August 2004

EXPRESSRAIL PERMIT	PEP-063	



Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

A-1

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : August 2004

ExpressRail

Exhibit B

TERMINAL OPERATOR

PERFORMANCE MEASURES & STANDARDS FOR THE NEW EXPRESSRAIL FACILITY

- Train Release:
  - Measure: Frequency of on-time train releases to the railroad.
  - Standard: Loading completed and train released to railroad on time 92% of the time, subject to on-time train placement and rail car mix at the Space by the railroad.

- Accurate Train Loading:
  - Measure: Occurrence of mis-loads (including incorrect destinations, overheights, overweights)
  - Standard: The Permittee will pay for, or reimburse the railroad for, re-routing costs, if contractually required by agreement between the Permittee and the railroad. (measured on a case by case basis)

- Terminal Turn-Time:
  - Measure: Maximum total turnaround time for yard hustlers from other terminals, from arrival at the in-bound gate, to departure from the out-bound gate.
  - Standard: Turn time at the Space will not exceed 30 minutes (gate to gate). Permittee will pay "detention" time to hustler operators for each 15 minute increment over 30 minutes at the rate of $12.50/15 min. on a single move and for each 15 minute increment over 45 minutes at the rate of $12.50/15 min. on a double move provided in each case that the trucker has presented necessary documentation to the Permittee.

- Import Unit Handling Efficiency:
  - Measure: Percentage of units on hand loaded to train.
  - Standard: 100% of all loaded import units received to the Space by cut-off (to be defined) must be loaded on the train on the same day, given adequate railcar supply by railroad. (measured on a weekly basis)

Export Unit Handling Efficiency:
- Measure: Percentage of units made available for customer pick up within stipulated time after train is placed.
- Standard: On weekdays, 100% of all inbound containers must be made available within two hours of train placement or the start of business, whichever is later. Following

weekends or holidays, all containers must be made available by 6:00 a.m. next business day. (measured on a weekly basis)

- E.D.I./Data Entry:
  - Measure: Compatibility of systems, and percent of information entered accurately and timely.
  - Standard: System and data entry must be compatible with equipment and standards of servicing railroad.

- Container Dwell Time in Terminal:
  - Measure: Min/max/avg time containers spend in Space.
  - Standard: Terminal operator may enforce a demurrage program consistent with tariff rates of servicing railroad (measured on a case by case basis)

- Safe Operation:

  Operation at the Space without injuries/fatalities; development and enforcement of a proactive safety program.

CONTRACT OF GUARANTY

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, (hereinafter called the "Port Authority") is willing to enter into the attached Permit Agreement identified by Permit No. PEP-063 (hereinafter called the "Permit") with Millennium Marine Rail, L.L.C., a limited liability company organized and existing under and by virtue of the laws of the State of New Jersey with an office and place of business at Four Connell Drive, 4th Floor, Berkeley Heights, New Jersey 07922 (hereinafter called the "Permittee") upon certain terms and conditions among which is the guaranty of the obligations of the Permittee under the Permit by Maher Terminals, Inc. ("Maher"), a New Jersey corporation , and APM Terminals North America, Inc. ("APM"), a Delaware corporation (formerly known as Maersk Container Service Company, Inc.) (Maher and APM hereinafter collectively called the "Guarantors"); and

WHEREAS, the Guarantors have agreed, in order to induce the Port Authority to enter into the Permit to guarantee the payment of all monetary obligations of the Permittee stated in the Permit and the performance by the Permittee of all the terms, conditions, covenants and provisions of the Permit on its part to be kept, performed, observed and fulfilled; and

WHEREAS, this Contract of Guaranty is made in connection with and incidental to the exercise by each of the Guarantors of its respective corporate rights, powers, privileges and franchises, and in fulfillment of its respective corporate purposes and objects; and

WHEREAS, the making of the Permit between the Port Authority and the Permittee will inure to the benefit of each of the Guarantors and enhance its respective business and improve its respective situation;

NOW, THEREFORE, in consideration for and as an inducement to the Port Authority to enter into the Permit with the Permittee, the Guarantors do hereby covenant and agree with the Port Authority as follows:

1. The Guarantors, jointly and severally, do hereby absolutely and unconditionally guarantee up to a maximum amount of Two and One Half Million Dollars and No Cents ($2,500,000.00), promise and agree that the Permittee will duly and punctually pay all of the monetary obligations set forth in the Permit and will fully and faithfully perform, observe and fulfill each and every promise, agreement, condition, term and provision contained in the Permit to be performed, observed and fulfilled by the Permittee.

2. The Guarantors waive and dispense with any notice of non-payment, non-performance or non-observance, or proof of notice or demand whereby to charge each of them therefor, and agree that the validity of this Contract of Guaranty and the obligations of the Guarantors hereunder shall in nowise be terminated, affected or impaired by reason of any failure of the Port Authority to insist upon strict performance under the Permit, or by the assertion by the Port Authority against the Permittee of any of the rights or remedies reserved to the Port Authority pursuant to the provisions of the Permit or by the withdrawal, discontinuance or settlement of any judicial or other proceedings brought by the Port Authority against the Permittee.

3. The liability of the Guarantors hereunder shall in no way be affected by:

(a) The release or discharge of the Permittee in any creditor's receivership, bankruptcy or other similar proceeding; or

(b) The impairment, limitation or modification of the liability of the Permittee or its estate in bankruptcy, or of any remedy for the enforcement of the Permittee's said liability under the Permit, resulting from the operation of any present or future provision of the Bankruptcy Code or any other statute or from the decision of any court having jurisdiction over the Permittee or its estate; or

(c) The rejection or disaffirmance of the Permit in any creditor's receivership, bankruptcy or other similar proceeding; or

(d) Any disability or any defense of the Permittee.

4. This Contract of Guaranty shall remain and continue in full force and effect as to any and every renewal, modification or extension of the Permit, whether in accordance with the terms of the Permit, or by a separate or additional document, and notwithstanding any such renewal, modification or extension, whether or not the Guarantors have specifically consented to such renewal, modification or extension. The liability of the Guarantors hereunder shall in no way be affected by the failure of the Port Authority to obtain the Guarantors' consent to any such renewal, modification or extension, notwithstanding that the Port Authority may have previously obtained such consent with respect to a prior renewal, modification or extension.

5. Acceptance of this Contract of Guaranty and reliance thereon by the Port Authority shall be evidenced by the execution of the Permit by the Port Authority without any further act or notice. If, for any reason, any part of the obligations of the Guarantors hereunder shall be held invalid or unenforceable, the balance of such obligations shall nevertheless remain in full force and effect. Failure physically to attach a copy of the Permit to this Contract of Guaranty shall not void, alter or affect this Contract of Guaranty, or alter or amend the obligations of the Guarantors hereunder.

IN WITNESS WHEREOF, the Guarantors caused these presents to be executed this day of , 2004.

ATTEST:

_____
Secretary

By

(Title)_____President__
(Corporate Seal)

ATTEST:

_____
Secretary

By

(Title)_____President_____

Initialled:

For the Port Authority

For the Permittee

CERTIFICATE OF SECRETARY

I, , Secretary of _____ do hereby certify as follows:

1. That_____is the absolute and unconditional owner of all of the issued and outstanding shares of the capital stock of _____.; and

2. That said _____ is the absolute and unconditional owner of all the issued and outstanding voting shares of the capital stock of_____., a corporation of the State of _____; and

3. That the following is a full, true and correct copy of a resolution adopted by unanimous vote of the Board of Directors of_____, present at a meeting duly called and held on the day of , 2004, in accordance with law and with the charter and by-laws of the said corporation, at which a quorum was present; and that the said resolution has not been altered or repealed and is now in full force and effect:

"RESOLVED, that in order to induce the Port Authority of New York and New Jersey to enter into a Permit Agreement made as of _____, and identified by Port Authority Permit No. PEP-063 with Millennium Marine Rail, L.L.C. as Permittee, (a copy of which is before this Board and shall be deemed a part of this resolution as if set forth herein at length) whereby the Port Authority will grant to the Permittee the privilege to manage and operate the new ExpressRail , and this corporation shall guarantee the obligations of Millennium Marine Rail under such Permit; and be it further

RESOLVED, that in the judgment of the Board of Directors of this corporation such action will effectuate the purposes and objects of this corporation, inure to its benefit and promote, enhance and develop its business, interests and assets; and be it further

RESOLVED, that the President or Vice-President of this corporation be and he hereby is authorized and directed to make, execute and deliver on behalf and in the name of this corporation a contract of guaranty, guaranteeing such obligation; and be it further

RESOLVED, that the officers of this corporation and each of them are hereby authorized and directed to take such steps, execute such documents and perform such other acts and things as may be necessary and convenient for the purpose of effecting such contract of guaranty."

3. That the purpose of this certificate is to induce The Port Authority of New York and New Jersey to enter into a Permit Agreement with Millennium Marine Rail, L.L.C. with the intent that the Port Authority of New York and New Jersey, its agents and representatives, shall rely on the truth of the matters contained herein.

IN WITNESS WHEREOF, I have signed my name and affixed the corporate seal this day of , 2004.

Secretary

(Corporate Seal)

For the Port Authority

Initialled:

For the Permittee

*

OPINION ON CORPORATE GUARANTY
(Letterhead of Counsel)

, 2004

The Port Authority of New York and New Jersey
225 Park Avenue South
New York, New York 10048

Re: Port Elizabeth
Permit with Millennium Marine Rail, L. L. C.

Dear Sirs:

This letter is being provided to you on behalf of our client, _____, in connection with your entering into a permit covering the granting of certain privileges at the Elizabeth – Port Authority Marine Terminal to _____ [insert name of Permittee]. Our client has requested that we give you our opinion, to be relied upon by you, as to the validity and enforceability of the Contract of Guaranty which support the obligations of [insert name of Permittee] under the above-described permit.

