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FOURTH AMENDMENT
TO AGREEMENT NO. T-3904

BETWEEN

PORT OF TACOMA

AND

TOTEM OCEAN TRAILER EXPRESS, INC.

'86
FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

~~THIS AGREEMENT, made and entered into this 24th day of April, 1980, FOURTH AMENDMENT to Agreement No. T-3904 is made and entered into this 27th day of MARCH, 1986, between the PORT OF TACOMA, as Lessor, and TOTEM OCEAN TRAILER EXPRESS, INC., an Alaska Corporation, as Lessee,~~

WITNESSETH:

A. Lessor and Lessee entered into Agreement No. T-3904 on April 24, 1980, pursuant to which Lessor leased to Lessee and Lessee leased from Lessor certain land and facilities, and pursuant to which Lessor granted to Lessee preferential use of a berthing area. The Agreement has been approved by the Federal Maritime Commission and has been amended three times. The Agreement as amended is still in effect.

B. The Third Amendment to the Agreement, dated December 23, 1982, provided for (1) relocation of the premises subject to the Agreement, (2) construction of new facilities by Lessor for Lessee, and (3) relocation of the preferential use area and Lessor's easement for access to the preferential use area. Attached to the Third Amendment were Exhibits A-1, B-1, and C-1, which contained preliminary descriptions of the new premises and new facilities to be constructed.

C. The new facilities have been constructed and Lessee is now occupying those facilities. The facilities as constructed, however, varied in certain respects from the preliminary descriptions in Exhibits A-1, B-1, and C-1. In addition, Lessor and Lessee desire to relocate Lessor's easement

for access to the preferential use area. Lessor and Lessee therefore have agreed to execute this Fourth Amendment to substitute for the above-referenced Exhibits the Exhibits attached hereto as Exhibits A-2, B-2, and C-2, which describe the facilities as constructed and the location of Lessor's easement.

D. 46 C.F.R. § 560.4 requires that whenever an agreement approved by the Federal Maritime Commission has been amended three times, the next succeeding modification shall be accomplished by restating the entire agreement, in a manner that incorporates all previous modifications. Certain provisions of the Agreement however, such as monthly rent, have been superseded by exercise of options pursuant to the Agreement. Other provisions, such as those relating to the period prior to occupancy of the new facilities, have been rendered obsolete. In addition to substituting the above-referenced Exhibits, therefore, Lessor and Lessee desire to amend the Agreement by excising superseded or obsolete terms and adding terms, such as monthly rent, that reflect the parties' current Agreement.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. Premises: Lessor ~~hereby leases~~ is presently leasing to Lessee and Lessee ~~rents~~ is presently leasing from Lessor, subject to the terms and conditions herein contained, the following property situated in Tacoma, Pierce County, Washington:

(A) ~~Parcel I: Approximately 25.1 acres of land as delineated on Exhibit "A" annexed hereto, and improvements as delineated on Exhibit "C" annexed hereto. Approximately 33.277~~

acres of land as described on Exhibit B-2 attached hereto, and the premises, facilities, and improvements delineated on Exhibit C-2 attached hereto.

~~(B) Parcel II: Office space, engineering space and the non-exclusive use of 45 parking stalls as delineated on Exhibit "B" annexed hereto, and improvements as delineated on Exhibit "C" annexed hereto. [deleted]~~

(C) Preferential use of ~~Alaska Terminal, Port of Tacoma piers,~~ as the berth and adjacent area (hereinafter "berth" or "preferential use area") consisting of approximately 8.107 acres, as described delineated on Exhibit "A" A-2 annexed attached hereto and delineated on Exhibit C-2 attached hereto, for visits by Lessee's vessels. The term "preferential use" shall mean the right of Lessee to berth Lessee's vessels at the berth for up to 104 twenty-eight (28) hour periods each year commencing four (4) hours prior to the scheduled arrival of Lessee's vessels as filed with Lessor at least ninety-six (96) hours prior to the arrivals. Lessee shall be entitled to preferential use of the berth whether it is occupied by another vessel, or if the berth is so occupied at the time of commencement of said twenty-eight (28) hour period, such other vessel shall vacate or be removed from the berth prior to arrival of Lessee's vessel at no cost to Lessee.

In the event Lessee's vessels arrive at the berth prior to commencement or after termination of said twenty-eight hour period, Lessee shall immediately advise Lessor regarding the

arrival, and Lessor shall make every effort to promptly make the berth available to Lessee. In such case, once the berth is made available, Lessee shall be given up to twenty-eight (28) hours to vacate the berth.

Should Lessee's vessels vacate the berth prior to the end of the assigned twenty-eight (28) hour period, any hours remaining of the assigned twenty-eight (28) hour period shall be accumulated for Lessee's use. Lessee can utilize these accumulated unused berth hours to extend berthing beyond their stipulated twenty-eight (28) hour period, at no additional cost to Lessee. To extend the berthing period beyond the twenty-eight (28) hour period Lessee must give Lessor notice of Lessee's intention to extend the berthing at least ninety-six (96) hours prior to the scheduled arrival time of Lessee's vessel. If less than ninety-six (96) hours notice is given, Lessee shall have the right to remain at the berth beyond the twenty-eight (28) hour period but must vacate the berth upon the arrival of any vessel scheduled to the berth by Lessor before Lessor had notice of Lessee's intent to extend its berthing beyond the previously stipulated twenty-eight (28) hours. After the departure of said third party vessel, Lessee shall have the right to re-berth with any additional hours used after re-berthing being charged against Lessee's accumulated unused hours.

For purposes of calculating the berth hours used and unused by Lessee, berthing shall be deemed to begin four hours prior to

the scheduled arrival time of Lessee's vessel and end at last line off.

