
5. EVIDENCE OF RIGHT, TITLE AND INTEREST

The Project area is located on the parcel identified as Tax Map 43-G-1-2, and is owned by the City of Portland. The City of Portland leases the parcel to the Maine Port Authority for the International Marine Terminal. The attached legal description from the Maine Port Authority, is provided as evidence of Right, Title and Interest of the parcel.

5.1 ATTACHMENTS

- Legal Description of International Marine Terminal

LEASE AGREEMENT

BETWEEN

CITY OF PORTLAND,

AND

MAINE PORT AUTHORITY

For property known as the International Marine Terminal
located on Commercial Street in Portland, Maine

Dated: June 1, 2009

LEASE AGREEMENT

THIS LEASE made this ____ day of _____, 2009, by and between the **CITY OF PORTLAND**, a body politic and corporate, located in the County of Cumberland, State of Maine (hereinafter referred to as "Landlord"), and the **MAINE PORT AUTHORITY**, a body corporate and politic and an instrumentality of the State of Maine created pursuant to 23 M.R.S.A. §4420, (hereinafter referred to as "Tenant"),

WITNESSETH:

In consideration of the mutual covenants and agreements contained herein and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

SECTION 1. Premises: Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all of that tract, piece or parcel of land, together with the buildings, equipment and improvements thereon commonly known as the International Marine Terminal located on Commercial Street in Portland, Cumberland County, Maine, more particularly described in Exhibit A attached hereto, together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto (all of the foregoing hereinafter sometimes referred to as the "demised premises" and sometimes referred to as the "premises"), excluding the terminal building located on a portion of the premises as shown on the site plan attached hereto as Exhibit A-1 (the "Terminal Building"), but the land and structural support improvements located below the ground floor of the Terminal Building are included in the demised premises. The premises include certain submerged land leased to Landlord (the "Submerged Land") pursuant to Submerged Lands Lease No. 16-17-A dated October 5, 1994, between the Bureau of Parks and Lands, an Agency of the State of Maine Department of Conservation and Landlord, a copy of which is attached hereto as Exhibit B (as the same may be amended or replaced from time to time with the consent of Tenant, the "Submerged Lands Lease"). With respect to the Submerged Land, this Lease is a sublease of the leasehold interest held by Landlord as lessee under the Submerged Lands Lease and is subject to all of the terms and conditions of the Submerged Lands Lease.

SECTION 2. Term: (a) The original term of this Lease shall be for a period of approximately three (3) years and 2 months which shall begin on May 1, 2009 (hereinafter referred to as the "Commencement Date") and expire on June 30, 2012. The first "lease year" hereof shall be the period from the Commencement Date through June 30, 2010 and each subsequent lease year shall be a 12 month period ending on June 30.

(b) Tenant shall have the option, at the expiration of the original term hereof, to extend the original term hereof for up to four (4) successive extension terms, the first two extension terms to be of five (5) years each, and the last two extension terms to be of ten (10) years each, each of such extension periods to be exercised separately in the manner herein provided, and to

be on all the same terms, covenants and conditions as are contained in this Lease, provided that Tenant may not exercise any such option when it is in default in the performance of its obligations hereunder (including its maintenance obligations) which default has not been cured within the applicable cure period set forth in Section 24. Such option to extend, or further to extend, as the case may be, shall be exercised by written notice to Landlord at least six (6) months prior to the expiration of said original term, or said term as previously extended, and upon the giving of such notice and without any further instrument, lease or agreement, this Lease shall be so extended, or further extended. Notwithstanding that Tenant shall have failed at any time to have given written notice to Landlord at least six (6) months prior to the expiration of the original term, or said term as previously extended, Tenant's right to extend the term of this Lease, or further to extend, as the case may be, shall nevertheless continue until fifteen (15) days after Landlord shall have given Tenant written notice of its failure to so extend. As used in this Lease, the expression "the term of this Lease," and similar expressions, shall mean and refer to the original term together with any extension terms, if elected by Tenant.

SECTION 3. Rent: Tenant agrees to pay to Landlord, at the address set forth in Section 30 in regard to notices or at such other place as Landlord may by notice in writing to Tenant from time to time direct, annual rent as hereinafter set forth. During the original term of this Lease such annual rent shall be equal to the lesser of (i) the Maximum Annual Rent (as hereinafter defined) or (ii) one-third of the Net Revenues during the applicable lease year. During each extension term of this Lease such annual rent shall be equal to the lesser of (i) the Maximum Annual Rent (as hereinafter defined) or (ii) one-quarter of the Gross Revenues during the applicable lease year. On or before September 30 of each year Tenant shall provide Landlord with a statement computing the amount of rent due with respect to the lease year ended the preceding June 30 accompanied with payment of the amount of rent as set forth on such statement.

(a) "Net Revenues" for any period shall mean the amount by which the "Gross Revenues" for such period exceeds the "Operating Costs" for such period. Gross Revenues shall mean Tenant's actual cash receipts relating to the premises including all fees and charges for use of the wharf and other facilities on the premises (but not fees for use of the crane or other equipment which is not owned by Landlord) and any rents or license fees from subleases or licenses of any portion of the premises.

(b) "Operating Costs" for an period shall mean all expenses, costs and amounts of every kind and nature (including capital expenditures) which Tenant shall pay during the applicable period in connection with the management, repair, maintenance, restoration, marketing and operation of the premises, including without limitation, any amounts paid for: (i) utilities for the premises, including but not limited to electricity, power, gas, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilating, (ii) permits, licenses and certificates necessary to operate the premises or for the operation of any transportation to or from the Property, (iii) insurance applicable to the premises, or applicable to the provision of any transportation to or from the premises, but not limited to the amount of coverage Tenant is required to provide under this Lease, (iv) supplies, tools, equipment and materials used in the operation, repair and maintenance of the premises, including any equipment rental of any kind, (v) accounting, legal,

inspection, consulting, engineering and other services, (vi) all management fees and other amounts payable under any property management agreements, (vii) wages, salaries and other compensation and benefits for all persons engaged in the operation, maintenance or security of, or transportation to or from, the premises, and employer's Social Security taxes, unemployment taxes or insurance, and any other taxes which may be levied on such wages, salaries, compensation and benefits, (viii) payments under any contracts relating to the premises, and (ix) operation, repair, and maintenance of all buildings, wharves, improvements, systems and equipment and components thereof (including replacement of components), janitorial service, alarm and security service, trash removal, removal of ice and snow, maintenance and replacement of shrubs, trees, grass, sod and other landscaped items, drainage facilities, fences, curbs, and walkways, re-paving and re-striping of paved areas. Notwithstanding the foregoing, Operating Costs shall not, however, include depreciation or amortization or any capital expenditures funded with Bond proceeds as described in Section 7 below or funded with insurance proceeds received by Tenant.

(c) During the first lease year, the Maximum Annual Rent shall be \$120,000. For each subsequent lease year the Maximum Annual Rent shall be equal to the product of (i) \$120,000 multiplied by (ii) a fraction the numerator of which is the CPI for the month of May preceding the start of such lease year and the denominator of which is the CPI for May, 2009. The "CPI" shall mean the "Consumer Price Index" published by the U.S. Department of Labor, Bureau of Labor Statistics and commonly referred to as the Consumer Price Index for all U.S. cities, "All Items" (1982-84=100).

(d) Tenant shall maintain records respecting Gross Revenues and Operating Costs and determine the same in accordance with sound accounting and management practices, consistently applied. Landlord or its representative shall have the right to examine such records upon reasonable prior notice specifying such records Landlord desires to examine, during normal business hours at the place or places where such records are normally kept by sending such notice no later than ninety (90) days following the furnishing of the statement computing the rent due hereunder, provided that after the original term such examination shall be limited to a review of Gross Revenues as Operating Costs shall no longer be relevant to the computation of rent. Landlord may take exception to matters included in any such statement by sending notice specifying such exception and the reasons therefor to Tenant no later than sixty (60) days after Tenant makes such records available for examination. Each rent computation statement shall be considered final, except as to matters to which exception is taken after examination of Tenant's records in the foregoing manner and within the foregoing times. If Landlord takes exception to any matter contained in the statement as provided herein, Tenant shall refer the matter to an independent certified public accountant reasonably acceptable to Landlord and Tenant, whose certification as to the proper amount shall be final and conclusive as between Landlord and Tenant. Landlord shall promptly pay the cost of such certification unless such certification determines that Tenant underpaid rent by more than five percent (5%).