The Contract of Guaranty are valid and enforceable under the laws of _____ where _____, the Guarantor, has been incorporated and such Contract of Guaranty are in accordance with the charter, by-laws and resolutions of the corporation and execution thereof is valid and proper and meets all the requirements of the jurisdiction and the corporate charter, by-laws and resolutions.

All governmental laws, rules, regulations, orders and directions have been complied with. All necessary permissions, approvals, consents and resolutions have been obtained.

Very truly yours,

(Counsel)

For the Port Authority

Initialled:

For the Permittee

Schedule __

CSL-Ack. N.J.; Corp. & Corp.

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

On this 7th day of February 2005 before me, the subscriber, a notary public of New York, personally appeared RICHARD M. LARRABEE DIRECTOR, PORT COMMERCE DEPT. the of The Port Authority of New York and New Jersey, who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal and delivered the same as such officer aforesaid and the within instrument is the voluntary act and deed of such corporation made by virtue of the authority of its Board of Commissioners.

(notarial seal and stamp)

LUCY AMBROSINO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01AM6101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV. 3, 2007

STATE OF New Jersey)
) ss.
COUNTY OF Essex)

On this 1st day of October , 2004, before me, the subscriber, a Notary Public of NJ , personally appeared Joseph C. Curto the Representative of Millennium Marine Rail, L.L.C., who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed and delivered the same as such officer aforesaid and the within instrument is the voluntary act and deed of such company made by virtue of the authority of its Members.

(notarial seal and stamp)

PATRICIA W. DUEMIG
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 26, 2008

ExpressRail

STATE OF New Jersey)
) ss.
COUNTY OF Essex)

On this 1st day of October, 2004, before me, the subscriber, a Notary Public of NJ, personally appeared Nicholas P. Tabe the Representative of Millennium Marine Rail, L.L.C., who I am satisfied is the person who has signed the within instrument; and, I having first made known to him the contents thereof, he did acknowledge that he signed and delivered the same as such officer aforesaid and the within instrument is the voluntary act and deed of such company made by virtue of the authority of its Members.

Patricia W. Duemig
(notarial seal and stamp)

PATRICIA W. DUEMIG
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 26, 2008

folder

THE PORT AUTHORITY OF NY & NJ

April 15, 2005

Mr. Scott H. Schley
General Counsel & Secretary
Maher Terminals, Inc.
4 Connell Drive
Berkeley Heights, New Jersey 07922

Dear Mr. Schley:

Enclosed for your files is the fully executed, duplicate original of Permit No. PEP-063.

Thank you for your cooperation.

Sincerely,

Robert W. Evans II
Assistant Manager
Leasing & Property Development Division

encl.

cc: C. McCarthy

New Jersey Marine Terminals
260 Kellogg Street
Port Newark, NJ 07114
T: 212 435 7000

THE PORT AUTHORITY OF NY & NJ

April 15, 2005

Mr. Dennis A. O'Brien
Associate General Counsel
Maersk, Inc.
2 Giralda Farms
Madison, New Jersey 07940

Dear Mr. O'Brien:

Enclosed for your files is the fully executed, duplicate original of Permit No. PEP-063.

Thank you for your cooperation.

Sincerely,

Robert W. Evans II
Assistant Manager
Leasing and Property Development Division

encl.

cc: John Loepprich - APM
Carol McCarthy - PANYNJ

New Jersey Marine Terminals
260 Kellogg Street
Port Newark, NJ 07114
T: 212 435 7000

THIS AGREEMENT SHALL NOT BE BINDING UPON
THE PORT AUTHORITY UNTIL DULY EXECUTED
BY AN EXECUTIVE OFFICER THEREOF AND
DELIVERED TO THE PERMITTEE
BY AN AUTHORIZED REPRESENTATIVE
OF THE PORT AUTHORITY

Port Authority Permit No. PEP-063, dated September 1, 2004
Supplement No. 1
Port Authority Facility: Elizabeth – Port Authority Marine Terminal

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
225 Park Avenue South
New York, New York 10003

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made by and between The Port Authority of New York and New Jersey (hereinafter called "the Port Authority") and Millennium Marine Rail, L.L.C. (hereinafter called the "Permittee").

WITNESSETH, that the Port Authority and the Permittee hereby agree to amend, effective as of September 1, 2014, that certain Permit (identified above by Port Authority Permit Number and by date and covering space at the above-mentioned Port Authority Facility) issued by the Port Authority to the Permittee, and hereinafter, as the same may have been previously supplemented and amended, called "the Permit," as follows:

WHEREAS, the Port Authority and the Permittee desire to extend the period of the permission granted under the Permit;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the Port Authority and the Permittee hereby agree as follows:

1. The effective period of the permission granted under this Permit is hereby extended for the period ending on February 28, 2015, unless sooner terminated, at the same annual fee heretofore set forth in the Agreement.

2. As herein amended, all the terms, provisions, covenants and conditions of the Agreement shall continue in full force and effect.

3. The Permittee represents and warrants that no broker has been concerned in the negotiation of this Supplemental Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Permittee shall indemnify and save harmless the Port Authority of and from all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Supplemental Agreement.

4. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Permittee, with any liability, or held liable to it under any term or provision of this Supplemental Agreement or because of any breach or attempted or alleged breach thereof.

5. This Supplemental Agreement, together with the Permit (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Permittee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Permittee. The Permittee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Permittee or in this Supplemental Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of September 1, 2014.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____

Name: Richard M. Larrabee

(Title) Director, Port Commerce Dept.

MILLENNIUM MARINE RAIL, L.L.C.

By: _____

Name: BRIAN E. CLARK

(Title) CHAIRMAN MMR LLC.

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:

THIS AGREEMENT SHALL NOT BE BINDING UPON
THE PORT AUTHORITY UNTIL DULY EXECUTED
BY AN EXECUTIVE OFFICER THEREOF AND
DELIVERED TO THE PERMITTEE
BY AN AUTHORIZED REPRESENTATIVE
OF THE PORT AUTHORITY

Port Authority Permit No. PEP-063, dated September 1, 2004
Supplement No. 2
Port Authority Facility: Elizabeth – Port Authority Marine Terminal

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
225 Park Avenue South
New York, New York 10003

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made by and between The Port Authority of New York and New Jersey (hereinafter called "the Port Authority") and Millennium Marine Rail, L.L.C. (hereinafter called the "Permittee").

WITNESSETH, that the Port Authority and the Permittee hereby agree to amend, effective as of March 1, 2015, that certain Permit (identified above by Port Authority Permit Number and by date and covering space at the above-mentioned Port Authority Facility) issued by the Port Authority to the Permittee, and hereinafter, as the same may have been previously supplemented and amended, called "the Permit," as follows:

WHEREAS, the Port Authority and the Permittee desire to extend the period of the permission granted under the Permit;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the Port Authority and the Permittee hereby agree as follows:

1. The effective period of the permission granted under this Permit is hereby extended for the period ending on August 31, 2015, unless sooner terminated, at the same annual fee heretofore set forth in the Agreement.

2. As herein amended, all the terms, provisions, covenants and conditions of the Agreement shall continue in full force and effect.

3. The Permittee represents and warrants that no broker has been concerned in the negotiation of this Supplemental Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Permittee shall indemnify and save harmless the Port Authority of and from all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Supplemental Agreement.

4. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Permittee, with any liability, or held liable to it under any term or provision of this Supplemental Agreement or because of any breach or attempted or alleged breach thereof.

5. This Supplemental Agreement, together with the Permit (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Permittee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Permittee. The Permittee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Permittee or in this Supplemental Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of March 1, 2015.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____

Name: Richard M. Larrabee

(Title) Director, Port Commerce Dept.

MILLENNIUM MARINE RAIL, L.L.C.

By: _____

Name: BRIAN E. CLARK

(Title) CHAIRMAN, MMR LLC.

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:

CONFORMED COPY

CONFIDENTIAL EXECUTION COPY

Port Authority Lease No. EP-249
Supplement No. 1

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of July 3, 2007, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the "Port Authority") and MAHER TERMINALS LLC (formerly Maher Terminals Inc., and hereinafter called the "Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of October 1, 2000, the Port Authority and Maher Terminals, Inc. entered into an agreement of lease covering the Elizabeth-Port Authority Marine Terminal (the "Terminal"), in the city of Elizabeth, in the County of Union and State of New Jersey (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called the "Lease"); and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

NOW, THEREFORE, for and in consideration of the foregoing and the agreements hereinafter contained, the Port Authority and the Lessee hereby agree as follows:

1. Section 45 of the Lease requires consent by the Port Authority of certain changes in the ownership or control of the Lessee and of certain entities having direct or indirect beneficial ownership in the Lessee. The Lessee has requested that the Port Authority grant its consent to the acquisition by Deutsche Bank Americas Holding Corp. ("DBAH") and its affiliates, of all of the outstanding membership interests of Maher Terminals USA, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Maher USA"), which owns one hundred percent of the issued and outstanding membership interests of the Lessee (hereinafter called the "Acquisition"). The Lessee hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that, immediately following the Closing Date, the Lessee's ownership and control shall be as set forth in Section 45 of the Lease, as such provision is restated, amended and set forth in paragraph 3 of this Agreement. As used herein, the "Closing Date" shall mean the closing of the Acquisition on a date and time subsequent to the date first above written.

2. The Port Authority hereby grants its consent and approval under Section 45 of the Lease to the transfers of and changes in ownership and control of the Lessee represented by the Acquisition.

