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SEP 14 1984

INTERMODAL CONTAINER TRANSFER FACILITY PERMIT  
FOR USE OF LAND

Between

THE CITY OF LOS ANGELES

And

INTERMODAL CONTAINER TRANSFER  
FACILITY JOINT POWERS AUTHORITY

SEP 14 1984, 1984

PERMIT FOR USE OF LAND

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PERMIT FOR USE OF LAND  
BETWEEN  
THE CITY OF LOS ANGELES

AND  
INTERMODAL CONTAINER TRANSFER FACILITY  
JOINT POWERS AUTHORITY

THIS PERMIT FOR USE OF LAND ("Permit"), is made and entered into Sept. 14, 1984, by and between THE CITY OF LOS ANGELES, a municipal corporation duly organized and existing under its Charter and the Constitution and the laws of the State of California ("Los Angeles"), acting by and through its Board of Harbor Commissioners ("Board"), and INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY, a joint powers authority created by Los Angeles and The City of Long Beach in accordance with the laws of the State of California ("Authority").

RECITALS:

A. Los Angeles owns certain real property located in The City of Los Angeles, County of Los Angeles, State of California and intends to acquire additional property located outside The City of Los Angeles in the County of Los Angeles, all of which is more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Premises").

B. The Premises are located near the Ports of Los Angeles and Long Beach and would be a suitable location for an intermodal container transfer facility.

C. Authority wishes to obtain the right to occupy and use the Premises pursuant to the terms of this Permit for the purposes of (i) constructing an intermodal container transfer facility on the Premises and (ii) subleasing the Premises, in accordance with Section 15 of this Permit, to Southern Pacific Transportation Company ("Corporation ") as "Assuming Subtenant" pursuant to that certain Sublease Agreement (the "Sublease Agreement") of even date herewith by and between Authority, as sublessor, and Corporation, as subtenant.

NOW THEREFORE, in consideration of the foregoing Recitals which are incorporated herein by this reference, the mutual promises and agreements of the parties hereto as

hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions.

Unless the context clearly otherwise requires, the capitalized terms in this Permit shall have the meaning specified in Schedule A attached hereto.

Section 2. Agreement.

Los Angeles hereby delivers the Premises to Authority and grants to Authority the right to occupy and use the Premises, and Authority hereby accepts the Premises from Los Angeles, until the expiration or termination of this Permit and subject to the terms and conditions provided herein.

Section 3. Premises.

(a) Reservations. This Permit and the Premises delivered hereby are and shall be at all times subject to the following:

(1) Utility Rights-of-Way. Rights-of-way for sewers, pipelines and conduits and for telephone, telegraph, light, heat and power lines which do not cause permanent impairment of Tenant's operation as may from time to time be determined to be reasonably necessary by Board, including the right to enter upon, above, below or through the surface of the Premises to construct, maintain, replace, repair, enlarge or otherwise utilize the Premises for such purposes, without compensation or abatement of rent; provided that continuous operation of the Facilities is maintained; and provided further that the surface of the Premises disturbed by such construction shall be restored to the extent possible to the condition previously existing by such structures, fill, compaction and paving as may be necessary to provide adequate bearing capacity for the rail and truck traffic using the Facilities. The expense of protecting the continuity of and noninterference with operations at the Facilities shall be borne by the party installing such utilities.

(2) Streets and Highways. Rights-of-way for streets, other highways and other means of transportation which are shown on Exhibit "A".

(3) Prior Exceptions. All prior exceptions, reservations, grants, easements, leases or licenses of any

kind whatsoever as the same appear of record in the Office of the Recorder of Los Angeles County, California.

(b) Inspection. Tenant has inspected the Premises in contemplation of occupying them for the uses permitted hereunder and agrees that the Premises are suitable for Tenant's intended uses. No officer or employee of Los Angeles has made any representation or warranty with respect to the Premises and no officer or employee is authorized to make any such representation or warranty unless the nature and extent of such representation or warranty is described in writing and attached hereto as an addendum.

(c) Modification. By mutual agreement of the parties hereto, land not exceeding five (5) acres in the aggregate may be added to or deleted from the Premises granted herein without approval of the City Council of Los Angeles or Board. The amount of Permit Rent payable pursuant to Section 5 shall be increased or decreased on a pro rata basis to reflect any such addition or deletion of land. The Executive Director is authorized to execute amendments to this Permit to effect the foregoing adjustments to area and compensation without further action of the Board.

#### Section 4. Term.

(a) Execution and Term. Subject to the provisions of Section 4(c), the term of this Permit shall commence on the date it is executed by the Executive Director and shall end on the date that is fifty (50) years after such date of execution or on such earlier date upon which this Permit is terminated pursuant to the provisions of this Permit or pursuant to law.

(b) Right to Terminate. If the Completion Date does not occur for any reason within five (5) years from the date of execution of this Permit, either Los Angeles or Authority may terminate this Permit by giving the other written notice thereof, and neither party thereafter shall have any further obligations hereunder.

(c) Submission to FMC and ICC. This Permit shall be submitted to the FMC in accordance with the provisions of the Shipping Act of 1984. This Permit shall not be or become effective until it becomes effective under said Act or until the FMC determines in writing that it is not subject to said Act. In the event it is determined that this Permit is subject to said Act, then the term hereof shall commence on the first day of the calendar month following its effective date under said Act. In the event the Commission determines that this Permit is not subject to said Act, then the term

kind whatsoever as the same appear of record in the Office of the Recorder of Los Angeles County, California.

(b) Inspection. Tenant has inspected the Premises in contemplation of occupying them for the uses permitted hereunder and agrees that the Premises are suitable for Tenant's intended uses. No officer or employee of Los Angeles has made any representation or warranty with respect to the Premises and no officer or employee is authorized to make any such representation or warranty unless the nature and extent of such representation or warranty is described in writing and attached hereto as an addendum.

(c) Modification. By mutual agreement of the parties hereto, land not exceeding five (5) acres in the aggregate may be added to or deleted from the Premises granted herein without approval of the City Council of Los Angeles or Board. The amount of Permit Rent payable pursuant to Section 5 shall be increased or decreased on a pro rata basis to reflect any such addition or deletion of land. The Executive Director is authorized to execute amendments to this Permit to effect the foregoing adjustments to area and compensation without further action of the Board.

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(b) Right to Terminate. If the Completion Date does not occur for any reason within five (5) years from the date of execution of this Permit, either Los Angeles or Authority may terminate this Permit by giving the other written notice thereof, and neither party thereafter shall have any further obligations hereunder.

(c) Approval by FMC and ICC. This Permit shall be submitted to the FMC for approval or a determination by the FMC that it is not subject to the Shipping Act of 1916, as amended. This Permit shall not be or become effective until the FMC approves this Permit or determines in writing that it is not subject to said Act. In the event it is determined that this Permit is subject to said Act, then the term hereof shall commence on the first day of the calendar month following such approval. In the event the Commission determines that this Permit is not subject to said Act, then the term

hereof shall be deemed to have commenced on such date established in Section 4(a) hereof.

This Permit shall also be submitted to the ICC for approval or a determination that the ICC has no jurisdiction over this transaction and shall not be effective until such approval or a finding of no jurisdiction is received.

(d) Holdover. If Tenant shall hold over all or any part of the Premises after the termination or expiration of this Permit, Los Angeles may elect to treat such holdover as an extension of this Permit on a month-to-month basis at the same rate of rent and upon the same terms and conditions as set forth in this Permit. If, during any such holdover by Tenant, Los Angeles and Authority agree to extend the term of this Permit or enter into a new agreement for the same Premises or for substantially the same Premises described in this Permit, the rent for the period of any such holdover by Tenant shall be at the rate provided in such extension or new agreement. The payments of rent for any such holdover made by Tenant to Los Angeles at the rates provided in this Permit shall be credited against the rent payable under the extension or new agreement and Tenant shall pay to Los Angeles the difference, if any, between the rent paid at the rate herein provided and the rent due pursuant to the extension or new agreement within thirty (30) days after the effective date of any such extension or new agreement.

#### Section 5. Permit Rent.

(a) Monthly Rent Prior to the First Day of the Month Following the Completion Date. Tenant shall pay the Interim Rent to Los Angeles as rent for the use of the Premises commencing on the earlier of (i) the Completion Date or (ii) eighteen (18) months after the day work is commenced in accordance with the Grading Contract; provided that such eighteen (18) month period may be extended by Force Majeure occurrences as provided in Section 13 of this Permit. Tenant shall pay the Interim Rent in advance, on the first day of each calendar month until the first month following the Completion Date. If Tenant commences paying Interim Rent on a day other than the first day of a calendar month, the Interim Rent for that partial calendar month shall be prorated on the basis of the actual number of days in such month.

#### (b) Container Charge For Each Movement.

(1) Commencing on the first day of the calendar month following the Completion Date, Tenant shall pay as rent to Los Angeles for the use of the Premises during each Permit Year for the first ten (10) Permit Years of

this Permit the following Container Charge for each Movement:

First Permit Year - \$12.00 per Movement  
Second Permit Year - \$13.00 per Movement  
Third Permit Year - \$14.00 per Movement  
Fourth Permit Year - \$15.00 per Movement  
Fifth Permit Year - \$16.00 per Movement  
Sixth Permit Year - \$16.50 per Movement  
Seventh Permit Year - \$17.00 per Movement  
Eighth Permit Year - \$17.50 per Movement  
Ninth Permit Year - \$18.00 per Movement  
Tenth Permit Year - \$18.50 per Movement

The Container Charge shall be paid to Los Angeles each calendar month at the time and in the manner specified in Section 5(b)(3). After the first ten (10) Permit Years, the Container Charge shall be payable in the amounts determined pursuant to Section 5(g)(3).

(2) During the first ten (10) Permit Years, if the aggregate amount of Container Charges received by Los Angeles in any Permit Year exceeds the Break Even Point specified for that Permit Year in Section 5(d) hereof, for the remainder of that Permit Year the Container Charge to be paid shall be stepped downward in the following manner:

A. If the aggregate amount of Container Charges received by Los Angeles during any Permit Year is between 100% and 125% of the Break Even Point specified for that Permit Year, then the Container Charge for each additional Movement during that Permit Year shall be reduced by 20%.

B. If the aggregate amount of Container Charges received by Los Angeles during any Permit Year is between 125% and 150% of the Break Even Point specified for that Permit Year, then the Container Charge for each additional Movement

during that Permit Year shall be reduced an additional 15% for a total reduction of 35%.

C. If the aggregate amount of Container Charges received by Los Angeles during any Permit Year exceeds 150% of the Break Even Point specified for that Permit Year, then the Container Charge for each additional Movement during that Permit Year shall be reduced an additional 15% for a total reduction of 50%.

(3) Tenant shall prepare and deliver to Los Angeles within fifteen (15) days after the end of each calendar month, on a form prepared by the Department or in a format approved by the Department, a written statement signed by a duly authorized officer or representative of Tenant showing in reasonable detail the number of Movements and the number of movements of all empty Tenant controlled or furnished Containers at the Facilities during the preceding month. Payment of the aggregate Container Charges for the preceding month, to the extent any such charge is payable, shall accompany the written statement. Tenant shall further prepare and deliver to Los Angeles on or before the one hundred twentieth (120) day following the end of each Permit Year during the term of this Permit and on or before the one hundred twentieth (120) day after the end of the term of this Permit, an annual statement certified and signed by such duly authorized officer or representative, showing in reasonable detail the elements and number of Movements through the Facilities during the preceding Permit Year or fraction thereof. At the time Tenant is required to submit such annual statement to Los Angeles, Tenant shall pay to Los Angeles (i) the aggregate amount of Container Charges still unpaid, if any, and (ii) if the aggregate amount of Container Charges received by Los Angeles during the preceding Permit Year was less than the Guaranteed Annual Rent for that Permit Year, an amount equal to the difference between the aggregate amount of Container Charges received by Los Angeles and the Guaranteed Annual Rent.

(c) Guaranteed Annual Rent. For each and every Permit Year for the first ten (10) Permit Years following the Completion Date, Tenant shall pay to Los Angeles the

Guaranteed Annual Rent as rent for the use of the Premises in the amount of:

First Permit Year -	\$1,177,000
Second Permit Year -	\$1,427,000
Third Permit Year -	\$1,677,000
Fourth Permit Year -	\$1,927,000
Fifth Permit Year -	\$2,177,000
Sixth Permit Year -	\$2,504,000
Seventh Permit Year -	\$2,879,000
Eighth Permit Year -	\$3,311,000
Ninth Permit Year -	\$3,808,000
Tenth Permit Year -	\$4,379,000

The Guaranteed Annual Rent, if any is due, shall be due and payable as provided in Section 5(b)(3). After the first ten (10) Permit Years, the Guaranteed Annual Rent shall be payable in the amounts determined pursuant to Section 5(g)(1) hereof.