SECTION 4. Utilities, Services and Contracts: Landlord warrants and represents that the demised premises have direct access to electric, telephone, public water, public sewer and

stormwater drainage lines in the portions of Commercial Street that are contiguous to the demised premises, so as not to require any easements for such purposes. Landlord further covenants and agrees that the demised premises shall at all times remain connected to the necessary public utilities and water and sewerage system during the term of this Lease. Landlord further covenants and agrees that Tenant may take such steps as may be necessary to ensure the demised premises shall be connected, at all times during the term of this Lease, with all necessary public or private utility lines and water and sewerage system. Landlord warrants and represents that attached hereto as Exhibit C is a list of all contracts, agreements, licenses and leases presently in effect relating to the demised premises (the "Contracts"). To the extent that Tenant specifically requests assignment thereof such Contracts will be assigned by Landlord to Tenant effective as of the Commencement Date. All Contracts that are not so assigned to Tenant shall be terminated by Landlord effective as of the Commencement Date. Landlord shall be responsible for any costs associated with any such assignment or termination of the Contracts.

SECTION 5. Use of Premises and Tenant Responsibilities: The demised premises may be used for a marine terminal and for any other lawful purpose. In connection with such use, during the term of this lease,

- (a) Tenant shall be considered the terminal operator of the International Marine Terminal.
- (b) Tenant shall be fully responsible, at its own expense, for all repairs, replacement, upkeep and maintenance of the demised premises (but not the Terminal Building as described in Section 7(b) below), reasonable wear and tear and casualty damage excepted. Tenant shall make all necessary repairs in order to maintain the pier infrastructure in a good and usable condition, reasonable wear and tear and damage by casualty excepted. Within three (3) months after the commencement of this Lease and prior to each extension term, Tenant shall prepare and furnish to Landlord for approval maintenance and repair plans for the premises for the following term. Landlord shall review said plans for consistency with Tenant's obligations under this section. Landlord's approval shall not be unreasonably withheld. Tenant shall perform maintenance and repairs substantially in accordance with such maintenance plans, subject to Tenant's right to make reasonable modifications to such plans from time to time. Tenant shall furnish Landlord with all engineering reports prepared for or by Tenant regarding the Premises during the term of this Lease and shall also furnish Landlord with a yearly report documenting all maintenance and repairs completed by Tenant.
- (c) Tenant shall provide an annual report to the Portland City Council which summarizes the operations and activities on the premises during the previous year.
- (d) Tenant shall develop a marketing plan, and work actively to attract business to the premises.
- (e) In consultation with Landlord, Tenant shall publish a tariff for the premises in accordance with Federal Maritime Commission regulations.

(f) Tenant shall be responsible for all aspects of compliance with the Maritime Transportation Security Act and the Transportation Workers Identification Credential Program in regards to the Premises.

SECTION 6. Taxes and Utility Expenses: (a) The demised premises are currently exempt from real estate taxation as a governmental use and the parties anticipate that such tax status will continue during the term of this Lease. However, if real estate taxes should be due with respect to the premises, Landlord shall be responsible for paying such taxes. Landlord represents and warrants that the City of Portland shall treat all personal property located at the demised premises awaiting further transportation (no matter how long such property may be stored at the premises) as exempt from personal property taxation pursuant to 36 MRSA §655 1.G and neither Tenant nor any parties using the demised premises will be required to submit further documents to establish such exemption.

(b) Tenant shall, during the term of this Lease, pay and discharge punctually, as and when the same shall become due and payable, all charges for sewer, water, gas, heat, hot water, electricity, light and power, and other service or services furnished to the demised premises or the occupants thereof during the term of this Lease (hereinafter referred to as "Utility Expenses"). Landlord and Tenant shall cooperate to change the billing accounts for the Utility Expenses from Landlord's name to Tenant's name at or about the Commencement Date and to change such accounts back to Landlord's name at the end of the term. Landlord shall be responsible for the payment of all Utility Expenses for periods prior to the Commencement Date and after the termination date of this Lease.

SECTION 7. Improvements; Repairs; Additions; Replacements: (a) Currently there remains approximately [\$200,000] of proceeds from the Bonds authorized by Public Laws of 2007, Chapter 39 (the "Bond Proceeds") that have not yet been expended pursuant to the Cooperative Agreement relating thereto between Landlord and the Maine Department of Transportation. Said Cooperative Agreement is among the Contracts that will be terminated pursuant to Section 4 above. Tenant and the Maine Department of Transportation shall enter into an agreement pursuant to which any Bond Proceeds remaining as of the Commencement Date will be used to make alterations, removals, changes, replacements, improvements to the existing improvements on the premises and/or to construct or install additional buildings, structures, and other similar and dissimilar improvements as Tenant shall from time to time determine, provided that the same shall be in compliance with all then applicable building and zoning codes, laws and ordinances.

(b) As described in Section 1, the Terminal Building is excluded from the demised premises. If Tenant should desire to make use of any part of the Terminal Building, it shall have the right to send a notice to Landlord describing the portion of the Terminal Building that it desires to add to the demised premises and upon the date set forth in such notice, such portion shall become part of the demised premises and shall no longer be considered to be a part of the Terminal Building as such term is used in this Lease. Tenant shall have the right to demolish all or any portion of the Terminal Building and it intends to attempt to arrange funding for the costs

thereof and undertake such demolition promptly following the availability of such funding. Prior to such demolition, the Terminal Building may not be occupied or used by either party. In the event that prior to the time that Tenant has been able to arrange financing for the costs of such demolition, any governmental authority shall order that repairs or maintenance actions be taken with respect to the Terminal Building or that the Terminal Building be demolished based on public safety issues, release of Hazardous Materials or any other reason not caused by Tenant, Landlord shall be responsible for compliance with any such order at its expense. Landlord shall have the right to enter on the premises for access to the Terminal Building for the purpose of performing its obligations under any such order provided that such entry and such work shall be performed in a manner to assure that the same will not unreasonably interfere with operations of the demised premises.

(c) Upon sixty (60) days prior written notice to Landlord, Tenant may, at its own cost and expense, at any time and from time to time throughout the term of this Lease, make such alterations, changes, replacements, improvements and additions in and to the demised premises, and the buildings and improvements thereon, subject to all applicable codes and ordinances, as it may deem desirable, including the demolition or removal in whole or in part of any building(s), improvement(s), and/or structure(s) that may be situated upon the demised premises at the commencement of the term of this Lease or which may subsequently be erected upon the demised premises, together with any equipment or fixtures installed thereon.

(d) From and after the Commencement Date, title to any building or buildings or improvements constructed with Tenant's funds on the demised premises and the building equipment and other items purchased with Tenant's funds and installed thereon shall remain solely in Tenant and Tenant shall have the right to remove the same.

(e) On the last day or sooner termination of the term of this Lease, Tenant shall quit and surrender to Landlord the demised premises, and any buildings and permanent improvements then thereon, in their then existing condition and repair, and any buildings or permanent improvements which have not been removed by Tenant shall become the property of Landlord without any further consideration therefor.

SECTION 8. Requirements of Public Authority: (a) During the term of this Lease, Tenant shall, at its own cost and expense (or with the use of Bond Proceeds), promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, and city governments and of all other governmental authorities affecting the demised premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the term of this Lease or may in the future be passed, enacted or directed; provided, however, that Landlord shall be responsible for compliance, at Landlord's own cost and expense, with the governmental requirements relating to certain Hazardous Materials as described in Section 22 hereof. Nothing herein shall require Tenant to perform any act or to comply with any law, ordinance, requirement, order, directive,

rule or regulation if Tenant can lawfully avoid such performance or compliance by closing the operations upon the demised premises or otherwise altering its activities thereon.