3. Immediately following the closing of the Acquisition on the Closing Date, Section 45 of the Lease shall be deleted and terminated in its entirety and replaced by a new Section 45, which reads in its entirety as follows:

"Section 45. Right of Termination - Ownership and Control

(a) The Lessee hereby represents as to itself and its Affiliates, knowing that the Port Authority is relying on the accuracy of such representations, that as of the date hereof (the "Effective Time"):

(1) Lessee is a limited liability company organized and existing under the laws of the State of Delaware;

(2) one hundred percent (100%) of the issued and outstanding membership interests of Lessee are owned of record by Maher Terminals USA, LLC, a limited liability company organized and existing under the laws of the State of Delaware and having an office and place of business at 400 Connell Drive, Berkeley Heights, New Jersey 07922 (hereinafter called "Maher USA");

(3) one hundred percent (100%) of the issued and outstanding membership interests of Maher USA are owned by Port Elizabeth Holdings LLC, a limited liability company organized and existing under the laws of the State of Delaware and having an office and place of business at 280 Park Avenue, 22nd Floor, New York, New York 10017 (hereinafter called "PE Holdings").

(4) Kingfisher Holdings LLC, a limited liability company organized and existing under the laws of the State of Delaware and having an office and place of business at 280 Park Avenue, 22nd Floor, New York, New York 10017 (hereinafter called "Kingfisher"), has voting power over fifty-one percent (51%) of the issued and outstanding membership interests of PE Holdings through the ownership of such membership interests and/or by an irrevocable proxy validly granted to Kingfisher by DBAH (as defined below);

(5) Deutsche Bank Americas Holding Corp., a company organized and existing under the laws of the State of Delaware and having an office and place of business at 60 Wall Street, New York, New York 10005 (hereinafter called "DBAH"), has voting power over forty-nine percent (49%) of the issued and outstanding membership interests of PE Holdings, taking into account the irrevocable proxy validly granted to Kingfisher over a portion of the issued and outstanding membership interests of PE Holdings owned by DBAH;

(6) one hundred percent (100%) of the membership interests of Kingfisher are owned by RREEF North America Infrastructure Fund , L.P., a limited partnership organized and existing under the laws of the State of Delaware and having an office and place of business at 280 Park Avenue, 22nd Floor, New York, New York 10017 (hereinafter called "NAIF").

(7) one hundred percent (100%) of the outstanding capital stock of DBAH, representing one hundred percent (100%) of the voting securities of DBAH, are indirectly owned by Deutsche Bank, AG, a corporation organized and existing under the laws of Germany and having an office and place of business at Taunusanlage 12, Frankfurt am Main, Germany (hereinafter called "Deutsche Bank"), and no Person other than Deutsche Bank Controls DBAH;

(8) one hundred percent (100%) of the general partner interest of NAIF is held by GSS Holdings (RREEF NAIF), Inc., a corporation incorporated and existing under the laws

of the State of Delaware and having an office and place of business at 114 West 47th Street, Suite 2310, New York, New York 10036 (hereinafter called the "GP"); the Control of, and the determination of policy with respect to, NAIF is vested exclusively in the GP and the powers of the GP have been delegated to RREEF America LLC, a wholly owned subsidiary of DBAH and an investment adviser registered with the Securities and Exchange Commission ("RREEF"), pursuant to the terms of the Limited Partnership Agreement of NAIF dated as of May 17, 2007 (the "LPA") and the Investment Management Agreement dated as of July 2, 2007 (the "Management Agreement") between the GP and RREEF;

(9) one hundred percent (100%) of the limited partner interest of NAIF is held indirectly by Deutsche Bank; and

(10) there are no other membership interests in the Lessee, and there are no other Persons which are not Affiliates of Deutsche Bank having any direct or indirect beneficial ownership of the Lessee.

(b) The Lessee recognizes the fact that a transfer of securities in the Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or with respect to the identity of the parties in Control of the Lessee, is for practical purposes a transfer or disposition of the rights obtained by the Lessee through this Agreement. The Lessee further recognizes that because of the nature of the obligations of the Lessee hereunder, the qualifications and identity of the Lessee and its direct and indirect owners are of particular concern to the Port Authority. The Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Lessee for the faithful performance of all obligations and covenants hereunder. Therefore, the Lessee represents and agrees with respect to itself, Maher USA, NAIF, RREEF, DBAH and Deutsche Bank and any permitted successors or assigns thereof, respectively, that without the prior written approval of the Port Authority, there shall be no direct or indirect transfer of any equity securities in the Lessee, other change in ownership of such securities, or change in identity of the parties in Control of Lessee, in each case by Lessee or any of its Affiliates that would result in: (i) NAIF, DBAH or another Controlled Subsidiary of Deutsche Bank, individually or together, owning, less than eighty percent (80%) of the total economic interests and voting power with respect to the aggregate of the issued and outstanding equity securities of each of Maher USA and Lessee; (ii) (A) RREEF, (B) another Controlled Subsidiary of Deutsche Bank and/or (C) Deutsche Bank no longer Controlling any of (I) NAIF (except in the circumstances where NAIF could transfer all of its indirect ownership of equity securities in the Lessee without violating clause (b)(i) of this Section 45), (II) Maher USA or (III) Lessee; or (iii) any breach of the covenants set forth in paragraph (c) below. For only the limited purpose of clause (b)(i) of this Section 45, "Controlled Subsidiary of Deutsche Bank" shall include any Person (A) which a Controlled Subsidiary (as defined in clause (g) of this Section 45) of Deutsche Bank has the power to manage the operations of (including, without limitation, determining the investments, business plan and other strategic planning aspects of such Person's business and operations, and managing day to day operations) and (B) such management power and Control with respect to such Person is substantially the same as that granted as of the date hereof pursuant to the LPA and the Management Agreement.

(c) The Lessee represents and agrees with respect to itself, Maher USA, NAIF, DBAH, RREEF and Deutsche Bank that during the term of the Lease, except with the prior written consent of the Port Authority:

(1) Maher USA shall maintain ownership of one hundred percent (100%) of the issued and outstanding membership interests of Lessee;

(2) Except in the circumstances where NAIF could transfer all of its indirect ownership of equity securities in the Lessee without violating clause (b)(i) of this Section 45, RREEF or one or more Controlled Subsidiaries of Deutsche Bank shall (A) manage and Control NAIF and (B) remain the manager of NAIF maintaining substantially the same Control and management power with respect to NAIF as granted as of the date hereof pursuant to the LPA and the Management Agreement; and

(3) For so long as RREEF is the manager of NAIF (except in the circumstances where NAIF could transfer all of its indirect ownership of equity securities in the Lessee without violating clause (b)(i) of this Section 45), Deutsche Bank shall maintain indirect ownership of one hundred percent (100%) of the outstanding voting securities of RREEF, and shall, directly or indirectly, Control RREEF.

(d) The Lessee acknowledges that the Lessee's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Lessee with the provisions contained in this Section 45 shall constitute an event of default under Section 25 of this Agreement, and the Port Authority shall have the right to terminate this Agreement and the letting hereunder pursuant to the provisions of said Section 25 hereof.

(e) The foregoing right of termination shall be in addition to all other rights of termination the Port Authority has under this Agreement and the failure of the Port Authority to exercise its right of termination under this Section at any time in which it may have such right shall not affect, waive or limit its right to exercise said right of termination at any subsequent time.

(f) For the avoidance of doubt, it is expressly acknowledged and agreed by the Port Authority that any issuance or transfer of any limited partnership interests of NAIF or any other Person managed by RREEF or another Affiliate of Deutsche Bank which owns, directly or indirectly, membership interest in Lessee, shall not require the prior written consent of the Port Authority, provided, that the requirements of subsection (b) and (c) of this Section 45 are satisfied in full immediately prior to any such issuance or transfer and no such issuance of transfer results in any breach of subsections (b) and (c) of this Section 45. Any such issuance or transfer contemplated in this subsection (f) of this Section 45 that fails to satisfy the conditions set forth above shall constitute noncompliance on the part of Lessee with the provisions contained in this Section 45, entitling the Port Authority to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(g) Definitions:

(1) The term "Control" as used herein shall mean the direct or indirect power of a Person through contract, arrangement, understanding, relationship, ownership of other business entities or otherwise to (A) dispose of or to direct the disposal of another Person, (B) vote or to direct the voting of, a majority of the voting securities of another Person, or (C) manage the operations of such Person, including, without limitation, determining investments, the business plan and other strategic planning aspects of such Person's business and operations, and managing day to day operations.

(2) The term "Controlled Subsidiary" as used herein shall mean as to any Person, any other Person of which at least eighty percent (80%) of the total voting power and total economic interests of all the issued and outstanding equity securities of such Person are owned, directly or indirectly, by such Person.

(3) The term "security" or "securities" shall include any membership interest, stock, any bond which carries voting rights, or rights or options to subscribe to, purchase, convert or transfer into or otherwise acquire equity securities, or any other obligation of a Person, the holder of which has any voting rights including but not limited to the right to vote for the election of members of the governing body or board of directors of said Person and shall include any security convertible into a voting security and any right, option or warrant to purchase a voting security.

(4) The term "Affiliate" shall mean, with respect to any Person, any Person that directly or indirectly Controls or is Controlled by, or is under common Control with, the Person specified.

(5) The term "Person" shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture or other entity.

(h) The Lessee shall promptly advise the Port Authority of any change in the representations made in paragraph (a) of this Section 45 or any breach of the covenants in paragraph (c) of this Section 45."

4. On the Closing Date of the Acquisition, the Lessee shall deposit with the Port Authority the Security Deposit (as defined below) in the amount indicated below and Section 40 of the Lease shall be deleted in its entirety and replaced with a new Section 40, which shall read in its entirety as follows:

"Section 40. Security

(a) The Lessee shall deposit and maintain with the Port Authority, subject to annual increase and adjustment as provided below, a security deposit in the amount of $10,000,000 (as adjusted as provided herein, the "Security Deposit") which shall be in the form of a letter of credit for such amount.