(d) Break Even Point. During the first ten (10) Permit Years following the Completion Date, the Break Even Point amounts for the use of the Premises shall be:

First Permit Year -	\$2,177,000
Second Permit Year -	\$2,177,000
Third Permit Year -	\$2,177,000
Fourth Permit Year -	\$2,177,000
Fifth Permit Year -	\$2,177,000
Sixth Permit Year -	\$2,504,000
Seventh Permit Year -	\$2,879,000
Eighth Permit Year -	\$3,311,000
Ninth Permit Year -	\$3,808,000
Tenth Permit Year -	\$4,379,000

(e) Adjustment of Guaranteed Annual Rent and Break Even Points. The Guaranteed Annual Rent and the Break Even Point amounts listed in Sections 5(c) and 5(d), respectively, will be adjusted to reflect the actual acquisition cost of certain properties presently owned by the Watson Land Company and Super Service Inc. Los Angeles estimates that the acquisition cost of these properties will be \$4,270,000 and has included one-tenth of this estimated acquisition cost in the Guaranteed Annual Rents and the Break Even Points for each of the first ten (10) Permit Years established in Sections 5(c) and 5(d). When the actual acquisition cost is determined, one-tenth of the difference between the actual cost and \$4,270,000 will be added (if the actual cost exceeds \$4,270,000) or subtracted (if the actual cost is less than \$4,270,000) from the Guaranteed Annual Rent and Break Even Point for each of such Permit Years.

(f) Payment. Tenant shall pay all Permit Rents when due, without notice or demand and without any abatement, deduction or setoff. Tenant shall pay all Permit Rents in lawful money of the United States. All Permit Rents due under this Section 5 shall be made payable to Board and mailed to the following address:

Board of Harbor Commissioners  
P.O. Box 151  
San Pedro, California 90733  
Attention: Chief Accountant

or to such other address as Executive Director may designate by written notice to Tenant. Payments of Rents required to be made by this Section 5, that have not been paid within thirty (30) days of the date such payments are due shall bear interest from the date on which such payments were due at the Prime Rate then in effect or ten percent (10%) per annum, whichever is greater; provided that such interest rate shall not exceed the maximum rate permitted by law.

(g) Renegotiation of Guaranteed Annual Rent and the Container Charge.

(1) Guaranteed Annual Rent. The Guaranteed Annual Rent to be paid under Section 5(c) by Tenant to Los Angeles in each Adjustment Period or any portion thereof shall be mutually agreed upon between Tenant and Board at some time not more than nine (9) months and not less than three (3) months prior to the Adjustment Date. The renegotiated Guaranteed Annual Rent shall not vary within an Adjustment Period and shall be established by order of Board. If negotiations regarding the Guaranteed Annual Rent have not begun four (4) months prior to any Adjustment Date, Tenant shall immediately set a date to discuss with the Executive Director the readjustment of the Guaranteed Annual Rent; provided that oversight or failure to set such date shall not constitute an event of default hereunder. On the date specified by Tenant, the Executive Director shall meet with Tenant to discuss readjustment of the Guaranteed Annual Rent.

In the event Tenant and Board cannot agree upon the the Guaranteed Annual Rent for an upcoming Adjustment Period by the date three (3) months prior to the applicable Adjustment Date, Board shall give to Tenant a written notice demanding an appraisal of the fair rental value of the Premises to determine the Guaranteed Annual Rent and naming the person appointed by Board to act as an appraiser on its behalf. Within fifteen (15) days

from the receipt of such notice, Tenant shall appoint an appraiser and notify Board of such appointment. If either party shall not have notified the other in writing of the appointment of its appraiser, the Presiding Judge of the Superior Court of the State of California for the County of Los Angeles shall, upon the request of either party, appoint the appraiser for the party so in default. The two appraisers will then appoint a third appraiser. If they are unable to agree upon the third appraiser within ten (10) days after the appointment of the second appraiser, the third appraiser shall be appointed by said Presiding Judge. Any vacancy shall be filled by the party who made the original appointment to the vacant place.

Within sixty (60) days after the appointment of the third appraiser, each appraiser shall file with Board a written opinion concerning the Guaranteed Annual Rent for the Premises. Copies of each opinion shall also concurrently be furnished to Tenant. Each opinion shall be presented in the form prescribed by the rules of the Los Angeles Superior Court. In forming their opinions, the appraisers shall take into consideration typical industrial port related uses such as warehousing, container freight stations, container handling facilities for cargo moved by rail, truck, ship, or other modes of transportation and the then existing use of the Premises under this Permit. The appraisers shall not consider the improvements on the Premises, but shall take into consideration and be limited to all of the factors and data relating to such value which may properly be considered in determining the fair rental value of leaseholds of land limited to the above uses under the laws of eminent domain (including the Evidence Code) in the State of California. In the event any appraiser fails to file his opinion within said sixty (60) day period, a new appraiser shall be appointed in the manner prescribed above.

Upon the receipt of three opinions, Board shall properly set a date for, and on said date hold, a public hearing. At the public hearing said opinions and such other expert evidence of the fair rental value of the Premises as may be presented by Tenant or others shall be received and considered. Based upon evidence presented at the hearing, Board policy regarding rate of return as applied to land with respect to which Board has made no investment in the improvements thereon and any other relevant factors, Board shall determine and establish by order the Guaranteed Annual Rent to be paid by Tenant for the Adjustment Period under consideration.

Board's discretion in setting the Guaranteed Annual Rent shall be guided by the considerations set forth in this Section 5(g) and the same considerations a jury may consider in establishing value in eminent domain proceedings.

Each party shall pay the costs and expenses of the appraiser appointed by it, together with fifty percent (50%) of the costs and expenses of the third appraiser.

(2) Calculation of a Graduated Guaranteed Annual Rent. After Board has established the Guaranteed Annual Rent for the Premises for the Adjustment Period under consideration, as provided in Section 5(g)(1), Tenant shall have the option to pay that Guaranteed Annual Rent or to pay the Graduated Guaranteed Annual Rent calculated by Board. The Graduated Guaranteed Annual Rent will be calculated in accordance with the formula and computer program set forth in Exhibit B hereto.

If Tenant elects to pay the Graduated Guaranteed Annual Rent for any Adjustment Period, the Graduated Guaranteed Annual Rent shall be fixed for that Adjustment Period by an order of Board.

(3) Container Charge. After Board has established the new Guaranteed Annual Rent for the Premises for an Adjustment Period, whether or not Tenant exercises its option to pay the Graduated Guaranteed Annual Rent, the Container Charge payable by Tenant in each Permit Year in that Adjustment Period shall be determined by dividing the Guaranteed Annual Rent for each of the five (5) Permit Years by the average of the total number of Movements in the three (3) Permit Years immediately preceding the Adjustment Period under consideration.

During each of the Permit Years in any Adjustment Period, if the aggregate amount of Container Charges received by Los Angeles in any such Permit Year exceeds the Guaranteed Annual Rent for that Permit Year, for the remainder of that Permit Year the Container Charge shall be stepped downward in the following manner:

A. If the aggregate amount of Container Charges received by Los Angeles during any Permit Year is between 100% and 125% of the Guaranteed Annual Rent for that Permit Year, then the Container Charge for each additional Movement during that Permit Year shall be reduced by 20%.

B. If the aggregate amount of Container Charges received by Los Angeles during any Permit Year is between 125% and 150% of the Guaranteed Annual Rent for that Permit Year, then the Container Charge for each additional Movement during that Permit Year shall be reduced an additional 15% for a total reduction of 35%.

C. If the aggregate amount of Container Charges received by Los Angeles during any Permit Year exceeds 150% of the Guaranteed Annual Rent for that Permit Year, then the Container Charge for each additional Movement during that Permit Year shall be reduced an additional 15% for a total reduction of 50%.

If for any reason the new Container Charge shall not be finally determined until after the beginning of any Adjustment Period, Tenant shall continue to pay at the rate in effect for the immediately preceding Permit Year which amount shall be a credit against the amount of the new Container Charge when fixed; provided, however, that Tenant's obligation to pay the amount fixed as the new Container Charge shall accrue from the beginning of said period and any unpaid amounts shall bear interest from the date on which they accrued at the Prime Rate then in effect. Within thirty (30) days after determination of the new Container Charge, Tenant shall pay to Los Angeles the amount, if any, by which the new Container Charges which have accrued during said period exceeds the payments Tenant has made during said period under the former rate for Container Charges, together with any interest due thereon. If Tenant has made payments for such period in excess of the new Container Charges which accrued during the period, the excess shall be credited against future installments of Container Charges.

#### Section 6. Uses.

(a) Permitted Uses. The Premises hereby granted shall be used for construction, operation and maintenance of the Facilities and for purposes incidental thereto. Tenant shall not use, or permit the use of, the Premises or any part thereof for any other purpose without the prior written approval of Board. The Facilities shall serve or be available for use by all shipping companies and all truck lines, freight forwarders, airlines, consignors or consignees wishing to use the Facilities on a first-come, first-serve basis subject to reasonable haul rates and routes established by Tenant.

(b) Ownership. The Facilities and all additions, modifications and alterations thereto, made or erected by or on behalf of Authority or its subtenants upon the Premises subsequent to the date hereof shall, as between Los Angeles and Tenant, be and remain the separate property of Authority or such subtenant, as the case may be, subject to the terms and conditions contained herein, and not become a part of the real property constituting the Premises even though some or all of the improvements may be affixed thereto. Tenant may sell, assign or otherwise transfer ownership of such Facilities to any person or entity without the necessity of obtaining the consent or approval of Los Angeles.

(c) State Tidelands Grant. This Permit, and the interest in the Premises granted hereby, shall at all times be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled, "An Act Granting to The City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and Article XI of the Charter of The City of Los Angeles relating to such lands.

#### Section 7. Default and Termination.

(a) Default During Any Period in which the Premises are not Subleased to an Assuming Subtenant. During any period in which the Premises are not subleased to an Assuming Subtenant pursuant to Section 15 hereof, the occurrence of any of the following events shall constitute an "Event of Default" by Authority under this Permit:

(1) Any failure by Authority to pay all sums, including Rents, then due, owing and unpaid within ten (10) days after such sums become due;

(2) The neglect, failure or refusal by Authority to comply with any of the terms or conditions of this Permit, other than as referred to in Section 7(a)(1), where such neglect, failure or refusal continues for thirty (30) days after written notice thereof is given to Authority by Board; provided, however, that if the failure stated in the notice cannot be corrected within the thirty (30) day period following service of notice, Board will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Authority within that period and diligently pursued until such failure is corrected;

(3) Authority fails or ceases to use the Premises or any substantial portion thereof for the purposes and in the manner herein prescribed for a period of more than thirty (30) consecutive days without the consent of Board; provided, however, that if cessation of or failure to use as herein prescribed is caused by reason of war, strikes, embargos, riots, civil commotion, unavailability of fuel, materials or supplies, acts of public enemies, earthquake, other natural disasters, restrictive governmental laws or regulations or action of the elements or any other similar cause beyond Authority's control, and Authority so notifies Board within ten (10) days from the date said period of cessation or failure to use began, such period of nonuse shall be excluded in computing the thirty (30) day period set forth herein;

(4) The making by Authority of any general assignment or general arrangement for the benefit of creditors;

(5) The filing by or against Authority of a petition to have Authority adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy with the exception that if the action against Authority is involuntary, then Authority shall have 180 days to have said action dismissed;

(6) The appointment of a trustee or receiver to take possession of all or substantially all of Authority's assets located at the Premises or of Authority's interest in this Permit;

(7) Any attachment, execution or other judicial seizure of substantially all of Authority's assets located at the Premises or of Authority's interest in this Permit, where such seizure is not discharged within thirty (30) days; or

(8) The filing of any tax lien against Authority with respect to the Premises which becomes delinquent.

(b) Default During Any Period in which the Premises are Subleased to an Assuming Subtenant.

