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**PIERS M/N/O TERMINAL LEASE
AND DEVELOPMENT AGREEMENT**

Agreement No. AP-96-97-(4)-092

entered into between

THE PUERTO RICO PORTS AUTHORITY

G.P.O. Box 362829
San Juan, Puerto Rico 00936-2829
(787) 729-8805

and

INTERNATIONAL SHIPPING AGENCY, INC.

P.O. Box 2748
San Juan, Puerto Rico 00902
(787) 721-4355

FMC Agreement No. 224-
Agreement Effective: December 2, 1996
Agreement Last Published: December 2, 1996
Current Expiration Date: December 1, 2016

December 2, 1996

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FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETARY



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PIERS M/N/O TERMINAL LEASE AND DEVELOPMENT AGREEMENT

In the City of San Juan, Puerto Rico, on this 2nd day of December, 1996,

APPEAR

AS PARTY OF THE FIRST PART: THE PUERTO RICO PORTS AUTHORITY, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 125, approved May 7, 1942, as amended, with offices at the Isla Grande Terminal in San Juan, Puerto Rico, hereinafter referred to as the "AUTHORITY", herein represented by its duly authorized Executive Director, Dr. HERMAN SULSONA, or any such other duly authorized officer acting in his stead; and

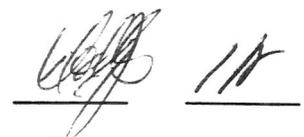
AS PARTY OF THE SECOND PART: INTERNATIONAL SHIPPING AGENCY, INC., a corporation organized under the laws of the Commonwealth of Puerto Rico, engaged in the marine terminal and stevedoring business, with offices at Pier 11, Fernández Juncos Avenue, San Juan, Puerto Rico, hereinafter referred to as "INTERSHIP" or "LESSEE", herein represented by its duly authorized President, MR. DAVID R. SEGARRA, JR.

PREAMBLE

WHEREAS, the AUTHORITY is responsible for the development and operation of the marine terminal facilities at the Port of San Juan (the "Port"); and

WHEREAS, the AUTHORITY desires to expand the Port's marine terminal facilities and develop additional public marine terminal facilities at the northeastern end of the Puerto Nuevo Marine Terminal Area, including the development of two new marine terminal areas to be known as the Piers N and O Terminals; and

WHEREAS, INTERSHIP is engaged in marine terminal and stevedoring operations at the Port of San Juan, and is presently operating at Pier 11, Pier 12, Isla Grande, the Army Terminal, and Pier M, pursuant to various lease agreements executed with the AUTHORITY; and



Areas, a public marine terminal, to be known as the **InterMarine Public Terminal**, as described in this **Agreement**.

(B) Scope of Services and Obligations of LESSEE: LESSEE, subject to the terms and conditions of this **Agreement**, shall design, develop, operate, and maintain in the **Leased Areas** the **InterMarine Public Terminal**, where LESSEE shall provide the following services:

(1) Provide Full Marine and Stevedoring Services: LESSEE shall offer and provide to common carriers in the U.S. domestic and international trades, and to other non-common carrier vessels and **Port** users, on a full-time basis throughout the term of this **Agreement** and any extension hereof, a complete range of marine terminal and stevedoring services for the handling of general cargo, break-bulk cargo, containers, non-bulk dry cargo, automobiles, and other cargo, including the berthing, mooring, loading and unloading of vessels and feeding tenders and their containers, automobiles, and other cargo, the provision of fuel, supplies, ship chandler, port, customs and shipping agency services, the rendering of preparation for delivery services, repairs and/or other services related and incidental thereto to the vessel and feeding tenders, cargo, containers and automobiles, and their Master, crew and passengers, the marshaling, preparation and transshipment of cargo, automobiles and containers in connection therewith, the operation of material handling equipment, tractors and cranes, and the temporary storage of containers, automobiles, and cargo in connection or incidental therewith for which equipment and facilities are available at the **InterMarine Public Terminal** and as may be advisable and convenient to operate the facility in an efficient and productive manner.

(2) Provide Funds and Financing for Development of Terminals: LESSEE shall be responsible for and pay the costs of LESSEE's **Terminal Improvements** and the necessary equipment and machinery to operate the **InterMarine Public Terminal**, as set forth in this **Agreement**.

(3) Design and Develop a Public Marine Terminal: LESSEE shall be responsible for the design and development of, and obtaining all necessary and appropriate permits and other authorizations necessary to develop and construct, a public marine terminal at **Piers M, N, and O** under the terms of this **Agreement**, all as more fully described in **Article VII** below.

(4) Provide Adequate Operating and Supervisory Personnel: LESSEE shall, at its sole expense, contract and hire such executive, supervisory, and operating personnel as may be necessary and convenient to operate the **InterMarine Public Terminal** in an efficient and productive manner.

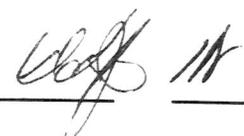
(5) Maintain Operations Office in InterMarine Public Terminal: LESSEE shall, at its sole expense, maintain an office at the **InterMarine Public Terminal** in order to support its on-site personnel and to conduct its day-to-day operations. LESSEE shall provide the **AUTHORITY** with the names and telephone numbers of two or more of LESSEE's representatives who can be contacted at any time with respect to daily operational matters.

(6) Provide Adequate Machinery, Equipment, and Cranes to Operate: LESSEE shall, at its sole expense, purchase, lease, or otherwise make available, such machinery and equipment as is reasonably necessary and convenient to operate the **InterMarine Public Terminal** in an efficient and productive manner, including, upon the full transfer of the vessel operations presently being conducted by **INTERSHIP** at **Piers 11 and 12**, and at **Isla Grande**, as contemplated by this **Agreement**, the machinery and equipment set forth in Exhibit "C" or similar machinery and equipment fit for its function.

(7) Offer Competitive Rates: LESSEE shall offer and provide services at the **InterMarine Public Terminal** to all members of the public, at competitive rates in accordance with LESSEE's stevedoring agreements or public terminal rates as shall be filed, to the extent so required, with the appropriate regulatory agencies with jurisdiction. LESSEE shall provide to the **AUTHORITY** copies of LESSEE's public rates and tariffs as they may be amended from time to time, and shall maintain copies available for inspection by any parties interested in using the **InterMarine Public Terminal** and its services.

(8) Bill and Collect AUTHORITY's Tariff Charges for Services Rendered: LESSEE shall bill and collect charges in connection with vessels serviced at the **InterMarine Public Terminal** in accordance with the **AUTHORITY's** current **Tariffs** then in effect, when such tariff services are billable to LESSEE by the **AUTHORITY**. LESSEE shall keep records thereof, and shall make all such payments to the **AUTHORITY** as set forth in this **Agreement**.

(9) Market the Port of San Juan and the InterMarine Public Terminal: To the extent LESSEE has facilities to accommodate incremental business in the **Leased Areas**, LESSEE shall use its best



efforts to market the **Port of San Juan** and **LESSEE's** services at the **Port** to all potential users of the **Port**, including both exporters and importers of cargo, and potential users of the **InterMarine Public Terminal** for the transshipment of cargo, and, commencing on September 1, 1997, shall provide to the **AUTHORITY**, to the extent required of other marine terminal operators at the **Port of San Juan**, no later than September 1st of each year, a written annual summary report of **LESSEE's** marketing efforts during the **AUTHORITY's** fiscal year (July 1 - June 30) ending the prior June 30th.

(10) Cooperate in the Efficient and Productive Use of the Port: **LESSEE** shall cooperate at all times with the **AUTHORITY**, and with other persons or entities operating at the **Port**, including both **Port** tenants and operating personnel, to maximize the efficient and productive use of the **Port** facilities, consistent with the efficient and economic operation of **LESSEE's** business and the terms of this **Agreement**.

(11) Submit Annual Reports: **LESSEE** shall submit to the **AUTHORITY**, no later than September 1st of each year, a written report summarizing (i) the progress of any then ongoing design and development under this **Agreement** during the **AUTHORITY's** fiscal year just ended, including the status of any required permit applications with respect thereto, and (ii) the condition and status of the facilities and the **Leased Areas** as of the end of such fiscal year, and any repairs or improvements deemed necessary or advisable thereto during the then current fiscal year.

(C) Definitions: The following capitalized terms shall have the definitions set forth below:

"**Acceptance Certificate**" shall have the meaning set forth in **Article VII(D) (2) (e)** of this **Agreement**.

"**AIA Contract Documents**" shall have the meaning set forth in **Article VII(A) (1) (1.2) (iii)** of this **Agreement**.

"**Aggregate Ceiling Price**" shall have the meaning set forth in **Article VII(D) (2) (b)** of this **Agreement**.

"**Approved Costs**" shall have the meaning set forth in **Article VII(D) (2)** of this **Agreement**.

"**Approved Interim Costs**" shall have the meaning set forth in **Article VII(D) (1)** of this **Agreement**.

Handwritten signatures of two individuals, one appearing to be a name and the other a set of initials, both written in dark ink.

"Assignee" shall have the meaning set forth in Article XXIV(A) (1) of this Agreement.

"Assignee Minimum Capitalization" shall have the meaning set forth in Article XXIV(A) (2) of this Agreement.

"Authority's Improvements" shall have the meanings set forth in Article VII(C) (5) of this Agreement.

"Authority Improvements Costs" shall have the meaning set forth in Article VII(D) (2) of this Agreement.

"Bankruptcy Code" shall mean Title 11 of the United States Code.

"Berthing Apron" shall have the meaning set forth in Article II(A) (1) of this Agreement.

"Certified Cost Submittal" shall have the meaning set forth in Article VII(D) (2) (d) of this Agreement.

"Depreciated Book Value" shall have the meaning set forth in Article XV(B) (1) of this Agreement.

"Design Services" shall have the meaning set forth in Article VII(A) (1) of this Agreement.

"Development Term" shall have the meaning set forth in Article VI(A) of this Agreement.

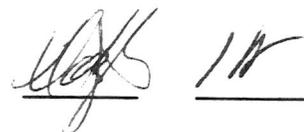
"Dispute" shall have the meaning set forth in Article XXXII(C) (1) of this Agreement.

"Environmental Authorities" shall have the meaning set forth in Article XXXI(B) (6) (a) of this Agreement.

"EQB" shall mean the Puerto Rico Environmental Quality Board.

"Excess Costs" shall have the meaning set forth in Article VII(D) (2) (a) of this Agreement.

"Exclusive Areas" shall mean Areas ME-1, ME-2, ME-3, NE-1, NE-3, NE-4, NE-5, NE-6, LE-3, LE-4, LE-5, LE-6, LE-7, LE-8, OE-1, and OE-2, as defined in Article III and, upon exercise of the

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first refusal rights provided in **Article IV** with respect to any of such Areas, **Areas ME-4, LE-9, and NE-2.**

"**Execution Date**" shall have the meaning set forth in **Article VI(A)** of this **Agreement.**

"**Extension Notice**" shall have the meaning set forth in **Article VI(C)(2)** of this **Agreement.**

"**Extension Right**" shall have the meaning set forth in **Article VI(C)(1)** of this **Agreement.**

"**Extension Term**" shall have the meaning set forth in **Article VI(C)(1)** of this **Agreement.**

"**FMC**" shall mean the Federal Maritime Commission and any successor agency with jurisdiction over marine terminal activities.

"**Formal Plan**" shall have the meaning set forth in **Article VII(A)(1)(1.2)(i)** of this **Agreement.**

"**GDB**" shall mean the Government Development Bank of Puerto Rico.

"**Gate and Access Roadways Areas**" shall have the meaning set forth in **Article II(D)(1)** of this **Agreement.**

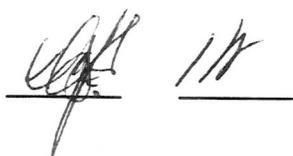
"**Guaranteed Berthing**" shall have the meaning set forth in **Article VIII(A)(3)** of this **Agreement.**

"**Hazardous Substances**" shall have the meaning set forth in **Article XXXI(A)(1)** of this **Agreement.**

"**Interim Improvements**" shall have the meaning set forth in **Article VII(D)(1)** of this **Agreement.**

"**Initial Term**" shall have the meaning set forth in **Article VI(B)** of this **Agreement.**

"**InterMarine Public Terminal**" shall mean the modern public marine terminal that **LESSEE** is required to design, and to operate and maintain, in accordance with the terms of this **Agreement**, all as more fully described in **Article VII** and elsewhere in this **Agreement.**

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"Joint Management Committee" shall have the meaning set forth in Article VII(A) (7) of this Agreement.