(b) The Lessee shall deposit additional funds with, or arrange for additional or substitute letter(s) of credit to be delivered to, the Port Authority such that the Security Deposit held by the Port Authority pursuant to this Agreement meets the requirements on December 31 of each year as detailed below:

(1) $14,000,000 by December 31, 2008;
(2) $18,000,000 by December 31, 2009;
(3) $22,000,000 by December 31, 2010;
(4) $26,000,000 by December 31, 2011.

(c) In the event the Lessee refinances indebtedness incurred under the Credit Agreement (as defined below), the Security Deposit shall be immediately increased, and the Lessee shall deposit such additional funds with, or arrange for additional or substitute letter(s) of credit to be delivered to, the Port Authority such that the Security Deposit held by the Port Authority pursuant to this Agreement equals no less than one year's rent under the this Agreement (such annual rent to be based upon the annual rent paid by Lessee under this Agreement for the last full year).

(d) The Security Deposit shall be further adjusted on December 31, 2017, to equal no less than the annual base rent paid in 2017 by Lessee and its affiliates under this Agreement and all other leases with the Port Authority; provided, that for purposes of determining the Security Deposit hereunder, such annual 2017 base rent shall not include any 2017 throughput rent or construction reimbursement amounts.

(e) The Security Deposit and the provisions of this Section 40 shall be subject to the provisions of the Standard Endorsement attached hereto as Annex A."

5. Immediately following the Closing Date of the Acquisition, a new Annex A to the Lease shall be added in its entirety, substantially in the form attached hereto as Addendum A.

6. On the Closing Date of the Acquisition, a new paragraph 11 shall be added in its entirety prior to the current paragraph 11 of Section 25(a) (which existing paragraph 11 shall become paragraph 12), which shall read as follows:

"(11) The Lessee shall fail duly and punctually to deposit funds or provide additional or substitute letter(s) of credit to satisfy or maintain the Security Deposit required under Section 40 of this Agreement."

7. On the Closing Date, in exchange for the Lessee providing the Security Deposit (as defined above) as provided herein, the Port Authority shall return to the Lessee the letter of credit currently being held by the Port Authority securing the existing security deposit obligation of the Lessee.

8. Immediately following the Closing Date of the Acquisition, a new Section 43 shall be added in its entirety, which reads as follows:

"Section 43. Records

(a) Compliance Certificates. The Lessee shall, subject to the confidentiality restrictions in clause (e) below, provide to the Port Authority, its designated agents and advisors as soon as practicable after providing the same to the lenders under the Credit Agreement (as defined below), a copy of each certificate required to be provided by any of the independent

public accountants, chief executive or chief financial officer of the Lessee under the credit agreement dated as of July 3, 2007 (the "Credit Agreement"), among Lessee and the lenders named therein with respect to (A) in the case of the independent public accountants, compliance with the financial covenants thereunder and (B) in the case of the chief financial officer or chief executive officer of Lessee, the absence of any default or event of default thereunder. Capitalized terms used in this Section 43, which are not otherwise defined herein, shall have the respective meanings assigned to them in the Credit Agreement.

(b) Financial Reports. In the event that (A) Lessee fails to provide any of the compliance certificates to be delivered to the Port Authority pursuant to clause (a) above within five (5) business days after it receives a request from the Port Authority to Lessee to provide such certificate(s) that have been delivered to the lenders pursuant to clause (a) above, or (B) any of the compliance certificates provided pursuant to clause (a) above indicates noncompliance with the financial covenants or a default or event of default under the Credit Agreement, then for the period covered by such certificate or so long as such noncompliance or default or event of default shall be continuing, as applicable, the Lessee shall make available to the Port Authority, during normal business hours upon the Port Authority's reasonable prior notice to Lessee, at the office of the Lessee or one of its agents or advisors solely for review by the Port Authority and its agents at such location and without taking any copies, each of the following:

(i) Quarterly Reports. As soon as available, and in any event within 45 days after the end of each of the first three quarters of each fiscal year, the unaudited balance sheet of Lessee and its Subsidiaries as of the close of such quarter and related statements of income and cash flow for such quarter and that portion of the fiscal year ending as of the close of such quarter, setting forth in comparative form the figures for the corresponding period in the prior fiscal year certified by the chief financial officer of the Lessee as fairly presenting in all material respects the financial position, results of operations and cash flow of Lessee as at the dates indicated and for the periods indicated in accordance with GAAP (subject to the normal year-end audit adjustments).

(ii) Annual Reports. As soon as available, and in any event within 120 days after the end of each fiscal year, the balance sheet of Lessee and its Subsidiaries as of the end of such year and related statements of income, stockholders' equity and cash flow for such fiscal year, each prepared in accordance with GAAP, together with a certification by independent certified public accountants for the Lessee that such financial statements fairly present in all material respects the financial position, results of operations and cash flow of Lessee as at the dates indicated and for the periods indicated therein in accordance with GAAP.

(c) Labor Matters. The Lessee shall give the Port Authority notice (which notice may be made by telephone if promptly confirmed in writing), promptly and in any event within ten (10) days after the chief executive officer of the Lessee obtains actual knowledge of (or would reasonably be expected to have obtained such knowledge if such officer had performed his or her customary and normal duties), the commencement of any Labor Activity (as defined below) at the premises leased under this Agreement which has materially interfered, or could reasonably be expected to materially interfere, with the operation of such premises; provided, however, that notwithstanding anything in this Agreement to the contrary, no breach or failure to comply with the requirements of this clause (c) shall give the Port Authority any right

to terminate this Agreement under Section 25 or otherwise. As used in this clause (c), "Labor Activity" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns or labor disputes.

(d) Maintenance of Maher Books and Records. The Lessee shall: (i) maintain books, records and accounts with respect to the business and operations of Lessee on a separate stand-alone basis from the overall operations of Maher Terminals USA, LLC and any other direct or indirect subsidiaries thereof, in accordance with good business practice and applicable law; and (ii) make available to the Port Authority, during normal business hours upon the Port Authority's reasonable prior notice to Lessee, at the office of the Lessee or one of its agents or advisors solely for review by the Port Authority and its agents at such location and without taking any copies, that portion of such books, records and accounts relating to security matters at the premises leased under this Agreement or as may reasonably be required for the Port Authority to verify calculations relating to container throughput rentals and reimbursement requests made from time to time.

(e) Confidentiality. The Port Authority agrees that all information delivered pursuant to this Section 43, including, without limitation, the certificates delivered pursuant to clause (a) above, and (ii) all notes, reports and analyses prepared by the Port Authority, its representatives or its advisors in connection with their review of materials provided or made available pursuant to this Section 43, including, without limitation, the books and records and other materials provided or made available pursuant to clauses (a), (b) or (d) above, shall, to the fullest extent permitted by applicable law, be treated confidentially and protected from disclosure by the Port Authority, including, without limitation, pursuant to any available exceptions or exemptions under the Port Authority's "Freedom of Information Act – Port Authority Policy and Procedure". If the Port Authority receives any request to disclose any of the information provided hereunder, the Port Authority agrees to provide the Lessee with prior written notice of such requirement so that the Lessee may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this provision. If such protective order or other remedy is not obtained, or if the Lessee waives compliance with the provisions hereof, the Port Authority agrees to disclose only that portion of the information that it is advised by counsel is legally required and it shall exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such information."

9. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect.

10. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

11. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no

representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed these presents as of the date first above written.

ATTEST:

Assistant Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: for Dennis Lebdi

Name: Richard M. Larrabee

Title: Director, Port Commerce Dept.

WITNESS:

_____

MAHER TERMINALS LLC

By: _____

Name:

Title:

APPROVED:	
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SUPPLEMENTAL AGREEMENT SIGNATURE PAGE

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed these presents as of the date first above written.

ATTEST:

_____

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Name:
Title:

WITNESS:

_____

MAHER TERMINALS LLC

By: M Brian Maher
Name: M Brian Maher
Title: Chairman & CEO

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

On the 27th day of June in the year 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared Dennis Lombardi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lucy Ambrosino
(notarial seal and stamp)

LUCY AMBROSINO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01AM6101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV. 3, 2007

SUPPLEMENTAL AGREEMENT SIGNATURE PAGE

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

On the 29th day of June in the year 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared M. Brian Maher, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

PATRICIA HAWKINS
Notary Public, State of New York
No. 01HA5059289
Qualified in Kings County
Certificate Filed in New York County
Commission Expires April 22, 2010

(notarial seal and stamp)

ADDENDUM A

FORM OF STANDARD ENDORSEMENT

(a) (i) Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority and (ii) from time to time as otherwise required by this Agreement, the Lessee shall deliver to the Port Authority, as security for the Lessee's full, faithful and prompt performance of and compliance with all of its obligations under the Lease as amended by this Agreement, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having an office within the Port of New York District, in favor of the Port Authority in the applicable amounts under Section 40 of this Agreement (as adjusted as provided in Section 40 of this Agreement, the "Letter of Credit"). The form and terms of such Letter of Credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such Letter of Credit shall provide that it shall continue throughout the term of the letting and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of subsequent satisfactory letters of credit. Upon notice of cancellation any Letter of Credit, the Lessee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the Letter of Credit is replaced by another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as security under this provision. Failure to provide such Letter of Credit at any time during the term of the letting, valid and available to the Port Authority, including any failure of any banking institution issuing any such Letter of Credit previously accepted by the Port Authority to make one or more payments as may be provided in such Letter of Credit shall be deemed to be a breach of the Lease as amended by this Agreement on the part of the Lessee. If the Port Authority shall make any drawing under a Letter of Credit held by the Port Authority hereunder, the Lessee, on demand of the Port Authority and within two (2) days thereafter, shall bring such Letter of Credit back up to its full amount. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to draw upon any Letter of Credit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee arising out of or with respect to the Lessee's obligations under the Lease as amended by this Agreement. There shall be no

obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of any of Letters of Credit itself shall cure any default or breach of the Lease as amended by this Agreement on the part of the Lessee. After the expiration or earlier termination of the letting under the Lease as amended by this Agreement (as it may have been further amended or extended or both), and upon condition that the Lessee shall then be in no wise in default under any part of the Lease as amended by this Agreement (as it may have been further amended or extended or both), and upon written request therefor by the Lessee, the Port Authority will return the Letter of Credit to the Lessee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Lessee of the Lease as amended by this Agreement or any part thereof.