(1) Events Requiring Notice. During any period in which the Premises are subleased to an Assuming Subtenant pursuant to Section 15, if any of the following events occur, Board shall give notice thereof to Authority and to any Subleasehold Mortgagee:

A. Any failure by Assuming Subtenant to pay all sums, including Rents, then due, owing and unpaid within ten (10) days after such sums become due;

B. The neglect, failure or refusal by Assuming Subtenant to comply with any of the terms or conditions of this Permit, other than as referred to in Section 7(b)(1)(A), where such neglect, failure or refusal continues for thirty (30) days after written notice thereof is given by Board to Assuming Subtenant; provided, however, that if the failure stated in the notice cannot be corrected within the thirty (30) day period following service of notice, Board will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Assuming Subtenant within that period and diligently pursued until the failure is corrected;

C. Assuming Subtenant fails or ceases to use the Premises or any substantial portion thereof for the purposes and in the manner herein prescribed for a period of more than thirty (30) consecutive days without the consent of Board; provided, however, if cessation of or failure to use as herein prescribed is caused by reason of war, strikes, embargos, riots, civil commotion, unavailability of fuel, materials or supplies, acts of public enemies, earthquake, other natural disasters, restrictive governmental laws or regulations or action of the elements or any other similar cause beyond Assuming Subtenant's control, and Assuming Subtenant so notifies Board within ten (10) days from the date said period of cessation or failure to use began, such period of nonuse shall be excluded in computing the thirty (30) day period set forth herein;

D. The making by Assuming Subtenant of any general assignment or general arrangement for the benefit of creditors;

E. The filing by or against Assuming Subtenant of a petition to have Assuming Subtenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy with the exception that if the action against Assuming Subtenant is involuntary, then Assuming Subtenant shall have one

hundred eighty (180) days to have said action dismissed;

F. The appointment of a trustee (other than a trustee appointed pursuant to Federal Bankruptcy Law specifically relating to railroads (Subchapter IV of Title 11 of the Bankruptcy Act, "U.S.C.A." § 1161 et. seq.) or the trustee appointed in connection with the merger of Southern Pacific Company and Santa Fe Industries, Inc. to hold the shares of Corporation pending ICC approval of common control of Corporation and Atchison Topeka and Santa Fe Railway Company) or receiver to take possession of all or substantially all of Assuming Subtenant's assets located at the Premises or of Assuming Subtenant's interest in this Permit;

G. Any attachment, execution or other judicial seizure of substantially all of Assuming Subtenant's assets located at the Premises, or of Assuming Subtenant's interest in this Permit or the Sublease, where such seizure is not discharged within thirty (30) days; or

H. The filing of any tax lien against Assuming Subtenant with respect to the Premises which becomes delinquent.

(2) Events of Default. Upon the occurrence of any of the events specified in Section 7(b)(1), and receipt of notice thereof, the failure of Authority or Subleasehold Mortgagee to take any of the following actions within thirty (30) days following receipt of such notice, shall constitute an "Event of Default" hereunder:

A. Authority or Subleasehold Mortgagee cures the breach specified in such notice; provided, however, that if the breach cannot be corrected within thirty (30) days following service of notice, Board shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Authority or Subleasehold Mortgagee within that period and diligently pursued until such breach is corrected; or

B. Authority terminates or commences appropriate action to terminate the sublease with Assuming Subtenant and diligently prosecutes the same to completion (provided that upon such termination of a sublease with Assuming Subtenant, the provisions of Section 15(d) shall control); or

C. Subleasehold Mortgagee commences foreclosure or other appropriate proceedings under the Subleasehold Mortgage and diligently prosecutes the same to completion; provided, however, that such Subleasehold Mortgagee shall keep and perform all of the monetary covenants and obligations of Tenant under this Permit until such time as the Subleasehold Estate shall be sold upon foreclosure or shall be released or reconveyed thereunder.

(c) Termination Of Permit. Upon the occurrence of an Event of Default under Section 7(a) or (b), then, in addition to any other remedies available to Los Angeles at law or in equity, but subject to the provisions of Section 15(c) and (d), Los Angeles shall have the immediate option to terminate this Permit and all rights of Tenant hereunder by giving Authority and Assuming Subtenant a notice of termination. In the event that Los Angeles elects to so terminate this Permit, then Los Angeles may recover from Tenant:

(1) The worth at the time of award of any unpaid Permit Rents which had been earned at the time of such termination; plus

(2) The worth at the time of award of the amount by which the unpaid Permit Rents which would have been earned after termination until the time of award exceeds the amount of such rental loss Authority proves could have been reasonably avoided; plus

(3) The worth at the time of award of the amount by which the unpaid Permit Rent for the balance of the term after the time of award or five (5) years after the time of the award, whichever period is shorter, exceeds the amount of such rental loss for such period that Authority proves could be reasonably avoided; plus

(4) Subject to the limitations imposed by paragraph (3) above, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by any applicable provision of California law.

As used in paragraphs (1) and (2) above, the "worth at the time of award" is computed by allowing interest from the date of termination until the time of award at the Prime Rate then in effect or ten percent (10%) per annum, whichever is greater; provided that such rate shall not exceed the maximum rate permitted by law. As used in paragraph (3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

(d) Improvements. Upon any termination of this Permit pursuant to Section 7(c), any and all buildings, structures and improvements of any character whatsoever, erected, installed or made, under, through, because of, or pursuant to the terms of this Permit, shall immediately ipso facto either become the property of Los Angeles free and clear of any claim of any kind or nature of Tenant or any subtenant or of their respective successors in interest, and without compensation to Tenant or any subtenant or their respective successors, or at the option of Board, become removable at the sole expense of Tenant or any subtenant.

(e) Continuation of Permit. Even though Tenant may have breached this Permit and abandoned the Premises, this Permit shall continue in effect for so long as Los Angeles does not terminate Tenant's right to possession and Los Angeles may enforce all its rights and remedies under this Permit, including the right to recover the Permit Rents as they become due under this Permit. In the event that Tenant has breached this Permit and abandoned the Premises and Los Angeles elects to proceed under this Section 7(e), Authority shall have the right to sublease its interest in the Premises provided that Authority first obtains the written consent of Los Angeles to such sublease and an Assuming Subtenant shall have the right to sub-sublease its interest under its sublease provided that the Assuming Subtenant first obtains the written consent of Los Angeles and Authority to such sub-sublease. Such consents shall not unreasonably be withheld.

(f) Termination by Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by Los Angeles of any of its material obligations under this Permit, then either Los Angeles or Authority may terminate this Permit by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate.

(g) Termination by Destruction of Premises. In the event the Facilities are totally destroyed by fire not resulting from Tenant's neglect or fault, or by earthquake, or other natural disaster or action of the elements, or are so nearly destroyed as to require rebuilding or are rendered unusable by governmental edict, Authority must notify Los Angeles within sixty (60) days after such destruction of Authority's election to either terminate this Permit or rebuild the Facilities and keep this Permit in effect. If Authority fails to notify Los Angeles of its election within such sixty (60) day period, Authority shall be deemed to have

elected to rebuild the Facilities and keep this Permit in effect and all terms and conditions of this Permit shall remain the same. Neither Los Angeles nor Tenant shall have any further rights or be under any further obligations on account of this Permit if Authority elects to terminate. For the purposes hereof, damages in excess of fifty percent (50%) of the replacement value of the Facilities shall constitute total destruction thereof.

In the event that the Facilities are partially destroyed by fire not resulting from Tenant's neglect or fault, or by earthquake, or other natural disaster or action of the elements, Tenant with reasonable promptness and dispatch shall repair and rebuild the same, but, subject to the provisions of Section 13(a), such repairs must be completed within one year after the date on which the damage occurred; provided that if less than twenty-one (21) years remain in the term of this Permit from the date of the partial destruction (as such term is set forth herein or as extended by an amendment hereto adopted prior or subsequent to the date of such partial destruction), Tenant's obligation to repair and rebuild shall be limited to the insurance proceeds available therefor and Tenant shall be relieved of its obligation to comply with Section 10(b) hereof. For the purposes hereof, damage that amounts to fifty percent (50%) or less of the replacement value of the Facilities shall be considered partial destruction.

Notwithstanding any provision contained herein, for so long as Bonds remain Outstanding the application of any insurance proceeds shall be determined pursuant to the provisions of the Agreement and the Indenture.

#### Section 8. Records and Accounts.

All books, accounts and other records showing the Movements at the Facilities, movements of all empty Tenant furnished or controlled Containers at the Facilities and all Rents and charges assessed and due hereunder shall be maintained locally, and, pursuant to the provisions of the Interstate Commerce Act, shall be subject to examination, audit and transcription by Board or any person designated by it; and in the event it becomes necessary to make such examination, audit or transcription at any place other than within fifty (50) miles of the Facilities, then all costs and expenses necessary or incident to such examination, audit or transcription shall be paid by Tenant. These records shall be retained during the term of this Permit so that the records for the two (2) most recent years are available at all times. Following the termination of this Permit, Tenant shall maintain the records for the two (2) most recent years for at least two (2) years after the date of termination. Upon request in writing by Board or by its designated

representative, Tenant shall furnish a statement of the exact location of all records and the name and telephone number of the custodian of such records. The statement shall be submitted within fifteen (15) days of the request and shall contain such detail and cover such period of time as may be specified in any such request. All records submitted by Tenant shall be held by Los Angeles and Board in confidence and released only for audit purposes.

Section 9. Improvements.

(a) Approval of Plans. Following the Completion Date, Tenant shall not construct or alter any works, structures or other improvements upon the Premises, including a change in the grade thereof, without first submitting to Harbor Engineer a complete set of drawings, plans, and specifications and obtaining his approval, which approval shall not be unreasonably withheld. Harbor Engineer shall respond to any such submission within sixty (60) days and failure by Harbor Engineer to so respond shall be deemed an approval.

(b) Compliance with Applicable Laws. Every work, structure or improvement constructed, or alteration or change of grade made, by Tenant shall conform with the plans and specifications as approved by Harbor Engineer and shall conform in all respects to the applicable federal, state, regional and local laws, statutes, ordinances, rules and regulations. The approval of Harbor Engineer given as provided in this Section 9 shall not constitute a representation or warranty as to such conformity.

(c) Cost of Permits. Tenant, at its own expense, shall obtain all permits necessary for such construction and shall require by contract that its construction contractors and subcontractors comply with all applicable federal, state, regional, and local statutes, ordinances, rules and regulations.

(d) Notices. Tenant shall give advance written notice to Harbor Engineer, of the date it will commence any construction. Immediately upon the completion of the construction, Tenant shall notify Harbor Engineer of the date of such completion and shall, within thirty (30) days after such completion, file with him a statement, verified by the oath of Tenant or its duly authorized representative, setting forth the cost of the labor and material used. Tenant shall also file with Harbor Engineer, in a form acceptable to Harbor Engineer, a set of "as built" plans for such construction within thirty (30) days after such completion.

Section 10. Maintenance and Restoration.

(a) Maintenance. Tenant covenants that it will maintain and operate the Premises and the Facilities as an intermodal container transfer facility and will maintain and operate the same, and all apparatus, fixtures, fittings and equipment of any kind that shall be placed at any time on the Premises or the Facilities in good repair, working order and condition, and that it will from time to time, make, or cause to be made, all needful and proper replacements, repairs, renewals and improvements so that the efficiency and value of the Premises and the Facilities shall not be impaired. Tenant shall make all necessary capital improvements required to maintain the Facilities in a good operating condition at no cost to Los Angeles. Any capital improvements shall require written approval of Board. The appearance of the Premises and Facilities shall be maintained to the reasonable satisfaction of Executive Director. Tenant shall not permit any offensive refuse matter or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health to be or remain on the Premises, and Tenant shall prevent any such matter or material from being or accumulating thereon. In the event Tenant fails to repair, maintain and keep the Premises or the Facilities as required by this Section 10, Executive Director may give thirty (30) days written notice to Tenant to correct such default, except that no notice shall be required where, in the opinion of Executive Director, such failure creates an imminent hazard to persons or property beyond those necessarily arising out of the operations contemplated by the Agreement. If Tenant fails to cure such default within the time specified in such notice, or if Executive Director determines that an imminent hazard to persons or property exists due to such failure, Los Angeles may enter upon the Premises and the Facilities and cause such repair or maintenance to be made, and the costs thereof, including labor, materials, equipment and administrative overhead, to be charged to Tenant. Such charges shall be due and payable with the next succeeding payment of the Container Charge required by Section 5(b)(3).

(b) Restoration and Surrender of Premises. On or before the expiration of the term of this Permit, including any extension hereof, or any sooner termination other than by forfeiture pursuant to Section 7(c) of this Permit, Tenant shall remove, at its sole cost and expense, all improvements of any kind whatsoever placed or maintained on the Premises, including the Facilities and shall, leave the surface of the ground in a level, graded condition with no excavations, holes, hollows, hills or humps. Upon the expiration of the term of this Permit or any sooner termination, other than by forfeiture pursuant to Section 7(c) of this Permit, Tenant

shall quit and surrender possession of the Premises to Board in at least as good and usable a condition, acceptable to Executive Director, as the same were in prior to the construction undertaken to develop the Facilities.

(c) Services and Utilities. Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the Premises or used in connection with its occupancy, including but not limited to heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, taxes, assessments, governmental charges, connection fees, charges and meter rentals required by the supplier of any such service, including Los Angeles.

(d) Inspection of Premises. Executive Director and his duly authorized representatives shall have the right to enter upon the Premises and the Facilities at their own risk at any and all reasonable times during the term of this Permit for the purpose of determining compliance with its terms and conditions or for any other purpose incidental to the rights of Los Angeles. The right of inspection reserved hereunder shall impose no obligation upon Los Angeles to make inspections to ascertain the condition of the Premises or the Facilities, and shall impose no liability upon Los Angeles for failure to make such inspections. By reserving the right of inspection, Los Angeles assumes no responsibility or liability for loss or damage to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes or for any shortages of cargo handled by Tenant at the Premises.