"Leased Areas" shall mean each of the Preferential Areas, Exclusive Areas, and Gate and Access Roadway Areas.

"Mediation Term" shall have the meaning set forth in Article XXXII(C) (1) of this Agreement.

"Notice of Non-Intensive Utilization of Facilities" shall have the meaning set forth in Article VI(C) (3) of this Agreement.

"Occupied Exclusive Area" shall have the meaning set forth in Article III(B) (4) of this Agreement.

"Operations Platform and Cargo-in-Transit Area" shall have the meaning set forth in Article II(A) (1) of this Agreement.

"Permitting Services" shall have the meaning set forth in Article VII(A) (1) of this Agreement.

"Pier M Interim Agreement" shall have the meaning set forth in Article VII(D) (1) of the Agreement.

"Port" shall mean the Port of San Juan, Puerto Rico, as set forth in the Preamble of this Agreement.

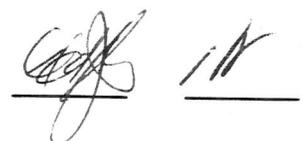
"Preferential Areas" shall mean Areas MP1-1 and LP2-1, and, if and to the extent developed in accordance with the terms of this Agreement, Areas NP1-1, and OP1-1.

"Project Ceiling Price" shall have the meaning set forth in Article VII(A) (1) (1.2) (i) of this Agreement.

"Project Financing" shall have the meaning set forth in Article VII(D) of this Agreement.

"Puerto Nuevo Marine Terminal Areas" shall mean those Port areas from Berths E to O, and the terminal areas to the South thereof extending to Kennedy Avenue, identified as the Puerto Nuevo Marine Terminal Areas and located on the southern edge of the Bay of San Juan.

"Right of Preference" shall mean the right to use the Preferential Areas in accordance with the terms of Article V of this Agreement.

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"Security Deposit" shall have the meaning set forth in Article X of this Agreement.

"Special Cargo" shall have the meaning set forth in Article V(B) (5) (c) of this Agreement.

"Special Cargo Vessel" shall have the meaning set forth in Article V(B) (5) (c) of this Agreement.

"Stevedoring Services" shall mean, at a minimum, those services identified in Article I(B) (1) of this Agreement.

"Target Development Schedule" shall have the meaning set forth in Article VII(A) (1.1) of this Agreement.

"Tariffs" shall have the meaning set forth in Article V(B) (1) of this Agreement.

"Terminal Improvements" shall have the meanings set forth in Article VII(C) (4) (a) of this Agreement.

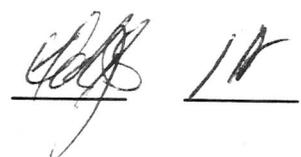
"Use Schedule" shall have the meaning set forth in Article V(B) (2) of this Agreement.

ARTICLE II. GRANT OF RIGHTS.

(A) (1) RIGHT OF FIRST PREFERENCE AREA:

Subject to the conditions precedent and the additional terms and conditions set forth below, the **AUTHORITY** hereby grants to **LESSEE**, and **LESSEE** hereby accepts, a license to use, on a **Right of Preference** basis (as provided in **Articles III(A) (1) and V** hereof), that area defined herein as "**Area MP1-1**", which forms part of the areas herein referred to as the **Preferential Areas** as shown on Exhibit A, and described as follows:

Area MP1-1. The berthing area (measuring six hundred (600) feet in length along the water's edge, consisting of the area alongside the edge of the wharf and the first sixty (60) feet of the wharf from the water's edge (the "**Berthing Apron**")), and the operations platform and cargo-in-transit areas (consisting of the next two hundred and fifty (250) feet from the water's edge after the Berthing Apron; hereinafter, the "**Operations Platform and Cargo-in-Transit Area**"), and related fixtures and equipment, of the presently constructed marine ter-



minal pier designated as **Terminal M** in the **Puerto Nuevo Marine Terminal Areas**, subject to the rights and any easement of **Bacardi Corporation** for its molasses pipeline, consisting of the **Berthing Apron** (60 feet by 600 feet) and the **Operations Platform and Cargo-in-Transit Area** of one hundred fifty thousand (150,000) square feet (250 feet by 600 feet), with the latter being equivalent to three point five four five five (3.5455) cuerdas, and identified in its entirety as **Area MP1-1** on Exhibit A.

(A) (2) RIGHT OF SECOND PREFERENCE AREA:

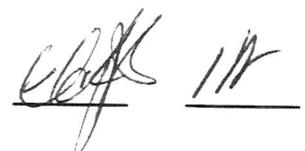
Subject to the terms and conditions of this **Agreement**, the **AUTHORITY** hereby grants to **LESSEE**, and **LESSEE** hereby accepts, a license to use, on a **Right of Second Preference** basis (as provided in **Articles III(A)(4)** and **V** below), that area defined herein as "**Area LP2-1**", which forms part of the areas herein referred to as the **Preferential Areas** as shown on Exhibit A, and described as follows:

Area LP2-1. The **Berthing Apron** (measuring sixty (60) feet by nine hundred (900) feet) and the **Operations Platform and Cargo-in-Transit Area** (measuring two hundred and fifty (250) feet by nine hundred (900) feet), and related fixtures and equipment, of the presently constructed nine hundred (900) foot long marine terminal pier designated as **Terminal L** in the **Puerto Nuevo Marine Terminal Areas**, the **Operations Platform and Cargo-in-Transit Area** which consists of a total of two hundred twenty-five thousand (225,000) square feet (900 feet by 250 feet), equivalent to five point three one nine three (5.3193) cuerdas, and identified as **Area LP2-1** on Exhibit A.

(A) (3) RIGHT OF PREFERENCE AREAS TO BE DEVELOPED:

Subject to the conditions precedent and the additional terms and conditions set forth herein, the **AUTHORITY** hereby grants to **LESSEE**, and **LESSEE** hereby accepts, a license to use, on a **Right of Preference** basis (as provided herein and in **Article III(A)** and **Article V** of this **Agreement**), those areas defined herein as "**Area NP1-1**" and "**Area OP1-1**," which are undeveloped waterfront lots, presently under water, to be developed by **LESSEE** as provided in this **Agreement**, and which are respectively described as follows:

(i) Area NP1-1. The undeveloped waterfront lot, presently under water except for a cofferdam which is presently being used by Redondo Construction, measuring, to the extent capable



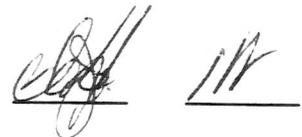
of being developed, up to six hundred (600) feet in length along the waterfront, to be developed into a **Preferential Area** including a **Berthing Apron** measuring sixty (60) feet by up to six hundred (600) feet, and a **Operations Platform and Cargo-in-Transit Area** measuring one hundred and ninety (190) feet by up to six hundred (600) feet, and related fixtures and equipment, of the marine terminal pier designated as **Terminal N** located in the **Puerto Nuevo Marine Terminal Areas**, subject to the rights and any easement of **Bacardi Corporation** for its molasses pipeline, projected, upon development being authorized and completed, to have an **Operations Platform and Cargo-in-Transit** area of one hundred and fourteen thousand (114,000) square feet, equivalent to two point six nine five six (2.6956) cuerdas, based upon an assumed developable length of 600 feet, and identified as **Area NP1-1** on Exhibit A.

(ii) Area OP1-1. The undeveloped waterfront lot measuring, to the extent capable of being developed, up to three hundred (300) feet in length along the waterfront, presently under water, to be developed into a **Preferential Area** including a **Berthing Apron** measuring sixty (60) feet by up to three hundred (300) feet, and a **Operations Platform and Cargo-in-Transit Area** measuring one hundred and ninety (190) feet by up to three hundred (300) feet, and related fixtures and equipment, of the marine terminal pier designated as **Terminal O** in the **Puerto Nuevo Marine Terminal Areas**, projected upon development being authorized and completed, to have an area of fifty-seven thousand (57,000) square feet, equivalent to one point three four seven eight (1.3478) cuerdas, based on a length of three hundred (300) feet, and identified, as subdivided, as **Areas OP1-1A** and **OP1-1B** on Exhibit A.

(B) (1) EXCLUSIVE RIGHTS AREAS:

Subject to the conditions precedent and the additional terms and conditions herein, the **AUTHORITY** hereby grants to **LESSEE**, and **LESSEE** hereby accepts, the exclusive right which shall operate to permit the exclusive use (as provided in **Article III(B)** and elsewhere in this **Agreement**) by **LESSEE**, for its stevedoring, public marine terminal operations, and related and incidental services and activities, of **Areas ME-1, ME-2, NE-3, and OE-2**, which are respectively described as follows:

(i) Area ME-1. The marine terminal operations area, presently occupied by **LESSEE**, fronting to the North with **Area MP1-1**, to the East with **Roadway N**, to the South with **Area ME-2**, and to

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4, to the West with **Area ME-3** and **Roadway CC**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the East with **Area OE-2**, consisting of a total of zero point seven nine zero two (0.7902) cuerdas, and identified as **Area NE-6** on Exhibit A.

(vi) Area LE-3. The lot to be developed into a **marine terminal operations area**, presently occupied by Francisco Vega Otero, fronting to the North with **Roadway C**, to the East with **Area ME-4**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with **Area LE-4**, consisting of a total of zero point six four eight one (0.6481) cuerdas, and identified as **Area LE-3** on Exhibit A.

(vii) Area LE-4. The lot to be developed into a **marine terminal operations area**, presently occupied by Torres Trucking, fronting to the North with **Roadway C**, to the East with **Area LE-3**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with **Area LE-5**, consisting of a total of zero point six nine two nine (0.6929) cuerdas, and identified as **Area LE-4** on Exhibit A.

(viii) Area LE-5. The lot to be developed into a **marine terminal operations area**, presently occupied by Carreras Trucking, fronting to the North with **Roadway C**, to the East with **Area LE-4**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with **Area LE-6**, consisting of a total of zero point seven six six six (0.7666) cuerdas, and identified as **Area LE-5** on Exhibit A.

(ix) Area LE-6. The lot to be developed into a **marine terminal operations area**, presently occupied by Eladio Mulero, fronting to the North with **Roadway C**, to the East with **Area LE-5**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with **Area LE-7**, consisting of a total of one point two one four six (1.2146) cuerdas, and identified as **Area LE-6** on Exhibit A.

(x) Area LE-7. The lot to be developed into a **marine terminal operations area**, presently occupied by H. L. Garcia Transport, Inc., fronting to the North with **Roadway C**, to the East with **Area LE-6**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with **Area LE-8**, consisting of a total of one point zero seven seven zero (1.0770) cuerdas, and identified as **Area LE-7** on Exhibit A.



(xi) Area LE-8. The lot to be developed into a **marine terminal operations area**, presently occupied by Redondo Construction, fronting to the North with **Roadway C**, to the East with **Area LE-7**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with **Area LE-9** presently being leased to Trailer Truck, consisting of a total of three point five nine three three (3.5933) cuerdas, and identified as **Area LE-8** on Exhibit A.

(xii) Area OE-1. The undeveloped lot, presently partially under water, to be developed to the extent permitted by the U.S. Coast Guard and other appropriate authorities and determined financially feasible, into a **marine terminal operations area**, fronting to the North with **Areas NP1-1** and **OP1-1**, presently partially under water and part of the **Bay of San Juan**, to the West with **Area NE-1**, also presently partially under water, to the South with **Area OE-2**, and to the East with a mangrove area adjacent to the Martin Peña Channel, consisting of a total of one point eight seven five two (1.8752) cuerdas, and identified as subdivided into **Areas OE-1A**, **OE-1B**, and **OE-1C** on Exhibit A.

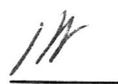
(C) AREA MEASUREMENTS SUBJECT TO CHANGE:

Notwithstanding the measurements contained in the foregoing definitions of each of the **Leased Areas**, final measurements of all such **Leased Areas**, and the rental and use fees due to the **AUTHORITY** in connection therewith pursuant to **Article IX** below, shall be subject to change in accordance with the final development plans, actual construction, and land surveys, with appropriate adjustment debits or credits as to any prior payments made by **LESSEE**.