After the close of each year an accounting shall be made of Lessee's berth hours unused and those hours used in excess of the stipulated twenty-eight (28) hour periods. If excess unused hours remain they shall not be carried over into succeeding years for Lessee's use. If Lessee's vessels have utilized more hours at berth than the hours Lessee has paid for under Paragraphs 1(C)(4) and 1(C)(8) hereof, Lessee shall pay as additional User Fee 11.54% of the then-current monthly User Fee as defined in Section 1(C)(4) herein, for every twenty-eight (28) hours of excess berth hours used in excess of the accumulated unused berth hours.

Should Lessee increase its "Preferential Use" of the ~~Alaska Terminal~~ preferential use area, as provided for in Paragraph 1(C)(8), hours unused in these additional berthings or used in excess of twenty-eight (28) hours each for these additional berthings shall be included in the annual accounting for berth hours as detailed above.

In addition, the Preferential Use defined herein shall be subject to the following:

- (1) It shall extend to Lessee's vessels engaged in domestic service, carrying cargo in interstate or foreign commerce.
- (2) It shall be non-assignable.
- (3) When the berth is not subject to the preferential use it shall be kept clear of property and equipment belonging to Lessee if

to be used by other customers of the Lessor as provided hereinafter.

- (4) In addition to the rent amounts provided in Paragraph 3 hereof, Lessee shall pay to the Lessor, and Lessor shall accept from Lessee, the sum of ~~\$19,978.32~~ \$38,752.00 per month, as adjusted in Paragraph 4 hereof, as a user fee (the "User Fee") for the preferential use. This charge shall be in lieu of all wharfages, dockage and service and facility charges normally assessed against vessels, consignees, etc., for use of such facilities.
- (5) The charge provided for in Paragraph 1(C)(4) is based upon at least two (2) vessel calls per month and, in the event that fewer than two vessel calls hereunder shall occur in a calendar month, Lessee agrees to pay the Lessor for such month the lesser of the User Fee or the then applicable wharfage charges applicable to cargo N.O.S. which would have accrued had two such calls actually occurred in such month, based upon a cargo of three thousand (3,000) short tons per ship, and such charge shall apply for such month instead of the User Fee defined in Paragraph 1(C)(4).
- (6) The Lessor shall furnish the berth, including proper mooring facilities, adjacent pier apron areas and dredging necessary to make and keep the berth in safe condition for berthing and mooring of Lessee's vessels and shall promptly undertake all action necessary to effect and maintain such safe conditions, including but not limited to complying with paragraph 6(c) of this Agreement.
- (7) The Lessor will assure the Lessee of alternate berthing at the Port of Tacoma in the event that the above facility should for any reason be inoperative.
- (8) Lessee shall have the right to increase its "preferential use" of the ~~Alaska Terminal~~ preferential use area (as defined in Paragraph 1(C) herein) by up to fifty-two (52) additional 28-hour berthings per year. Should Lessee exercise this right Lessee shall pay as additional User Fee 11.54% of the then-current monthly User Fee as defined

in Paragraph 1(C)(4) herein for each such additional berthing over one hundred four (104) berthings per year.

(D) Five (5) ramps or ramp sections, described as two-bridge/ramp units with wedge sections, of a total weight of 188 tons, constructed by Lockheed Shipbuilding & Construction Co. under Sun Shipbuilding & Drydock Co. Purchase Order No. 164546-G dated July 14, 1975, designed as Lockheed Charge No. A15316-109.

(E) One air compressor identified as manufactured by Manchester Tank Equipment under Serial No. P-494208.

(F) One overhead crane identified as manufactured by American Chain and Cable under Serial No. V18222.

(G) At the request of and for the convenience of Lessor, the parties ~~have~~ agreed to relocation of Lessee's operations to new facilities (the "new facilities") ~~to be~~ constructed by Lessor at Lessor's sole expense for the use and enjoyment of Lessee under the terms and conditions of this Agreement, as amended. The new facilities ~~shall be constructed adjacent to the preferential use area described in Exhibit A-1 attached hereto, on the premises described in Exhibit B-1 attached hereto, both as shown on the attached Exhibit C-1. The new facilities shall include the following, to be placed on the premises as shown on the attached Exhibit D-1, and to be constructed by Lessor in accordance with the Revised Preliminary Specifications set forth in Exhibit E-1 attached hereto, subject~~

~~to final approval and acceptance in writing by Lessee:~~ include
the following:

Pier facility and appurtenances (three working piers and one breasting pier, walkways, catwalks, land-based mooring bollards, mooring dolphins, capstans, fender system, additional Seaward-type fenders, steel wearing plates, concrete landing ramps, steel ramp guides, etc.); a completely equipped container yard adequate for Lessee's roll-on/roll-off trailership operation (new paving for automobile parking, roads and container parking, dolly pads, concrete backing logs, reefer receptacles, parking signs, stripe painting, fencing, gates and ports, area lighting, electrical distribution system, telephone and telecommunication duct system, fire protection and alarm systems, area drainage, guard posts, fueling system, wash areas, truck scales, median barriers, etc.); a control tower building; a main office building; a vehicle office building; a maintenance building; a gate office building; a double unloading ramp; security fencing; a contractors' yard and gate area; and a covered gate inspection shelter.

The new facilities ~~will~~ were to be designed and constructed so as to assure Lessee the same level of explosives handling and storage capability as permitted at the Alaska Terminal immediately prior to Lessee's relocation. Lessor further ~~agrees~~ agreed to construct a left turn lane on Alexander Avenue with appropriate signalization for traffic entering the new facilities, and to use its best efforts to continue the availability and capability of existing approaches to and from the premises, as hereinafter defined, including but not limited to supplying traffic signals, turning lanes, and other improvements necessary to preserve the same level of

traffic-handling capability at the Alexander Avenue entrance to the new facilities as ~~exists~~ existed at the date of occupancy as hereinafter defined; and using best efforts to preserve a similar level of capability at the intersection of Alexander Avenue and East Eleventh Street and other routes of ingress and egress to and from the premises, whether under city, state, federal, or other jurisdiction.