(b) Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of the Tenant, or Landlord (if legally required), or both (if legally required), without cost or expense to Landlord, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (a) of this Section and, if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding.

(c) Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement and to fully cooperate with Tenant in such contest.

SECTION 9. Covenant Against Liens: If, because of any work performed upon the demised premises by or at the expense of Tenant, any mechanic's lien or other lien shall be filed against Landlord or any portion of the demised premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within one hundred twenty (120) days after written notice from Landlord to Tenant of the filing thereof.

SECTION 10. Access to Premises: (a) During the term of this Lease Landlord or Landlord's agents shall have the right, after giving Tenant reasonable advance notice, and subject to compliance with the then applicable facility security plan, to enter upon the demised premises at reasonable times to examine the same provided such entry shall not unreasonably interfere with the activities then being conducted on the demised premises.

(b) Upon consent of Tenant, Landlord shall be permitted to utilize a portion of premises for certain City purposes that do not conflict with Tenant's use of the premises, that will comply with the facility security plan and will not harm or require changes to the infrastructure or improvements on the demised premises. Tenant shall determine whether such proposed use by Landlord conflicts with Tenant's use, and the duration and location of said use.

SECTION 11. Assignment and Subletting: Tenant shall have the right to sublet all or any part of the demised premises at any time, and from time to time, during the term of this Lease. Tenant shall promptly provide Landlord with a notice describing each such sublease, including the name of the subtenant. Tenant shall not assign this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding any such assignment or subletting, Tenant shall remain directly and primarily liable for the performance of its obligations under this Lease.

SECTION 12. Signs: Tenant shall, during the term of this Lease, have the right to install, maintain and replace in, on or over or in front of the demised premises or in any part thereof signs and advertising matter as Tenant may desire, and Tenant shall comply with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes.

SECTION 13. Responsibility for Claims and Liabilities: As between Landlord and Tenant, Tenant, unless released under the provisions of Section 15 hereof, shall be responsible for all claims and all costs, expenses, and liabilities incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of (a) any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person, alleged to have occurred on the demised premises during the term of this Lease or (b) the intentional misconduct or negligent acts or omissions of Tenant or of the agents, contractors, servants or employees of Tenant or (c) the use and operation by Tenant of the demised premises during the term of this Lease; excepting, however, in each case, claims, accidents, injuries, loss or damages arising from or as a result of the intentional misconduct or negligent acts or omissions of Landlord or its agents, contractors, servants or employees. As between Landlord and Tenant, Landlord, unless released under the provisions of Section 15 hereof, shall be responsible for all claims and all costs, expenses, and liabilities incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of (a) any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person, alleged to have occurred in or about the demised premises prior to the Commencement Date or after then end of the term of this Lease or (b) the intentional misconduct or negligent acts or omissions of Landlord or the agents, contractors, servants or employees of Landlord or (c) the use, operation and maintenance of the demised premises prior to the Commencement Date or after then end of the term of this Lease; excepting, however, in each case, claims, accidents, injuries, loss, or damages arising from or as a result of the intentional misconduct or negligent acts or omissions of Tenant or of the agents, contractors, servants or employees of Tenant. Each party hereto shall promptly notify the other of any claim asserted against such party with respect to which is the responsibility of the other party hereunder, and the party giving such notice shall promptly deliver to the other party the original or a true copy of any summons or other process, pleading, or notice issued or served in any suit or other proceeding to assert or enforce any such claim. The party responsible for such claim as provided in this Section shall defend any such suit at its sole cost and expense with attorneys of its own selection, but the other party shall have the right, if it sees fit, to participate in such defense at its own expense. The provisions contained in this Section, notwithstanding anything to the contrary herein, shall not be considered to, and shall not, expand or create liability on the part of either party to any person for claims from which a party is released, exempted and/or protected by Maine law, including without limit, the Maine Tort Claims Act, as it is currently in effect or is in the future from time to time modified or amended.

SECTION 14. Insurance: (a) Tenant shall require that each stevedore licensee maintain with respect to the demised premises, liability insurance in the types and minimum amounts set forth below, in companies qualified to do business in the State of Maine, insuring Landlord, Tenant and any designee of Tenant having an interest in the demised premises, provided, however, that the obligation to maintain the insurance required hereunder shall always be subject to the availability of such insurance in the required amounts, and there may be reasonable deductibles on such insurance.

	<u>Description</u>	<u>Coverage</u>	<u>Each Occurrence</u>
(i)	Commercial General Liability (including Stevedore's legal liability and wharfinger's liability)	B.I./Death P.D.	\$1,000,000.00 \$1,000,000.00
(ii)	Vehicle Liability, including owned, hired or non-owned	B.I./Death P.D.	\$400,000.00 \$400,000.00
(iii)	Worker's Compensation, Employer's Liability (including an endorsement for Federal Longshoreman and Harbor Worker's coverage)	B.I./Death	Statutory amount
(iv)	Pollution coverage	Land to Sea Land to Land	\$1,000,000.00 \$1,000,000.00

(b) In addition to such licensee's insurance, Tenant shall maintain liability insurance (or have self insurance through the State of Maine) consistent with Tenant's limited liability under the Maine Tort Claims Act. Tenant shall deposit with Landlord certificates of both the licensee's insurance and its insurance prior to the commencement of the term, and thereafter within ten (10) days prior to the expiration of such policy. Such policies shall, to the extent obtainable, provide that the applicable policy may not be materially changed or cancelled without at least ten (10) days' prior written notice to Landlord.

(c) During the term of this Lease, Tenant shall maintain property insurance upon any buildings, equipment and other structures (including all improvements, alterations, additions and changes thereto) which are located on the demised premises (but not on the Terminal Building which is not a part of the demised premises) with coverage for perils at least as broad as

Insurance Services Office form CP 1030 (Causes of Loss-Special Form), in an amount not less than 90% of the full insurable replacement cost (i.e., total cost less value of land and non-destructibles such as foundations and underground utilities). Tenant shall not be required to carry flood or earthquake insurance. Tenant shall be responsible for determining the amount of property coverage insurance to be maintained. Landlord shall maintain similar insurance on the Terminal Building. Notwithstanding anything herein (1) Tenant's obligations to maintain any of the insurance required hereunder shall always be subject to the availability of the required insurance in the required amounts; (2) Tenant may self insure for all or any part of the required insurance (but Tenant shall not be deemed to be a self insurer unless it shall elect to self insure by notice in writing to Landlord, and notwithstanding such election Tenant shall not be considered a self insurer for risks other than those required to be insured against hereunder, or for amounts in excess of the amount of insurance required hereunder); and (3) Tenant may maintain its usual deductibles on such insurance. All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to and shall be the absolute property of Tenant, and Landlord shall not be entitled to, and shall have no interest in, the proceeds of such insurance or any part thereof. Landlord shall, at Tenant's cost and expense, cooperate fully with Tenant in order to obtain the largest possible recovery and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as hereinbefore provided and Landlord shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Tenant hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under Tenant's insurance.

(d) Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the demised premises and other locations provided such blanket insurance complies with all of the other requirements of this Lease with respect to the insurance involved. Tenant may by contract require its licensees, subtenants or other parties to perform some or all of Tenant's insurance obligations under this Section.

SECTION 15. Waiver of Subrogation: Each of Landlord and Tenant hereby releases the other and their officers, directors, shareholders, agents and employees from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property caused by fire or other casualty, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

SECTION 16. Damage or Destruction: In the event that, at any time during the term of this Lease, any one or more of the buildings on the demised premises shall be destroyed or damaged in whole or in part by fire or other casualty, Tenant shall within a reasonable time, at its own cost and expense, either repair and restore said damaged buildings to complete architectural units, or demolish and remove said damaged buildings from the demised premises and remove all rubble. Tenant shall not be entitled to any suspension or abatement of rent by reason of any such destruction or damage to the buildings and improvements upon the demised premises.