(b) For purposes of the provisions set forth in this Standard Endorsement, the Lessee hereby certifies that its I.R.S. Employer Identification No. is 20-5929586.

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into this 24 day of July 2008, by and between The Port Authority of New York and New Jersey ("the Port Authority") and APM Terminals North America, Inc. ("APMT").

WHEREAS, APMT and the Port Authority are parties to a Lease Agreement dated January 6, 2000, and filed as FMC Agreement No. 201106, as amended (the "Lease"); and

WHEREAS, APMT filed a complaint with the Federal Maritime Commission ("FMC") on December 29, 2006, alleging that the Port Authority committed various violations of the Shipping Act of 1984, as amended, in connection with the delivery of 84 acres of land under the Lease (FMC Docket No. 07-01)(the "Complaint"); and

WHEREAS, the Port Authority filed a counter-complaint against APMT on July 30, 2007, alleging that APMT was in material breach of the Lease in connection with the completion of certain construction work described in the Lease as "Class A Work" (the "Counter-Complaint"); and

WHEREAS, the parties desire to resolve the Complaint and the Counter-Complaint amicably and without further litigation;

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. The parties shall jointly submit this Agreement to the FMC for approval and shall request dismissal of the Complaint and the Counter-Complaint with prejudice.

2. Simultaneously with the execution of this Agreement, the parties shall execute the Third Supplemental Agreement in the form attached hereto as Exhibit 1 (the "Lease Amendment"). The Lease Amendment shall become effective on the date the FMC approves the dismissal of the Complaint and the Counter-Complaint.

3. Notwithstanding anything in the Lease (including the Lease Amendment) to the contrary, to the extent required under the Lease (including the Lease Amendment), the Port Authority consents to the transfer of Maersk Inc.'s interest in APMT (the "APMT Shares") to any affiliate of Maersk Inc., including without limitation the transfer of the APMT Shares by Maersk Inc. to A.P. Moller-Maersk A/S ("APMM"), the transfer of the APMT Shares by APMM to APM Terminals B.V. and the transfer of the APMT Shares by APM Terminals B.V. to APM Terminals North America B.V., provided that such named transferee is and continues to be a affiliate of Maersk Inc. For the purposes of this paragraph, the term "affiliate" shall mean any entity that controls, is controlled by, or is under common control with the named entity. "Control" shall mean the ownership of greater than 50% of the direct or indirect beneficial ownership of such entity together with voting control over such entity. For the avoidance of doubt, any future assignments or changes in the ownership of Lessee under the Lease shall be subject to the terms and provisions of the Lease, including, without limitation, Sections 18 and 46 thereof. Under no circumstances, without the

prior written consent and approval of the Port Authority, shall APMM cease to maintain Control (as defined in this Section 3) of AMPT.

4. The Port Authority hereby covenants not to sue and fully, finally, and forever generally releases, surrenders, remises, acquits, and forever discharges APMT, Maersk Inc. and all of their respective current and former affiliates, officers, directors, employees (the "APMT Parties"), on and after the date this Agreement is approved by the FMC, of and from any and all claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character, accrued or unaccrued, known or unknown, foreseen or unforeseen, whether based on contract, tort, or statute that the Port Authority had, has or may have against any APMT Party arising from facts, occurrences, actions, inactions, events or circumstances relating in any way to the subject matter of the complaint or counter-complaint or otherwise relating to the subject matter of FMC Docket No. 07-01 and/or the subject matter of this Agreement. The Port Authority further warrants that it has no known or foreseen claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character against any APMT Party accrued or unaccrued related to APMT's obligations, operations, use and occupancy under the Lease as of the date of this Agreement. The Port Authority agrees that if this warranty is breached, any such claims will be waived and released.

5. APMT hereby covenants not to sue and fully, finally, and forever generally releases, surrenders, remises, acquits, and forever discharges the Port Authority, its respective, current and former, affiliates, officers, directors, employees (the "Port Authority Parties"), on and after the date this Agreement is approved by the FMC, of and from any and all claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character, accrued or unaccrued, known or unknown, foreseen or unforeseen, whether based on contract, tort, or statute that APMT had, has or may have against any Port Authority Party arising from facts, occurrences, actions, inactions, events or circumstances relating in any way to the subject matter of the complaint or counter-complaint or otherwise relating to the subject matter of FMC Docket No. 07-01 and/or the subject matter of this Agreement. APMT further warrants that it has no known or foreseen claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character against any Port Authority Party accrued or unaccrued that are related to any of the Port Authority's obligations under the Lease as of the date of this Agreement, except with respect to any monies which the Port Authority is obligated to provide to APMT under Section 7(a)(3) of the Lease. APMT agrees, represents and warrants that the Port Authority has fully and completely satisfied all of its obligations under section 7(a)(2) of the Lease. APMT agrees that if any of the warranties contained in this Section 5 are breached, any such claims will be waived and released.

6. The parties acknowledge and agree that the only reduction in the rental amount due under the Lease shall be the reduction resulting from the surrender of the "Second Surrendered Area" as defined and described in Section 4 of the Lease Amendment.

7. Each party shall be responsible for its own legal costs.

8. This Agreement shall be treated as confidential and shall be filed with the FMC as Confidential Information as provided in the Protective Order issued by the Presiding Officer on September 25, 2007. Notwithstanding the foregoing, either party may disclose this Agreement and its contents to the extent required by applicable law and as may be necessary to assert its rights against the other party.

9. This Agreement does not constitute an admission by either party of any violation of the Shipping Act of 1984, as amended, or of any violation of any Lease term.

10. The representatives of the parties signing below each represent and warrant that they are duly authorized to enter into this Agreement on behalf of the party for which they are signing.

11. This Agreement may be signed in counterparts.

12. This Agreement shall be governed by the laws of the State of New York.

13. This Agreement is subject to the veto authority of the Governors of New York and New Jersey and shall not become effective or enforceable until the veto period expires with no veto being issued.

For APM TERMINALS NORTH AMERICA, INC.

By: JOE NIELSEN
Title: VICE PRESIDENT

For THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By:
Title:

For APM TERMINALS NORTH AMERICA, INC.

By:
Title:

For THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

for Denis Lilli

By:
Title: Richard M. Larrabee

Director, Port Commerce Dept.

APPROVED:	
FORM	TERMS
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Exhibit 1

THIRD SUPPLEMENTAL AGREEMENT

This Third Supplemental Agreement (this "Agreement") is made as of the 24 day of July, 2008, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the "Port Authority") and APM TERMINALS NORTH AMERICA, INC. ("Lessee").

Recitals:

A. The Port Authority and Lessee entered into a certain Agreement of Lease dated January 6, 2000 (the "Original Lease"), pursuant to which Lessee leased from the Port Authority certain premises located within the Elizabeth-Port Authority Marine Terminal situated in Union County, Elizabeth, New Jersey, as such premises is more particularly described in the Original Lease.

B. The Original Lease has been modified and supplemented pursuant to that certain Supplemental Agreement No. 1 dated June 18, 2002 (the "First Supplement") and that certain Supplemental Agreement No. 2 dated March 14, 2007 (the "Second Supplement"), both between the Port Authority and Lessee. The Original Lease, as modified and supplemented by the First Supplement and the Second Supplement, is referred to herein as the "Lease."

C. The Port Authority and Lessee desire to further modify and supplement the Lease in accordance with a certain Settlement Agreement dated July 24, 2008, between the Port Authority and Lessee (the "Settlement Agreement").

Agreement:

NOW THEREFORE, in consideration of the mutual agreements set forth below and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Port Authority and Lessee hereby agree as follows:

1. Effective Date; Defined Terms. This Agreement shall only become effective on the date (the "Effective Date") specified in the Settlement Agreement. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meaning ascribed to such terms in the Lease.

2. Class A Work.

(a) Completion of Class A Work. The Port Authority and Lessee hereby acknowledge and agree that the portion of the Class A Work described on Exhibit A attached hereto and made a part hereof (the "Completed Class A Work") is complete and shall be deemed to have been completed prior to the Class A Work Completion Date. Lessee shall have no further obligations under the Lease with respect to the Completed Class A Work. The Port Authority shall deliver to Lessee, within ten (10) days after the Effective Date, a certificate of final completion pursuant to the Lease with respect to the Completed Class A Work.

(b) Remaining Class A Work. The Port Authority and Lessee hereby acknowledge and agree that described on Exhibit B attached hereto and made a part hereof is the remaining Class A Work under the Lease (the "Remaining Class A Work"). The Port Authority shall have no right to exercise any remedies pursuant to the Lease, at law or in equity, as applicable, as a result of the failure of the Remaining Class A Work to be completed on or before the Class A Work Completion Date.

3. Class A Work Completion Date.

(a) Extension of Completion Date. The Class A Work Completion Date shall be amended to occur on the earlier of: (i) the first anniversary of the full completion of the Panama Canal Expansion Project (as defined below) as announced by the Panama Canal Authority; or (ii) December 31, 2017, (the "New Class A Work Completion Date"). Notwithstanding the forgoing, the New Class A Work Completion Date shall not occur any earlier than December 31, 2013. For purposes of this provision the Panama Canal Expansion Project is defined as the canal expansion project approved by Panamanian referendum on October 26, 2006, and which consists of the addition of two new sets of locks and the widening and deepening of existing navigational channels in Gatun Lake and the deepening of Culebra Cut.