(D) GATE AND ACCESS ROADWAYS:

(1) The **AUTHORITY** hereby grants to **LESSEE**, and **LESSEE** hereby accepts, the right which shall operate to permit **LESSEE** to use (as provided in **Articles II(D)(2)** and **III(C)** of this **Agreement**) the **Gate and Access Roadway Areas** (as such term is hereinafter defined), which shall be developed and/or improved by **LESSEE** as provided herein, for access and egress and to coordinate security. The term "**Gate and Access Roadways Areas**" shall mean:

(a) The **Gate and Access Roadway** from **Roadway C** to **Roadway M** and **Roadway N**, identified as **Roadway CC** on Exhibit A, which roadway shall continue to be the property of the **AUTHORITY**;

(b) The gate and access roadway from Roadway CC to Areas MP1-1, ME-1, and ME-2, identified as Roadway M on Exhibit A, which roadway shall continue to be the property of the AUTHORITY; and

(c) The gate and access roadway from Roadway CC to Areas NP-1, NE-1, and NE-2, identified as Roadway N on Exhibit A, which roadway shall continue to be the property of the AUTHORITY.

(2) LESSEE's rights pursuant to Article II(D)(1) above are subject to (i) LESSEE using and controlling such Gate and Access Roadway Areas in a manner that is consistent with the ownership rights of the AUTHORITY to use and permit others to use the Puerto Nuevo Marine Terminal Areas of the Port, including the Preferential Areas, (ii) LESSEE giving full access to and use of the Gate and Access Roadway Areas by any other tenant fronting on any of such roadways, and (iii) said rights not infringing upon and not being exercised in such a manner that they infringe upon the rights of any other tenant fronting on any of such roadways. LESSEE shall cooperate and coordinate with any such tenants the operational and security control aspects of said roadways and any mutually agreed arrangement for the maintenance and operation of the same. No toll or user fee, except any mutually agreed arrangement to share in the operations and maintenance cost, shall be imposed by LESSEE on the other tenants in the Puerto Nuevo Marine Terminal Areas of the Port, except with the AUTHORITY's prior written approval. Any amount left at the end of any year in excess of such cost shall be used to cover said cost for the next year.

ARTICLE III. DELIVERY AND USE OF LEASED AREAS.

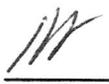
(A) THE PREFERENCE AREAS:

(1) Delivery of Areas LP2-1, MP1-1, NP1-1, and OP1-1:
As of the effective date of this Agreement, but subject to the conditions precedent set forth below in paragraphs (2) and (3) as to Areas NP1-1 and OP1-1, and the conditions in paragraph (4) with respect to Area LP2-1 and in paragraph (5) with respect to Area MP1-1, the AUTHORITY hereby grants LESSEE a license to enter and use Areas LP2-1, MP1-1, NP1-1, and OP1-1, on a Right of Preference basis and subject to the additional terms and conditions set forth in this Agreement, so that LESSEE may carry out in such Preferential Areas a complete range of stevedoring services for the hand-




ling of general cargo, break-bulk cargo, containers, non-bulk dry cargo, automobiles, and other cargo, including: the berthing, mooring, loading, and unloading of vessels and feeding tenders and their containers, automobiles, and cargo; the provision of fuel, supplies, ship chandler, port, customs and shipping agency services; the rendering of preparation for delivery services, repairs and/or other services related and incidental thereto to the vessel and feeding tenders, cargo, containers, and automobiles, and their Master, crew, and passengers; the marshaling, preparation, and transshipment of cargo, automobiles, and containers in connection with such vessel loading or unloading; the operation of material handling equipment, tractors, and cranes; and the temporary storage of containers, automobiles, and cargo in connection or incidental therewith, in such a manner as will not interfere with, or hinder, the ability of any third party to use such Areas with the **AUTHORITY's** authorization consistent with any senior right in time of **LESSEE** to use such Areas under a prior assignment of the berth. Notwithstanding the foregoing, **LESSEE**, to the extent provided in **Article V(B) (5) (b)** below, shall not store or leave any equipment (other than any permanent cranes) or cargo on the **Berthing Apron** or within the first one hundred and fifty (150) feet from the water's edge, or in a thirty (30) foot vehicle and equipment access and circulation roadway area parallel to the water's edge with similar access to the **Berthing Apron** between each berth, which areas are to be kept clear at all times. Any cargo, equipment, or other materials, including, but not limited to, any trash, waste, debris, or rubbish, left in such areas by **LESSEE**, if not promptly removed by **LESSEE** upon the **AUTHORITY's** request, may be moved by the **AUTHORITY** or any entity properly assigned the use of such areas, at **LESSEE's** sole risk and cost per the **Port Tariff** then in effect.

(2) **Development Use of Areas:** The foregoing notwithstanding, **LESSEE's** license to enter and use the **Preferential Areas** designated as **Areas NP1-1** and **OP1-1** for the purposes set forth in the foregoing **Article III(A) (1)**, is entirely subject to the condition precedent that such **Areas NP1-1** and **OP1-1** shall first have been developed in accordance with the terms of **Article VII** below, and, until such development is completed in accordance with those terms, **LESSEE** shall only use such **Areas NP1-1** and **OP1-1** for purposes relating to such development. Pending the issuance of all necessary permits and authorizations for the proposed development and the commencement of such development of **Preferential Area NP1-1**, **LESSEE's** license to enter and use **Preferential Area NP1-1** is further subject to any right of Redondo Construction to continue to use such Area for its dredging operations at the Martin Peña Canal, as the **AUTHORITY** may permit and authorize. However, it shall be

the responsibility of the **AUTHORITY** to ensure that Redondo vacates **Preferential Area NP1-1** in a timely manner so as not to delay the start of the construction development of such area. In order to maximize the use of the facilities and the revenues of the **AUTHORITY**, the parties anticipate that **LESSEE** will commence operations during the development period as the facilities become available for operational use.

(3) Partial Termination for Non-Development: Subject to the provisions of **Article VII(A) (2) and (3)** and **Article XVI** below, any other provision in this **Agreement** to the contrary notwithstanding, if **LESSEE** does not diligently pursue the necessary permits and authorizations, or, through **LESSEE's** failure or neglect, does not complete and provide the necessary development plans and specifications in a timely manner so as to reasonably permit the commencement of the construction by the **AUTHORITY** of the improvements to **Areas NP1-1** and **OP1-1** contemplated under **Article VII** below, or which may subsequently be agreed to in writing by the **AUTHORITY** and **LESSEE**, within thirty-six (36) months after the granting of all necessary permits and authorizations to proceed with such development (or such later date as may be agreed to in writing by the **AUTHORITY** and **LESSEE**), then, at the **AUTHORITY's** sole election, **LESSEE's** rights and obligations, and the **AUTHORITY's** obligations, with respect to **Areas NP1-1** and **OP1-1** shall terminate upon the **AUTHORITY's** delivery of a written termination notice to **LESSEE**, and any interest in such Areas that is conveyed to **LESSEE** by the terms of this **Agreement** shall revert back to the **AUTHORITY**.

(4) Improvements to LP2-1: In the case of **Preferential Area LP2-1**, **LESSEE** shall coordinate with **NPR, Inc.**, the holder of the first preference right over said Area, and any assignees of **NPR, Inc.**, as to any proposed construction or development, and as to any entry by **LESSEE** into said Area for any construction or development purposes. **LESSEE** shall be allowed to carry out any construction or development work which may be approved by the **AUTHORITY** during such periods as may be reasonably agreed by the **AUTHORITY** and **LESSEE**. **LESSEE** and its architects, engineers, and contractors shall coordinate their work with the **AUTHORITY** in order to expedite any such approval, and shall conduct any work or operations so not to interfere with any authorized use of **Area LP2-1**. **LESSEE** shall otherwise conduct any operations in **Area LP2-1** so as not to interfere with any prior authorized use of **Area LP2-1**, and without disturbing any cargo lawfully occupying such preferential area or interfering with any operations with respect to such cargo or in preparation for the arrival of any authorized vessel. Any conflict between **LESSEE** and any other entity shall be resolved

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promptly by the **AUTHORITY**, and **LESSEE** shall comply with any such resolution subject to **LESSEE's** reservation of any rights and claims under this **Agreement**.

(5) **Priority Berthing of Bacardi:** Notwithstanding the foregoing or any other provision of this **Agreement**, **LESSEE's** preferential berthing rights as to **Area MP1-1** shall be subordinate to, and **LESSEE** hereby recognizes and will accommodate, the need of **Bacardi Corporation** to have priority berthing for its molasses and liquid sugar cargo vessels and barges, provided that the **AUTHORITY** otherwise provides **GUARANTEED BERTHING**, as defined in this **Agreement**, for the vessels to be serviced by **LESSEE** otherwise entitled to be berthed at **Area MP1-1**.

(B) THE EXCLUSIVE AREAS:

(1) **Unoccupied Exclusive Areas:** As of the effective date of this **Agreement**, but subject to the conditions precedent set forth below with respect to **Areas NE-1, OE-1, and OE-2**, the **AUTHORITY** hereby delivers to **LESSEE** the use and possession of the **Exclusive Areas** designated as **Areas ME-1, ME-2, NE-1, NE-3, OE-1, and OE-2**, so that **LESSEE** can carry out, subject to the terms and conditions of this **Agreement**, the construction, development, use, and operation of the **AUTHORITY's IMPROVEMENTS** and the **TERMINAL IMPROVEMENTS**, and to operate full marine terminal and stevedoring services for the handling of general cargo, break-bulk cargo, containers, non-bulk dry cargo, automobiles, and other cargo, including the berthing, mooring, loading and unloading of vessels and feeding tenders and their containers, automobiles, and cargo, the provision of fuel, supplies, ship chandler, port, customs and shipping agency services, the rendering of preparation for delivery services, repairs and/or other services related and incidental thereto to the vessel and feeding tenders, cargo, containers and automobiles, and their Master, crew and passengers, the marshaling, preparation and transshipment of cargo, automobiles, and containers in connection therewith, the operation of material handling equipment, tractors and cranes, and the temporary storage of containers, automobiles, and cargo in connection or incidental therewith, and all the services and activities incidental and related thereto under the terms of this **Agreement** in the **Leased Areas**.

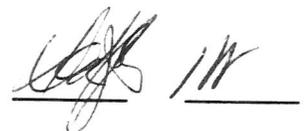
(2) **Use Prior to Development:** The foregoing notwithstanding, **LESSEE's** right to use and possess each of the **Exclusive Areas** designated as **Areas NE-1, OE-1, and OE-2** for the purposes set forth in the foregoing **Article III(B)(1)**, is subject to the condition precedent that each of such **Areas NE-1, OE-1, and OE-2** shall

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have been developed in accordance with the terms of **Article VII** below, and, until such development is substantially completed in accordance with those terms, **LESSEE** shall only use the undeveloped portions of **Areas NE-1, OE-1, and OE-2** for purposes relating to the development thereof. In order to maximize the use of the facilities and the revenues of the **AUTHORITY**, the parties anticipate that **LESSEE** will commence operations during the development period as the facilities become available for operational use.

(3) **Partial Termination for Non-Development:** Subject to the provisions of **Article VII(A) (2) and (3), Article XVI, and Article III(B) (2)**, any other provision in this **Agreement** to the contrary notwithstanding, if **LESSEE** does not diligently pursue the necessary permits and authorizations, or, through **LESSEE's** fault or neglect, does not complete and provide the necessary development plans and specifications in a timely manner so as to reasonably permit the commencement of construction by the **AUTHORITY** of the improvements to **Areas NE-1, OE-1, and OE-2** which are contemplated under **Article VII** below, or which may be subsequently agreed to in writing by the **AUTHORITY** and **LESSEE**, within twenty-four (24) months of the issuance of all necessary permits and authorizations to proceed with such development (or such later date as may be agreed to in writing by the **AUTHORITY** and **LESSEE**, then, at the **AUTHORITY's** sole election, **LESSEE's** rights and the **AUTHORITY's** obligations with respect to the subject portions of **Areas NE-1, OE-1, and OE-2** shall terminate upon the **AUTHORITY's** delivery of a written termination notice to **LESSEE**, and any interest in such **Area** that is conveyed to **LESSEE** by the terms of this **Agreement** shall revert back to the **AUTHORITY**.