In addition, the parties agree as follows:

- (1) ~~The parties have agreed on the Revised Preliminary Specifications set forth in Exhibit E-1, which outline the scope of the work to be performed by lessor, and which form the basis for the final design and specifications to be developed by the Lessor in accordance therewith, subject to the approval of TOTE. All design, construction, equipment requisition, and real and personal property improvements shall be to Lessee's reasonable satisfaction, which shall be assured, inter alia, through periodic review and comment by Lessee during the design phase, and Lessee's right to approval of scope changes during the construction phase. Subject to the foregoing, however, Lessor shall remain solely responsible for the design, construction, suitability, safety, and sufficiency of the new facilities all of which shall be the property of ~~lessor~~ Lessor, and Lessee's right of approval of any of the facilities shall not be construed as acceptance of any such responsibility.~~
- (2) Lessor shall promptly apply for all permits and approvals, shall expeditiously prosecute all such applications, and shall perform all acts necessary to assure compliance with laws and regulations relating to design, construction, and approval of the new facilities and Lessee's relocation thereto, including but not limited to

furnishing the information for or performing any environmental assessment required by law or regulation.

- (3) Lessor covenants and warrants that Lessor has the right to construct the new facilities, to lease the premises, and to grant preferential use of the adjacent berthing area to Lessee, and that Lessee shall have the right to quietly have, hold, occupy, use and enjoy the new facilities, the premises, and the preferential use area without interruption by anyone claiming any right, title, or interest therein. If any such right is asserted, Lessor shall save Lessee harmless therefrom, shall use utmost diligence to defend Lessee and to protect Lessee's interests, and shall indemnify Lessee from all loss and expense in connection therewith. Provided that Lessor retains the right to use the preferential berthing area in accordance with paragraphs 1(C) and 6(B), of the Agreement.
- (4) Lessor ~~will~~ has ~~build~~ built the new facilities ~~and relocate Lessee's operations thereto~~ at Lessor's sole expense, on a non-recourse basis, with no financial participation from Lessee whatsoever. Lessor shall pay the entire costs of or associated with Lessee's relocation to the new facilities, including but not limited to the design and construction of the new facilities, the relocation of Lessee's equipment, miscellaneous administrative expenses, and without limitation all costs directly or indirectly related, as reasonably determined by Lessee, to relocating Lessee's operations to the new facilities, including but not limited to moving, at Lessee's direction, the existing guardhouse on the premises, the ramps specified in paragraph 1(D) hereof, the air compressor specified in paragraph 1(E) hereof, the overhead crane specified in paragraph 1(F) hereof, the yard hustlers used in Lessee's operations, the Weigh-Rite Model 1X70 portable platform

scale and associated instruments, appurtenances, etc., specified as a trade fixture in paragraph 13 hereof, all other trade fixtures, movable and equipment, all trailers, and all other personal property on the premises and used in lessee's trailership operations, whether owned by Lessee or otherwise.

- (5) ~~The new facilities shall be constructed by Lessor on a "turn-key" basis, such that lessee shall have no obligation to occupy the new facilities until they are tendered by Lessor and accepted in writing by Lessee as substantially and completed and ready for occupancy and full use by Lessee, which acceptance shall not be unreasonably withheld. Not later than one month prior to the expected completion of the new facilities, Lessor will give notice to Lessee of the estimated completion date, but subject to the foregoing, the actual date of relocation shall be as reasonably determined by Lessee.~~

~~Provided that notwithstanding Lessee's acceptance of and relocation to the new facilities, Lessee shall have one year following the date of occupancy to identify defects and omissions in the new facilities to be remedied promptly at Lessor's expense. Provided further that nothing Nothing herein shall be construed as limiting Lessor's obligation to maintain and repair the premises and improvements as specified in paragraph 7 hereof.~~

- (6) The term "date of occupancy" as used herein shall mean the sixteenth day of the first calendar month following completion of the new facilities, acceptance thereof by Lessee, and relocation of Lessee's operations thereto; i.e., September 16, 1984.
- (7) ~~Until the date of occupancy, the term "premises" shall mean the premises as delineated on Exhibits "A", "B", and "C" to this Agreement. Upon the date of occupancy, the term "premises" as used~~

~~herein, unless expressly limited, shall mean the new facilities, the preferential use area described in Exhibit A-1 and the premises described in Exhibit B-1 both as shown on Exhibit C-1, and the provisions of this Agreement shall apply fully thereto.~~

~~Provided that~~ Lessor shall retain the access easement described in Exhibit ~~A-1~~ A-2 and shown on Exhibit ~~C-1~~ C-2 solely for the purpose of providing access to the preferential use area for use by Lessor as provided in paragraph 6(B) hereof.

~~Provided further~~ that the preferential use area shall not be construed as part of the premises leased hereunder, and the fee for preferential use of such area shall be construed as strictly segregated from the rental paid for the leased premises.