SECTION 17. Eminent Domain: (a) If, during the term of this Lease, the whole of the demised premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that possession has been taken. In the event of a partial taking (or purchase) of the demised premises during the term of this Lease, as a result of which the demised premises are no longer reasonably usable, in whole or in substantial part, for the business then being conducted thereon or the use then being made thereof, or if as a result of a taking (or purchase in lieu thereof) the demised premises are deprived of direct, reasonable and adequate access to the public streets and highways, Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord on or prior to the date which is ninety (90) days after the date of such taking (or purchase), and upon the giving of such notice of termination the term of this Lease shall expire and come to an end on the last day of the calendar month in which such notice shall be given with the same force and effect as if said day had been originally fixed herein as the expiration date of the term of this Lease. In the event this Lease shall terminate or be terminated, the rental shall, if and when necessary, be adjusted to the day of the taking (or purchase) and neither party shall have any further rights or liabilities hereunder.

(b) In the event of a taking (or purchase) resulting in the termination of this Lease pursuant to the provisions of paragraph (a) of this Section 17 the parties hereto agree to cooperate in applying for and in prosecuting any claim for such taking and further agree, that the aggregate net award pertaining to the demised premises, after deducting all expenses and costs, including reasonable attorneys' fees, incurred in connection therewith, payable to both Landlord and Tenant (herein called the "Fund") shall be paid and distributed as follows:

(1) There shall first be paid to Tenant an amount equal to the unamortized cost to Tenant of any buildings and other leasehold improvements paid for by Tenant and installed in, or made to, the premises at such time, and any award for lost profits of the Tenant or any of its subtenants or licensees.

(2) All of the Fund remaining after the payment specified in subparagraph (1) above, shall be paid to or retained by Landlord.

(c) (1) In the event that by notice to Landlord, Tenant elects after a partial taking (or purchase in lieu thereof) to make repairs to any of the building(s) and improvements on the demised premises affected by such taking (or purchase in lieu thereof) (to the extent feasible, taking into account the amount of land remaining after such taking or purchase) or to replace any of such building(s) or improvements, all compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase) shall be paid to Tenant for the purpose of paying towards the cost of such restoration or replacement, or, in the event that the parties hereto agree that only a portion of the aggregate award is sufficient to so restore or replace, then only such portion as agreed upon shall be paid to Tenant for such purpose and the balance shall be distributed pursuant to subparagraph (2) of this paragraph (c) of this Section.

(2) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase in lieu thereof) in excess of the amount thereof needed by Tenant to repair and restore the building(s) and improvements shall be distributed in the same manner as is provided in subparagraphs (1) and (2) of paragraph (b) of this Section, except that all compensation for any temporary taking shall be distributed to Tenant without participation by Landlord. In the event that any payment out of such compensation shall be paid to Landlord, then a portion of the rent payable hereunder shall be abated, effective from the date of taking (or purchase in lieu thereof), according to the nature and extent of the permanent injuries to the demised premises.

(d) Despite anything herein to the contrary contained, Tenant shall not be prevented from making a claim in its own name against any such condemning authority with respect to any trade fixtures, trade equipment, or personal property of any kind belonging to Tenant and not forming part of the real estate, or for the cost of moving all of the same, and any such award made directly to the Tenant shall belong entirely to Tenant.

SECTION 18. Utility Easements: Tenant shall have the right to enter into agreements with utility companies, and/or public authorities which provide necessary utilities, creating easements in favor of such companies and/or authorities as are required in order to service the demised premises, and Landlord covenants and agrees to consent thereto and to execute any and all documents, agreements and instruments, and to take all other actions, in order to effectuate the same, all at Tenant's cost and expense. Landlord represents that on the Commencement Date there exist adequate connections to the demised premises for public water, public sewer, stormwater drainage, electricity, telephone, gas and other utility services to enable Tenant to conduct Tenant's intended uses at the demised premises, and Landlord warrants that adequate connections will continue to exist for the term of this Lease. Landlord represents and warrants that access between the demised premises and Commercial Street will exist for the term of this Lease from and after the Commencement Date.

SECTION 19. Mortgages: Landlord hereby covenants and agrees that during the term of this Lease (including any extensions thereof), Landlord shall not have the right or power to grant any mortgage or deed of trust or otherwise create any security or other liens or encumbrances upon or affecting the demised premises, or any part thereof, at any time and from time to time, and Landlord shall not have the right or power to modify, extend, renew, replace, refinance or otherwise change or affect any mortgage, deed of trust or other security at any time or from time to time created by Tenant pursuant to this Lease, and Landlord covenants and agrees that all such rights and powers are hereby exclusively and irrevocably vested in and granted to Tenant, subject to the terms and conditions hereinafter set forth.

SECTION 20. Leasehold Mortgages: (a) Tenant shall have the right, from time to time, to mortgage its interest in this Lease ("Tenant's Leasehold Estate") and to assign, pledge or hypothecate it as security for any such mortgage, and may grant a first-lien security interest to any purchase money lender for Tenant's Personal Property, it being expressly agreed however that except as may be specifically provided herein, Tenant shall have no authority, express or

implied, to create any lien, charge or encumbrance upon the fee estate of the Landlord in the Premises. Landlord hereby subordinates any contractual, statutory, constitutional or common law lien to which Landlord may be entitled against Tenant's Personal Property to the lien or security interest of any such lender.

(b) If any mortgagee or holder of the indebtedness secured by any leasehold mortgage of Tenant ("Leasehold Mortgagee") shall notify the Landlord in the manner herein provided for the giving of notice of such mortgage and name and place for service of notice upon such Leasehold Mortgagee, then and in such event, Landlord agrees to give any Leasehold Mortgagee simultaneously with service on Tenant a duplicate of any and all notices of demand or default. Further, in the event of any such default by Tenant under this Lease, the Leasehold Mortgagee shall have the privilege of performing any of Tenant's covenants or of curing any defaults by Tenant hereunder.

(c) No liability for the payment of rental or the performance of any of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee unless and until such Leasehold Mortgagee assumes possession of the Premises.

(d) Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default or the act or omission which gave rise to such default, Landlord shall notify Leasehold Mortgagee of Landlord's intent to so terminate ("Termination Notice") at least 15 days in advance of the proposed effective date of such termination ("Termination Notice Period"). The provisions of Section 25(e) below shall apply if, during such Termination Notice Period, any Leasehold Mortgagee shall:

(i) notify Landlord in writing of such Leasehold Mortgagee's desire to act pursuant to such notice given by Landlord, and

(ii) pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the Termination Notice, as well as all payments which may become due during such Termination Notice Period, and

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

(e) If a Leasehold Mortgagee shall have proceeded in the manner provided for in Section 25(d) above, the specified date for the termination of this Lease as fixed by Landlord in its Termination Notice shall be extended for a period of three months, provided that such Leasehold Mortgagee shall, during such three month period:

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

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

(f) If a Leasehold Mortgagee is complying with Section 25(e) above, upon the acquisition of Tenant's Leasehold Estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise ("Successor Tenant") this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided that Landlord shall have given its written consent to the Successor Tenant, such consent not to be unreasonably withheld, conditioned or delayed.

(g) Any Successor Tenant may, upon acquiring Tenant's Leasehold Estate and upon obtaining the written consent of Landlord (such consent not to be unreasonably withheld, conditioned or delayed), further sell and assign the Leasehold Estate on such terms and to such persons and organizations as are acceptable to such Successor Tenant and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease.

(h) Landlord shall upon request, execute, acknowledge and deliver to each leasehold mortgagee(s), an agreement prepared at the sole cost and expense of Tenant in form satisfactory to such leasehold mortgagee(s) between Landlord, Tenant and the leasehold mortgagee(s), agreeing to all of the provisions of this Section 20. Tenant's rights under this Section 20 may also be exercised by any subtenant of all or any part of the demised premises.

SECTION 21. Subleases: If for any reason, other than a default caused by a sublessee as provided below, this Lease and the leasehold estate of Tenant hereunder is terminated by Landlord by summary proceedings or otherwise in accordance with the terms of this Lease, Landlord covenants and agrees that such termination of this Lease shall not result in a termination of any sublease affecting the demised premises and that they shall all continue for the duration of their respective terms and any extensions thereof as a direct lease between Landlord hereunder and the sublessee thereunder, with the same force and effect as if Landlord hereunder had originally entered into such sublease as Landlord thereunder. Any such sublessee shall not be named or joined in any action or proceeding by Landlord under this Lease to recover possession of the demised premises or for any other relief. Landlord shall, upon request, execute, acknowledge and deliver such agreements evidencing and agreeing to the foregoing as each sublessee shall require. If this Lease and the leasehold estate of Tenant hereunder is terminated by Landlord due to a default made by Tenant which is caused by a sublessee, such termination of

this Lease shall also result in a termination of said sublease. Any licenses issued by Tenant with respect to the demised premises shall terminate effective upon any termination of this Lease.