(4) **Occupied Exclusive Areas:** The parties acknowledge that **Areas NE-4, NE-5, NE-6, ME-3, LE-3, LE-4, LE-5, LE-6, LE-7, and LE-8** (each an "**Occupied Exclusive Area**") are each currently occupied, and **LESSEE** agrees that, except as provided in **Article III(D) (4)** below, (a) the **AUTHORITY** has no obligation to deliver, and (b) **LESSEE** has no rights under this **Agreement** with respect to, each such **Occupied Exclusive Area** until such **Area** has been vacated and the **AUTHORITY** notifies **LESSEE** in writing that such **Occupied Exclusive Area** has been vacated. The **AUTHORITY** agrees to diligently give **LESSEE** such written notice as soon as practicable after each **Occupied Exclusive Area** is vacated, and, upon the **AUTHORITY's** delivery of said notice, the **AUTHORITY** shall be deemed to have delivered use and possession to **LESSEE** of the **Occupied Exclusive Area(s)** covered by such notice so that **LESSEE** can carry out, subject to the terms and conditions of this **Agreement**, the development, use, and operation of the **AUTHORITY's IMPROVEMENTS** and **TERMI-**

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NAL IMPROVEMENTS, including construction of the latter, and to conduct marine terminal and stevedoring services for the handling of general cargo, break-bulk cargo, containers, non-bulk dry cargo, automobiles, and other cargo, including: the berthing, mooring, loading and unloading of vessels and feeding tenders, and their containers, automobiles, and cargo; the provision of fuel, supplies, ship chandler, port, customs, and shipping agency services; the rendering of preparation for delivery services, repairs and/or other services related and incidental thereto, to the vessel and feeding tenders, cargo, containers, and automobiles, and their Master, crew, and passengers; the marshaling, preparation and transshipment of cargo, automobiles, and containers in connection therewith; the operation of material handling equipment, tractors, and cranes; and the temporary storage of containers, automobiles, and cargo in connection or incidental therewith; and all the services and activities incidental and related thereto under the terms of this **Agreement**. In the event that the **AUTHORITY** fails to deliver any of the Areas identified in this **Article III(B)(4)**, within thirty-six (36) months from the effective date of this **Agreement**, and the total area conveyed under this **Agreement** is less than 42 cuerdas, the **AUTHORITY** shall provide comparable marine terminal exclusive operations areas at the **PUERTO NUEVO MARINE TERMINAL AREAS** to make up such difference.

(5) **Contracting Rights:** Except as provided in **Article VII(A)(1)** below as to the design, development, and construction of the **AUTHORITY's IMPROVEMENTS**, nothing contained in this **Agreement** shall be interpreted or be deemed to restrict **LESSEE's** ability, in connection with the development and operation of the **InterMarine Public Terminal**, to freely contract with executives, consultants, professionals, engineers, architects, medical services, employees, labor, material, or services providers, contractors and subcontractors, agents or authorized representatives or similar or incidental service providers to assist with the operation of **LESSEE's** public terminal, stevedoring, and agency business, and all the services and activities incidental and related thereto and to the vessels and feeding tenders and their captains, crew and passengers, shipping containers, automobiles and cargo under the terms of this **Agreement**; provided, however, that **LESSEE** shall not subcontract to any non-affiliated third party the basic stevedoring and public terminal handling services to be provided by **LESSEE** under this **Agreement** without the **AUTHORITY's** express prior written approval.

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(C) GATE AND ACCESS ROADWAYS:

Subject to the conditions precedent and the additional terms and conditions herein, the **AUTHORITY** hereby grants **LESSEE**, as of the effective date of this **Agreement**, and **LESSEE** so acknowledges, a license to use all of the **Gate and Access Roadway Areas** so that **LESSEE** may transit to and from the **Leased Areas** and to carry out the development and operation of the **InterMarine Public Terminal**, and operations and business incidental thereto, under the terms of this **Agreement**.

(D) REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY AND LESSEE; DISCLAIMER BY THE AUTHORITY:

(1) Subject to the terms and conditions of this **Agreement**, and except as otherwise provided herein, the **AUTHORITY** hereby warrants and represents to **LESSEE** that the **AUTHORITY** has title over the **Leased Areas**, that during the entire term of this **Agreement** the **AUTHORITY** shall maintain rights over the **Leased Areas** to comply with the **AUTHORITY's** obligations under this **Agreement**.

(2) **LESSEE** hereby warrants and represents to the **AUTHORITY** that **LESSEE** has the requisite authority to enter into this **Agreement**. The **AUTHORITY** hereby warrants and represents to **LESSEE** that the **AUTHORITY** has the requisite authority to enter into this **Agreement**.

(3) The **AUTHORITY** and **LESSEE** shall each deliver to the other party, at the time of the execution of this **Agreement**, (a) a Corporate Secretary's Certificate certifying, attesting, and transcribing or attaching the text of the corporate actions and resolutions duly authorized and approved by their respective **Boards of Directors** approving this **Agreement** and authorizing the **AUTHORITY's Executive Director** and **INTERSHIP's President** respectively, or other authorized officer of each of said signatories, to execute this **Agreement**, and (b) a written opinion of their respective corporate counsel as to the legality and validity of such corporate acts.

(4) The **AUTHORITY** covenants with **LESSEE** that the **AUTHORITY** will use its best efforts to exercise its rights over the proposed **Leased Areas** so as to cause the occupants of **Areas ME-3, NE-4, NE-5, NE-6, LE-3, LE-4, LE-5, LE-6, LE-7, and LE-8**, to vacate said **Areas** as soon as practicable, and to deliver the free and unencumbered possession of such **Areas** to **LESSEE**, subject to any existing utility or other easements of record. The **AUTHORITY** shall attempt, up to June 30, 1997, to negotiate the relocation of such



occupants to other sites on terms which are mutually acceptable between the **AUTHORITY** and each of such occupants, but shall not cure any defaulted lease, or extend or grant any additional possessory rights beyond June 30, 1997, except as may be necessary to relocate such occupants prior to June 30, 1998 under a legally enforceable agreement providing for such relocation. In the event such relocation efforts are unsuccessful, the **AUTHORITY** shall diligently exercise all legal rights, remedies, and causes of action to obtain the necessary specific performance, injunction, eviction, or dispossession of the **Leased Areas** by said occupants so that the **Leased Areas** may be delivered to **LESSEE** in a timely manner. The **AUTHORITY** shall notify **LESSEE** of any legal actions which the **AUTHORITY** may institute against any of the occupants of such **Leased Areas**, and, upon **LESSEE's** written request, the **AUTHORITY** shall provide **LESSEE** with a copy of all pleadings in any such legal actions. **LESSEE** acknowledges that the time at which **LESSEE** will receive possession of such Areas as contemplated by this **Agreement** may be impacted and delayed by the Courts or other factors beyond the **AUTHORITY's** control. In the event that **Area LE-9** is not made available immediately due to the existing lease agreement, the same shall be delivered by the **AUTHORITY** to **LESSEE** upon the expiration of the present term of such lease without any extension of said lease by amendment or otherwise as to **Area LE-9**.

(5) EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OR AS OTHERWISE SET FORTH IN THIS AGREEMENT, LESSEE ACKNOWLEDGES THAT THE AUTHORITY HAS NOT MADE, AND THE AUTHORITY HEREBY EXPRESSLY DISCLAIMS AND NEGATES, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, RELATING TO THE CONDITION OF THE LEASED AREAS, INCLUDING, WITHOUT LIMITATION, (a) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (b) ANY RIGHTS OF LESSEE UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE CONSIDERATION, (c) ANY IMPLIED OR EXPRESS REPRESENTATION OR WARRANTY WITH RESPECT TO THE AUTHORITY POSSESSING ANY OF THE LICENSES, PERMITS OR OTHER AUTHORITY NECESSARY TO DEVELOP THE LEASED AREAS AS CONTEMPLATED HEREIN, AND (d) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW NOW OR HEREAFTER IN EFFECT.

ARTICLE IV. RIGHTS OF FIRST REFUSAL.

(A) THE FIRST REFUSAL AREAS:

(1) Description of Land: The **AUTHORITY** is the owner of certain parcels of land which are described as follows:



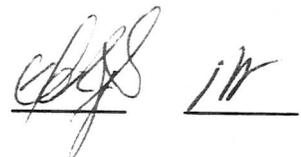
(a) Area NE-2. The developed lot, presently occupied by Bacardi Corporation for its molasses tank farm, fronting to the North with **Area NE-1**, to the East with **Area OE-1**, to the South with **Area NE-3**, and to the West with **Roadway N**, consisting of a total of six point zero zero two zero (6.0020) cuerdas, and identified as **Area NE-2** on Exhibit A.

(b) Area ME-4. The lot to be developed into a **marine terminal operations area**, presently occupied by Ismael Perez ("**Perez**") pursuant to a long-term lease agreement, fronting to the North with **Roadway CC**, to the East with **Area ME-3**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with **Area LE-3**, consisting of a total of zero point seven five four three (0.7543) cuerdas, and identified as **Area ME-4** on Exhibit A.

(c) Area LE-9. The lot to be developed into a **marine terminal operations area**, presently occupied by Trailer Truck Repair Center pursuant to a long-term lease agreement, fronting to the North with **Roadway C**, to the East with **Area LE-8**, to the South with the edge of the **Port** property to the North of Kennedy Avenue, and to the West with additional lands presently being occupied by Trailer Truck, consisting of a total of one point three seven three nine (1.3739) cuerdas, and identified as **Area LE-9** on Exhibit A.

(2) Grant of Right of First Refusal Right and Option: The **AUTHORITY**, subject to the provisos of this **Article IV**, hereby grants **LESSEE** the right of first refusal and, in the event that said right is exercised in accordance with the terms hereof, the right to use and lease under the terms of this **Agreement**, as additional **Exclusive Areas**, each of **Areas ME-4, LE-9, and NE-2** as to which such first refusal right is exercised. The areas subject to this right of first refusal shall be referred to as the "**First Refusal Areas**". The **AUTHORITY** further covenants and agrees to notify **LESSEE** in the event that any and all of the **First Refusal Areas** become available for lease during the term of this **Agreement** or any extension thereof.

(3) Exercise of Rights Granted: **LESSEE** may exercise the rights granted in this **Article IV** by giving written notice to the **AUTHORITY** of **LESSEE's** election to occupy any and/or all of the **First Refusal Areas** which become available. In order to validly



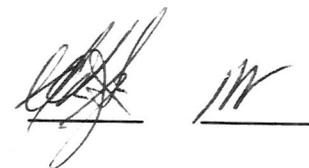
exercise and protect the first refusal rights granted under this **Article IV**, **LESSEE** must give the **AUTHORITY** written notice of **LESSEE's** election to lease and occupy the optioned areas under the terms of this **Agreement** no later than forty (40) calendar days after receipt of a formal written notice from the **AUTHORITY** to the effect that any one or all of the **First Refusal Areas** are available to **LESSEE** under the terms of this **Agreement**. The parties hereto will execute amendments to this **Agreement** to add any and/or all of the **First Refusal Areas** upon any exercise of the first refusal rights, and reflect the full compliance with the covenants and undertakings contained in this **Agreement**. **LESSEE** shall be free to negotiate and seek from the respective present lessees, right holders, and/or future lawful authorized assignees of said **First Refusal Areas**, the early assignment or termination for the benefit of **LESSEE** of all or part of their rights over the **First Refusal Areas**.

(4) **Prior Lessee's Rights:** The **AUTHORITY** and **LESSEE** each agree that the terms of this **Article IV** are not intended to, and in no event shall be read to, interfere with the right or ability of any existing tenant or user of **Area NE-2** to extend its lease of its respective area, including through the extension of the presently existing lease or the execution of any successor lease with the existing tenant or user.

ARTICLE V. EXERCISE OF RIGHT OF PREFERENCE OVER PREFERENCE AREAS.

(A) (1) **Nature of Right of Preference:** Except to the extent that the **AUTHORITY** exercises its right to permit others to use the **Preference Areas** in emergency situations or to save lives, and subject to the conditions set forth in **Article III(A)** above and in this **Article V**, the **Right of Preference** granted to **LESSEE** pursuant to **Article II(A) (1)** and (3) above shall operate to prefer **LESSEE** over other members of the public in the use of the **Preferential Areas** for the purposes and use of all of the services and activities described in **Article III(A) (1)** above.