~~(8) In addition to the definition contained in paragraph 1(C) hereof, the term "preferential use" as used herein, unless expressly limited, shall mean preferential use of the Alaska Terminal as delineated on Exhibit "A" hereto until the date of occupancy. Upon the date of occupancy, the terms "preferential use" and "preferential use of the Alaska Terminal" shall mean preferential use of the preferential use area described in Exhibit A-1 and shown on Exhibit C-1.~~

~~(9) Until the date of occupancy, Lessor will provide Lessee with a graded, paved, fenced, lighted and improved parking area sufficient for parking up to 300 40 foot trailers, at the rate of \$2.00 per day for each trailer actually parked in such area, to be located on or adjacent to Pier 7 at the Port of Tacoma.~~

~~(10) Notwithstanding any of the above, if by March 1, 1983, it reasonably appears that relocation of Lessee's operations to the new facilities has been rendered~~

~~impossible by unforeseen events not subject to the control of either party, Lessee shall have the right to remain at the existing premises subject to this Agreement as amended. Provided that not later than July 16, 1983, Lessor shall increase the premises leased to Lessee under this Agreement by addition of 8.8 contiguous acres adjacent to Lessee's existing premises, graded, drained, paved, fenced, striped, lighted, and improved with reefer electrical outlets and other utilities, at Lessor's expense, sufficient for parking trailers and other normal use in connection with Lessee's operations. Said acreage shall be included within the premises as defined herein and Exhibits "A," "B" and "C" shall be amended to show the additional acreage. If so, beginning July 16, 1983, the rental for said premises shall be adjusted to \$29,837.65 per month, and the preferential user fee shall be adjusted to \$34,494.41 per month, thereafter to be adjusted in accordance with paragraph 4 hereof. Lessor shall also furnish the former Port of Tacoma administrative building to Lessee, for lessee to use at the building's current site or at a relocated site, or for Lessee to demolish and retain the salvage value thereof, all at the option of the Lessee.~~

~~Provided further that the Federal Maritime Commission shall be promptly notified at its offices in Washington, D. C., and shall be furnished with copies of amended Exhibits if relocation of Lessee's operations to the new facilities does not take place in accordance herewith and if this subparagraph 1(C)(10) becomes operative.~~

(H) Lessee shall have first option to lease, under the terms and conditions of this Agreement as amended, the land immediately adjacent to the new facilities which is presently

leased to Commencement Bay Corrugated, Inc., (C.B.C.). Said option shall be exercisable on and after the expiration of C.B.C.'s existing lease term on December 31, 1989, at the rental then prevailing under this Agreement, but not less than \$38,096.97 per acre, to be adjusted thereafter in accordance with paragraph 4 hereof. If this option is exercised, Lessor, at its own expense, shall at Lessee's option demolish the existing building(s) thereon and shall grade, pave, fence, light, and improve the land for use in connection with Lessee's trailer operations. The Federal Maritime Commission shall be notified at its offices in Washington, D.C., if this option is exercised.

2. Term: ~~Subject to the provisions of Paragraph 24, the~~
The initial term of this agreement shall commence commenced with approval of this agreement by the Federal Maritime Commission and ~~shall terminate~~ terminated on July 15, 1981. By the terms of the Agreement as amended, Lessee ~~shall be~~ was granted fourteen consecutive two-year options, the first of which ~~shall commence~~ commenced upon termination of the initial term. Lessee shall inform Lessor in writing not less than sixty (60) days prior to the conclusion of the initial term of this agreement or any renewal term thereof, of Lessee's intent to exercise its option for the next succeeding option renewal term.

The Federal Maritime Commission shall be notified at its offices in Washington, D. C., if an option is exercised to renew the term of this agreement.

3. Rental and User Fee: Lessee agrees to pay, and Lessor agrees to accept, rental for the demised premises as follows:

(A) For the premises subject to lease, a monthly rental, subject to adjustment hereinafter set forth in Paragraphs 4, of ~~\$17,285.40~~ \$33,529.00.

(B) Lessee, ~~will, on following execution of the original Agreement hereof, elect~~ elect ~~whether it will to~~ whether it will to pay for the add-on items constructed at its request and listed in Exhibit "D" annexed hereto, the total cost of which is agreed to be \$289,896.61, ~~by payment in a single cash payment or in installments over a period of twenty (20) years. If payment in cash is elected, such~~ Such sum will be paid ~~within thirty (30) days following execution hereof. If payment in installments, is elected, it shall be~~ pursuant to the schedule annexed as Exhibit "F". In the event that this agreement shall not continue in effect for twenty (20) years from July 16, 1979, on termination of this Agreement or expiration due to lack of exercise of a renewal option Lessee shall thereupon pay to Lessor a lump sum equal to the then unamortized portion of the total cost of such add-on items as shown by such exhibit.

(C) For the ramps listed in paragraph 1(D) a monthly payment as stated in Exhibit "E" over a period of twenty (20) years commencing on May 4, 1977, and terminating on May 3, 1997. Upon payment by Lessee of the unamortized balance as stated in Exhibit "E" attached hereto, at any time and at the sole option

of Lessee, Lessor shall relinquish to Lessee any rights it may assert against such ramps.

(D) For the air compressor and overhead crane enumerated in Paragraphs 1(E) and (F), the rental fee is included in the rental described in Paragraph 3(A). Lessee shall have no further obligation to pay for the use of these items. Lessee will be responsible for the maintenance of these items and shall return these items at the end of the Agreement term, or any extension periods thereof, to the Lessor in the condition they were received at the beginning of this Agreement, normal wear and tear excepted.

(E) In the event of a strike or labor disturbance which prevents the handling of cargo and/or the movement of cargo to or from the premises, the Lessee shall give written notice to the Lessor indicating the effective and termination dates of such strike or disturbance, and the "User Fee" provided for in Paragraph 1(C)(4) as adjusted pursuant to Paragraph 4, if applicable, shall be reduced on a pro-rata basis by the ratio of the period of stoppage less thirty (30) days, to a full Agreement year. Such reduction of User Fee shall not exceed 50% of the annualized User Fee for any Agreement year. In the event a stoppage begins in one such Agreement year and terminates the succeeding Agreement year, the following procedure will apply in determining the ratio to be used in computing the reduction in such annual User Fee in each such year:

(1) If the period of stoppage exceeds thirty (30) days in one Agreement year but not in the other, the full period of stoppage less thirty (30) days will be allocated to the year in which the stoppage exceeds thirty (30) days, and none of the stoppage will be allocated to the other year.