(b) Letter of Credit. (i) In the event that Lessee has not completed the Remaining Class A Work on or before the New Class A Work Completion Date, Lessee shall, within five (5) business days after the New Class A Work Completion Date, post an irrevocable letter of credit, in the form attached hereto as Exhibit C, in an amount equal to $73 million. Lessee shall increase the amount of the letter of credit by three percent (3%) on or prior to each anniversary of the date of the letter of credit and the Port Authority shall reasonably cooperate with Lessee in connection therewith (including, without limitation, returning the existing letter of credit in exchange for a new letter of credit in such higher amount).

(ii) At any time after the New Class A Work Completion Date, the Port Authority may at its option perform the Remaining Class A Work and may draw on the letter of credit an amount reasonably necessary to fund such work, which amount shall be used by the Port Authority solely for purposes of completing the Remaining Class A Work with any excess funds being refunded to Lessee. If the Port Authority exercises its option to draw on the letter of credit under this clause, Lessee's obligation to complete the Remaining Class A Work shall be extinguished and the letter of credit will be terminated as per subparagraph (b)(iii). In the event Lessee has not completed the Remaining Class A Work on or prior to the New Class A Work Completion date, drawing on the letter of credit shall be the Port Authority's sole remedy for any such failure and the Port Authority shall have no right to exercise any other remedies pursuant to the Lease, at law or in equity, as applicable.

(iii) The letter of credit shall be terminated on the earlier of the completion of the Remaining Class A Work (by either party), the Port Authority's drawdown on the entire outstanding amount of the letter of credit, or the expiration of the Lease.

(c) If Lessee has not completed the Remaining Class A Work on or before the New Class A Work Completion Date and has not posted the letter of credit required by paragraph (b) above within five (5) business days thereafter, the Port Authority shall have the option to terminate the Lease within ten (10) business days after the end of such five (5) business day period.

4. Second Surrendered Area.

(a) Second Surrendered Area and Second Surrender Date. (i) As of 11:59 p.m. on the Second Surrender Date (as defined below), Lessee shall surrender and yield up to the Port Authority, its successors and assigns, forever, all of its right, title and interest in and to the Second Surrendered Area (as defined below) and the term of years with respect thereto under the Lease shall terminate with the same force and effect as if such date were the original expiration date under the Lease. The "Second Surrendered Area" shall mean (i) the 2.5 acres of the premises depicted on Exhibit D attached hereto and made a part hereof; and (ii) further land necessary for the Port Authority's expansion of McLester Street as may be reasonably agreed to by Lessee upon the request of the Port Authority. The "Second Surrender Date" shall mean any date from the date hereof up to and including December 31, 2009.

(b) Effect on Rent. The Port Authority and Lessee agree that on and following the Second Surrender Date, the basic rental payable under the Lease shall be reduced by prorating the basic rental as set forth in Section 3 of the Lease to reflect the actual area of the premises less the Second Surrendered Area.

(c) Maturity of Obligations With Respect to Second Surrendered Area. Subject to subsections (d) and (e) below and Section 5 of this Agreement, all promises, covenants, agreements and obligations of the Port Authority and Lessee contained in the Lease with respect to the Second Surrendered Area or otherwise which, under the provisions of the Lease, would have matured upon the date originally identified in the Lease as the expiration date of the term or upon the earlier termination of the Lease or within a stated period after such expiration or termination shall mature as to the Second Surrendered Area upon the Second Surrender Date.

(d) Release and Discharge. As of the Second Surrender Date, Lessee shall release and discharge the Port Authority from any and all obligations on the part of the Port Authority to be performed under the Lease with respect to the Second Surrendered Area for that portion of the term of the Lease occurring after the Second Surrender Date. As of the Second Surrender Date, the Port Authority shall release and discharge Lessee from any and all obligations on the part of Lessee to be performed under the Lease with respect to the Second Surrendered Area for that portion of the term of the Lease occurring after the Second Surrender Date. Notwithstanding the foregoing, the release of the Port Authority and Lessee set forth in this subsection (d) shall not be applicable to matters relating to the environmental condition of the Second Surrendered Area accruing on or prior to the Second Surrender Date.

(e) Delivery of Second Surrendered Area. In consideration of the making of this Agreement by the Port Authority, Lessee hereby agrees to terminate its occupancy of the Second Surrendered Area and to deliver actual physical possession of the same to the Port Authority on or before the Second Surrender Date in the condition required by the Lease upon surrender of the premises at expiration of the Lease term. Notwithstanding anything to the contrary contained in the Lease (i) Lessee shall not be obligated to remove any property (including, without limitation, any fencing, light poles or lighting fixtures) from the Second Surrendered Area or perform any work thereat in connection with the surrender, (ii) on or prior to the Second Surrender Date, the Port Authority shall construct a fence to separate the Second Surrendered Area from the remaining premises under the Lease, which fence shall be in compliance with all laws applicable to such premises and Lessee's operations thereat, (iii) the Port Authority shall relocate to a reasonably acceptable area servicing the premises under the Lease all utilities and facilities (including, without limitation, all pipes, conduits, wires, electrical equipment and similar property) located within the Second Surrendered Area during fence construction in order to prevent interference with the service of such utilities and facilities to such premises, (iv) the construction of the fence and any relocation of utilities and facilities shall be done in a good and workmanlike manner and in compliance with all applicable laws and upon completion of such work, such fence and relocated utilities and facilities shall be reasonably comparable in quality, functionality and usefulness as those in existence at the Second Surrendered Area on the date hereof. The Port Authority's obligations under this Section 4(e) shall not be subject to the release and discharge by Lessee set forth in Section 4(d) above.

(f) Representations and Warranties Regarding Second Surrendered Area. Lessee hereby covenants on behalf of itself, its successors and assigns that (i) it has not done or suffered and will not do or suffer anything whereby the Second Surrendered Area, or Lessee's leasehold therein, shall be encumbered as of the Second Surrender Date, and (ii) Lessee is and will remain, until the Second Surrender Date, the sole and absolute owner of the leasehold estate in the Second Surrendered Area and of the rights, rights of renewal, licenses, privileges and options granted by the Lease with respect thereto and that its leasehold estate will be, as of the Second Surrender Date, free and clear of all liens and encumbrances of whatsoever nature created by Lessee. The Port Authority hereby represents and warrants that it is and will remain, as of the Second Surrender Date, the lessor under the Lease and that there are no liens or encumbrances of whatsoever nature created by the Port Authority on the fee title to the real property covered by the Lease that could result in a foreclosure upon the real property or any portion thereof or any other interference with the rights of Lessee to exclusive possession of the premises under the Lease. The preceding representations and warranties shall be deemed repeated as of the Second Surrender Date.

(g) Temporary Use. If requested by the Port Authority, Lessee shall also make reasonable efforts to temporarily permit an additional portion of the premises demised under the Lease to be used by the Port Authority for construction support purposes in connection with the McLester Street widening. The rent payable under the Lease shall be reasonably prorated to reflect such use of these additional acres for the duration of such use. Notwithstanding anything in the Lease to the contrary, Lessee shall have no obligations or responsibilities with respect to any portion of the premises that are being used under this provision for the duration of such use. The Port Authority will return such premises to Lessee

within 15 days after completion of the McLester Street widening in the same condition the premises were in when such use commenced. Such use shall be subject to reasonable conditions specified by Lessee.

5. McLester Street Project. In connection with the contemplated project to widen McLester Street located in Elizabeth, New Jersey and the construction of a new gate at the premises under the Lease, the Port Authority shall use reasonable efforts to prevent any obstruction or hindrance of vehicular ingress and egress to and from such premises, and shall provide an equitable adjustment to the rent due by Lessee in the event any obstruction occurs.

6. Traffic Planning. Lessee and the Port Authority agree to cooperate fully with each other in connection with traffic planning and modeling efforts. Such cooperation shall include, without limitation, reasonable sharing of information and providing specific input and recommendations to enhance traffic flow for all port users.

7. Representations and Warranties. Lessee hereby represents and warrants that it has the full right and power to execute, deliver and perform this Agreement and such execution, delivery and performance are in accordance with, and not in violation of, the Lease. The Port Authority hereby represents and warrants that it has the full right and power to execute, deliver and perform this Agreement and such execution, delivery and performance are in accordance with, and not in violation of, the Lease and that there are no uncured defaults on the part of Lessee under the Lease.

8. Class B Work. With the exception of the dredging to 50 feet mlw at the 1300 feet of berths 94-96 ("Berth 94-96 Dredging") and the approved submission of a tenant alteration application to the Port Authority in the near future to convert Building 5130 to a maintenance and repair facility, the Port Authority and Lessee hereby acknowledge and agree that Lessee has timely completed its obligations to perform the Class B Work described in the Lease, and that Lessee has no further obligations under the Lease with respect to the Class B Work. For the avoidance of doubt the parties confirm that the Berth 94-96 Dredging will be performed in accordance with the First Supplement to this Agreement.

9. Amendment of Lease. Except as otherwise expressly modified in this Agreement, the Lease and all terms, covenants, agreements and conditions contained therein shall remain in full force and effect.

10. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be considered originals and together shall constitute one and the same instrument.

11. Governing Law. This Agreement shall be governed by the laws of the State of New York, without regard to its internal choice of law principles.

12. Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement, or the application of such term or provision to persons or circumstances other

than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

13. Captions and Headings. The captions or section headings contained in this Agreement are for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

14. Entire Agreement. This Agreement, together with the Lease (which it supplements) and the Settlement Agreement, constitute the entire agreement between the Port Authority and Lessee on the subject matter and may not be changed, modified, discharged or extended except by an instrument in writing, duly executed on behalf of both the Port Authority and Lessee.

[Signature Page Follows]

IN WITNESS WHEREOF, the Port Authority and Lessee have executed this Agreement as of the date first above written.

THE PORT AUTHORITY:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Name:
Title:

LESSEE:

APM TERMINALS NORTH AMERICA, INC.