SECTION 22. Hazardous Materials: As between Landlord and Tenant, Landlord shall be responsible for any loss, liability or expense relating to personal, property or economic injury (including any costs incurred by Tenant in connection with the correction of any violation of Environmental Laws) arising from the presence of Hazardous Materials located within the demised premises (other than any such Hazardous Materials introduced by Tenant). As between Landlord and Tenant, Tenant shall be responsible for any loss, liability or expense relating to personal, property or economic injury (including any costs incurred by Landlord in connection with the correction of any violation of Environmental Laws) arising from the presence of Hazardous Materials located within the demises premises if introduced by Tenant. Tenant agrees that it will comply with all Environmental Laws with respect to Tenant's use of the premises. Each party will promptly notify the other party and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the environmental condition of the premises or compliance with Environmental Laws. Landlord shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the premises, pursuant to any reasonable written request of Tenant after Tenant has reason to believe that Hazardous Materials are located within the demised premises (other than any such Hazardous Materials introduced by Tenant) or that such Hazardous Materials may be in violation of Environmental Laws (including, but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Tenant the reports and other results thereof, and Tenant shall be entitled to rely on such reports and other results thereof. Landlord shall, at its sole cost and expense, comply with all reasonable written requests of Tenant to (A) reasonably effectuate remediation of any condition in, on, under or from the premises, (B) comply with any Environmental Law, (C) comply with any directive from any governmental authority, and (D) take any other reasonable action necessary or appropriate for protection of human health or the environment. Any such environmental inspections and samplings, shall be performed by Landlord during regular business hours (except in the event of an emergency) or during such other hours as Landlord and Tenant may agree. Landlord will use reasonable efforts to minimize interference caused by Landlord's entry and remediation efforts. Upon completion of any sampling or remediation work Landlord will restore the affected area of the premises from any damage caused by Landlord's sampling and remediation reasonably promptly. The provisions of this Section 22 shall survive the expiration or earlier termination of this Lease. For the purposes of this Lease, the term "Environmental Laws" shall be defined to include all present or future laws or regulations regarding the use, storage, removal or abatement of hazardous, toxic and/or environmentally controlled materials. As used herein, "Hazardous Materials" shall mean all hazardous, toxic and/or environmentally or statutorily controlled materials.

SECTION 23. Quiet Enjoyment; Landlord's Warranties: (a) Landlord covenants and agrees with Tenant that upon Tenant paying the rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant shall and may peaceably and quietly have, hold, occupy and enjoy the demised premises and all appurtenances

thereto without hindrance or molestation. Landlord shall deliver full and actual possession of the demised premises to Tenant upon the Commencement Date of this Lease, subject to the occupancy of office trailer and storage area by Ports America Maine pursuant to the lease set forth on Exhibit C.

(b) Landlord warrants and represents, upon which warranty and representation Tenant has relied in the execution of this Lease, that Landlord has fee simple title to the land which constitutes the demised premises (other than the Submerged Land as to which Landlord has a valid leasehold interest under the Submerged Lands Lease) free and clear of all defects, encumbrances, restrictions, liens, leases, tenancies, easements, agreements, contract rights, or other claims or interests (collectively "Encumbrances") except for those listed on Exhibit "D" hereto; that on and after the Commencement Date this lease shall be a first lien upon the demised premises free and clear of all Encumbrances except for those listed on Exhibit D or created by Tenant, and there shall be no mortgages, deeds or trust or liens having priority over this Lease; that no such matter listed on Exhibit D shall adversely affect the use and enjoyment of the demised premises or the building or improvements thereon in accordance with the terms of this Lease; that Landlord and any person executing this Lease in a representative capacity has full right and lawful authority to execute this Lease for the term in the manner and upon the conditions and provisions herein contained; that Landlord has not granted to any other person or entity other than Tenant any rights of first refusal or right to purchase the demised premises; that from and after the Commencement Date there shall be no legal impediment to the use of the demised premises or the building or improvements thereon as a marine freight terminal; that the demised premises are contiguous to Commercial Street along the full length of the demised premises and have free and lawful access to Commercial Street. Landlord covenants and agrees to reimburse Tenant from and against all damages, claims, demands, penalties, liabilities, costs and expenses (including reasonable attorneys fees) arising directly or indirectly from any breach of or inaccuracy in the warranties, representations or provisions of paragraphs (a) or (b) of this Section 23. Without limiting the foregoing, Tenant shall, in addition to the foregoing remedies, be entitled to deduct from the rent and/or additional rent due hereunder the reasonable cost of curing or removing any Encumbrance or condition which is inconsistent with the provisions of said paragraphs (a) or (b) hereof provided that Tenant shall have first notified Landlord of the Encumbrance or condition and Landlord shall have failed to remove or cure the same within thirty (30) days of said notice. Landlord covenants and agrees that in addition to any other legal or equitable remedies available to Tenant, Tenant shall have the right to terminate this Lease for any breach of or inaccuracy in the warranties, representations or provisions of paragraphs (a) and (b).

SECTION 24. Defaults: (a) If default shall be made in the due and punctual payment of any installment of rent payable under this Lease, when and as the same shall become due and payable, and such default shall continue for a period of thirty (30) days after written notice from Landlord to Tenant specifying the items in default; then and in any such event, Landlord, at any time while such default shall continue after the expiration of such thirty (30) day period, may give written notice to Tenant specifying such event of default or events of default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such

notice which date shall be at least ten (10) days after the giving of such notice, and upon the date specified in such notice, this Lease and the term hereby demised and all rights of Tenant under this Lease, including any renewal or extension privileges whether or not exercised, shall expire and terminate. Upon any such expiration or termination of this Lease, Tenant shall quit and peacefully surrender the demised premises to Landlord, and Landlord, upon or at any such expiration or termination, may without further notice, enter upon and reenter the demised premises and possess and repossess itself thereof, by summary proceedings, and may dispossess Tenant and remove Tenant and all other persons and property from the demised premises and may have, hold and enjoy the demised premises and the rights to receive all rental income of and from the same. No such expiration or termination of this Lease, or summary proceedings, reentry or dispossession, shall relieve Tenant of its liability and obligation under this Lease to pay rent based on Net Revenues or Gross Revenues, as applicable, for the period prior to such termination.

(b) If default shall be made by Tenant in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease provided, other than those referred to in the foregoing paragraph (a), and such default shall continue for a period of sixty (60) days after written notice from Landlord to Tenant specifying the items in default, or in case of a default or contingency which cannot with due diligence be cured within said sixty (60) day period, Tenant fails to proceed within said sixty (60) day period to commence to cure the same and thereafter to prosecute the curing of such default with due diligence and within a period of time which, under all prevailing circumstances, shall be reasonable, then Tenant shall be in default under this Lease and Landlord shall be entitled to terminate this Lease. Upon said termination, Tenant shall quit and peacefully surrender the demised premises to Landlord, and Landlord, upon or at any such expiration or termination, may without further notice, enter upon and reenter the demised premises and possess and repossess itself thereof, by summary proceedings, and may dispossess Tenant and remove Tenant and all other persons and property from the demised premises and may have, hold and enjoy the demised premises and the rights to receive all rental income of and from the same. No such expiration or termination of this Lease, or summary proceedings, reentry or dispossession, shall relieve Tenant of its liability and obligation under this Lease to pay rent based on Net Revenues or Gross Revenues, as applicable, for the period prior to such termination.