(e) Signs. Tenant shall not erect or display, or permit to be erected or displayed, on the Premises or upon the Facilities any advertising matter of any kind, including signs, without obtaining the prior written consent of Executive Director.

(f) Relocation of Business. Upon the expiration of the term of this Permit or any sooner termination pursuant to the terms hereof, if no new agreement is entered into, Tenant is obligated to relocate its business at its own expense and to vacate the Premises as provided for herein. No relocation expenses will be paid by Los Angeles.

(g) Additions and Improvements. Any modification, improvement, or addition to the Premises following the Completion Date and any equipment installation required by any local, regional, state or federal agency in connection with Tenant's operations shall be constructed or installed by Tenant at Tenant's sole cost and expense.

(h) Tenant shall provide all necessary equipment to operate and maintain the Facilities. All equipment used by Tenant must be used in accordance with the design specifications for the Facilities as set forth in the Plans. If Tenant fails to use equipment in accordance with design specifications, any damage to the Premises or the Facilities shall be repaired at Tenant's sole cost and expense and shall be accomplished promptly upon discovery of the damage.

Section 11. Indemnity and Insurance.

(a) Indemnity. Tenant shall at all times indemnify, protect and hold harmless Los Angeles and any and all of its boards, officers, agents and employees from and defend them against any and all claims, losses, demands, actions, proceedings, liens, costs and judgments of any kind or nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property, including property owned by or under the care and custody of Los Angeles, and for civil fines and penalties, that may arise from or be caused directly or indirectly by:

(1) Any dangerous, hazardous, unsafe or defective condition of, in or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees;

(2) Any operation conducted upon or any use or occupation of the Premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this Permit or otherwise;

(3) Any active or passive negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, at the Premises regardless of whether any passive negligence of Los Angeles its officers, agents or employees contributed thereto;

(4) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Permit or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation.

Tenant also agrees to indemnify Los Angeles and pay for all damages or loss suffered by Los Angeles and Department, including but not limited to damage to or loss of Los Angeles property, to the extent not insured by Los Angeles, and loss

of Los Angeles revenue from the Premises, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in paragraphs (1) through (4) of this subsection (a). The term "persons" as used in this subsection (a) shall include but not be limited to officers and employees of Tenant.

(b) Insurance. Tenant, at its sole cost and expense, shall procure and maintain and keep in force, or cause to be procured and maintained and kept in force, at all times during the term of this Permit the following insurance:

(1) Insurance against loss or damage to the Facilities by fire, lightning, vandalism, malicious-mischief, earthquake, flood, theft and the perils covered by extended coverage insurance in an amount at least equal to the amount of the full replacement value of the Facilities.

(2) All insurance required to meet the Workers' Compensation Laws of the State of California, the Federal Employers Liability Act or other applicable laws.

(3) Business interruption insurance for all risks including, but not limited to, strikes, earthquakes and floods, with such exclusions as are customarily imposed by insurers, in an amount sufficient to produce for a period of not less than one year a net recovery of not less than 110% of the amount established as the Guaranteed Annual Rent or the Graduated Guaranteed Annual Rent in the event Tenant exercises its option to pay the Graduated Guarantee Annual Rent in place of the Guaranteed Annual Rent.

(4) As a condition precedent to the right of Tenant to exercise its rights under this Permit, and in partial performance of Tenant's obligations of indemnity, a policy or policies of public and property damage liability insurance from a company or companies authorized to do business in the State of California, with minimum coverages of \$10,000,000 combined single limit for death, personal injury, bodily injury or loss sustained by any one person or more than one person in any one occurrence, and for damage to or loss of property sustained in any one occurrence.

The coverage afforded by all such insurance shall be without deduction, provided that Executive Director may permit a deductible amount in those cases where, in his judgment, such a deductible is justified by the net worth of Tenant. The insurance provided shall contain a severability of

interest clause. In all cases, regardless of any deductible, said insurance shall contain a defense of suits provision. The submitted policy shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"(i) Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that The City of Los Angeles and its Board of Harbor Commissioners, officers, agents and employees is an additional insured hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under this Agreement No. \_\_\_\_\_, and under any amendments, modifications, extensions or renewals of said Permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the insured or a combination of the insured and the additional insured;

(ii) The policy to which this endorsement is attached shall not be cancelled or reduced in coverage until after the Board and the City Attorney of Los Angeles have each been given sixty (60) days' prior written notice by registered mail addressed to P.O. Box 151, San Pedro, California 90733;

(iii) The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance available to Los Angeles is excess coverage and all rights of contribution therewith are waived;

(iv) In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability;

(v) Notice of occurrences or claims under the policy shall be made to [the name and address of the person to be notified]."

(c) Notice of Cancellation. Each insurance policy described above shall provide that it will not be cancelled

or reduced in coverage until after Board and the City Attorney of Los Angeles have each been given sixty (60) days prior written notice by registered mail.

(d) Copies of Policies. Two certified copies of each policy shall be furnished to Board. Alternatively, two duplicate original certificates of insurance on forms provided by Board may be submitted. The form of such policy or certificates shall be subject to the approval of the City Attorney of Los Angeles.

(e) Renewal of Policies. At least ten (10) days prior to the expiration of each policy, Tenant shall furnish to Board a certificate or certificates showing that the policy has been renewed or extended, or, if new insurance has been obtained, two certified copies of each new policy or certificate shall be furnished to Board and the form thereof shall be subject to the approval of the City Attorney of Los Angeles. If Tenant neglects or fails to secure or maintain the required insurance or fails to submit copies thereof as required above, at the expense of Tenant, Board may, but is not obligated to, obtain such insurance for Tenant.

(f) Modification of Coverage. Executive Director, at his discretion based upon recommendation of independent insurance consultants to Los Angeles, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days prior written notice to Tenant.

(g) Accident Reports. Tenant shall report in writing to Executive Director within fifteen (15) days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of \$10,000 to property, occurring upon the Premises. Such report shall contain to the extent available (1) the names and addresses of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Tenant, its officers or managing agents.

(h) Tenant's Right to Self-Insure. The insurance requirements of Section 11(b) may be satisfied by the existence of an established self-insurance program maintained by Tenant upon written notice to Los Angeles and subject to the approval of Executive Director, which approval shall not be unreasonably withheld. In the event of such election and approval, Tenant shall protect Los Angeles in the same manner as if the insurance required hereunder were in effect.

Section 12. Sublease and Assignment.

(a) Sublease and Assignment. Except as set forth in this Section 12 or in Section 15(a) hereof, no assignment, sublease, transfer, gift, hypothecation or grant of control or other encumbrance of this Permit, or any interest herein or any right or privilege hereunder, whether voluntary or by operation of law, in whole or in part, shall be valid for any purpose unless first approved by order of Board. The approval by Board of any assignment, sublease, transfer, gift, hypothecation, grant of control or other encumbrance shall not be deemed to be an approval by Board of any other assignment, sublease, transfer, gift, hypothecation, grant of control or other encumbrance.

For purposes of this subsection, the term "by operation of law" includes, but is not limited to, the placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee (with the exception, during any period that Corporation is Assuming Subtenant hereunder, of a trustee appointed pursuant to Federal Bankruptcy Law specifically relating to railroads (Subchapter IV of Title 11 of the Bankruptcy Act, 11 U.S.C.A. §1161 et. seq.), or a trustee appointed in connection with the merger of Southern Pacific Company and Santa Fe Industries Inc. to hold the shares of Corporation pending ICC approval of common control of Corporation and Atchison Topeka and Santa Fe Railway Company) an assignment by Tenant for the benefit of creditors, the adjudication of Tenant as a bankrupt, the institution of any proceedings (by Tenant or against Tenant) under the Bankruptcy Act as the same now exists or under any other act relating to the subject of bankruptcy wherein Tenant seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization.

(b) For purposes of this Section 12, the merger or combination of Corporation and Santa Fe Railway Company shall not constitute an assignment, sublease, transfer, gift, hypothecation or grant of control or other encumbrance requiring Board approval.

(c) Terms Binding on Successors. All the terms, covenants and conditions of this Permit shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this subsection (b) shall not be deemed as a waiver of any of the conditions against assignment above set forth.

### Section 13. Force Majeure

(a) Los Angeles and Tenant shall be excused for delay or failure in the performances called for by this Permit when such delay or failure results from Force Majeure occurrences at or affecting the Premises or the Facilities. The term "Force Majeure Event" shall mean acts of God, strikes, embargoes, lockouts, unavailability of fuel, materials or supplies, war (declared or undeclared), explosions, earthquakes, acts or orders of governmental agencies, including without limitation, riots, insurrection or civil disturbances or other occurrence of like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Permit. The party claiming Force Majeure shall promptly give written notice to the other party of such claim. If a Force Majeure Event has occurred and has continued for one (1) year, either party upon 30 days written notice may terminate this Permit. An extension of time for a Force Majeure Event shall only be for the period of the delay actually caused by the Force Majeure Event, which period shall commence to run from the date the affected party is first delayed by the occurrence; provided, however, that if the party claiming Force Majeure sends notice to the other party of such claim more than thirty (30) days after the commencement of the delay, the period of Force Majeure Event shall commence to run only thirty (30) days prior to the giving of such notice. Upon conclusion of the Force Majeure Event, Tenant shall give written notice to Los Angeles stating the date thereof.

(b) The period of time Tenant is prevented from handling the movement of Containers at the Premises due to a Force Majeure occurrence shall be prorated during the year, or years, in which such occurrence occurs for the purpose of proportionately reducing the Guaranteed Annual Rent or the Graduated Guaranteed Annual Rent due hereunder for such period. The proration provided in the preceding sentence, however, shall not modify or reduce any amount of insurance coverage required by this Permit.

Section 14. Maintain Existence. Authority covenants that during the term of this Permit it will maintain its existence as a joint powers authority under the laws of the State of California.

### Section 15. Assuming Subtenant.

(a) Sublease to Assuming Subtenant. From time to time Authority shall have the right to sublease all or substantially all of the Premises to an Assuming Subtenant

approved by the Board, which approval shall not be unreasonably withheld. Any sublease to an Assuming Subtenant shall be evidenced by a written sublease agreement in which Assuming Subtenant shall assume all rights, privileges, duties and obligations addressed to "Tenant" under this Permit (subject to certain exceptions and to certain rights of Authority provided for in this Section 15). Such sublease agreement may also grant to any Assuming Subtenant the right to enter into a Subleasehold Mortgage with the approval of Board. Such sublease agreement may also contain any other terms and conditions not inconsistent with the terms of this Permit (including, but not limited to, provision for additional rentals payable by such Assuming Subtenant to Authority). Board hereby approves and consents to the sublease of the Premises to Corporation pursuant to the terms of the Sublease. Board further approves and consents to the execution and delivery by Corporation of the Deed of Trust substantially in the form attached to the Sublease as Exhibit B, the foreclosure of the Subleasehold Mortgage created thereunder and the sale of the Subleasehold Estate to the Trustee. For so long as a sublease to an Assuming Subtenant shall continue in effect, but subject to the provisions of this Section 15 with respect to certain rights of Authority and without limiting any additional rights and obligations of Authority and Assuming Subtenant under the terms of their sublease, as between Los Angeles and Assuming Subtenant, all rights, privileges and obligations addressed to "Tenant" under this Permit shall inure to the benefit of and be binding upon Assuming Subtenant and Los Angeles, and Los Angeles shall look solely and directly to Assuming Subtenant for enforcement thereof, except as otherwise provided for in this Section 15. The indemnity and insurance provisions of Section 11, with respect to obligations of Tenant to indemnify Los Angeles and to name Los Angeles as an additional named insured shall also apply to Authority and The City of Long Beach, and Assuming Subtenant shall indemnify Authority and The City of Long Beach and name Authority and The City of Long Beach as an additional insured in the same manner provided for in Section 11 of this Permit. Authority shall have access to the records and files of Los Angeles, Board and Department to verify compliance by Assuming Subtenant with the terms of this Permit. As used in this Subsection 15(a), the rights, privileges and obligations of "Tenant" do not include the rights, privileges and obligations of Authority contained in this Section 15.