(A) (2) **Nature of Rights of Second Preference:** Except to the extent that the **AUTHORITY** exercises its right to permit others to use the berthing areas in emergency situations or to save lives, and subject to the conditions set forth below in this **Article V**, the **Right of Second Preference** granted to **LESSEE** pursuant to **Article II(A) (2)** above shall operate to prefer **LESSEE** over members of the public other than **NPR, Inc.**, the holder of the right of first preference, and its authorized assignees, in the use of **Preferential Area LP2-1** for the purpose and use of all of the

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services and activities described in **Article III(A)(1)** and **(4)**. The rights granted hereunder shall be subject and subordinate to the rights of the **AUTHORITY** to permit **NPR, Inc.**, and its authorized assignees, the use of all or part of **Area LP2-1**, in accordance with any present or future contract between the **AUTHORITY** and **NPR, Inc.**, and its authorized assignees, and applicable **AUTHORITY** Regulations. **LESSEE's** use of **Preferential Area LP2-1** under this **Agreement** shall be coordinated through the **AUTHORITY**, shall comply with the **AUTHORITY's** Regulations and **Articles III** and **V** of this **Agreement**, and shall not interfere with the rights of **NPR, Inc.** and its authorized assignees.

(B) Use of Preferential Areas: Subject to the foregoing, each operational use of the **Preferential Areas** (berthing areas and **Operations Platform and Cargo-in-Transit Areas**, and any fixtures thereof) made by **LESSEE**, shall be made under individual contracts between **LESSEE** and the **AUTHORITY** as follows:

(1) Single Contract and Use: Each use of the **Preferential Areas** made in connection with one berthing of a seagoing vessel and its feeding tenders, shall create a single contract between the **AUTHORITY** and **LESSEE**, which contract shall cover all use of the **Preferential Area** in connection with the berthing or service of such vessel and any feeding tender, including the loading and discharge of the vessel, the handling and temporary storage of outbound and inbound cargo and supplies, and the handling of passengers, and shall be subject to all terms and provisions of this **Agreement** and to the rules and regulations applicable to the **AUTHORITY's Port** terminal facilities (hereinafter referred to as the "**Tariffs**"), including the rates and charges then in effect.

(2) Schedule of Use and Arrival of Vessels: **(a) Filing of Use Schedules:** **LESSEE** shall provide the **AUTHORITY** a written "Schedule of Use and Arrival of Vessels" (the "**Use Schedule**") showing **(i)** the expected arrivals of seagoing vessels at any of the **Preferential Areas** for the next succeeding thirty (30) days, and **(ii)** the number of days that each vessel is expected to occupy space at the berthing areas. This **Use Schedule** shall be filed no less frequently than once a month, on or before the eighth (**8th**) day of each calendar month, during the effective period of this **Agreement**. Each such filed **Use Schedule** shall be subject to modification or revision by **LESSEE** in the next succeeding schedule in order to accommodate the overlapping or future portion of any such thirty (30) day period. Without waiving the requirement to file the **Use Schedule**, the parties may establish, by mutual written agreement,



facsimile or other means of written communication to coordinate the use of the berths.

(b) **Assignment and Use of Berths:** The **Use Schedule** or other agreed upon facsimile or written communication shall constitute an application for a berth assignment, and the **AUTHORITY** shall assign the berths as requested by **LESSEE**, provided (i) that the **AUTHORITY** has not already assigned such berths to other vessels, and (ii) otherwise consistent with the terms of this **Agreement**. Each vessel so scheduled and assigned a berthing dock must occupy the berthing space assigned by the **AUTHORITY**, and shall not occupy or move to another berthing area without the prior written consent or direction of the **AUTHORITY**. Upon the late or unscheduled arrival of a vessel to be serviced in the **InterMarine Public Terminal** and otherwise entitled to the use of a berthing area covered under the terms of this **Agreement**, but not scheduled, **LESSEE** may exercise its right of preference only for such period as the **AUTHORITY** has not assigned the **Preferential Area**, or has not otherwise validly scheduled the use thereof. Upon notice of the proximate arrival of a vessel, at the day or time scheduled by **LESSEE**, the **AUTHORITY** will cause the **Preferential Areas** and scheduled berths to be made available for such vessel entitled to preferential berthing, and the **AUTHORITY** shall cause to move or remove any vessel occupying said berth at the cost and expense of such third party vessel.

(3) **Right to Permit Use:** If a **Use Schedule** furnished by **LESSEE** indicates that **LESSEE** has not scheduled the use of the dockage berth of any of the **Preferential Areas**, or the **AUTHORITY** has not otherwise previously assigned the berth to **LESSEE's** serviced vessels or pursuant to **Sub-paragraphs (2)** above and (c) below, the **AUTHORITY** shall have the right to use, and permit the use by others for vessels not scheduled by **LESSEE** of, all or any part of the **Preferential Areas**, including the **Berthing Areas** not in use at the time by **LESSEE** for the authorized berthing of vessels. All such assignments shall be made by the **AUTHORITY** on an equal allocation basis which does not subject **Berths L** through **O** (to the extent completed and operational) to a greater intensity of use than **Berths E** through **J** of the **Puerto Nuevo Marine Terminals** as provided in **Sub-paragraph (5)** below. The **AUTHORITY** shall notify **LESSEE** of each such assignment of the **Preferential Areas** within twenty-four (24) hours of such assignment being made by the **AUTHORITY**; such notice shall specify the name of the vessel, the approximate date and time of arrival, the expected discharge time, and the nature of the cargo.

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(4) Rendering of Stevedoring Services: As Areas LP2-1 and MP1-1 are made available to LESSEE under the terms of this Agreement, and/or the improvements outlined under this Agreement to any of Areas NP1-1 and OP1-1 and the related facilities are completed, if not already made available or completed as of the effective date of this Agreement, herein collectively referred to upon the completion of such improvements as the "Improved Preferential Areas", LESSEE is hereby authorized to provide Stevedoring Services at each of the Improved Preferential Areas. The AUTHORITY may assign from time-to-time, on an equal allocation basis of Berths E through O of the Puerto Nuevo Marine Terminals as provided in Subparagraph (5) below, third party vessels to the Improved Preferential Areas to be discharged and serviced by third party stevedoring entities other than LESSEE, and LESSEE shall not interfere with any such third party stevedoring operations being accomplished in a timely and economical manner in accordance with the AUTHORITY's regulations and tariffs, and the terms of this Agreement.

Any Stevedoring Services provided by LESSEE in Preferential Areas LP2-1, MP1-1, NP1-1, and OP1-1, as a public terminal, shall be made available and provided to all members of the public desiring to use such services at competitive rates in accordance with LESSEE's stevedoring agreements or public terminal rates as shall be filed, to the extent so required, with the appropriate regulatory agencies with jurisdiction. LESSEE shall provide to the AUTHORITY copies of LESSEE's public rates and tariffs as they may be amended from time to time, and shall maintain copies available for inspection by any parties interested in using the InterMarine Public Terminal and its services. LESSEE, as a public terminal operator, shall handle all vessels that may be reasonably scheduled into the public terminal facility considering its usage and scheduled cargo, except for environmentally hazardous cargo or vessels, or cargo that may render LESSEE liable or subject to labor contract disputes, or violation of contractual obligations, or civil or criminal violations of law.

(5) Extent of Rights: (a) Equivalent Assignment Intensity of Berths: The AUTHORITY shall assign during the calendar year the free unscheduled time of the dockage berths and Preferential Areas of the InterMarine Public Terminal, not otherwise scheduled and reserved by LESSEE, or as to Berth L by NPR, Inc. and its authorized assignees, or as to Berth M by Bacardi Corporation and any Special Cargo Vessels limited to such Berths per Article 5(c) below, in such a manner so that each of such berths is not burdened with more than its fair share of third-party vessels (including, for purposes of permitting other third-party vessels, the Bacardi

Corporation and **Special Cargo Vessels**) on an equal allocation basis with all of **Berths E** through **O** of the **Puerto Nuevo Marine Terminals**, subject to their respective intensity of vessel use. This means that, before assigning any additional third party vessel to the **Berthing Areas** within the **Preferential Areas**, the **AUTHORITY** will review the intensity of use for the prior twelve (12) months of each of **Berths E** through **M** initially, and including **Berths N** and **O** as such **Berths** are developed and become operational (i.e., the **AUTHORITY** will determine the number of days each such **Berth** was in use), and will not assign any additional third party vessels to any of **Berths L** through **O** if there are other available berths among **Berths E** through **K** which have not been used as much, on a comparative basis for such time period, as any of **Berths L** through **O**, unless there are extenuating circumstances requiring such assignment for the efficient and economical handling of such vessel and its cargo. No such assignment shall affect the preferential rights to berth of **LESSEE's** previously notified vessels exercising the preferential right to berth under this **Agreement**.

(b) **Use of Preferential Areas:** In order to facilitate and maximize the efficient and economical use of the **Preferential Areas** by **LESSEE** and by any authorized third parties, a thirty (30) foot vehicle and equipment access and circulation roadway parallel to the water's edge, and a similar access and circulation roadway connecting such parallel roadway to the **Berthing Apron** between each **Berth**, shall be kept free and clear at all times, and the service gates of the exclusive terminal area, and the first one hundred fifty (150) feet of the apron from the water's edge, shall have been cleared of all cargo prior to the arrival of any authorized vessel. All cargo or equipment left on or in such areas shall be removed by the consignee, terminal operator, or the **AUTHORITY** if not promptly removed upon request, at the published cost per the **Port Tariff** then in effect, and at the risk and expense of the carrier and consignee and its third party stevedoring company, to other available areas within the **Preferential Areas** so that such cargo can continue to enjoy any remaining free time after discharge, or demurrage charges, as appropriate. If any trash, debris, or other solid or liquid waste, has been left on the apron by third parties prior to the commencement of any authorized vessel operations by **LESSEE**, such materials may be removed by **LESSEE**, upon request by the **AUTHORITY**, at the cost, risk, and expense of the responsible carrier, vessel, consignee, or terminal operator, in accordance with the **Port Tariff**. The use and cleaning standards outlined herein shall be referred to as the "**Preferential Area Use and Cleaning Standards**." The **Authority** will amend the **Port Tariff** within a reasonable period of time after the effective date of this

Agreement to require all third party stevedores, users, consignees, and vessels being assigned use of the **Preferential Areas** or one of its berths, to strictly comply with the foregoing **Preferential Area Use and Cleaning Standards**. In the event that the **Port Tariff** is not so amended by July 1, 1997, then **INTERSHIP's** obligation to comply with the foregoing **Standards** shall be suspended as of July 1, 1997 and continuing until the **Port Tariff** is amended to incorporate such **Standards** or other standards; thereafter **INTERSHIP** shall comply with such standards as may be adopted and established in the **Port Tariff**.

(c) **Special Cargo:** The **AUTHORITY** has advised **LESSEE** that the **Preferential Areas** of **Berth M** are presently designated by the **AUTHORITY** and the **EQB** to receive certain bulk loose cargoes that are subject to fugitive dust upon being unloaded, such as grounded coal and clinker. Such cargoes are herein designated as "**Special Cargo**," and the vessels carrying the same as "**Special Cargo Vessels**".

LESSEE and all other users of the **Puerto Nuevo Marine Terminals** are expected to cooperate with the **AUTHORITY** to provide berthing in the **Puerto Nuevo Marine Terminals** for vessels to unload such **Special Cargo**. The **AUTHORITY** will not assign to the **Preferential Areas** berths more than their respective fair share of such **Special Cargo Vessels** as among all of **Puerto Nuevo Berths E** through **O** which may be authorized by the **EQB** to receive such vessels, and as provided in **Subparagraph (5) (a)** above. The **AUTHORITY** shall diligently seek authorization to handle such **Special Cargo** at all of **Berths E** through **O** from the cognizant authorizing agencies. **LESSEE** shall not be required by the **AUTHORITY** to stevedore said **Special Cargo Vessels**, although **LESSEE** may freely so elect, and **LESSEE** shall not interfere with any third party stevedore handling such vessels in accordance with the **AUTHORITY's** **Port** regulations and in a manner not inconsistent with the terms of this **Agreement**.