(c) Simultaneously with the sending of the notice described in paragraphs (a) and (b) of this Section 24 to Tenant, Landlord shall send a copy of such notice to any leasehold mortgagee(s) and to any persons or parties having an interest in the demised premises that Tenant may select in writing from time to time. The curing of any default(s) within the above time limits, or within the time limits provided in Section 20 hereof with respect to cure by a leasehold mortgagee, by any of the aforesaid parties or combination thereof, shall constitute a curing of any default(s) hereunder with like effect as if Tenant had cured same hereunder.

SECTION 25. Disputes: It is agreed that if at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions hereof, the Tenant shall have the right to make payment "under protest" and such payment shall not be regarded as a

voluntary payment and there shall survive the right on the part of Tenant to institute suit for the recovery of such sum, and if it shall be adjudged that there was no legal obligation on the part of Tenant to pay such sum or any part thereof, Tenant shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by Tenant under the provisions hereof, Tenant may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right on the part of Tenant to institute suit for the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of Tenant to perform such work or any portion thereof, Tenant shall be entitled to recover the cost of such work or the cost of so much thereof as Tenant was not legally required to perform under the provisions of this Lease.

SECTION 26. Waivers: Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be in exclusion of any other; and any two or more of all of such rights and remedies may be exercised at the same time.

SECTION 27. Self-Help: (a) If Tenant shall default in the performance or observance of any agreement, obligation, condition or other provision in this lease contained on its part to be performed or observed other than an obligation to pay money, and shall not cure such default within sixty (60) days after notice in writing from Landlord specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence), Landlord may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Tenant, and any reasonable amount paid or any reasonable contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant and Tenant agrees to reimburse Landlord therefor; provided that Landlord may cure any such default as aforesaid prior to the expiration of said waiting period but after notice to Tenant, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the real estate or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of rent due hereunder.

(b) If Landlord shall default in the performance or observance of any agreement, obligation, warranty, condition or other provision in this lease contained on its part to be performed or observed, and if Landlord shall not cure such default within sixty (60) days after written notice from Tenant specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence), Tenant may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Landlord, and any amount reasonably paid by Tenant or any contractual liability reasonably incurred by Tenant in curing such default shall be deemed paid or incurred for the account of Landlord and Landlord shall reimburse Tenant therefor; provided that Tenant may cure any such default as aforesaid prior to the expiration of said waiting period, but after notice to Landlord, as long as the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the demised premises or the continued operation in the usual manner of Tenant's business therein, or to prevent injury or damage to persons or property. If Landlord shall fail to reimburse Tenant within thirty (30) days after demand for any amount paid for the account of Landlord in accordance with the provisions of this paragraph (b), Tenant may deduct said amount, together with interest thereon at the variable rate per annum which is three percent (3%) per annum greater than the "Prime Rate" of interest as then set forth in the "Money Rates" column of the Wall Street Journal or any successor publication, from the next several payments of rent and other charges due hereunder until such amounts, together with interest as aforesaid, have been fully recovered by Tenant. The good faith deduction of rent or other charges by Tenant in accordance with the provisions hereof shall not constitute a default by Tenant in the payment of rent or other charges or in the performance of its obligations under this lease unless Tenant shall fail to pay the amount of such deduction to Landlord within thirty (30) days after a final adjudication that such amount is due and owing to Landlord.

SECTION 28. Zoning: Landlord hereby authorizes Tenant, for the term of this lease, in Landlord's name if necessary, to apply for and secure from any governmental authority having jurisdiction over the demised premises and the building or improvements, any permits, licenses approvals, consents, or the like (hereinafter "Permits") as Tenant desires. Landlord covenants and agrees, throughout the term of this Lease, to cooperate fully with Tenant in any and all applications and proceedings and appeals made or prosecuted by Tenant in connection with obtaining any necessary Permits under the zoning, land use, environmental and/or building regulations, ordinances, codes, laws and directives of all of the federal, state, town and other authorities having jurisdiction over the development and use of the demised premises and the building or improvements. Landlord shall, if requested by Tenant, execute and join in the execution of any and all applications, documents, instruments, consents and authorizations requested by Tenant which shall be necessary or desirable with respect thereto, including any appeals therefrom, including appeals to the courts having jurisdiction in the matter. Tenant may prosecute such applications, proceedings and appeals in its own or in Landlord's name and through counsel of its choice, but shall do so at its own cost and expense, except that Landlord shall bear the cost and expense of any applications, proceedings or appeals resulting from or

necessitated by any breach of or inaccuracy in the warranties, covenants or representations of Landlord hereunder, including without limitation those contained in Sections 18 and 23 hereof.

SECTION 29. Force Majeure: In any case where either party hereto is required to do any act (except for the payment of money), the time for the performance thereof shall be extended by a period equal to any delay caused by or resulting from act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy, labor, materials or equipment, government regulations, delays caused by either party to the other, or other causes beyond such party's reasonable control, whether such time be designated by a fixed date, a fixed time or a "reasonable time."

SECTION 30. Notices: All notices and other communications authorized or required hereunder shall be in writing and shall be either delivered in person to the party to whom they are addressed or sent by certified mail or registered mail, return receipt requested, or by overnight carrier, in each case with all postage and mailing charges prepaid and addressed in the manner hereinafter provided. Any such notice or other communication which is required to be given within a certain period or prior to a certain date in order to be effective shall be deemed to have been given by the sending party when personally delivered or mailed in the manner herein provided to the party to whom such notice or other communication shall be addressed. Any such notice or other communication which requires or anticipates a response by the receiving party within a certain period or prior to a certain date shall be deemed to have been given to the receiving party when received or refused by the party to whom such notice or other communication is addressed. For the purposes hereof, any notice or other communication shall be deemed to have been received by the party to whom addressed on the third (3rd) business day after the posting of the same in the United States Mail in the manner herein provided and on the first (1st) business day after the deposit of the same with an overnight carrier as herein provided. Any notice or other communication intended for Landlord shall be mailed to Landlord at:

City Manager
Portland City Hall
389 Congress Street
Portland, ME 04101

or at such other address or addresses as Landlord may hereafter designate by notice to Tenant; and any notice or other communication intended for Tenant shall be mailed to Tenant at:

Maine Port Authority
ATTN: John Henshaw, Executive Director
16 State House Station
Augusta, Maine 04333-0016

or at such other address or addresses as Tenant may hereafter designate by notice to Landlord.

SECTION 31. Estoppel Certificates: Each party agrees that at any time, and from time to time, upon not less than fourteen (14) days prior notice, at either party's request, it shall execute, acknowledge and deliver to the other party, a statement in writing certifying, if such be the case, that this Lease is unmodified and in full force and effect, or if there are modifications, stating the modifications and that the Lease as modified is still in full force and effect, and that there are no defaults, defenses or offsets thereto then accrued, or stating those claimed, and stating the dates to which the rents or other charges have been paid.

SECTION 32. Purchase Rights of Tenant: On each occasion on which Landlord shall decide or desire to sell all or any part or parts of the demised premises during the term of this Lease, Landlord shall give written notice to Tenant describing the premises which Landlord desires to sell and setting forth the terms and conditions upon which Landlord proposes to sell said premises, which notice shall constitute an offer by Landlord to sell said premises to Tenant on the terms and conditions set forth in said notice. Tenant may then accept such offer by giving written notice of such acceptance within one hundred twenty (120) days after receipt of the written offer by Landlord. The acceptance by Tenant of such offer shall be deemed to create a binding agreement between Landlord and Tenant for the sale of said premises on the terms and conditions set forth in the offer without need for any further instrument or agreement, which purchase and sale shall be consummated by a closing to be held within sixty (60) days after acceptance of the offer. If Tenant shall fail to accept any offer from Landlord made in accordance herewith, Landlord may sell the premises described in such offer to any other party; provided, however, (1) that such sale shall be subject to this Lease and particularly to the provisions of this Section 32 with respect to any future sales, and (2) that Landlord shall not sell the premises described in such offer to another party on terms and conditions more favorable than those offered to Tenant without first re-offering said premises to Tenant on the more favorable terms and conditions, which reoffer shall remain open for a period of thirty (30) days and may be accepted by Tenant in the manner provided herein with respect to the original offer. Notwithstanding the failure by Tenant to exercise the above-described right to purchase on any one occasion or with respect to one portion of the demised premises, Tenant shall retain the right to purchase with respect to any other occasions or any other portions of the demised premises offered for sale by Landlord.