(2) If the period of stoppage does not exceed thirty (30) days in either year but does exceed thirty (30) days in total, the full period of stoppage less thirty (30) days will be allocated to the succeeding year, and none of the stoppage will be allocated to the prior year.

(3) If the period of stoppage exceeds thirty (30) days in both years, the stoppage in each year less fifteen (15) days will be allocated to such year.

(F) The Lessee will file such concurrent instruments as may be appropriate to assure that all its terminal operations at the premises for which it publishes separate terminal charges are subject to all of the provisions of the Tacoma Terminals Tariff No. 6, revisions thereto, and reissues thereof, but not including the Service and Facilities Charge in said Tariffs.

4. Adjustment of Rental and Preferential Use Fees: Lessor reserves the right to adjust the User Fee detailed in Paragraph 1(C)(4) and the rental fee detailed in Paragraph 3(A) at the beginning of each option period described in Paragraph 2 above. To exercise such right, Lessor shall give written notice to Lessee of any such proposed adjustment, including the amount thereof, at least 180 days in advance of its applicable date. If

Lessee shall determine that any such proposed adjustment by Lessor is excessive, Lessee shall provide written notice of such determination to Lessor within thirty (30) days after receipt of notice from Lessor of the proposed adjustment. In such event the rental shall be established at the fair rental value of comparable facilities in Tacoma, Washington, by arbitration selected as follows: Each party shall select an arbitrator, and the two arbitrators so selected shall select a third arbitrator. (All such arbitrators shall be members of the American Institute of Real Estate Appraisers and members of the Society of Industrial Realtors qualified by experience in appraisal of industrial real estate.) If the two arbitrators appointed by the parties cannot agree upon the third arbitrator, the third arbitrator shall be selected by the senior acting judge of the Superior Court for Pierce County, Washington. The three arbitrators shall be authorized to make such evaluation as they deem necessary and proper in order to establish the base rental at the fair rental value of comparable facilities in Tacoma, Washington. Lessee shall have a period of thirty (30) days subsequent to the determination of the arbitrators to exercise its option to continue the lease for any two-year option period as detailed in Paragraph 2 above. The requirement that Lessee exercise such option no later than sixty (60) days prior to the beginning of any lease option period as detailed in Paragraph 2 above shall be waived in such instances.

Notwithstanding any of the above, rental and User Fee adjustments, if any, shall be effective on the first day of the pertinent option period. The fair rental value established by the arbitrators shall apply to the pertinent option period or for that part of any option period that Lessee occupies the facility.

The cost of arbitration shall be borne equally by Lessor and Lessee. If a majority of arbitrators chosen agree on a decision, such decision shall be binding upon the parties. Should it not be possible to get a majority agreement on any decision, the judgment of the arbitrator not selected by the parties shall be binding upon the parties.

Provided, however, notwithstanding any other provision herein contained, that the rental and User Fee adjustment, if any, during the first two-year option periods that follow the initial period of this Agreement, shall not exceed 10% of the rentals and User Fee as they existed prior to such adjustment.

Provided further, ~~that upon the date of occupancy as defined herein, the rental for the premises subject to lease shall be adjusted to \$30,480.47 per month, and the preferential user fee shall be adjusted to \$35,229.03 per month.~~ In in any event, the rental and user fee shall thereafter be adjusted, if at all, at the commencement of each two-year option period, beginning on July 16, 1985, by the percentage increase, if any, in Lessor's wharfage tariff charges on Cargo N.O.S. during the two-year period immediately preceding the commencement of the two-year option period for which such adjustment, if any, is being

calculated, or by 10%, whichever is lower. Notwithstanding the immediately preceding sentence, however, the rental for the premises subject to lease shall, at the option of the Lessor exercised in accordance with this paragraph 7, be increased to \$49,923.20 per month, and the user fee shall be increased to \$57,617.49 per month at the commencement of the two-year period beginning on July 16, 1989. Subsequent adjustments, if any, shall be made at the commencement of each two-year option period beginning on July 16, 1991, and extending through July 15, 2009, and shall not exceed the percentage increase, if any, in Lessor's wharfage tariff charges on Cargo N.O.S. during the two-year option period for which such adjustment, if any, is being calculated, or 10%, whichever is lower.

5. Bond: In accordance with the Revised Code of Washington 53.08.085, each lease shall be secured by a bond or other security. Lessee shall ~~initially~~ provide a bond or other security ~~for the initial term of lease~~ with a penalty in the amount of ~~\$447,164.64~~ \$867,372.00. The penalty amount and bond will be changed as a result of rental and User Fee adjustments provided for herein or any other changes affecting the value and/or term of this Agreement. These changes are to be incorporated into the penalty amount of the bond and filed with the Lessor at least thirty (30) days prior to commencement of the new term. The bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Lessor if this Agreement is not in default

at the time of said notice. In the event the bond shall so terminate, on or prior to the termination of this Agreement the Lessee shall file and maintain in effect a new bond satisfactory to the Lessor.

6. Use of Premises:

(A) Lessee shall use the premises for the loading and discharging of the Lessee's vessels and for its operations incidental thereto and shall not use the premises for any other purpose without the prior written consent of the Lessor. The term "Lessee's vessels" shall include vessels owned, chartered, operated, or controlled by Lessee or by any company affiliated with the Lessee.