(6) **Right to Require Vessel to Vacate:** The **AUTHORITY**, in an emergency situation, may require any vessel to vacate a berth when, in the sole judgment of the **AUTHORITY**, after consulting and notifying **LESSEE**, such action shall be necessary to prevent injury or damage, or threat of injury or damage, to persons or property during said emergency.

(7) **Report of Use:** No later than five (5) working days after the departure of each vessel, unless other specified in the **Port Tariff**, **LESSEE** shall submit to the **AUTHORITY** a copy of the vessel's **Port** cargo manifest and a report referred to as the "**Re-**

port of Dockage of Vessel," including the following information and any other information required under the applicable **Port Tariffs**:

- a. The name of the vessel;
- b. The vessel's gross registered tonnage;
- c. The date and time of arrival of the vessel;
- d. The volume and tonnage of actual cargo loaded and unloaded; and
- e. The number of passengers that arrive and leave, if any.

ARTICLE VI. TERM.

(A) **CONSTRUCTION AND DEVELOPMENT TERM:** The preliminary development and construction term of this **Agreement** shall be a period of five (5) years beginning on the date first appearing on page one of this **Agreement**, which shall be the date of the execution of this **Agreement** (the "**Execution Date**"), and ending at midnight (2400 hours) of the day preceding the fifth (5th) anniversary of the **Execution Date** (hereinafter, the "**Development Term**"). In order to maximize the use of the facilities and the revenues of the **AUTHORITY**, the parties anticipate that **LESSEE** will commence operations during the **Development Term** as the facilities become available for operational use.

(B) **THE INITIAL OPERATIONS TERM:** Upon the completion of the **Development Term**, and beginning immediately upon the expiration of the **Development Term**, the initial operations term of this **Agreement** shall be for a period of fifteen (15) years (the "**Initial Term**"), ending at midnight (2400 hours) on the day preceding the twentieth (20th) anniversary of the **Execution Date**.

(C) **EXTENSION OF THE INITIAL TERM:**

(1) **Extension Rights:** **LESSEE** may extend the **Initial Term** of this **Agreement** for up to a total of two (2) additional five (5)- year extension terms (each an "**Extension Term**"), for a total of ten (10) additional years, or an aggregate total potential term of thirty (30) years (including the **Development Term**). Each five (5)- year **Extension Term**, if exercised, shall commence immediately upon the expiration of the previously existing term, and shall end at midnight (2400 hours) of the day preceding the fifth (5th) anniversary of the start date of such five-year term. Each such five-year term extension right shall be herein referred to as the "**Extension Right**".



(2) Exercise of Extension Terms: Provided that LESSEE is not in a default which is not curable under **Article XV** below of any of the terms of this **Agreement**, either at the time of exercise of an **Extension Right** or at the commencement of any **Extension Term**, LESSEE may exercise an **Extension Term** by giving written notice to the **AUTHORITY**, no later than twelve (12) months prior to the expiration of the **Initial Term**, or, after exercise of any **Extension Term**, not later than twelve (12) months prior to the expiration of said **Extension Term**, which notice shall herein be referred to as the "**Extension Notice**". Each such **Extension Notice** shall be addressed to the **AUTHORITY**, shall make reference to this **Agreement**, shall state that LESSEE is exercising the **Extension Term**, and shall clearly set forth the commencement and expiration date of the then current term. Upon the **AUTHORITY's** receipt of such **Extension Notice**, and conditional upon LESSEE not being in an incurable default as set forth above of any of its obligations under this **Agreement** as of the commencement of the **Extension Term**, this **Agreement** shall be deemed so extended, subject to the provisions of **Article VI(C)(3)** below.

(3) Notice of Non-Intensive Utilization of Facilities: The **AUTHORITY** may elect, within fifteen (15) working days of receipt of an **Extension Notice**, to provide LESSEE a "**Notice of Non-Intensive Utilization of Facilities**" letter that shall reasonably describe the basis for the **AUTHORITY's** determination that the past two-year average use of the **Leased Areas** by LESSEE is twenty per cent (20%) below the past two-year average gross tonnage and TEU container use of the other terminals of the **Puerto Nuevo Marine Terminal Areas** on an equivalent basis. Any usage for different cargo types, such as liquid bulk or sugars, molasses, food and liquor, and automobiles, using the various facilities shall be taken into account in establishing berthing use and requirements by LESSEE. Upon receipt of a **Notice of Non-Intensive Utilization of Facilities**, LESSEE shall, within fifteen (15) working days after the date of the **Notice of Non-Intensive Utilization of Facilities**, either:

(a) deliver to the **AUTHORITY** a letter of "**Acceptance of Notice of Non-Intensive Utilization of Facilities**", in which event LESSEE shall have an eighteen (18) month period, commencing ten (10) months before the expiration of the then current term, to generate enough volume to bring the **Leased Area** to a utilization rate above eighty per cent (80%) of the referenced average gross tonnage and TEU container use of the other terminals of the **Puerto Nuevo Terminal area** on an equivalent basis (herein referred to as the "**80% Utilization**





Rate") and upon such average achievement over a minimum period of six (6) continuous months during said eighteen (18) month utilization compliance term, the full five-year term of the subject **Extension Term** shall be deemed validated. In the event **LESSEE** has met the **80% Utilization Rate** test during the last three (3) months of the eighteen (18) month period, then and in that event, the utilization compliance term shall be extended on a month-to-month basis up to three (3) additional months to allow **LESSEE** to meet the **80% Utilization Rate** test. If **LESSEE** fails to achieve the **80% Utilization Rate**, **LESSEE's** rights under this **Agreement** may be terminated by the **AUTHORITY** upon delivery of a written termination notice to **LESSEE**, and, as soon as practicable thereafter (but in no event later than ten (10) working days after the date of such termination notice), the parties shall meet or otherwise discuss and agree upon the terms of **LESSEE's** surrender of the **Leased Area** as provided in **Article VI(C) (3) (b)** below; or

(b) deliver to the **AUTHORITY** a letter of "**Surrender of Facilities**", in which event, and as soon as practicable thereafter (but in no event later than ten (10) working days after the date of such letter), the parties shall meet or otherwise discuss and agree upon the terms of **LESSEE's** surrender of such portions of the **Leased Areas** as is necessary to achieve an **80% Utilization Rate**; or

(c) challenge the **AUTHORITY's** **Notice of Non-Intensive Utilization of Facilities** determination pursuant to the procedures set forth in **Article XXXII** below. **LESSEE's** challenge submission shall set forth such data concerning **LESSEE's** utilization of the **Leased Areas**, including the adjacent or alternative berth areas, as is necessary for the **AUTHORITY** to make a utilization determination in accordance with the terms of **Article VI(C) (3)** above. However, any such challenge by **LESSEE** will not serve to extend the eighteen-month compliance period afforded under **subparagraph (a)** above, and, if **LESSEE's** challenge is not sustained, and if **LESSEE** has not established its compliance as set forth in **subparagraph (a)** above, then the remaining provisions of that subparagraph shall apply.

ARTICLE VII. CONSTRUCTION OF THE TERMINAL FACILITIES.

(A) RESPONSIBILITIES OF LESSEE FOR THE DEVELOPMENT.

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(1) Development Master Plan: LESSEE and the AUTHORITY have agreed upon certain improvements to the Leased Areas which are described in Exhibit B to this Agreement, and which, as completed, together with the Leased Areas, will comprise the InterMarine Public Terminal. Certain of these improvements (i.e., AUTHORITY'S IMPROVEMENTS) are intended to increase the permanent value of the Leased Areas as a marine terminal and as assets of the AUTHORITY, and will be constructed and paid for by the AUTHORITY, and shall become the property of the AUTHORITY as they are constructed and installed in the Leased Areas. In addition, title to any improvements made by LESSEE at its own expense to structurally reinforce the quay apron platform for cranes or ramps shall immediately vest in the AUTHORITY as an integral part of the platform as such improvements are implemented. The parties agree that, except as otherwise provided herein or directed in writing by the AUTHORITY, LESSEE shall be responsible for (i) obtaining all permits and other authorizations necessary and appropriate for the design, development, and construction of the AUTHORITY'S IMPROVEMENTS (collectively, "Permitting Services"), and (ii) providing (or contracting for the provision of) designs, including as appropriate all architectural plans and technical drawings (collectively, "Design Services"), for the AUTHORITY'S IMPROVEMENTS. The parties further agree that, except as otherwise provided herein or directed in writing by the AUTHORITY, the AUTHORITY shall be responsible for contracting for any other services or materials necessary or appropriate to implement the AUTHORITY'S IMPROVEMENTS. All Permitting Services and Design Services shall be provided by LESSEE in compliance with the terms of this Agreement, including without limitation Article VII(A) (2) below and, provided that said Permitting Services and Design Services are performed in compliance with said terms, shall be paid for by the AUTHORITY in accordance with the terms and conditions set forth in this Agreement.

The parties also agree that, except as otherwise directed in writing by the AUTHORITY, LESSEE shall be responsible for the design, development, and construction or other implementation of the TERMINAL IMPROVEMENTS, including all costs associated with said TERMINAL IMPROVEMENTS. LESSEE shall comply with the terms of this Agreement, including without limitation Article VII(A) (2) below, in connection with the design, development, and construction or other implementation of the TERMINAL IMPROVEMENTS.

(1.1) Target Development Schedule: LESSEE shall be responsible for the design and development of a public marine terminal on the Leased Areas under the terms of this Agreement. Provided that LESSEE receives the permits and requisite financing and

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consent from the **AUTHORITY**, **LESSEE** will cause, through its contractors, architects and engineers, the diligent design and development in phases of the **InterMarine Public Terminal** as more fully described in the following target development schedule (the "**Target Development Schedule**"):

(i) **Phase One:** **LESSEE** shall first complete the improvement of **Areas Preferential Areas LP2-1 and MP1-1, and Areas ME-1 and ME-2**, within six (6) months of this **Agreement** becoming effective, except as set forth below. As contemplated by the parties, **Area ME-2** required substantial improvements, including sub-surfacing, asphalt pavement, and fencing, which have been completed pursuant to the **Pier M Interim Agreement**. **Area ME-1** will require similar improvements as **Area ME-2**, since the existing asphalt surface is only two to three inches (2" - 3") and does not have an adequate sub-base to support heavy container traffic. **Area MP1-1** will require cleaning, surface capital repairs, and adequate security fencing, and such improvements to the bulkhead and berthing areas, including the installation of fenders, as may be determined necessary after proper technical consultation and inspection. Based upon **LESSEE's** preliminary estimates, the total cost of this work will be approximately **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000)**. The work on **Area ME-1** will only be partially completed during the aforesaid six (6) months, and will be coordinated and completed with the final location and construction of the break-bulk and customs warehouse discussed in **Phase Seven** below. All improvements described as a part of **Phase One** shall be **AUTHORITY's IMPROVEMENTS** as and when completed, and shall be designed, constructed, and otherwise implemented by or on behalf of **LESSEE**.

(ii) **Phase Two:** **Areas OE-2 and NE-3** shall be developed next and completed prior to December 31, 1997, or within twelve (12) months after the receipt of all requisite permits and approvals. **LESSEE** shall remove and sell so much of the sobrecargo material presently in **Area OE-2** as is advisable and necessary for the clearing and development of such Area, and shall credit the proceeds of the sales of such material against the development costs of **AREA OE-2**, and shall provide the **AUTHORITY** a written accounting of such sales and supporting documents. **LESSEE** estimates that the development cost of these Areas will be approximately **ONE MILLION SIX HUNDRED THOUSAND DOLLARS (\$1,600,000)** based upon preliminary estimates of \$150,000 per cuerda for the development of **Area OE-2**, and \$120,000 per cuerda for the development of **Area NE-3**, for the



subsurface work, surfacing, mechanical and electrical infrastructure, lighting, and fencing. All improvements described as a part of **Phase Two** shall be **AUTHORITY IMPROVEMENTS** as and when completed. With the exception of the removal and sale of the sobrecargo in **Area OE-2**, which shall be the responsibility of **LESSEE**, all other improvements described as a part of **Phase Two** shall be made as follows: (a) **LESSEE** shall be responsible for **Design Services** and **Permitting Services**, and (b) the **AUTHORITY** shall have the power to contract for and control the construction and implementation of all other improvements described as a part of **Phase Two**.