SECTION 33. Governing Law: This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

SECTION 34. Partial Invalidity: If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, 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, covenant, condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 35. Holding Over: In the event that Tenant shall continue in occupancy of the demised premises after the expiration of the term hereof, such occupancy shall not be deemed to

extend or renew the terms of this Lease, but such occupancy shall continue as a tenancy at will from month to month upon the covenants, provisions and conditions herein contained at a rent equal to the rent in effect during the last lease year of the term, prorated and payable for the period of such occupancy. This Section shall not be construed as giving Tenant any right to hold over after the expiration of the term hereof except as is otherwise expressly provided in this Lease.

SECTION 36. Memorandum of Lease: The parties will at any time, at the request of either one, promptly execute multiple originals of an instrument, in recordable form which will constitute a memorandum or notice of lease, setting forth the names of the parties, a description of the demised premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may request. Landlord shall, upon request of Tenant, promptly execute and deliver to Tenant any transfer tax returns, affidavits or other documents which shall be required by any recording office as a condition of recording such memorandum or notice of this Lease. If any gains tax or transfer tax is due from Landlord due to the execution or recording of this Lease, Landlord shall remit the same promptly upon demand by Tenant.

SECTION 37. Interpretation: Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The word "Landlord", and the pronouns referring thereto, shall mean where the context so admits or requires, the persons, firm or corporation named herein as Landlord, and if there is more than one landlord, the covenants of Landlord shall be the joint and several obligations of each of them, and if Landlord is a partnership, the covenants of Landlord shall be the obligations of the firm. The word "Landlord," as used herein, means only the owner for the time being of Landlord's interest in this Lease and, in the event of any transfer of Landlord's interest in this Lease, the transferor shall cease to be liable and shall be released from all liability for the performance or observance of any agreements or conditions on the part of Landlord to be performed or observed subsequent to the time of said transfer, provided that from and after said transfer, the transferee shall assume and be liable for the performance and observance of said agreements and conditions.

SECTION 38. Entire Agreement: This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have any force or effect. This Lease shall not be modified in any way, except by a writing executed by both parties. It is expressly agreed by the parties hereto that the terms and provisions of this Lease are intended to apply only with respect to the leasehold estate created with respect to the demised premises.

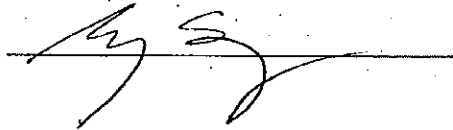
SECTION 39. Successors and Assigns: Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, administrators, successors and assigns.

SECTION 40. No Broker: Landlord and Tenant agree that no brokers have been involved in this transaction, and each agrees to reimburse the other for any losses, damages, costs or expenses (including reasonable attorneys' fee) that either party may suffer as a result of claims made or suits brought by any other broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim. The provisions of this Section 40 shall survive any termination of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal as of the day and year first above written.

WITNESS:

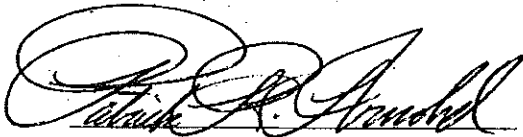
CITY OF PORTLAND, MAINE



By: Patricia D. Finnegan, Acting
Joseph E. Gray, Jr.
Its City Manager

"Landlord"

MAINE PORT AUTHORITY



By: J. L. E.
Its
Executive Director

"Tenant"

EXHIBIT A

DESCRIPTION OF DEMISED PREMISES

A certain lot or parcel of land situated along Portland Harbor in the City of Portland, Cumberland County, State of Maine, and bounded and described as follows:

BEGINNING at a rebar found on the southeasterly line of Commercial Street located at the westerly corner of land now or formerly of General Marine Construction Corporation;

THENCE, S54°06'32"E 410.00' along said General Marine Construction Corporation to a point;

THENCE, S54°06'32"E 319.48' along said General Marine Construction Corporation to a point along the Harbor Commissioner's Line;

THENCE, S43°30'57"W 863.62' along said Harbor Commissioner's Line to a point;

THENCE, S38°44'28"W 247.02' along said Harbor Commissioner's Line to a point at the northeasterly line of land now or formerly of Cumberland County

THENCE, N32°32'17"W 141.63' along said Cumberland County to a point at the southerly corner of a Transformer Facility Easement to the State of Maine;

THENCE, N32°32'17"W 42.28' along said Cumberland County and the southwesterly line of said Transformer Facility Easement to a point at the southeasterly end of a Bridge Maintenance Facility Access Easement of the State of Maine;

THENCE, N32°32'17"W 389.86' along said Cumberland County and the southwesterly line of said Bridge Maintenance Facility Access Easement to a point at land now or formerly of Maine Central Railroad Company;

THENCE, N32°36'28"E 107.89' along said Maine Central Railroad Company to a point;

THENCE, N30°54'28"E 577.45' along said Maine Central Railroad Company to a drill hole set;

THENCE, N30°54'28"E 60.64' to a point along the line of said Commercial Street;

THENCE, S54°04'32"E 5.52' along the line of said Commercial Street to a point;

THENCE, N30°54'28"E 148.93' along the line of said Commercial Street to the **POINT OF BEGINNING**.

Meaning and intending to describe a lot or parcel of land containing 14.33 Acres or six hundred twenty-four thousand three hundred thirty-five square feet (624,335 S.F.), more or less.

Bearings referenced herein are Grid North NAD83 Maine State Plane West Zone.

Said lot or parcel of land herein described being shown on a plan titled "Standard Boundary Survey For Property At Portland International Marine Terminal Commercial Street Portland, Cumberland County, Maine Owned by City of Portland" prepared by Easterly Surveying Incorporated, Dated 8/14/2002, Revision B 9/16/06, said plan on file in the Portland Department of Public Services Engineering Archives Vault.

Meaning and intending to describe an area of land being a certain lot or parcel of land as described in a deed to the City of Portland, dated February 25, 1971 and recorded in the Cumberland County Registry of Deeds in Book 3161, Page 33, and a certain lot or parcel of land as described in a deed dated November 12, 1976 and recorded in said Registry in Deed Book 3941, Page 348.

EXHIBIT B

(Submerged Lands Lease)

STATE OF MAINE

SUBMERGED LANDS LEASE

No. 16-17A
(Amended 8/30/94)

This SUBMERGED LANDS LEASE (hereinafter Lease) conveys certain limited rights in the submerged lands held by the State of Maine in trust for the public. It is not an environmental permit for the use of these lands.

This Lease is entered into by the Bureau of Public Lands (hereinafter Lessor), an agency of the State of Maine Department of Conservation, by its Director acting pursuant to the provisions of Title 12 M.R.S.A. Section 558-A, and The City of Portland (hereinafter Lessee) of 389 Congress Street, Portland, Maine 04101. Lessor hereby leases to Lessee, on the terms and conditions hereinafter set forth, the following described submerged land (hereinafter leased premises) situated in Cumberland County, Maine, to wit:

A certain parcel of public submerged land located in Fore River, Portland, Maine, totalling 130,400 square feet (3.0 acres) +/-, abutting adjacent upland now owned by the City of Portland, as further described in Attachment A which is hereby incorporated into this Lease.