(B) The Lessor reserves the right to use those premises and improvements which it has the responsibility to maintain as detailed in Paragraph 7 hereof, except the ramps and ramp sections described in Paragraph 1(D), for the berthing of vessels and loading or discharging of cargo and operations incidental thereto, provided that such use by the Lessor shall not interfere with the operations of the Lessee without the Lessee's prior written approval. In the event of such secondary use of the premises by the Lessor, all terminal charges in connection therewith shall accrue to the benefit and shall be billed by the Lessor. Should the Lessor use all or any part of the premises or improvements thereto that have been paid for in whole by Lessee under Paragraph 3(B), Lessee shall be given compensation for such use.

(C) Lessor agrees that it will not conduct or permit third persons to conduct any activities, including but not limited to use of corrosive sprays or spray painting, on or adjacent to the preferential use area or the premises subject to lease, which might adversely affect or endanger cargo, trailers, vehicles, vessels, equipment or personnel of Lessee, its officers, agents, employees, contractors, invitees, customers, or licensees, except with the prior written consent of Lessee.

7. Maintenance: All maintenance of the premises, unless otherwise provided for herein, including but not limited to the dock, maintenance and office buildings, yard, concrete dolly pads, underground wiring, heavy lift section, concrete backing blocks, water lines, power lines, roads etc., shall be the responsibility of the Lessor to be done promptly and at its expense, except Lessee shall be responsible for repair of any damage caused by the negligent or intentional act of Lessee or its agents or employees. Lessee shall be responsible for keeping the premises neat, clean and orderly. Lessee shall be responsible for repairs and maintenance necessary from time to time to keep the structures and improvements which Lessee has placed upon the premises in good condition, except for reasonable wear and tear and damage by fire, wind storms or acts of God, except that the Lessor shall maintain and repair the exteriors and the structural integrity of all such structures and improvements upon the leased premises. The Lessor will place and maintain fire and extended coverage insurance in reasonable and

prudent amounts on all structures and improvements on the premises to which the Lessor has title, and the proceeds of any such insurance shall be available to reimburse Lessee if and when Lessee shall incur costs in the repair of damages indemnified by such insurance proceeds.

8. Indemnity and Insurance: The Lessor shall hold Lessee harmless and free from liability for loss or damage to the demised premises and all property of the Lessor thereon, caused by fire and "Extended Coverage", sprinkler leakage, and vandalism and malicious mischief hazards. Lessor expressly waives all claims for such loss or damage.

Lessee shall hold the Lessor harmless and free from liability for loss or damage to all property of Lessee thereon, caused by fire and "Extended Coverage", sprinkler leakage, vandalism and malicious mischief hazards. Lessee expressly waives all claims for such loss or damage.

Lessee agrees to indemnify Lessor and to hold the Lessor harmless as to any claim arising out of damage to the property of third parties or bodily injuries to or the death of any person or persons in or about said premises which is not caused by acts or omissions of the Lessor. This indemnity shall be deemed to be satisfied by Lessee furnishing certificates evidencing insurance to be \$2,500,000./\$5,000,000. for personal injury and death claims, and \$2,500,000. for property damage claims. Such certificates shall provide that there shall be no reduction or

cancellation of or failure to renew such insurance without thirty (30) days' written notice to the Lessor.

If Lessee's insurance practices render compliance with the provision of such certificates temporarily impractical, it will so advise the Lessor in writing, and such requirement will then be waived for the time necessary to enable Lessee to resume compliance therewith.

Lessor shall furnish Lessee, at Lessor's sole expense, business interruption insurance indemnifying and saving Lessee harmless against all loss, damage, expense, or claims caused by any interruption of Lessee's business, arising from or in connection with the proximity of the preferential use area to the Blair Waterway Bridge, including business interruption resulting from collisions with Lessee's vessels, other vessels, and/or the Blair Waterway Bridge, but not including damage to Lessee's vessels, for which Lessee will look to other insurance. The Port's liability under this paragraph shall be limited to a maximum of \$66,000 per day for a period of 30 days commencing 24 hours after notification of each such interruption. The Lessor shall be subrogated, to the extent of payments made hereunder, to any claim which Lessee may have against such vessels, their owners, or operators for damages arising from such business interruption. Lessor shall furnish Lessee with a certificate evidencing such insurance, which shall provide that there shall be no reduction, modification, cancellation, or failure to renew such insurance without 30 days' written notice to Lessee. Such

insurance shall be maintained or renewed and shall remain in effect throughout the term of this Agreement and any option periods hereunder, until such time, if any, as the Blair ~~Street~~ Waterway Bridge is completely removed.

9. Utilities: The Lessor shall furnish to Lessee all utility service reasonably required for its operations, including but not limited to light, heat, electric, gas, water, sewage, garbage disposal, storm drains, etc., at prevailing rates.

10. Inspection: Lessor's representatives shall have the right to enter and inspect the premises at any reasonable time during business hours for the purpose of ascertaining the condition thereof.

11. Assignment and Sublease: Lessee shall not assign any right hereunder or sublease the demised premises without the written consent of the Lessor. Any purported assignment or sublease without such consent shall be null and void.

12. Nondiscrimination:

(A) Lessee covenants and agrees that, in all matters pertaining to the performance of this Agreement Lessee shall at all times conduct its business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons with respect to race, creed, or national origin, and in particular:

(1) Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions and qualified individuals who are members of racial minorities; and

(2) Lessee will comply strictly with all requirements of applicable federal, state, or local laws or regulations issued pursuant thereto relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color or national origin.