(b) Modification, Amendment or Termination of Permit. Los Angeles and Authority agree that during any period that the Premises are subleased to an Assuming Subtenant, this Permit may be modified or amended (including, without limitation, any modifications pursuant to

Section 3(c) or any voluntary termination of this Permit) only with the prior written consent of Assuming Subtenant and any Subleasehold Mortgagee. Notwithstanding the foregoing sentence, during any period that the Premises are subleased to an Assuming Subtenant, negotiations to modify the Guaranteed Annual Rent and the Container Charge pursuant to Section 5(g) shall be conducted by Los Angeles and Assuming Subtenant without the participation, consent or approval of Authority. Any election by Assuming Subtenant to terminate the Sublease as provided in provisions of the Sublease similar to (i) Section 4(b) hereof with respect to failure to commence grading or failure to reach the Completion Date within five (5) years from the date of execution of this Permit; (ii) Section 7(f) hereof following a court decree regarding performance of a material obligation of Los Angeles; (iii) Section 7(g) hereof following substantial destruction of the Facilities; or (iv) Section 16(1) hereof following discovery of Hazardous Waste shall, unless the Authority consents thereto, operate only to terminate the sublease between Authority and the Assuming Subtenant and this Permit shall remain in effect.

(c) Liability of Authority. Neither Authority, nor its Governing Board, agents or employees shall be liable to Los Angeles or to any of its boards, agents, employees or contractors or to any other person for any loss, injury or damage to Los Angeles or to any other person, or to them or their property, caused, in whole or in part, by the actions or omissions of any Assuming Subtenant, its directors, officers, employees, agents, contractors, invitees, sublessees, or licensees. Without limiting the generality of the foregoing, neither Authority nor its Governing Board, officers, agents or employees shall be liable for failure by any Assuming Subtenant to perform any obligation under this Permit assumed by the Assuming Subtenant, including payment of Permit Rents. Los Angeles agrees that it shall hold Authority harmless for any unpaid Permit Rents which accrue while the Premises are subleased to an Assuming Subtenant.

(d) Replacement Subtenant. In the event that a sublease with an Assuming Subtenant terminates or is terminated, Authority shall have twelve (12) months in which to sublease the Premises to a replacement Assuming Subtenant approved by Board or to commence operating the Facilities itself, and during such period Los Angeles shall not terminate this Permit without the prior written consent of Authority. During such twelve (12) month period, and notwithstanding any other provision in this Permit to the contrary, Authority shall be relieved of any obligation to pay Permit Rents hereunder or to operate the Facilities; provided, however, that if Authority operates the Facilities

during such period and if revenues from operations exceed the costs incurred in operating the Facilities, Authority shall pay to Los Angeles, solely from such excess, sums due as Permit Rents. If Authority does not sublease the Facilities or commence operating the Facilities within such twelve (12) month period, Los Angeles shall have the option to immediately terminate this Permit by giving Authority written notice thereof.

Section 16. Miscellaneous.

(a) Promotion of the Facilities. Following commencement of operations of the Facilities, Tenant and Board shall in good faith and with all reasonable diligence use their best efforts, by suitable advertising and other means to promote the use of the Facilities.

(b) Applicable Law. It is expressly understood and agreed that this Permit and all questions arising hereunder shall be construed in accordance with the laws of the State of California except to the extent such laws may be preempted by the laws of the United States.

(c) Compliance with Applicable Laws. Tenant shall, at all times, in its use and occupancy of the Premises and in the conduct of its operations thereon, comply with all laws, statutes, ordinances, rules and regulations applicable thereto, enacted and adopted by federal, state, regional, municipal or other governmental bodies, or departments or offices thereof. In addition to the foregoing, Tenant shall comply immediately with any and all directives issued by Executive Director or his authorized representative under authority of any such law, statute, ordinance, rule or regulation; provided Tenant shall have the right to contest such directive in any court or agency of competent jurisdiction.

(d) Affirmative Action. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age or physical handicap. All assignments, subleases and transfers of interest in this Permit under or pursuant to this Permit shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the attached Exhibit "C" are incorporated herein and made a part hereof.

(e) License Fees and Taxes. Tenant shall pay any and all taxes and assessments of whatever character levied

upon or charged against the interest of Tenant, created by this Permit in the Premises or upon works, structures, improvements or other property thereof, or upon Tenant's operations hereunder. Tenant shall also pay all license and permit fees required for the conduct of its operations hereunder.

TENANT IS AWARE AND BY EXECUTION OF THIS PERMIT ACKNOWLEDGES THAT THE GRANTING OF THIS PERMIT TO TENANT MAY CREATE A POSSESSORY PROPERTY INTEREST IN TENANT AND THAT TENANT MAY BE SUBJECT TO PAYMENT OF A POSSESSORY PROPERTY TAX IF SUCH AN INTEREST IS CREATED AND TENANT SHALL PAY ALL PROPERTY TAXES, IF ANY ARE ASSESSED AGAINST THE PREMISES OR THE INTEREST OF TENANT THEREIN.

(f) Invalidity. If any term or provision of this Permit or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment of any court of competent jurisdiction, the remainder of this Permit 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 shall continue in full force and effect.

(g) Waiver of Claims. Tenant hereby waives any claim against Los Angeles and Board and its officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Permit, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Permit null, void or voidable or delaying the same or any part thereof from being carried out.

(h) Visitors. The Executive Director or a representative of the City of Long Beach, each by their own request and each at their own risk may, from time to time and upon reasonable notice to Tenant, bring visitors at their own risk to the Facilities for the purpose of showing them the Premises and the operations conducted thereon. However, such visitor entries shall not unreasonably interfere with Tenant's safe operations and shall not cause disclosure of Tenant's trade secrets, procedures or information in which Tenant has a claim of proprietary interests. Tours by visitors of the yard area of the Facilities shall be conducted on a predetermined route selected in consultation with Tenant's representative. Visitor tours will be under the direction of Tenant's representative and will utilize, where necessary, conveyances as directed by Tenant's representative.

Approval of requests for visitor tours by the Executive Director or by a representative of the City of Long Beach shall not be unreasonably withheld by Tenant.

(i) Attorneys' Fees. If either Los Angeles or Tenant brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Permit, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services of the Office of City Attorney of Los Angeles or counsel to Tenant.

(j) Notices and Documents. In all cases where written notice is to be given under this Permit, service shall be deemed sufficient if said notice is delivered by personal service or transmitted by certified United States mail, postage prepaid, return receipt requested. When so given, such notice shall be effective from the date served or the date of execution of the receipt. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to Los Angeles shall be addressed to Executive Director, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151 and notice to Authority shall be addressed to Governing Board, Intermodal Container Transfer Facility Joint Powers Authority, P.O. Box 151, San Pedro, California 90733-0151.

If Authority subleases the Premises to an Assuming Subtenant, or if there is a Subleasehold Mortgage on the Subleasehold Estate, all communications, documents, notices or demands of any kind that are to be sent to the Tenant hereunder shall be also sent to the Assuming Subtenant and any Subleasehold Mortgagee at their addresses on file with Los Angeles, with a duplicate copy sent to Authority. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

(k) Waivers. No waiver by either Los Angeles or Tenant at any time of any of the terms, conditions, covenants or agreements of this Permit shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. The subsequent acceptance of Permit Rents by Board shall not be deemed to be a waiver of any other breach by Tenant of any term, covenant or condition of this Permit other than the failure of Tenant to timely make the particular Permit Rent payment so accepted, regardless of Board's knowledge of such other breach. No delay, failure or omission of either Los

Angeles or Tenant to execute any right, power, privilege or option arising from any default, nor subsequent acceptance of guarantee then or thereafter accrued, shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by either Los Angeles or Tenant shall be required to restore or revive the time is of the essence provision hereof after waiver by the other party or default in one or more instances. No option, right, power, remedy or privilege of either Los Angeles or Tenant shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to Los Angeles by this Permit are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, in that the exercise of one right, power, option or remedy by Los Angeles shall not impair its rights to any other right, power, option or remedy.

(1) Hazardous Waste; Additional Rent. If Hazardous Waste is discovered on the Premises, Los Angeles, Authority and Tenant shall determine or cause to be determined a reasonable estimate of the cost of removing the Hazardous Waste. Los Angeles agrees to contribute up to \$2,000,000 to pay the costs of removing any Hazardous Waste discovered prior to the later of the completion of work under the Grading Contract or the delivery of the Bonds. After the delivery of the Bonds and prior to the Completion Date, Tenant, at its option, may contribute funds to pay the costs of removing any Hazardous Waste or direct Authority to use moneys on deposit in the Construction Fund to pay such costs; provided that Los Angeles shall pay the first \$2,000,000 if such Hazardous Waste is discovered prior to the completion of work under the Grading Contract.

Prior to the delivery of the Bonds, if the estimated costs of removing any Hazardous Waste are in excess of \$2,000,000, either Los Angeles or Authority may terminate this Permit by written notice unless one of the parties or an Assuming Subtenant gives written notice within ten (10) days after the determining the estimated cost of removal that it will pay all of the costs of removal in excess of \$2,000,000. After delivery of the Bonds, if the estimated cost of removing any Hazardous Waste exceeds the amount which Los Angeles is required to contribute pursuant to this Section 16(1) or which Los Angeles, at its option, agrees to contribute as evidenced by written notice delivered to Tenant

within 10 days after determination of the cost estimate, Tenant may terminate this Permit by giving written notice to that effect.

In the event Authority has subleased the Premises to an Assuming Subtenant, any amounts required to be paid by Los Angeles pursuant to this Section 16(1) shall be paid directly to Authority. In consideration for such payment, Authority promises to pay to Los Angeles as additional rent hereunder a portion of each payment of Sublease Rent (when, as and if received) attributable to the Payment Periods and any portion of a Payment Period occurring prior to the Contribution Repayment Date; said portion being equal to the amount of a Sublease Rent payment multiplied by a fraction, the numerator of which is the amount of the payment made by Los Angeles to Authority to pay the cost of removal and the denominator of which is the amount of that payment from Los Angeles to Authority plus \$5,000,000.

(m) Integration. This Permit constitutes the whole agreement between Los Angeles and Tenant concerning the use of the Premises. There are no terms, obligations or conditions imposed upon Los Angeles or Tenant other than those contained herein or incorporated herein by reference. No modifications of this Permit shall be valid and effective unless evidenced by an agreement in writing and signed by both Los Angeles and Tenant.

(n) Time of the Essence. Time is expressly declared to be of the essence in this Permit.

(o) Schedule A. Schedule A hereto may be amended without the approval of the City Council of Los Angeles.

(p) Extensions. Board shall have the right to grant reasonable extensions of time to Tenant for any purpose or for the performance of any obligation of Tenant hereunder.

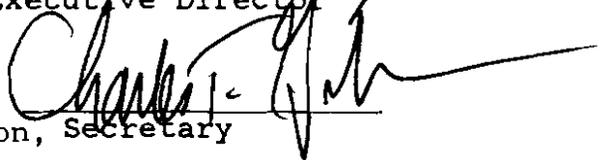
(q) Number and Gender. All terms and words used in this Permit, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

(r) Memorandum of Lease. At the request of either party hereto, a memorandum of lease rather than this Permit shall be recorded at the office of the Los Angeles County Recorder.

IN WITNESS WHEREOF, the parties hereto have executed this Permit on the date first hereinabove written.

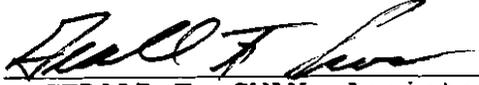
THE CITY OF LOS ANGELES, by  
its Board of Harbor  
Commissioners

By   
Ernest L. Perry, Executive Director

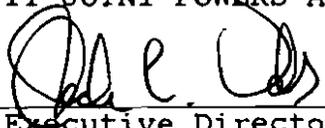
Attest:   
Charles T. Gibson, Secretary

APPROVED AS TO FORM

July 9, 1984  
IRA REINER, Los Angeles Attorney

By   
GERALD F. SWAN, Assistant  
Los Angeles Attorney

INTERMODAL CONTAINER TRANSFER  
FACILITY JOINT POWERS AUTHORITY

By   
Jack L. Wells, Executive Director

Attest:   
Diana L. Connolly, Secretary



STATE OF CALIFORNIA )  
                          ) ss.  
COUNTY OF LOS ANGELES)

On this 30th day of May, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared Diana L. Connolly known to me to be the Secretary of the Intermodal Container Transfer Facility Joint Powers Authority, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of such Authority, and acknowledged to me that such Authority executed the within instrument pursuant to its by-laws and a resolution of its Governing Board.

WITNESS my hand and official seal.

  
Notary Public in and for  
State

(SEAL)



EXHIBIT "A"

Description of the Premises

All that certain real property located in The City of Los Angeles, County of Los Angeles, State of California and more particularly described as follows:

Parcels No. 1, 2 and 3 as delineated on Drawing 6-1625; which Drawing is attached to this Exhibit "A" and is incorporated herein.

{To be modified upon acquisition  
of additional land}

EXHIBIT B

The following formulas shall be used in calculating the Graduated Guaranteed Annual Rent within each Adjustment Period.

$$\sum_{N=0}^5 \frac{X(1+Y)^N}{(1+I)^N} = \sum_{N=1}^5 \left( \frac{P}{(1+I)^N} \right) + X$$

N = 5 (five (5) year increment)

X = Guaranteed Annual Rent established by Board for the last year preceding the Adjustment Period under consideration.