(iii) **Phase Three**: The next phase contemplates the development of the access bridge from Kennedy Avenue to the **Inter-Marine Public Terminal** between **Areas N-5** and **NE-6**, title to which will be transferred to the **AUTHORITY** immediately upon completion of the same. Construction contract awards should commence within thirty (30) days after the receipt of all requisite construction permit approvals, receipt of endorsements of the Puerto Rico Department of Transportation of the access, and the requisite approval of the **AUTHORITY**. Up to the amount of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** of the costs of this work, when developed, will be charged as **AUTHORITY'S IMPROVEMENTS**, and the **AUTHORITY** will be responsible for any Government agency impact fees in the event of any assessment thereof. The balance of the cost will be paid by **LESSEE**. All improvements described as a part of **Phase Three** shall be **AUTHORITY'S IMPROVEMENTS** as and when completed, and shall be designed, constructed, and otherwise implemented by, or on behalf of, **LESSEE**.

(iv) **Phase Four**: It is anticipated that **Areas ME-3, NE-4, NE-5, and NE-6**, which total approximately **5.8801 cuerdas**, shall be developed concurrently with **Phase Two** or next as such areas are made available to **LESSEE** by the **AUTHORITY**. **LESSEE** estimates that the cost of this work will be around **SEVEN HUNDRED AND FIVE THOUSAND DOLLARS (\$705,000)** based upon preliminary estimates of \$120,000 per cuerda for sub-surfacing, asphalt pavement, fencing, storm sewer, other mechanical and electrical infrastructure, roadway construction, and the cost of removal or improvement of the electrical substation located in or adjacent to **Area ME-3**, depending on its service capability. The cost of environmental removal of any oil from the electrical substation transformers, if required, is not included in this estimate. All improvements described as a part of **Phase Four** shall be **AUTHORITY'S IMPROVEMENTS** as and when com-



pleted. All improvements described as a part of **Phase Four** shall be made as follows: (a) **LESSEE** shall be responsible for **Design Services** and **Permitting Services**, and (b) the **AUTHORITY** shall have the power to contract for and control the construction and implementation of all other improvements described as a part of **Phase Four**.

(v) **Phase Five:** It is anticipated that **Areas ME-4, LE-3, LE-4, LE-5, LE-6, LE-7, LE-8, and LE-9**, which total approximately **14.4563 cuerdas**, shall be developed during the nine (9) months following the delivery of such areas to **LESSEE** by the **AUTHORITY**. **LESSEE** estimates that the cost of this work will be around **ONE MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,750,000)** based upon preliminary estimates of \$120,000 per cuerda for sub-surfacing, asphalt pavement, fencing, storm sewer, and other mechanical and electrical infrastructure. All improvements described as a part of **Phase Five** shall be **AUTHORITY's IMPROVEMENTS** as and when completed. All improvements described as a part of **Phase Five** shall be made as follows: (a) **LESSEE** shall be responsible for **Design Services** and **Permitting Services**, and (b) the **AUTHORITY** shall have the power to contract for and control the construction and implementation of all other improvements described as a part of **Phase Five**.

(vi) **Phase Six:** This phase contemplates the development of the bulkhead and operations platform apron of **Preferential Areas NP-1 and OP-1**, with a total of approximately 225,000 square feet of apron platform, and the development of the adjoining terminal **Areas NE-1, OE-1A, OE-1B, and OE-1C**. This phase also will include any reinforcement of the platform to handle cranes, which cost shall be covered by **LESSEE**, but, as installed, title to said reinforcement improvements shall immediately vest in the **AUTHORITY** as an integral part of the platform. The development of these areas shall not begin until the receipt of any requisite permits from the U.S. Corps of Engineers and all requisite construction permits approvals and endorsements, including the requisite approval of the **AUTHORITY**. The **AUTHORITY** shall use its reasonable efforts to issue construction contracts as soon as practicable after **LESSEE** has obtained all requisite construction permits approvals and endorsements, including the requisite approval of the **AUTHORITY**. Work may be carried out in one or more phases, depending on the approvals of one or more of the quay's bulkheads and platforms. The parties hereto shall use their respective reasonable efforts to complete the construction and

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development of each of the **Terminals N and O** berthing and preferential operations areas, in phases, within two (2) years after final approval of the respective construction permits by the federal and insular governmental agencies with jurisdiction over the construction permitting process. **LESSEE** estimates that the cost of this work will be no less than **TWELVE MILLION DOLLARS (\$12,000,000)** based upon preliminary estimates of outside knowledgeable contractors and consultants premised on redesign of the work. All improvements described as a part of **Phase Six** shall be **AUTHORITY IMPROVEMENTS** as and when completed. All improvements described as a part of **Phase Six** shall be made as follows: (a) **LESSEE** shall be responsible for **Design Services and Permitting Services**, and (b) the **AUTHORITY** shall have the power to contract for and control the construction and implementation of all other improvements described as a part of **Phase Six**.

(vii) **Phase Seven:** Promptly upon the **Area NP-1** terminal operations area becoming available for such construction (or earlier if the warehouse is to be built at **Area ME-1**), **LESSEE** will commence construction of a break-bulk and customs warehouse building of approximately one hundred thousand square feet (**100,000 sq. ft.**), with offices and operating facilities. Preliminary plans call for the construction of the warehouse in **Areas NE-1 or ME-1**. **LESSEE** estimates that the cost of this work will be around **FOUR MILLION DOLLARS (\$4,000,000)** based upon preliminary construction estimates given by outside knowledgeable consultants. The **AUTHORITY's** share of the cost of this building shall be the first **TWO MILLION DOLLARS (\$2,000,000)**. **LESSEE** shall be responsible for all costs of the break-bulk and customs warehouse building in excess of such **TWO MILLION DOLLARS (\$2,000,000)**. The warehouse shall be designed, contracted, constructed, and otherwise implemented by **LESSEE**. Title shall be shared on the basis of the pro rata contributions of each of the **AUTHORITY** and **LESSEE** to the total development costs of the warehouse.

(viii) **Phase Eight:** Provided that **LESSEE** is able to acquire proper and sufficient rights to use and develop **Terminal L** from the holder of the first preference rights, the **AUTHORITY** shall reasonably cooperate with **LESSEE** to make **Terminal L** available for development and reinforcement work to extend **LESSEE's** cranes to said site. Any reinforcement work to permit the extension of the cranes to **Terminal L** will be carried out at **LESSEE's** sole cost and expense, and shall not interfere with the rights of the holder of the **Terminal L** first prefer-

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ence rights. All improvements described as a part of **Phase Eight** shall be **AUTHORITY'S IMPROVEMENTS** as and when completed, and shall be designed, constructed, and otherwise implemented by or on behalf of **LESSEE**.

(1.2) **Conditions of Development:** All development, design, construction, or other improvements (including **AUTHORITY'S IMPROVEMENTS** and **TERMINAL IMPROVEMENTS**) by **LESSEE** under this **Agreement** shall be carried out in accordance with the following additional terms and conditions:

(i) No development, design, construction, or other improvements shall be initiated by **LESSEE**, or, in the case of **AUTHORITY'S IMPROVEMENTS**, be reimbursable by the **AUTHORITY**, unless a formal plan for such portion of development, design, construction, or other improvements, in such form as is reasonably acceptable to the **AUTHORITY**, has been submitted to, and approved in writing by, the **AUTHORITY**, which formal approved plan shall be referred to as a "**Formal Plan**". Each such **Formal Plan** shall include, without limitation, (1) appropriate descriptions, designs, and drawings necessary to describe, in reasonable detail, the proposed project, (2) identification of all required licenses, permits, and other approvals (including any environmental permits or approvals required from United States federal or Puerto Rico authorities), (3) a ceiling price for the project, including all costs and expenses of any kind (the "**Project Ceiling Price**"), which shall not be exceeded by **LESSEE** without the prior written approval of the **AUTHORITY**, (4) the estimated time for completion, and (5) a description of which proposed improvements are **AUTHORITY'S IMPROVEMENTS** and which proposed improvements are **TERMINAL IMPROVEMENTS**.

(ii) All contractors and/or subcontractors and/or suppliers utilized by **LESSEE** for any of the phased development work described in **Article VII(A) (1.1)** above shall be acceptable to the parties and subject to the prior written approval of the **AUTHORITY**.

(iii) All contracting under this **Agreement** by **LESSEE**, including any capital maintenance and/or replacement of any **AUTHORITY'S IMPROVEMENTS** estimated to cost more than Twenty-Five Thousand Dollars (\$25,000) shall be generally in accordance with standard construction industry bidding and contracts as prescribed in the standard Contract Documents and General Terms and Conditions of the American Institute of

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Architects ("AIA"), as amended and supplemented to include any and all applicable clauses required by any applicable law, regulation, and/or Executive Orders, which contract documents and exhibits shall be hereinafter referred to as the "AIA Contract Documents". LESSEE shall request, to the extent available in the market, three (3) proposals from pre-qualified contractors or bids from responsible contractors for all construction of **AUTHORITY'S IMPROVEMENTS** estimated to cost more than \$25,000, including the berthing and operating platform areas in **Terminals N and O**, the warehouse building (**Phase Seven**), the access bridge roads (**Phase Three**), and the subsurface and asphalt work. All minor construction work having an estimated total cost of less than Twenty-Five Thousand Dollars (\$25,000) shall be carried out by competent contractors at generally available market prices as certified by the Project Architect or Engineer.

(iv) Prior to commencing any construction or other improvements under this **Agreement**, LESSEE and/or its contractors or subcontractors shall have obtained all required licenses, permits and other approvals.

(2) **Timeliness of Permit and Construction Process:** The orderly and timely development of the facilities described in this **Article** will depend upon the timely obtaining of all requisite licenses, permits, and other approvals in accordance with applicable law and regulation, and the timely bidding, contracting, and supervising of construction by the respective responsible party, subject to any delays under **Article XVI** of this **Agreement**. Both LESSEE and the **AUTHORITY** undertake and agree to cooperate in a diligent and timely manner to resolve any development issues as they arise.

(3) **Dredging of Berthing Areas:**

(a) **Short Term Maintenance Dredging:** The **AUTHORITY** will, to the extent necessary, dredge, or cause the maintenance dredging of, the berthing areas in front of **Berth K** and **Preferential Areas LP2-1** and **MP1-1**, to the present authorized depth of thirty-two (32) feet, which obligation shall commence within six (6) months after the date of execution of this **Agreement** and shall be timely executed until completed, provided that LESSEE has commenced and is timely proceeding with its performance obligations under this **Agreement**, and subject to the **AUTHORITY** obtaining all necessary permits or other authorizations for such dredging and

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ocean and/or cost-effective land disposal of the dredging materials, which permits the **AUTHORITY** will seek diligently.

(b) Dredging of the Puerto Nuevo Channel and Berthing Areas: The **AUTHORITY** has advised **LESSEE** that there is a plan, which has been approved by the U.S. Army Corps of Engineers, for the dredging of the Puerto Nuevo channel and berths to a depth of thirty-nine (39) feet, and, subject to the availability of funds, the **AUTHORITY** will dredge **Berths L** and **M**, and **Berths N** and **O** to the extent the development of such **Berths** is authorized, and **Berth K** in the event that the development of **Berth N** is not authorized, to a depth of thirty-nine (39) feet or such other greater depth as may be agreed by the **AUTHORITY** and the Corps of Engineers, if the dredging plan is funded and implemented.

(c) Permanent Maintenance Dredging: The **AUTHORITY** will use its reasonable efforts, to the extent necessary, and subject to the availability of funds, to dredge or cause the periodic maintenance dredging of **Berths L** and **M**, and **Berths N** and **O** to the extent that the development of such **Berths** is authorized and completed, and **Berth K** in the event that the development of **Berth N** is not authorized and completed, to maintain a depth of thirty-nine (39) feet or such other greater depth as may be agreed by the **AUTHORITY** and the Corps of Engineers.