(B) Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons of race, creed, color or national origin in furnishing or by refusing to furnish to such person or persons the use of the facilities herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

13. Alterations and Improvements: Lessee shall make no alterations or improvements to or upon the premises other than those permitted by this Agreement or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without obtaining the prior written approval in principle from the Lessor's Executive Director and also engineering approval of Lessee's proposed plans and specifications for each proposed alteration or improvement from the Lessor's Chief Engineer, which approvals shall not be unreasonably withheld. Lessor shall make every reasonable effort to render its decision with respect to its approvals within ninety (90) days. In the event any such alterations or improvements shall be made or such fixtures installed by Lessee,

they shall at once become a part of the realty and become the property of the Lessor. Movable furniture and trade fixtures which are removable without injury to the premises shall be and remain the property of the Lessee.

Notwithstanding the identification of other alterations or improvements which may be classified as trade fixtures, it is specifically agreed to by Lessor and Lessee that the Weigh-Rite Model 1X70 portable platform scale and associated instruments, appurtenances, etc., installed on the premises is a trade fixture and will continue to be the property of the Lessee.

Lessor may make changes in the premises described ~~as Parcel I and Parcel II in Paragraphs 1(A) and 1(B)~~ herein, but only with the prior written approval of the Lessee on any such change. Lessee shall not unreasonably withhold such approval, provided, however, that in no event shall Lessee bear any cost for any such change nor shall any such change reduce the overall dimensions of the premises.

14. Damage and Destruction:

(A) In the event the premises or the building or other structures without which Lessee could not effectively continue its normal operations are damaged by fire or other casualty and the parties agree that the damage is repairable within a reasonable period of time to permit Lessee to continue its trailer-ship service as substantially before the occurrence, the Lessor shall proceed with due diligence to repair the damage and restore the premises to a condition comparable with that existing

prior to such casualty. The rental due on the premises during the period beginning with the occurrence of casualty and ending with the completion of the repairs shall be abated in the proportion that the untenable or unusable part of the premises bears to the whole thereof.

(B) In the event the premises or the buildings or other structures without which Lessee could not effectively continue its normal operations are completely destroyed by fire or other casualty or damaged to such an extent that said damage cannot be repaired except over an extended period of time, the parties hereto may mutually agree either to continue or to terminate this Agreement. If the parties elect to continue this Agreement, the Lessor shall commence with due diligence to restore the premises as nearly as practicable to a condition comparable with that existing prior to the occurrence or casualty. The rental due during the period of restoration and until Lessee resumes its operations shall be abated on a pro-rata basis in accordance with the formula in sub-paragraph (A) of this Paragraph 14.

If the parties agree to terminate this Agreement after the occurrence of any such major destruction to the premises, the obligations of both parties hereto shall terminate as of the date of the occurrence or casualty, and Lessee shall be relieved of any further obligations to pay rental and/or User Fees from the date of said occurrence or casualty to the end of the unexpired initial term or option term, as the case may be.

(C) Should the parties hereto be unable to agree under this paragraph whether to continue or to terminate this Agreement, the matter shall be submitted to arbitration before three (3) arbitrators appointed in the same manner as provided under paragraph 4 of this Agreement.

(D) ~~Should Lessee prepay,~~ To the extent Lessee has paid, in whole or in part, for improvements as provided in Paragraph 3(B), Lessee shall receive a fair allocation of any insurance or other reimbursement, if any, received by the Lessor resulting from damage or destruction to the premises, building, structures or improvements thereon. Should the parties be unable to agree on said "fair allocation", fair allocation shall be determined by arbitration, using the same method of selection of arbitrators, mechanism for decision, and compensation of arbitrators, as stipulated in paragraph 4 hereof.

(E) Notwithstanding any of the above, nothing in this paragraph relieves Lessor from the obligation of providing alternate berthing at the Port of Tacoma as provided for in Paragraph 1(C)(7).

15. Termination for Government Use: In the event the United States government, the State of Washington, or any agency or instrumentality of said governments shall take title, possession, or the rights to possession of the premises or any part thereof by condemnation or otherwise, the Lessor shall have the option to terminate this Agreement, and if the taking has substantially impaired the utility of the premises to Lessee,

Lessee shall have the option to terminate this Agreement. Both options shall be exercisable as of the date of such taking. If Lessee is not in default under any of the provisions of this Agreement on the date of such taking, any rental prepaid by Lessee shall be promptly refunded to Lessee to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities which shall have accrued prior to such date.

(A) Notwithstanding any of the above, Lessor shall continue to be obligated to provide Lessee an alternate berthing at the Port of Tacoma as detailed in Paragraph 1(C)(7) to the extent that Lessor has any facilities remaining after the termination for government use.

(B) ~~Should Lessee prepay,~~ To the extent Lessee has paid, in whole or in part, for improvements as provided in paragraph 3(B), Lessee shall receive a fair allocation of any award received by Lessor due to the termination for government use. Should the parties be unable to agree on said "fair allocation", fair allocation shall be determined by arbitration, using the same method of selection of arbitrators, mechanism for decision, and compensation of arbitrators, as stipulated in paragraph 4 hereof.

16. Termination by Court Decree: In the event any Court having jurisdiction in the matter shall render a final decision preventing the performance by the Lessor or Lessee of any of its obligations under this Agreement either party may terminate this

Agreement by written notice. Upon such termination, all rights and obligations hereunder shall thereupon terminate, except for all undischarged obligations which accrued prior to the effective date of termination. If Lessee is not in default under any of the provisions of this Agreement on the effective date of such termination, any rental prepaid by Lessee shall be promptly refunded to the Lessee to the extent allocable to any period subsequent to such date.

(A) Notwithstanding any of the above Lessor shall undertake all efforts to provide Lessee operating premises and berthing similar to that described in Paragraph 1 hereof, at the terms and conditions of the Agreement to the extent that said terms and conditions are not adjudged improper by the court decree.