By: _____
Name: JOE NIELSEN
Title: VICE PRESIDENT

IN WITNESS WHEREOF, the Port Authority and Lessee have executed this Agreement as of the date first above written.

THE PORT AUTHORITY:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: for Dennis Lorbeli
Name: Richard M. Larrabee
Title: Director, Port Commerce Dept.

LESSEE:

APM TERMINALS NORTH AMERICA, INC.

By: _____
Name:
Title:

APPROVED:	
FORM	TERMS
[illegible]	DL

EXHIBIT A

Completed Class A Work

1. The work described in Section 7(a)(1)(iii), (iv) and (v) of the Lease.

2. The work described in Section 7(a)(1)(i) of the Lease except as described on Exhibit B attached to this Agreement.

3. The work described in Section 7(a)(1)(ii) of the Lease except as described on Exhibit B attached to this Agreement.

EXHIBIT B

Remaining Class A Work

1. That portion of the work described in Section 7(a)(1)(i) of the Lease consisting of 2,500 feet crane rail alongside Berths 94-98.

2. That portion of the work described in Section 7(a)(1)(ii) of the Lease consisting of the reinforcement of 1,300 feet of berth running from Berth 94 through half of Berth 96.

EXHIBIT C

Form of Letter of Credit

The Port Authority of New York & New Jersey
225 Park Avenue South, 12th Floor
New York, NY 10003

Date_____

Attn: CREDIT MANAGER

CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____(C)_____

At the request of _____(A)_____, we _____(B)_____ hereby open this CLEAN IRREVOCABLE LETTER OF CREDIT NO. _____(C)_____ pursuant to Section 3(b) of the Third Supplemental Agreement to Lease Agreement No. EP-248 in your favor up to an aggregate of _____(D)_____ U.S. Dollars, available by your draft(s) on us at sight.

We warrant to you that all your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us at _____(E)_____ on or before the expiration date set forth below or future expiration date as indicated below. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement thereto, or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under _____(B)_____ Letter of Credit No. ___(C)____ dated _____". Partial drawings under this Letter of Credit are permitted.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on _____(F)_____. This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended without amendment for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing not less than sixty (60) days before such date that we elect not to extend the Letter of Credit for such additional period, such notice to be sent by registered or certified mail to you at the address herein. Upon receipt by you of such notice you may draw on us at sight for the balance remaining in this Letter of Credit within the then applicable expiration date, no statement required.

The Letter of Credit shall upon expiry be returned to _____(B)_____ for cancellation but shall be considered null and void whether or not it is so returned.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

_____
BANK OFFICER/REPRESENTATIVE

LEGEND:
A – INSERT APPLICANT NAME, I.E. TENANT OR LESSEE NAME
B – INSERT NAME OF ISSUING BANK
C – INSERT L/C IDENTIFICATION NUMBER
D – INSERT DOLLAR VALUE OF INSTRUMENT
E – INSERT EXACT ADDRESS OF LOCAL BANK BRANCH
F – INSERT EXPIRATION DATE-ONE YEAR FROM ISSUE DATE

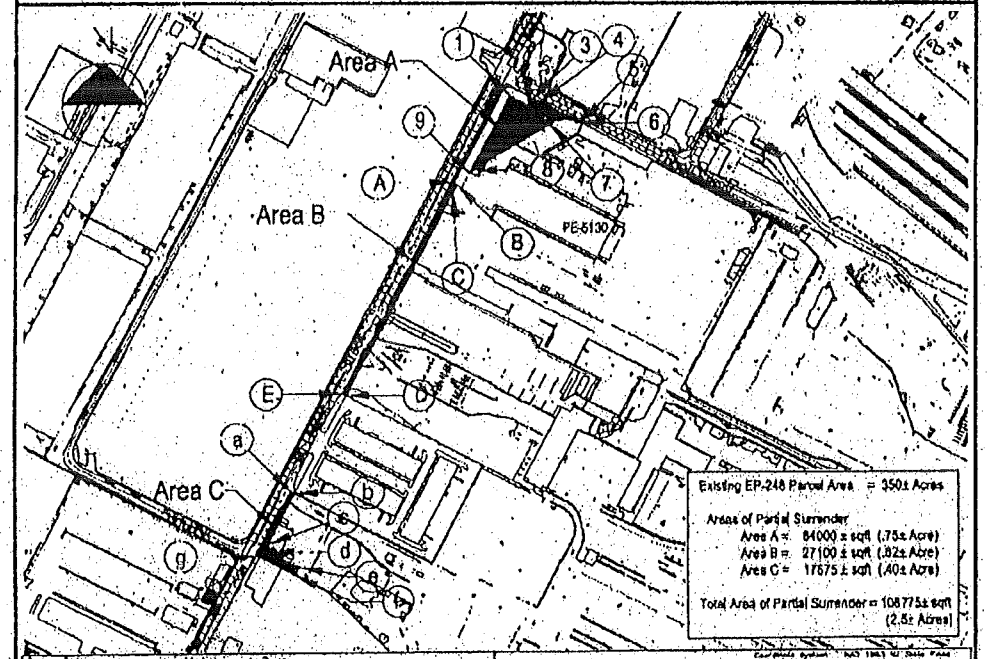
*** Please instruct your Bank to have the Letter of Credit issued in the above format in "Draft" form and fax to Michael Mayurnik, Credit Manger, at (212) 435-5846 for approval **PRIOR** to issuance in "Original" form or email a Word file to MMayurni@panynj.gov. **If the draft is not reviewed in advance, the Letter of Credit can be rejected.** If you are in need of further assistance, Mr. Mayurnik can be reached at (212) 435-5838. ****

EXHIBIT D

Second Surrendered Area

[See Attached]

APM TERMINALS, INC.	EP-248	



Area A — Meles and Bounds:

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
1			670558.96	586434.89
	03.00	S 62°23'25" E		
2			670511.23	586526.18
	38.09	N 27°36'36" E		
3			670544.98	586543.81
	55.22	N 71°40'39" W		
4			670527.02	586590.24
	211.50	S 62°28'05" E		
5			670429.85	586783.78
	4.43	S 31°45'37" W		

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
6			670426.00	586781.45
	Arc = 153.1	Rad = 150		
7			670427.66	586635.10
	432.66	S 09°02'53" W		
8			670199.12	586264.05
	Arc = 34.5	Rad = 189.91		
9			670179.76	586236.57
	427.93	N 27°36'36" E		
			(return to point 1)	

Area B — Meles and Bounds:

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
A			670133.75	586156.08
	26.06	S 62°23'25" E		
B			670121.68	586179.17
	Arc = 43.55 E Rad = 291.67			
C			670084.74	586156.18
	1145.10	S 27°36'53" W		

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
D			669070.08	585625.40
	22.7	N 63°16'03" W		
E			669080.29	585605.[illegible]
	1188.84	N 27°36'36" E		
			(return to point 1)	

Area C — Meles and Bounds:

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
a			668592.97	585350.24
	23.35	S 62°23'25" E		
b			668582.[illegible]5	585370.83
	285.34	S 27°35'29" W		
c			668329.26	585238.77
	42.36	S 17°19'44" E		
d			668288.82	585251.3

Point No.	Distance	Bearing	Northerly Coordinate	Easterly Coordinate
e	16[illegible].77	S 62°30'01" E		
			668214.12	585394.68
f	45.95	S 27°29'59" W		
			668173.36	585373.67
g	215.23	N 62°23'25" W		
			668273.11	585182.95
	360.97	N 27°36'36" E	(return to point 1)	

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

D

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : Jul. 14, 2008

THIS AGREEMENT SHALL NOT BE BINDING UPON THE PORT AUTHORITY UNTIL DULY EXECUTED BY AN EXECUTIVE OFICER THEREOF AND DELIVERED TO THE LESSEE BY AN AUTHORIZED REPRESENTATIVE OF THE PORT AUTHORITY.

Elizabeth-Port Authority Marine Terminal
Lease No. EP-248
Supplement No. 4

THIS AGREEMENT, dated as of the 31ST day of January 2013 by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called the "Port Authority"), and **APM TERMINALS NORTH AMERICA, INC.** (hereinafter called the "Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of the January 6, 2000, the Port Authority and the Lessee entered into an agreement of lease (which lease, as the same may have heretofore been supplemented and amended, is hereinafter called the "Lease") covering premises at the Elizabeth-Port Authority Marine Terminal, in the county of Union, City of Elizabeth and State of New Jersey; and

WHEREAS, the Lessee being presently in possession under the Lease, desires to terminate its occupancy the portion of the premises shown in on Exhibit PS-2 annexed hereto and hereby made a part hereof (the "Surrendered Premises"), and to surrender the same to the Port Authority effective as of the 28th day of February 2013 (which date is hereinafter called the "Surrender Date"); and

WHEREAS, the Port Authority is willing to accept such surrender on the terms and conditions hereinafter set forth; and

WHEREAS, the Port Authority and the Lessee hereby agree to amend the Lease in certain other respects;

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the Port Authority and the Lessee hereby agree as follows:

1. The Lessee has granted, bargained, sold, surrendered and yielded up and does by these presents grant, bargain, sell, surrender and yield up unto the Port Authority, its successors and assigns forever the Surrendered Premises and the term of years with respect thereto under the Lease yet to come and has given, granted and surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by the Lease with respect to the Surrendered Premises, all to the intent and purpose that the said term under the Lease and the said rights of renewal, licenses, privileges and options may be wholly merged, extinguished and determined on the Surrender Date, with the same force and effect as if the said term were in and by the provisions of the Lease originally fixed to expire on the Surrender Date;

TO HAVE AND TO HOLD the same unto the Port Authority, its successors and assigns forever.