P = Guaranteed Annual Rent established by Board for each Permit Year in the Adjustment Period.

I = An interest rate equal to the Prime Rate.

Y = The uniform annual percentage increase of X for each Permit Year in the Adjustment Period.

Solve for Y using the following computer program:

```

10 '   Program Name:  ICTFRENT.BAS.           Date:  May 1, 1984
20 '   Function:    To calculate ICTF graduated
                   increment rent increases.
30 '   Source:     Southern Pacific BASIC language program.
40 '
50 '
60 '   Hardware requirements:  IBM Personal Computer, 64-K
                   memory.  Any version Micro Soft Disc Operating
                   System (MS-DOS).
70 '
80 '
90 '
100  DEFDBL A-H,P-W: CLS: LOCATE 3
110  PRINT TAB(20)"ICTF Graduated Increment Rent Increase"
120  GOTO 190
130  SUM = 0
140  FOR N = 0 TO YR
150      SUM = SUM + X*(1+Y)^N/(1+I)^N
160  NEXT

```

```

180 RETURN
190
200 LOCATE 8
210 PRINT TAB(25);:INPUT "Input value for zero year: ",X
220 YR = 5
230 PRINT:PRINT TAB(25);:INPUT "Interest rate: ",I
240 PRINT:PRINT TAB(25);:INPUT "New Guaranteed Annual Rent: ",P
250 T=0
260 FOR N=1 TO YR
270     T = T+ P/(1+I)^N
280 NEXT
290 Y = .5
300 GOSUB 130
310 Y1 = Y: Z2 = Z
320 IF Z2 < 0 THEN Y = .4
330 IF Z2 > 0 THEN Y = .6
340 GOSUB 130
350 D = Y - (Y-Y1) / (1 - (Z2/Z))
360 IF (INT(((Y-D) * 100000!) + .5))/100000! = 0 THEN GOTO 390
370 Y1 = Y:Z2 = Z: Y = D
380 GOTO 340
390 Y = INT((Y*100000!)+.5)/100000!
400
410 PRINT:PRINT TAB(20);"_____ "
420 PRINT:PRINT TAB(25);"Rate = ";1+Y
430 PRINT
440 END

```

The result of the above computer program will be a value of  $1 + Y$ . The Graduated Guaranteed Annual Rent for each Permit Year within the Adjustment Period shall be calculated as follows:

First Permit Year  $X (1 + Y)$

Second Permit Year  $X (1 + Y)^2$

Third Permit Year  $X (1 + Y)^3$

Fourth Permit Year  $X (1 + Y)^4$

Fifth Permit Year  $X (1 + Y)^5$

The net present value of a uniform series of Guaranteed Annual Rent payments for the Adjustment Period shall equal the net present value of the series of Graduated Guaranteed Annual Rent payments for the same Adjustment Period.

The results of the computer program shall be verified by means of the following equations:

Net present value factor of a uniform series of payments is as follows:

$$= \frac{(1+I)^N - 1}{I(1+I)^N}$$

Net present value factor of a single series of payments is as follows:

$$= \frac{1}{(1+I)^N}$$

The net present value of a uniform series of payments (P) is equal to the net present value of a series of single payments

$X(1+Y)^N$ , and shall be calculated in accordance with the following equation:

$$P \left( \frac{(1+I)^5 - 1}{I(1+I)^5} \right) = (X(1+Y)) \left( \frac{1}{(1+I)} \right) + (X(1+Y)^2) \left( \frac{1}{(1+I)^2} \right) \\ + (X(1+Y)^3) \left( \frac{1}{(1+I)^3} \right) + (X(1+Y)^4) \left( \frac{1}{(1+I)^4} \right) \\ + (X(1+Y)^5) \left( \frac{1}{(1+I)^5} \right)$$

## EXHIBIT C

### AFFIRMATIVE ACTION PROGRAM

#### A. Definitions

The following definitions shall apply to the terms used in this Exhibit:

"Affirmative Action" means the taking of positive steps by a contractor or subcontractor to ensure that its practices and procedures will promote and effectuate the employment, retention and advancement of a particular class or category of employee, generally referred to as a minority group, including women and any person or group described by race, religion, sex, ancestry, national origin, age, and physical handicap. The action may also involve the concept, when applicable, of remedying the continuing effects of past discrimination.

"Affirmative Action Plan" means a plan, program, scheme, or policy setting forth in detail acts to be taken, procedures to be followed, and standards to be adhered to to establish an Affirmative Action Program. It may include provisions for positive recruitment, training and promotion, and procedures for internal auditing and reporting to ensure compliance and measure the success of the program.

"Awarding Authority" means any Board or Commission of the City of Los Angeles, or any authorized employee or officer of the City of Los Angeles, including the Purchasing Agent of the City of Los Angeles, who makes or enters into any contract or agreement for the provision of any goods or services of any kind or nature whatsoever for or on behalf of the City of Los Angeles.

"Contract" means any agreement, franchise, lease, or concession, including agreements for any occasional professional or technical personal services, for the performance of any work or service, the provision of any materials or supplies, or the rendition of any service to the City of Los Angeles or to the public, which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

"Contractor" means any person, firm, corporation, partnership, or any combination thereof, who submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

"Employment Practices" means any solicitation of, or advertisement for, employees, employment, change in grade or work assignment, assignment or change in place or location of work, lay-off, suspension or termination of employees, rate of pay or other form of compensation including vacation, sick and compensatory time, selection for training, including apprenticeship programs, any and all employee benefits and activities, promotion and upgrading, and any and all actions taken to discipline employees for infractions of work rules or employer requirements.

"Office of Contract Compliance" is that office of the Department of Public Works of the City of Los Angeles created by Article X of Chapter 13 of Division 22 of the Los Angeles Administrative Code.

"Subcontractor" means any person, firm or corporation or partnership, or any combination thereof who enters into a contract with a contractor to perform or provide a portion or part of any contract with the City.

B. During the performance of this contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, age or physical handicap.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work, or service category.

3. The contractor or subcontractor agrees to post a copy of paragraph B hereof in conspicuous places at its place of business available to employees and applicants for employment.

C. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, age or physical handicap.

D. At the request of the awarding authority or the office of Contract Compliance, the contractor shall certify on a form to be supplied, that the contractor has not discriminated in the performance of this contract against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, age or physical handicap.

E. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program of this contract, and on their or either of their request to provide evidence that it has or will comply therewith.

F. The failure of any contractor or subcontractor to comply with the Affirmative Action Program of this contract may be deemed to be a material breach hereof. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and

fair hearing after notice and an opportunity to be heard has been given to the contractor or subcontractor in accordance with the provisions of Section 22.359.3 of the Los Angeles Administrative Code.

G. Upon a finding duly made that the contractor or subcontractor has breached the Affirmative Action Program of this contract, this contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor or subcontractor is an irresponsible bidder pursuant to the provisions of Section 386 of the Los Angeles City Charter. In the event of such determination, such contractor or subcontractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he shall establish and carry out a program in conformance with the provisions hereof.

H. In the event of a finding by the Fair Employment Practice Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any Court of competent jurisdiction that the contractor or subcontractor has been guilty of a willful violation of the Fair Employment Practice Act of California, or the Affirmative Action Program of this contract, there may be deducted from the amount payable to the contractor or subcontractor by the City of Los Angeles under this contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of this contract.

I. Notwithstanding any other provision of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

J. The office of Contract Compliance shall promulgate rules and regulations and forms for the implementation of the Affirmative Action Program of this contract, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.

K. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

L. At the time its bid is submitted, the contractor shall submit an AFFIRMATIVE ACTION PLAN to the awarding authority which shall meet the requirements of this ordinance. The awarding authority may also require contractors and suppliers to take part in a prebid or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months next succeeding the date of contract award or the date of first approval by the Office of Contract Compliance whichever is the earliest.

L. (1). Every contract or subcontract in excess of \$5,000 which may provide construction, demolition, renovation, conservation, or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. (2). A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance.

M. Contractors and suppliers who are members in good standing of a trade association which has negotiated an Affirmative Action Program with the Board of Public Works, Office of Contract Compliance may make the program of such association their commitment for the specific contract upon approval of the Office of Contract Compliance, without the process of a separate prebid or preaward conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Office of Contract Compliance. Trade associations shall provide the Office of Contract Compliance with a list of members in good standing in such association.

N. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed approved Affirmative Action Nondiscrimination Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any affirmative action plan or change the affirmative action plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

O. The Affirmative Action Plan required to be submitted hereunder and the prebid or preaward conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Preapprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the contractor's, subcontractor's, or supplier's geographical area for such work; and

6. The entry of qualified women and minority journeymen into the industry.

7. The provision of needed supplies or job conditions to permit persons with some unusual physical condition to be employed, and minimize the impact of any physical handicap.

P. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the City's affirmative action contract compliance program in purchasing and construction shall be accomplished by either or both an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement, or death and not by termination, lay-off, demotion, or change in grade.

Q. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the prebid or preaward conferences shall not be confidential and may be publicized by the contractor at his discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its contract compliance affirmative action program.

R. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors, subcontractors or suppliers engaged in the performance of City contracts.

SCHEDULE A

Accountant's Certificate shall mean a certificate signed by an Independent Certified Public Accountant..

Act shall mean the Joint Exercise of Powers Act of the State of California, being California Government Code Sections 6500-6579.5, inclusive, as amended and supplemented.

Additional Bonds shall mean Bonds, whether issued in one or more Series, authenticated and delivered on original issuance pursuant to Section 204 of the Indenture and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article III, Section 404 or Section 1106 of the Indenture.

Additional Contribution shall mean the amounts designated as such in Section 5.01(a)(3)(i) of the Sublease.

Additional Payments shall mean the payments referred to as Additional Payments in Section 4.03 of the Agreement.

Additional Project shall mean additions, extensions or improvements to, of or for the Facilities and any equipment, machinery or other facilities added to, of or for the Facilities as contemplated by the Plans and financed by Bonds.

Adjustment Date shall mean the first day of each Adjustment Period.

Adjustment Period shall mean each period of five Permit Years beginning on the first day of the eleventh Permit Year and on the first day of every fifth year thereafter.

Agreement shall mean the Installment Sale and Security Agreement dated as of \_\_\_\_\_, 1984 by and between the Authority and the Corporation as from time to time amended or supplemented.

Annual Budget shall mean the annual budget, as amended or supplemented, adopted or in effect for a particular Fiscal Year as provided in Section 5.01(c) of the Sublease.

Architects' Certificate shall mean a certificate signed by a duly authorized officer or agent of the architects, engineers or supervising contractors selected by

the Authority in connection with the construction of the 1984 Project or any Additional Project.

Assuming Subtenant shall mean any person subletting the Premises from the Authority who, pursuant to Section 15 of the Permit, expressly assumes the rights, privileges and obligations addressed to "Tenant" in the Permit.

Authority shall mean the Intermodal Container Transfer Facility Joint Powers Authority, a joint powers authority created by Los Angeles and The City of Long Beach in accordance with the Act.

Authority Contribution shall mean the sum of \$5,000,000 contributed by the Authority to the construction of the Facilities and any amount contributed by Authority to pay the costs of removing Hazardous Waste discovered on the Premises.

Authority Expenses shall mean the costs, expenses and fees incurred by the Authority in carrying out its duties, responsibilities and obligations, and exercising its rights, under the Act and the Sublease. These costs, expenses and fees shall include, but shall not be limited to, fees and expenses of the Authority's legal counsel and accountants.

Authorized Authority Representative shall mean the Chairman of the Authority or any officer or employee of the Authority authorized to perform specific acts or duties by resolution duly adopted by the Authority.

Authorized Corporation Representative shall mean the person or persons at the time designated to act on behalf of the Corporation by written certificate furnished to the Authority and the Trustee containing the specimen signature of such person or persons and signed on behalf of the Corporation by the President, Vice President or Treasurer of the Corporation.

Board shall mean the Board of Harbor Commissioners of Los Angeles.

Bond or Bonds shall mean any bond or bonds, as the case may be, authenticated and delivered under and pursuant to the Indenture.

Bond Counsel shall mean an attorney or firm of attorneys of recognized national standing in the field of law relating to municipal bonds selected by the Authority.

Corporation, the President, any Vice President or Treasurer of the Corporation.

Authorized Denominations shall mean integral multiples thereof. Bond Adjustment Period : occur more often than sections" shall mean \$100,000 and any integral multiple thereof.