(B) ~~Should Lessee prepay~~ To the extent Lessee has paid in whole or in part for improvements as provided for in paragraph 3(B) hereof, Lessee shall receive from Lessor fair compensation for the use of these improvements by the Lessor or by others. Should the parties be unable to agree on the amount of such fair compensation, the fair compensation shall be determined by arbitration, using the same method of selection of arbitrators, mechanism for decision, and method of compensation for arbitrators as defined in paragraph 4 hereof.

17. Taxes: Lessee agrees to pay and save Lessor harmless from any tax imposed on the interest of either party in the

premises during the term of this Agreement, or imposed on the parties or either of them by reason of this Agreement.

18. Default: The following events shall be deemed to be events of default by Lessee under this Agreement:

(A) Lessee's failure to pay any installment of rent or charges under this Agreement if such failure shall continue for a period of fifteen (15) days after receipt by Lessee of written notice of such failure.

(B) Lessee's failure to comply with any term, provision or covenant of this Agreement, other than the payment of rent, if it fails to commence to cure such failure within thirty (30) days after receipt of written notice thereof to Lessee or shall fail or neglect to prosecute the completion of what is necessary to effect such cure with reasonable diligence.

(C) Lessee's becoming insolvent, or making a transfer in fraud of creditors, or an assignment for the benefit of creditors, or filing a petition in bankruptcy under any section of the Bankruptcy Laws.

Upon the occurrence of any such events of default, Lessor shall have the option, without any further notice or demand, to terminate this Agreement, or relet the premises and receive the rent therefor, in which event Lessee shall immediately surrender the premises to the Lessor and Lessee agrees to pay the Lessor on demand the amount of all loss and damage which the Lessor may suffer by reason of such termination or subletting. In addition, upon such termination and re-entry by the Lessor, lessee shall be

liable for payment for the ramps under Paragraph 1 hereof, and Lessee shall immediately pay to the Lessor its then unamortized balance thereof.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to the Lessor hereunder or to the damages accruing to the Lessor by reason of the violation of any of the terms, provisions, and covenants hereof.

19. Waiver by Breach: No waiver of either party of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained.

20. Ramps: This paragraph shall apply only in connection with Lessee's custody, control and use of the ramps specified in paragraph 1(D); in any instance of a conflict between this paragraph and any other provision in this Agreement the provisions of this paragraph shall control.

(A) Lessee shall keep the ramps in first class operating condition except for ordinary wear and tear, and all expenses for operation, maintenance and servicing of the ramps and any other expenses related to the ramps shall be solely accounted for by the Lessee. The Lessor shall, however, keep the pier structure in good condition, sufficient to support the operation of the ramps, except for any damage to the pier

structure which shall have been the result of the negligence of the Lessee, its employees, agents or invitees. As between Lessor and Lessee each party shall be responsible for damage caused by its negligence and that of its employees, agents and invitees. In case of joint negligence the damages shall be apportioned between the parties in proportion to the relative negligence attributable to each.

(B) In the event this Agreement shall not continue in effect to May 3rd 1997, on termination of this Agreement for any reason, including expiration due to lack of exercise of a renewal option, Lessee shall pay to Lessor a lump sum equal to the unamortized balance as shown on Exhibit "E", and upon such payment, Lessor shall relinquish to Lessee any rights it may assert against such ramps.

(C) Upon payment of the unamortized balance to Lessor pursuant to paragraph 20(B) above, Lessee, at no cost to the Lessor, shall remove the ramps from Lessor's premises within thirty (30) days after Lessee's payment.

(D) In the event that there is no earlier termination of the ramp agreement, as per paragraph 20(B) or paragraph 3(C) then upon Lessee making the final payment presently scheduled for May 1997 (see attached amortization schedule, Exhibit "E"), Lessor shall relinquish to Lessee any rights it may assert against such ramps.

21. Notices: All notices and payments hereunder may be delivered or mailed. If mailed they shall be sent to the following respective addresses:

LESSOR: PORT OF TACOMA
P.O. Box 1837
Tacoma, Washington 98401

LESSEE: TOTEM OCEAN TRAILER EXPRESS, INC.
P.O. Box 24908
~~1100 Olive Way~~
Seattle, Washington 98124

or to such other respective addresses as either party may hereafter from time to time designate in writing. Notices and payments sent by certified or registered mail and subsequently received by the Lessor shall be deemed to have been given when and if properly mailed, and the post mark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

22. Invalidity: If any term or provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this 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 be affected thereby and shall continue in full force and effect.

23. Captions: The captions in this Agreement are for convenience only and do not in any way limit or simplify the provisions of this Agreement.

24. Federal Maritime Commission Approval: This ~~Agreement~~ Fourth Amendment will, on execution, promptly be submitted ~~by the Lessor~~ to the Federal Maritime Commission for determination as to whether it is subject to Section 15 of the Shipping Act of 1916, as amended. In the event that the Commission or its staff determines that approval of this ~~Agreement~~ Fourth Amendment is required under said Section 15, this ~~Agreement~~ Fourth Amendment shall not become effective until both parties have been notified that the Commission has given such approval. No future amendment or modification to this Agreement, other than its termination, shall become effective until such amendment or modification has been submitted to and reviewed by the Commission and its staff in the manner above set forth.

~~Until approval of this Agreement by the Commission, Lessee will be assessed dockage, service and facilities and wharfage charges pursuant to Item 100 of the current Tacoma Terminals Tariff.~~

25. Integration. This Agreement constitutes the whole Agreement between the Lessor and Lessee. There are no terms, obligations, or conditions other than those contained herein.

No modification or amendment to this Agreement shall be valid and effective unless evidenced by an agreement in writing signed by both parties.