2. The Lessee hereby covenants on behalf of itself, its successors and assigns that (a) it has not done or suffered and will not do or suffer anything whereby the Surrendered Premises, or the Lessee's leasehold therein, has been or shall be encumbered as of the Surrender Date in any way whatsoever; (b) the Lessee is and will remain until the Surrender Date the sole and absolute owner of the leasehold estate in the Surrendered Premises and of the rights, rights of renewal, licenses, privileges and options granted by the Lease with respect thereto and that the same are and will remain until the Surrender Date free and clear of all liens and encumbrances of whatsoever nature; and (c) the Lessee has full right and power to make this Agreement.

3. All promises, covenants, agreements and obligations of the Lessee with respect to the Surrendered Premises, under the Lease or otherwise, which under the provisions thereof would have matured upon the date originally fixed in the Lease for the expiration of the term thereof, or upon the termination of the Lease prior to the said date, or within a stated period after expiration or termination, shall notwithstanding such provisions, mature upon the Surrender Date and shall survive the execution and delivery of this Agreement.

4. The Lessee has released and discharged and does by these presents release and discharge the Port Authority from any and all obligations of every kind, past, present or future on the part of the Port Authority to be performed under the Lease with respect to the Surrendered Premises except the Port Authority's obligation to refund the security deposit and interest accrued thereon, or balance thereof, if any, remaining on deposit with the Port Authority. The Port Authority does by these presents release and discharge the Lessee from any and all obligations on the part of the Lessee to be performed under the Lease with respect to the Surrendered Premises for that portion of the term subsequent to the Surrender Date, it being understood that nothing herein contained shall release, relieve or discharge the Lessee from any liability for rentals or for other charges that may be due or become due to the Port Authority for any period or periods prior to the Surrender Date, or for breach of any other obligation on the Lessee's part to be performed under the Lease for or during such period or periods or maturing pursuant to paragraph 3 above.

5. In consideration of the making of this Agreement by the Port Authority and the above-described release, the Lessee hereby agrees to terminate its occupancy of the Surrendered Premises and to deliver actual, physical possession of the Surrendered Premises to the Port Authority, on or before the Surrender Date, in the condition required by the Lease upon surrender. The Lessee further agrees that it shall remove from the Surrendered Premises, prior to the Surrender Date, all equipment, inventories, removable fixtures and other personal property of the Lessee or for which the Lessee is responsible. With respect to any such property not so removed, the Port Authority may at its option, as agent for the Lessee and at the risk and expense of the Lessee, remove such property to a public warehouse or may retain the same in its own possession and in either event, after the expiration of thirty (30) days, may sell or consent to the sale of the same at a public auction. The proceeds of any such sale shall be applied first to the expenses of removal, sale and storage and second to any sums owed by the Lessee to the Port Authority; any balance remaining shall be paid to the Lessee. The Lessee shall pay to the Port Authority any excess of the total cost of removal, storage and sale over the proceeds of sale.

6. Effective from and after March 1, 2013, the Port Authority and the Lessee agree that the basic rental payable under Section 3 of the Lease, as amended by Supplement No. 2 of

the Lease, shall be deemed deleted and the following shall be deemed inserted in lieu thereof:

"During the period commencing on March 1, 2013 and continuing through the expiration of the term of the letting, in lieu of the basic rental previously payable by the Lessee, the Lessee shall pay to the Port Authority a basic rental at the annual rate of Six Million Five Hundred Fifty Two Thousand Three Hundred Fifty-nine Dollars and Seventy Four Cents ($6,552,359.74) payable in equal monthly installments of Five Hundred Forty Six Thousand Twenty-Nine Dollars and Ninety-Eight Cents ($546,029.98) on March 1, 2013 and on the first day of each month during such period".

7. Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof shall be charged personally by the Lessee with any liability, or be held liable to it under any term or condition of this Agreement, or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof. The Lessee agrees that no representations or warranties with respect to this Agreement shall be binding upon the Port Authority unless expressed in writing herein.

8. The Lessee represents and warrants that no broker has been concerned in the negotiation of this Supplemental Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation or execution of this Supplemental Agreement.

9. This Supplemental Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Supplemental Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed these presents as of the date first above written.

ATTEST:

Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By _____

Title RICHARD M. LARRABEE
~~DIRECTOR, PORT COMMERCE DEPT.~~

ATTEST:

Secretary
JOHN N. LOEPPRICH

APM TERMINALS NORTH AMERICA, INC.

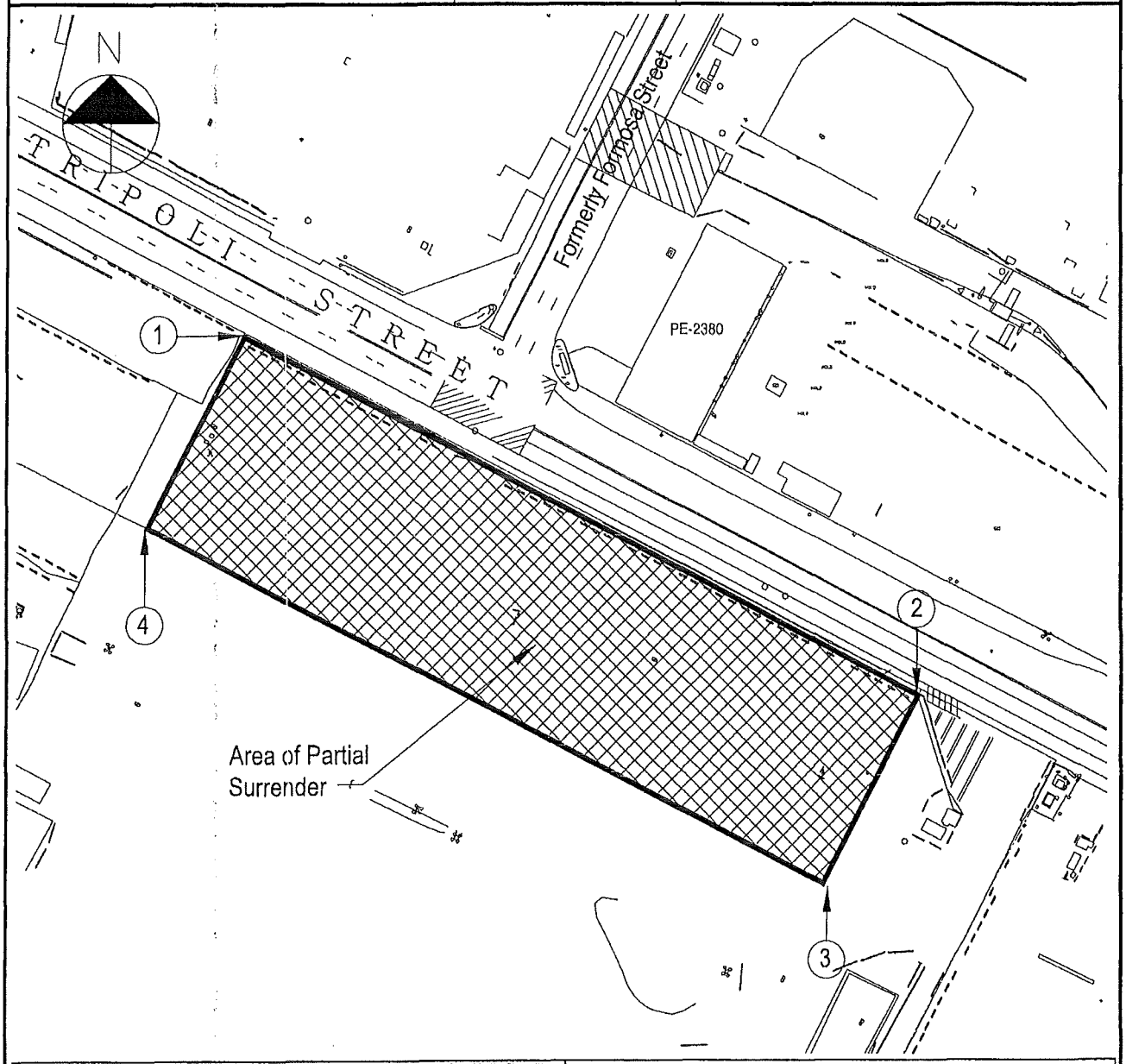
By _____

Title President
(Corporate Seal)
ERIC SISCO

APPROVED:

FORM	TERMS

APM TERMINALS, INC.	EP-248	Supplement No. 4



Point No.	Distance	Bearing	Metes and Bounds: Northerly Coordinate (NAD 1983 NJ State Plane)	Easterly Coordinate (NAD 1983 NJ State Plane)
1			670239.82	587140.27
	546.15'	S 62°12'33" E		
2			669985.18	587623.43
	149.51'	S 27°08'34" W		
3			669852.13	587555.22
	546.91'	N 62°27'50" W		
4			670105.08	587070.32
	151.82'	N 27°26'13" E	(return to point 1)	

AREA OF PARTIAL SURRENDER = 82,347.27± sqft (1.89± Acre)

Initialed:

For the PORT AUTHORITY

For the Lessee

EXHIBIT :

PS-2

THE PORT AUTHORITY OF NY & NJ

ELIZABETH - PORT AUTHORITY MARINE TERMINAL

Date : March 1, 2013

For the Port Authority

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

On the 10th day of May in the year 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard M. Larrabee, Director-Port Commerce Department personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lucy Ambrosino
(notary seal and stamp)

LUCY AMBROSINO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01AM6101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV. 3, 20 15

For the Lessee

STATE OF Virginia)

COUNTY OF Portsmouth)

On the 11th day of March in the year 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Eric Sisco

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

A. WOODARD
NOTARY PUBLIC
REG # 7502949
COMMISSION
EXPIRES
4/30/2015
COMMONWEALTH OF VIRGINIA

Adriana Woodard
(notary seal and stamp)

Commonwealth Of Virginia
Adriana Woodard - Notary Public
Commission No. 7502949
My Commission Expires 4/30/2015