Schedule A  
Agreement No. 221-010660-001  
Page SA-3

an \$5,000 and  
er, that during a  
ination Dates  
rized Denomina-  
and any integral

Available Moneys shall mean, with respect to any payment date occurring during the term of the Letter of Credit (i) moneys which have been paid to the Trustee by the Corporation and the proceeds from the investment of all moneys held by the Trustee, which in each case have been on deposit with the Trustee for at least 123 days during which no Event of Bankruptcy shall have occurred, and (ii) moneys on deposit with the Trustee representing proceeds (other than proceeds deposited in the Construction Fund) from the issuance and sale of the 1984 Bonds or representing proceeds from the remarketing by the Remarketing Agent of 1984 Bonds purchased as described in Section 1016 of the Indenture which in each case were at all times since their receipt by the Trustee held in a separate and segregated account or accounts or sub-account or sub-accounts in which no moneys which were not Available Moneys were at any time held, and (iii) moneys transferred from the Construction Fund which were either (1) transferred to the 1984 Bond Fund and held in a separate and segregated account or accounts or sub-account or sub-accounts (in which no other moneys were at any time held) in the 1984 Bond Fund until at least 123 days (during which no Event of Bankruptcy shall have occurred) after (x) the completion of the Facilities and payment of all costs and expenses incident thereto and to the issuance of the 1984 Bonds and (y) the Corporation shall have ceased to have any right to use or to direct the use or application of such moneys, or (2) held in a separate and segregated account or accounts or sub-account or sub-accounts in which no other moneys were at any time held for at least 123 days during which no Event of Bankruptcy shall have occurred, and (iv) moneys drawn under the Letter of Credit which in each case were at all times since their receipt by the Trustee held in a separate and segregated account or accounts or sub-account or sub-accounts in which no moneys (other than those drawn under the Letter of Credit) were at any time held and (b) with respect to any payment date not occurring during the term of the Letter of Credit, any moneys furnished to the Trustee and the proceeds from the investment thereof.

Bank shall mean The Industrial Bank of Japan, Limited, Los Angeles Agency, in its capacity as issuer of the Letter of Credit, its successors in such capacity, and its assigns. If any Alternate Letter of Credit is issued and delivered in accordance with the Agreement, "Bank" shall mean the issuer of such Alternate Letter

Bond Registrar shall mean the Trustee or any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by the Authority to perform the duties of Bond Registrar enumerated in Section 703 of the Indenture.

Bond Service for any period shall mean, as of any date of calculation and with respect to any Series of Bonds, an amount equal to the sum of (i) interest accruing during such period on Bonds of such Series, except to the extent that such interest is to be paid from amounts on deposit in the Capitalized Interest Account, (ii) the principal payments and Sinking Account Payments for such Series which would accrue during such period if such principal payments were deemed to accrue daily in equal amounts from the first day of such period; provided that any such interest, principal and Sinking Account Payment shall be calculated on the assumption that no Bonds of such Series Outstanding at the date of calculation will cease to be Outstanding except by reason of payment at maturity or by redemption from the Sinking Account Payments deposited in the Sinking Account.

Bond Service Fund shall mean the Bond Service Fund established by Section 502 of the Indenture.

Bond Service Reserve Account shall mean the Bond Service Reserve Account of the Bond Service Fund as established by Section 502 of the Indenture.

Bond Service Reserve Requirement shall mean an amount equal to one half of Maximum Annual Bond Service.

Bond Year shall mean the period commencing at 12:01 a.m. Los Angeles time on the day of each year which would be a Principal Payment Date if principal on the Bonds were due and payable in that year and ending at 12:01 a.m. on the such day in the next succeeding year.

Bondholder or Holder shall mean the person in whose name any Bond or Bonds shall be registered upon the books of the Authority which shall be kept and maintained by the Bond Registrar.

Break Even Points shall be the amounts designated as such in Section 5(d) of the Permit.

Business Day shall mean any day excluding Saturday, Sunday and any other day which is a legal holiday under the laws of the State of California.

Capitalized Interest Account shall mean the Capitalized Interest Account subaccount of the Interest

Account of the Bond Service Fund established by the Trustee pursuant to the Indenture.

Certificate of Completion shall mean a certificate executed by an Authorized Authority Representative, stating that the 1984 Project or any Additional Project has been completed pursuant to the Plans.

Cities shall mean Los Angeles and The City of Long Beach, a municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California.

Completion Date shall mean, with respect to the 1984 Project or any Additional Project, the date on which the Authority files with the Trustee a Certificate of Completion, together with an Architect's Certificate, regarding either the 1984 Project or any Additional Project, as the case may be, pursuant to Section 503(3) of the Indenture.

Construction Fund shall mean the Construction Fund established by Section 502 of the Indenture.

Container shall mean an intermodal container or highway trailer of any dimension.

Container Charge shall mean the amount per Movement that the Tenant shall pay to the City as rent for the use of the Premises under the Permit.

Contractor shall mean the person or persons with whom the Authority has contracted for the construction and installation of the 1984 Project or any Additional Project.

Contribution Repayment Date shall mean the first day of the month following the date on which the aggregate amount of Net Revenues made available to the Corporation pursuant to the Indenture equals the Corporation Contribution, unless such date is the first day of the month in which case the Contribution Repayment Date shall be such date.

Corporation shall mean the Southern Pacific Transportation Company, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns.

Corporation Contribution shall mean the sum contributed by the Corporation for the construction of the Facilities or for the acquisition, improvement and construction of certain other rights or properties related to the Facilities, including improvements at the Dolores Yard,

container/trailer handling equipment for the Facilities and the grade separation over Alameda Street, plus any Additional Contribution and any amount Corporation contributes to pay the costs of removing Hazardous Waste discovered on the Premises.

Cost of Construction shall mean all costs and expenses of planning, engineering, designing, acquiring, constructing, installing, equipping and financing the Facilities, placing the Facilities in operation, and obtaining governmental approvals, certificates, permits and licenses with respect thereto, heretofore or hereafter paid or incurred by or on behalf of the Authority or the Corporation and not otherwise paid from the proceeds of insurance. There shall be applied, as a credit against the Cost of Construction, all receipts, revenues and other moneys received from the sale of surplus equipment, materials and supplies and interest earned on investments all if and to the extent held or paid into the Construction Fund. Subject to the foregoing restrictions, Cost of Construction shall include, but shall not be limited to, funds required to pay the following:

(i) obligations of the Authority or the Corporation incurred for labor and materials (including reimbursements payable to the Authority or the Corporation and payments on contracts in the name of the Authority) in connection with the acquisition, construction and installation of the Facilities;

(ii) the cost of contract bonds, letters of credit or other types of credit facilities and of insurance of all kinds that may be required or necessary during the construction of the Facilities;

(iii) all costs of engineering services, including the costs of the Authority or the Corporation for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction of the Facilities;

(iv) all expenses incurred in connection with the issuance of Bonds payable by the Authority or the Corporation allocable to the purpose of providing funds for the Facilities (including interest expenses prior to, during and for a permissible period after completion of construction) and including, without limitation, letters of credit, insurance, compensation and expenses of the Trustee, underwriters, accountants and legal

expenses and fees, costs of printing and engraving, recording and filing fees;

(v) all costs which the Authority or the Corporation shall be required to pay, under the terms of any contract or contracts, for the acquisition, construction and installation of the Facilities;

(vi) any sums required to reimburse the Authority or the Corporation for advances made by them or on their behalf for any of the above items or for any other costs incurred and for work done by them which are properly chargeable to the Facilities; and

(vii) all costs of removing any Hazardous Waste discovered on the Premises.

Deed of Trust shall mean that certain Deed of Trust and Assignment of Rents dated as of \_\_\_\_\_, 1984, executed by the Corporation, as Trustor, in favor of the Authority, as Beneficiary.

Department shall mean the Harbor Department of Los Angeles.

Depository shall mean any bank or trust company organized under the laws of any state of the United States or any national banking association having capital stock and surplus aggregating at least \$50,000,000 and selected by the Authority and approved in writing by the Trustee as a depository of moneys and securities held under the provisions of the Indenture, and may include the Trustee; provided that, if the Trustee shall fail to approve of any Depository selected by the Authority, it shall deliver to the Authority a statement of its reasons for such failure.

Executive Director shall mean the Executive Director of the Department or his designee.

Facilities shall mean, collectively, the 1984 Project and any Additional Project, whether now existing or to be acquired, constructed or installed, which shall comprise all or part of or shall be for use in connection with the intermodal container transfer facility located on the Premises and consisting of a railroad yard, storage and marshalling areas for the transfer of Containers between land, water or rail modes of transportation, including but not limited to, all works, buildings, structures, foundations, footings, pavement, rails, ties, pipes, switches, equipment, machinery, fences, walls, tanks and any additions or modifications thereto.

Facilities Revenues shall mean all receipts, revenues, income and other moneys received by the Corporation from Gate Charges including any business interruption insurance awards and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights and the proceeds of such rights, whether now owned or held or hereafter coming into being, and all moneys derived from the sale, lease, sublease or other disposition of the Facilities.

First Supplemental Indenture shall mean the First Supplemental Indenture of Trust, dated as of \_\_\_\_\_, 1984 by and between the Authority and the Trustee.

Fiscal Year shall mean the twelve-month period commencing at 12:01 a.m. Los Angeles time on July 1 of each year and ending at 12:01 a.m. on the following July 1.

FMC shall mean the Federal Maritime Commission Successor.

Force Majeure Event shall mean any Force Majeure occurrence listed in Section 13 of the Permit.

Fund or Funds; Account or Accounts; or Funds and Accounts shall mean, as the case may be, each or all of the Funds and Accounts established in Article V of the Indenture.

Gate Charge shall mean the charge established by the Authority for each Movement, paid by shippers using the Facilities and collected by the Corporation.

Governing Board shall mean the Governing Board of the Authority established pursuant to the Joint Powers Agreement, as constituted from time to time, or if said Governing Board shall be abolished, such other entity or entities succeeding to the principal functions thereof or to whom the power and duties granted or imposed by the Indenture shall be given by law.

Grading Contract shall mean a construction contract awarded by the Authority that includes the grading and recompaction of the soil within the Premises for the Facilities and the construction of acoustical masonry walls, perimeter fencing, temporary storm water draining facilities and other features that may be required.

Graduated Guaranteed Annual Rent shall mean the amount of rent which the Tenant may elect to pay pursuant to Section 5(g) of the Permit which will be calculated in accordance with the formula provided in Exhibit B to the Permit.

Guaranteed Annual Rent shall mean the minimum amount of rent to be paid pursuant to the Permit by Tenant to City for the use of the Premises in any Permit Year.

Harbor Engineer shall mean the Chief Harbor Engineer of the Department, or his designee.

Hazardous Waste shall mean any substance defined as Hazardous Waste in Article 2 of Chapter 6.5 of Division 20 of the California Health and Safety Code, as amended.

ICC shall mean the Interstate Commerce Commission.

Indenture shall mean the Indenture of Trust dated as of \_\_\_\_\_ 1, 1984 by and between the Authority and the Trustee, as from time to time amended and supplemented.

Independent Certified Public Accountant shall mean any accountant or firm of accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State of California, appointed and paid by the Corporation or the Authority and satisfactory to and approved by the Trustee in the exercise of reasonable care, and who, or each of whom:

(a) is in fact independent and not under the domination of the Corporation or the Authority;

(b) does not have any substantial interest, direct or indirect, in the Corporation or the Authority;

(c) is not connected with the Corporation or the Authority as a member of the board of directors of the Corporation or the Authority, or as an officer or employee of the Corporation or the Authority, but who may be regularly retained to make annual or other similar audits of the books of the Corporation, and to certify the income, expenses and balance sheet, as well as related financial information, in accordance with generally accepted accounting principles; and

(d) satisfies Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accountants.

Installment Payments shall mean the payments referred to as such and required to be paid by the Corporation pursuant to Section 4.02 of the Agreement.

Interest Account shall mean the Interest Account in the Bond Service Fund as established by Section 502 of the Indenture.

Interest Payment Dates shall mean the dates set forth in the First Supplemental Indenture for the payment of interest on the 1984 Bonds.

Interim Rent shall mean an amount which is equal to one twelfth (1/12) of the amount set forth in Section 5(c) of the Permit as the Guaranteed Annual Rent for the first Permit Year.

Investment Securities shall mean and include any of the following securities, if and to the extent the same are permitted by law:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the Federal agencies set forth in clause (ii) below to the extent unconditionally guaranteed by the United States of America or securities which constitute an undivided interest in the foregoing;

(ii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Banks, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Association, or any successor to any thereof;

(iii) new housing authority bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or project notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under the Indenture such obligations are rated in either of the two highest

rating categories by Moody's Investors Service Inc. or Standard & Poor's Corporation or either of their successors.

(v) certificates of deposit, whether negotiable or non-negotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking; and

(vi) any repurchase agreement with any Depository or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (i), (ii) or (iii) above if the Trustee shall have received a perfected first security interest in such securities securing such agreement and the Trustee or its appointed agent shall hold such obligations free and clear of the claims of third parties.