1. **TERM.** This lease shall commence on May 2, 1988 and continue to December 31, 2017.
2. **USE.** Lessee is hereby authorized to use leased premises for the purposes of a public multipurpose marine terminal facility, as described in Maine Department of Environmental Protection Wetlands Alteration Permit Application, Number L-015169-03-A-N, and for no other purposes.
3. **OTHER USES.** Lessor reserves the rights of the general public to transitory fishing, fowling, recreation, navigation, and other traditional uses of leased premises, and the right of Lessor to make such other uses of leased premises, including by way of example and without limitation, the right to permit pipes to be laid thereunder or telephone wires to be maintained thereover, as shall not unreasonably interfere with Lessee's use and enjoyment of leased premises for the purposes stated in Paragraph 2 above.
4. **REGULATORY PERMITS.** Lessee shall be responsible for obtaining any and all permits required by any agency of the United States, the State of Maine, or any political subdivision thereof, having jurisdiction over the activities on the submerged lands contemplated by this Lease. Lessee's compliance with such permits and conditions thereof shall be a requirement of this Lease for all purposes including, without limitation, for purposes of defining the extent and purpose of any alteration or use of in, on, under, or over leased premises. Unless all required permits authorizing the uses contemplated hereby are issued prior to the expiration of the calendar year next following the creation of this leasehold, this Lease shall be void. In the event that any agency of the United States, the State of Maine, or any political subdivision thereof, denies or disapproves any portion of any application by Lessee for the use of leased premises or any portion thereof, this Lease shall be void as to the denied or disapproved use as of the date of such denial or disapproval. Rental payments made by Lessee for such denied or disapproved use may, upon proper request, be refunded or equitably adjusted, subject to a service charge. Failure by Lessee to abide by, or conform to, the terms and conditions of any such permit shall be an event of default hereunder.
5. **ASSIGNMENT OR SUBLEASING.** No rights leased herein by Lessor may be assigned or

sublet by Lessee without the prior written consent of Lessor. All rights remain subject to the Rules of the Bureau of Public Lands and all applicable laws and amendments thereto. Notwithstanding any such assignment or sublease, Lessee shall be and remain liable for compliance with the terms and conditions of this lease unless released by Lessor in writing.

6. **EXTINGUISHMENT OF CONSTRUCTIVE EASEMENT.** Lessee hereby relinquishes any and all rights to leased premises, or any portion thereof, that may have been formerly held by constructive easement under Title 12 M.R.S.A. Section 558-A or otherwise.

7. **RENTAL.** Annual rental shall be payable hereunder throughout the term hereof as follows:

\$00.00 (Nil)

8. **RENTAL ADJUSTMENT.** Lessor may adjust the rental from time to time as necessary to conform with its regulations and laws as they may be amended. Such adjustments may not be made more often than once in any five-year period, as reckoned from December 31, 1990. Lessor shall give Lessee at least 120 days notice of such adjustment. In the event Lessee is unwilling to accept such adjustment, Lessee may terminate Lease within 120 days of notice of adjustment as Lessee's sole remedy.

9. **TAXES.** Lessee shall pay when due all taxes, charges, assessments and other impositions levied by any governmental entity upon the structures and improvements on leased premises or any operations or activities thereon.

10. **INDEMNITY.** Lessee shall defend, or cause to be defended, and indemnify and hold Lessor harmless from and against any and all manner of claims, suits, expenses, damages or causes of action arising out of, in whole or in part, the use or occupancy of leased premises by Lessee, its agents, contractors, employees, guests, invitees, permittees and sublessees.

11. **MAINTENANCE.** Lessee, at Lessee's expense, shall keep leased premises free of garbage, refuse, and other discarded material and shall maintain all improvements upon leased premises in good condition and repair.

12. **GENERAL RESTRICTIONS.** No nuisance shall be permitted on leased premises. No minerals, including, without limitation, sand and gravel; shall be removed from leased premises, and no rock, earth, ballast or other material shall be deposited upon leased premises, without the prior written consent of Lessor.

13. **CASUALTY REPLACEMENT.** In the event that the improvements and structures placed on leased premises are substantially destroyed by fire or other casualty, and Lessee does not, within two years following such casualty, rebuild or replace the affected improvements and structures, Lessor may cancel this Lease upon thirty (30) days notice to Lessee. Such rebuilding or replacement shall not be undertaken by Lessee without the prior written approval of Lessor.

14. **DEFAULT.** The following shall be deemed to be events of default hereunder:

A. Failure of Lessee to pay when due any rent payable hereunder;

B. Failure of Lessee to comply with any other provision of this Lease. When Lessee's failure is caused by circumstances beyond Lessee's control, Lessee shall bring about compliance within thirty (30) days of notice of such failure, or, if such failure of compliance beyond Lessee's control cannot be cured within thirty (30) days, Lessee shall promptly and

diligently undertake to cure such failure of compliance and cause the same to be cured as soon as the nature of the failure of compliance permits;

- C. A transfer by Lessee in fraud of creditors, or petition initiated by Lessee or adjudgement of Lessee as bankrupt or insolvent in any proceedings;
- D. Appointment of a receiver or trustee for all, or substantially all, assets of Lessee; or
- E. Abandonment by Lessee of any portion of leased premises.

Upon the occurrence of any such event of default, Lessor may, in addition to, and not instead of, any other remedies available at law or in equity, cancel this lease without notice or demand to Lessee and enter onto and take possession of leased premises. Lessee shall be liable to Lessor for any loss and expenses incurred by Lessor by reason of such termination.

15. ENTRY. Lessor, its agents and representatives shall have access to leased premises and all improvements and structures thereon at all times for the purpose of inspecting and securing compliance with the terms and conditions of this Lease, and for all other lawful purposes.

16. NOTICE. Any notice required or permitted under this Lease shall be deemed to have been given when actually delivered, or when deposited in the United States mail, first class postage prepaid, addressed as follows: *To Lessor:* Bureau of Public Lands, State House Station 22, Augusta, Maine 04333, ATTN: Submerged Lands Program. *To Lessee:* at the address given below by Lessee, or at such other address as Lessee may have theretofore specified by written notice actually received and placed of record with Lessor.

17. ALTERATION. Lessee shall make no alteration to leased premises, and shall place no improvements or structures in, on, or over leased premises except as specifically described in Paragraph 2 of this Lease, without Lessor's prior written consent.

18. IMPROVEMENTS. Upon the expiration, cancellation, or termination of this Lease, regardless of the reason therefor, Lessee shall have ninety (90) days to remove his property. Lessor, at its discretion, shall become owner of all improvements and structures upon leased premises not so removed. Lessor may, at its option, require Lessee to remove all such improvements and structures at Lessee's expense, and to restore leased premises to the condition in which they existed prior to the placement of any improvements or structures thereon.

19. OTHER APPLICABLE LAWS AND RULES. This Lease is subject to change or cancellation, in whole or in part, by reason of any Act of the Legislature, and is subject, in whole and in part, to the provisions of the Rules of the Bureau of Public Lands.

20. MISCELLANEOUS. This Lease shall be binding upon, and shall inure to the benefit of, Lessor and Lessee and their respective successors, assigns and legal representatives. Failure of either party to complain of any act or omission on the part of the other, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. A waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall not be deemed a waiver of, or consent to, any subsequent breach of the same or any other provision. Lessee may not file this Lease of record, or cause or permit the same, without Lessor's prior written consent. Lessor makes no warranty of Lessee's leasehold estate, and in the event of any lawful ejectment of Lessee, Lessor shall refund to Lessee any rentals paid to Lessor for any period of Lease term then remaining. Lessee shall comply with all applicable laws, regulations and

ordinances of governmental entities having jurisdiction over leased premises. This Lease contains the entire agreement of the parties and may not be modified except by a writing subscribed by both parties.

21. **GENERAL RIGHT TO TERMINATE.** Lessee shall have the right to terminate this Lease by notifying Lessor at least thirty (30) days prior to termination date. In terminating, Lessee agrees to vacate leased premises and remove all structures and personal property of Lessee located thereon, unless other arrangements have been made, with prior approval of Lessor, to transfer ownership or otherwise dispose of same. Rental payments made by Lessee for such terminated use may, upon proper request, be equitably adjusted, subject to a service charge.

Accepted and agreed to on

October 5, , 1994

OCT 6 , 1994

Robert B. Ganley
(Lessee Signature)

Thomas A. Morrison
(Lessor Signature)

COPY

Robert B. Ganley
(Print Name)

Thomas A. Morrison
Director, Bureau of Public Lands
Department of Conservation
State of Maine

City Manager
(Title)

Portland City Hall
(Address of Record)

389 Congress Street

Portland, ME 04101-3509

EXHIBIT C

1. Stevedore License between City of Portland and P&O Ports, dated April 27, 2001

EXHIBIT D

1. Easement from the City of Portland to the Maine Department of Transportation