Joint Powers Agreement shall mean the Joint Exercise of Powers Agreement dated October 5, 1983, by and between the Cities as originally executed and as supplemented and amended.

Lease Term shall mean the term of the Sublease as set forth in Section 3.01 of the Sublease.

Los Angeles shall mean The City of Los Angeles, a charter city and municipal corporation duly organized and

existing under its charter and the Constitution and laws of the State of California.

Managerial Consultant shall mean any firm of national reputation qualified to report on questions relating to the financial condition of facilities such as the Facilities, selected by the Corporation and acceptable to the Trustee.

Maximum Annual Bond Service shall mean, as of any date of calculation, the amount of principal and interest due and payable with respect to any series of Bonds or portion thereof computed for the Bond Year in which such amount shall be the largest.

Movement shall mean the passing of a Container, whether empty, partially loaded or fully loaded, other than an empty Tenant controlled or furnished Container, either into or out of the Facilities by rail or truck; provided that such passing shall be counted only once for each Container entering or leaving the Facilities.

Net Revenues for any period shall mean the excess of Facilities Revenues over Installment Payments, payments of that portion of Rent required by Section 5.01(a)(2) of the Sublease and any annual letter of credit fees paid by the Corporation; provided that after Bonds cease to be Outstanding, Net Revenues shall be equal to Facilities Revenues minus said portion of Rent.

1984 Bonds shall mean the Intermodal Container Transfer Facilities Revenue Bonds, 1984 Series A, authorized by Article II of the First Supplemental Indenture.

1984 Project shall mean that portion of the Facilities described in Exhibit A of the Agreement to be constructed with the proceeds of the 1984 Bonds.

1984 Project Account shall mean the 1984 Project Account of the Construction Fund as established by Section 503 of the Indenture.

Opinion of Bond Counsel shall mean an opinion signed by Bond Counsel satisfactory to the Trustee; provided that, if the Trustee shall find such Bond Counsel unsatisfactory, it shall deliver to the Authority a statement of reasons for its finding.

Original Indenture shall mean the Indenture of Trust dated as of \_\_\_\_\_, 1984 by and between the Authority and the Trustee.

Outstanding, when used with reference to Bonds, shall mean, as of any date, Bonds theretofore or thereupon being authenticated and delivered under the Indenture except:

(a) Bonds cancelled by the Trustee at or prior to such date,

(b) Bonds (or portions of Bonds) for the payment or redemption of which, moneys equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under the Indenture and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), provided that if such Bonds (or portions of Bonds) are to be redeemed, notice of such redemption shall have been given as provided in Article IV of the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice.

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the Indenture, and

(d) Bonds deemed to have been paid as provided in subsection 2 of Section 1301 of the Indenture.

Payment Date shall mean any date on which any payment of Sublease Rent is due pursuant to Section 5.01(b) of the Sublease.

Payment Period shall mean the periods designated as such in Section 5.01(b) of the Sublease.

Permit shall mean that certain Permit for Use of Land dated as of \_\_\_\_\_, 1984 by and between the Authority and Los Angeles.

Permit Rents shall mean all sums accruing pursuant to Section 5 of the Permit including, without limitation, the Container Charges, the Guaranteed Annual Rent, and sums, if any, due under Section 5(a) of the Permit.

Permit Year shall mean the twelve month periods beginning on the first day of the month following the Completion Date and each anniversary thereof during the term of the Permit.

Permitted Encumbrances shall mean and include:

(i) Undetermined liens and charges incident to construction or maintenance and liens and charges

incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to judgment, provided that the Corporation shall have filed the lien release bond contemplated by California Civil Code Section 3143;

(ii) The lien of taxes and assessments which are not delinquent;

(iii) Minor defects and irregularities in the title to the Facilities which in the aggregate do not materially impair the use of the Facilities for the purposes for which they are or may reasonably be expected to be held;

(iv) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which in the aggregate do not materially impair the use of such property for the purposes for which it is or may reasonably be expected to be held;

(v) Rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of the Facilities which do not materially impair the use of the Facilities for the purposes for which they are or may reasonably be expected to be held;

(vi) Any obligations or duties affecting any portion of the Facilities to any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license, or permit;

(vii) Present or future valid zoning laws and ordinances;

(viii) The rights of the Authority under the Agreement or the Deed of Trust;

(ix) Liens securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of such indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness;

(x) The lien and charge of the Indenture;

(xi) Statutory liens arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith; and

(xii) The First Mortgage and Refunding Indenture dated as of \_\_\_\_\_ by and between the Corporation and \_\_\_\_\_.

Plans shall mean the plans and specifications for the Facilities dated \_\_\_\_\_, 1984, prepared by the Design and Construction Group of the Corporation and on file with the Corporation, the Trustee and the Authority, as the same may be revised from time to time prior to the Completion Date in accordance with the terms of the Agreement.

Ports shall mean the Port of Los Angeles, The City of Los Angeles and the Port of Long Beach, The City of Long Beach.

Premises shall mean certain parcels of real property as more fully described in Exhibit A to the Permit.

Prime Rate shall mean that rate of interest publicly announced by the Bank of America National Trust and Savings Association at its principal office in San Francisco, California as its "reference rate". Changes in the Prime Rate shall be effective as announced from time to time by the Bank of America National Trust and Savings Association.

Principal Account shall mean the Principal Account of the Bond Service Fund as established by Section 502 of the Indenture.

Principal Payment Date shall mean the dates on which any principal payment or Sinking Account Payment shall be required to be made pursuant to the terms of the First Supplemental Indenture.

Record Date shall mean the dates fifteen (15) days prior to each Interest Payment Date.

Redemption Fund shall mean the Redemption Fund as established by Section 502 of the Indenture.

Redemption Price shall mean, with respect to any Bond, the principal amount thereof plus the applicable premium, if any, payable upon redemption thereof.

Refunding Bonds shall mean all Bonds, whether issued in one or more Series, authenticated and delivered on original issuance pursuant to Section 205 of the Indenture, and any Bonds thereafter authenticated and delivered in lieu

of or in substitution for such Bonds pursuant to Article III, Section 404 or Section 1106 of the Indenture.

Rent or Rents shall mean all sums accruing pursuant to Section 5.01 of the Sublease.

Revenue Fund shall mean the Revenue Fund as established by Section 502 of the Indenture.

Revenues shall mean all Facilities Revenues and all other payments and moneys received by the Authority or the Trustee pursuant to the Agreement, the Indenture and any policy of title insurance and all receipts, revenues, purchase payments and other moneys received pursuant to the terms of the Agreement and the Deed of Trust including the moneys derived from the sale, lease, sublease or other disposition of the Facilities in accordance with the Agreement and the Deed of Trust (except payments to the Authority or the Trustee for the administrative costs and expenses or fees of either of them), and including any insurance or condemnation awards placed in the Revenue Fund as provided in the Agreement and all rights to receive the same and any income derived from the investment of any money in any fund or account established pursuant to the Indenture.

Serial Bonds shall mean any Bonds designated as Serial Bonds by any Supplemental Indenture.

Series shall mean all of the Bonds authenticated and delivered on original issuance in a simultaneous transaction and identified pursuant to the Indenture or any Supplemental Indenture authorizing such Bonds as a separate Series of Bonds, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to Article III, Section 406 or Section 1106 of the Indenture, regardless of variations in maturity, interest rate, or other provisions.

Sinking Account shall mean the Term Bonds Sinking Account subaccount of the Principal Account of the Bond Service Fund as established by Section 507 of the Indenture.

Sinking Account Payment shall mean the Sinking Account Payment required to be made into the Sinking Account pursuant to the terms of any Supplemental Indenture.

Special Fund shall mean the Special Fund as established by Section 502 of the Indenture.

Statement of Operations shall mean a document submitted by the Corporation to the Authority pursuant to Section 5.01(a)(3) of the Sublease stating the results of

operations at the Facilities during each monthly Payment Period.

Storage Charge shall mean the charge established by Authority for the storage of Containers at the Facilities.

Sublease shall mean that certain Sublease Agreement dated as of \_\_\_\_\_, 1984 by and between the Authority and the Corporation.

Sublease Rent shall mean the amounts referred to as such in Section 5.01(a)(3) of the Sublease.

Sublease Rent Payment Request shall mean a document submitted by the Authority to the Corporation and the Trustee pursuant to Section 5.01(a)(3) of the Sublease which directs the Trustee to make payment of Sublease Rent on behalf of the Corporation.

Subleasehold Estate shall mean the interest in the Premises held by the Corporation or any successor thereto as created by the Sublease.

Subleasehold Mortgage shall mean any leasehold mortgage encumbering the Subleasehold Estate and granted by any Assuming Subtenant pursuant to Section 11 of the Sublease.

Subleasehold Mortgagee shall mean any person or entity to whom a Subleasehold Mortgage is granted pursuant to Section 11 of the Sublease.

Supplemental Indenture shall mean any indenture supplemental to or amendatory of the Indenture, adopted by the Authority in accordance with Article X of the Indenture.

Tenant shall mean the Authority or any Assuming Subtenant.

Term Bonds shall mean any Bonds designated as Term Bonds by any Supplemental Indenture.

Total Contribution shall mean the sum of the Authority Contribution plus the Corporation Contribution.

Trustee shall mean \_\_\_\_\_, and its successor or successors and any other corporation which may at any time be substituted in this place pursuant to the Indenture.

Revenues shall mean (i) Facilities Revenues, (ii) all insurance or condemnation awards deposited in the Revenue Fund, (iii) all moneys received by the Trustee in respect of the Deed of Trust and (iv) all rights to receive the amounts specified in clauses (i), (ii) and (iii).

S&P shall mean Standard & Poor's Corporation, a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Corporation, approved by the Remarketing Agent and acceptable to the Trustee.

Scheduled Redemption Date shall mean the Bond Adjustment Date designated by the Corporation or the Remarketing Agent to occur not less than fourteen (14) days prior to the expiration or termination of the Letter of Credit.

Section 406 Fund shall mean the fund of that name established pursuant to Section 406 of the Indenture.

Section 701(d)(3) Fund shall mean the fund of that name established pursuant to Section 701(d)(3) of the Indenture.

Series shall mean all Bonds authenticated and delivered on original issuance in a simultaneous transaction and identified pursuant to the Indenture or any indenture authorizing Bonds pursuant to Sections 304 and 305 of the Indenture, as a separate Series of Bonds.

Statement of Operations shall mean a document submitted by the Corporation to the Authority pursuant to Section 5.01(a)(3) of the Sublease stating the results of operations at the Facilities during each monthly Payment Period.

Storage Charge shall mean the charge established by the Authority as agent for the Corporation under the Sublease, for the storage of Containers at the Facilities.

Sublease shall mean that certain Sublease Agreement, dated September 14, 1984 by and between the Authority and the Corporation as from time to time amended and supplemented.

Sublease Rent shall mean the amounts referred to as such in Section 5.01(a)(3) of the Sublease.

Sublease Rent Payment Request shall mean a document submitted by the Authority to the Corporation and the Trustee pursuant to Section 5.01(a)(3) of the Sublease which directs

the Trustee to make paym  
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Schedule A  
Agreement No.  
221-010660-001

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Premises held by the Cor  
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Subleasehold M  
mortgage encumbering the Subleasehold Estate and granted by  
any Assuming Subtenant pursuant to Section 11 of the  
Sublease.

any leasehold

Subleasehold Mortgagee shall mean any person or  
entity to whom a Subleasehold Mortgage is granted pursuant to  
Section 11 of the Sublease.

Substitution Date shall mean any Interest Payment  
Date on which the Corporation substitutes the Letter of Cred-  
it with an Alternate Letter of Credit or other credit facili-  
ties or fails to substitute an Alternate Letter of Credit or  
other credit facilities upon the expiration or termination of  
the Letter of Credit, which event results in a reduction or  
withdrawal of the then prevailing rating of such Bonds by  
Moody's or S&P.

Tenant shall mean the Authority or any Assuming  
Subtenant.

Total Contribution shall mean the sum of the Au-  
thority Contribution plus the Corporation Contribution.

Trust Estate shall mean the property conveyed to  
the Trustee pursuant to the Granting Clauses of the  
Indenture.

Trustee shall mean Morgan Guaranty Trust Company of  
New York, a New York banking corporation, and any successor  
trustee appointed as provided in the Indenture.

Undelivered Bonds shall mean the 1984 Bonds which  
have not been surrendered to the Trustee on a Purchase Date  
for such 1984 Bonds.

Variable Rate shall mean the interest rate borne by  
the 1984 Bonds during a Bond Adjustment Period determined as  
set forth under Section 203(b) of the Indenture.

Written Requisition, Written Consent, Written Order  
and Written Request shall mean, respectively, a written req-  
uisition, consent, order or request signed on behalf of the  
Authority by its Chairman or by the Executive Director or  
the Secretary or an Assistant Secretary or by any person