(4) Uncertainty of Development of Areas NP1-1, OP1-1, NE-1, and OE-1: The **AUTHORITY** has advised **LESSEE** that the construction and development of all or parts of **Areas NP1-1, OP1-1, NE-1, and OE-1** may not be permitted by the U.S. Army Corps of Engineers or other agencies with jurisdiction over such Areas. Moreover, some or all of such Areas may not be developed if the **AUTHORITY**, in its sole discretion, determines that the development thereof would be economically unfeasible because of environmental mitigation costs or otherwise. In the event that **Areas NP1-1** and **OP1-1** are not developed to a minimum length of nine hundred (900) feet, the **AUTHORITY** will ensure **INTERSHIP** comparable **Guaranteed Berthing**, within the meaning of **Article VIII((A)(3)** below, covering any shortfall, at the adjacent **Berths J, K, and L**, and the **AUTHORITY** will not object, and will consent on the existing terms, to any permanent transfer to **INTERSHIP** of **NPR's** first preference rights at **Pier L** which **INTERSHIP** may be able to negotiate with **NPR**, in which case the foregoing obligation to provide comparable **Guaranteed Berthing** shall terminate. In the event that **Area NE-1** is not developed, and **INTERSHIP** has to site its proposed Warehouse elsewhere within the **Leased Areas**, then the **AUTHORITY** shall provide



INTERSHIP additional marine terminal areas, with comparable acreage, at or in the vicinity of the **InterMarine Public Terminal**.

(5) **Redesign of Work:** Redesign work of the previously existing plans for the construction and development of the **M, N, and O Terminals** berthing and preferential operations areas will be necessary to provide for reenforcement and to upgrade to current operations standard, since such plans and concepts date to the initial development of the Puerto Nuevo facilities. The incremental cost of reinforcing the platform to install **LESSEE's** cranes and/or any Ro-Ro ramps shall be at **LESSEE's** sole cost and expense.

(6) **Coordination and Approvals:** The parties will coordinate, cooperate, and be accessible with respect to meeting with the architects, engineers, and consultants during the permitting and design process for the development of the **InterMarine Public Terminal**. **LESSEE** may contract with and retain architects, engineers, and consultants to assist with those improvements contemplated under this **Agreement** that are the responsibility of **LESSEE** under this **Agreement**. **LESSEE** shall coordinate with the **AUTHORITY** in obtaining the requisite licenses, permits, and other consents and approvals for the development of the **InterMarine Public Terminal**. **LESSEE** shall submit a copy of all proposed contracts to the **AUTHORITY** for its written approval prior to entering into such contracts. Time is of the essence in the development of the **InterMarine Public Terminal**.

(7) **Joint Management Committee:** A joint committee (the "**JOINT MANAGEMENT COMMITTEE**") shall be created as soon as practicable after the execution of this **Agreement**, consisting of one representative appointed by each of **LESSEE** and the **AUTHORITY**. The parties may appoint an additional consultant or engineer who or which shall be approved by both parties. The **JOINT MANAGEMENT COMMITTEE** will meet monthly to assist in the coordination of the project, and shall submit what is referred to as a "**Monthly Progress Report**" to both parties summarizing the progress of the permitting, development and construction of the project, including identification of any potential problems affecting the timely execution or cost of the work.

(8) **Public Roadways:** The **AUTHORITY**, at its cost, shall repair and improve the **Gate and Access Roadways** within the **InterMarine Public Terminal** area, which improvements shall be completed within twelve (12) months from the execution date of this **Agreement**.

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(B) **AUTHORITY'S OBLIGATION TO ASSIST IN THE DEVELOPMENT:**

(1) **Corporate Action and Permits:** The **AUTHORITY** shall diligently pursue and authorize, through any appropriate action of its Board of Directors or other appropriate **AUTHORITY** action, any aspects of the development and construction of the bulkheads, the **Intermarine Public Terminal**, and the dredging of the channels and the berthing and docking areas in front of the **Leased Areas**, that require **AUTHORITY** approval. The **AUTHORITY** shall diligently review and approve, through its Board of Directors or other appropriate action, sign, and timely authorize filing of any necessary permit applications properly prepared by **LESSEE**, or its architects and engineers, and submitted to the **AUTHORITY** for the development and financing of the **InterMarine Public Terminal**. Subject to applicable laws and regulations, and the **AUTHORITY's** exercise of its reasonable discretion, the **AUTHORITY** shall sign and authorize all customary and necessary new or amended endorsement requests and permit applications required to design, develop, construct, install, complete, and/or refurbish the **AUTHORITY's IMPROVEMENTS** and **TERMINAL IMPROVEMENTS**.

(2) **Use and Delivery of Existing Studies:** The **AUTHORITY**, without any representation or warranty with respect thereto, agrees to make available in a timely manner all existing studies, master plan(s), designs, drawings, surveys, and plans relating to the proposed development which are in the possession of the **AUTHORITY**. The **AUTHORITY** hereby grants to **LESSEE** any right which the **AUTHORITY** may have to use the same and incorporate them in the development of the **InterMarine Public Terminal**. The **AUTHORITY** agrees to assist **LESSEE** by (a) delivering copies of all permitting process files and correspondence that the **AUTHORITY** has in its possession, including any new correspondence received or information obtained by the **AUTHORITY** hereafter, and (b) to the extent that the **AUTHORITY** has a right to such materials, reasonably assist **LESSEE** in obtaining from any consultants, architects and engineers all existing studies, borings, engineering reports, environmental assessments or statements, plans, specifications, construction permits and approvals, which are pertinent to the proposed development of the **InterMarine Public Terminal**.

(3) **Sunken Vessels:** Subject to applicable laws and regulations, the **AUTHORITY** shall timely remove, or diligently cause the removal of, any sunken vessels or other obstructions to navigation in front of **Area MP1-1** and such portions of **Areas NP1-1** and **OP1-1** as may be developed.

(4) Environmental Mitigation Cost: Subject to applicable laws and regulations, and the availability of funds, the **AUTHORITY** shall provide the necessary funding, obtain permits, and authorize or carry out any work necessary to insure proper environmental protection to the areas being developed, including any mitigation cost.

(5) AUTHORITY's Default in Performance: To the extent that the **AUTHORITY** defaults with respect to its obligations under the preceding **Sub-paragraphs (B)(3) and (4)**, and the **AUTHORITY**, after having been given thirty (30) calendar days written notice to such effect by **LESSEE**, continues to fail to timely perform and complete such obligations, **LESSEE**, at its sole discretion, may elect, without waiving any other rights or remedies at law or equity, to proceed with the work for the **AUTHORITY's** account. Such cost shall be considered part of the cost of the **AUTHORITY's IMPROVEMENTS**, and shall be reimbursed by the **AUTHORITY** as **Approved Costs** or through a set-off against any payments due to the **AUTHORITY** under this Agreement.

(C) DEVELOPMENT RIGHTS ON THE LEASED PREMISES:

(1) Basic Utility Infrastructure: Subject to **LESSEE's** duty to coordinate with and comply with the rules of the appropriate utility, the **AUTHORITY** hereby grants **LESSEE** the right to connect to, use, and improve all existing telephone public utility, power, storm sewer, water, and sanitary sewer supply or service lines located within the boundary of the **Leased Areas**, and, as may be necessary to develop and operate the **Leased Areas** as the **Inter-Marine Public Terminal**, within the **Puerto Nuevo Marine Terminal Area**. The **AUTHORITY** shall only cover, as part of the cost of the **AUTHORITY's IMPROVEMENTS**, the cost to supply and connect to the basic utility infrastructure, including substations, to the **Inter-Marine Public Terminal** area and the cost of constructing the central distribution of such utilities within the **Leased Areas**, as usual and necessary for a modern public terminal. **LESSEE** shall be responsible for the cost of the connections from the central distribution facilities to any private facilities or other installations, including, without limitation, within any warehouse, office building, or other **TERMINAL IMPROVEMENTS** in the **Leased Areas**. All operating utility costs are strictly for **LESSEE's** account.

(2) Authorization to Develop and Requisite Consent: Subject to the terms and conditions hereof, **LESSEE** is hereby authorized to carry out all activities necessary or incidental to grubbing, cleaning, the removal of existing structures, and the de-

sign, construction and development of the roadways, site improvements, and infrastructure necessary and convenient to develop, on the **Leased Areas**, the **AUTHORITY's IMPROVEMENTS** and the **TERMINAL IMPROVEMENTS**. All such work shall be carried out in accordance with applicable laws and regulations. All improvement work pursuant to this **Agreement** shall be subject to the prior written approval and consent of the **AUTHORITY**. Said consent shall not be unreasonably denied, withheld or delayed, so long as the proposed work stipulated in this **Agreement** is cost effective for a modern international public terminal facility.

(3) (a) **Gate and Access Roadway Areas:** As set forth in **Article VII(A) (8)** above, the **AUTHORITY**, at its own cost, shall repair and improve the **Gate and Access Roadway Areas**, which work shall commence within six (6) months after the execution date of this **Agreement**. Pothole repair and maintenance will commence within thirty (30) days of execution of this **Agreement**, and will be carried out periodically as required.

(3) (b) **Roadway Areas Construction and Relocation:** **LESSEE** is hereby authorized to seek and obtain the necessary permits, and to design, develop, and construct upon the **AUTHORITY's** approval of **Formal Plans**, as part of the **Gate and Access Roadway Areas**, an additional entrance and exit to Kennedy Avenue, at any point in the South boundary of the **Leased Areas** with Kennedy Avenue, including the construction of any necessary bridges over the drainage ditch to improve the access to the **Leased Areas**, title to which will be transferred to the **AUTHORITY** immediately upon completion of the same. The aggregate cost of such additional entrance and exit to the **Leased Area**, including any necessary bridge, shall be covered by the **AUTHORITY** up to the amount of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)**, and the **AUTHORITY** shall be responsible for any Government agency impact fees in the event of any assessment thereof, as **AUTHORITY's IMPROVEMENTS**. **LESSEE**, at its cost and expense, shall cover any costs over such **AUTHORITY's** contribution.

(4) **Installation and Definition of TERMINAL IMPROVEMENTS:**

(a) **Terminal Improvements:** Subject to the **AUTHORITY's** prior written consent and approval of **Formal Plans**, **LESSEE** has the right, at its option and sole expense, to carry out upon the **Leased Areas** all necessary work to reinforce the preferential and exclusive areas to permit the support, installation, and operation of cranes, Ro-Ro ramps, and other cargo handling structures and equipment, and to build and develop in the **Exclusive Areas** such addi-



tional warehouses, offices, maintenance and repair shops, and other structures and improvements as may be necessary or convenient for the safe and efficient operation of the **InterMarine Public Terminal** and the handling, storage, and preparation of the cargo, machinery, and automobiles handled through the **InterMarine Public Terminal**. All such buildings and improvements, all other improvements built at **LESSEE's** cost upon the **Leased Areas** which are not otherwise considered an **AUTHORITY's IMPROVEMENT**, and the improvements so designated on Exhibit B shall be herein referred to as the "**TERMINAL IMPROVEMENTS**".

(b) **Installation of Fixtures and Signs:** At its own cost and expense, **LESSEE** may install signs relating to its business and any additional fixtures necessary for its activities in such a manner as not to deface or injure the **AUTHORITY's IMPROVEMENTS**. **LESSEE** shall not install such signs or fixtures without the **AUTHORITY's** prior written approval, which, subject to applicable rules and regulations, shall not be unreasonably denied, withheld, or delayed.

(5) **Definition of AUTHORITY'S IMPROVEMENTS:** The term "**AUTHORITY's IMPROVEMENTS**" as used herein shall mean and include the improvements outlined in **Item A** of Exhibit B to this Agreement and shall include, by way of example, but not limited to, all of the following, subject to the **AUTHORITY's** prior written approval of related **Formal Plans**; all customary and necessary soil studies and technical investigations; boundary surveys; environmental reports and surveys; necessary technical reports of consultants; design and engineering work, including plans, drawings, and specifications; all labor, materials, and equipment; construction equipment, supplies, management, and supervision; direct and indirect cost and overhead; and the cost of the work as defined and normally chargeable under the **AIA Contract Documents**, including any financing cost and related interest and costs prior to the funding of the **Project Financing** and first payment thereunder, required for the completion of the following:

(a) **Paved Operations Areas:** Clearing, grading, support filling, sub-surface and surface asphalt or concrete paving, surfacing, and soil stabilization work throughout the **Leased Areas**, as required for the purposes and uses granted to **LESSEE** under this **Agreement**.

(b) **Bulkheads and Pier:** Construction, installation, structural repair, replacement, and reinforcement of pier, piling, steel bulkheads, related dolphins and defenses, and

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structural reinforcement (except the structural reinforcement for the installation of any cranes to be covered by LESSEE under the terms of **Article VII(A) (1.1) (viii)** above).

(c) **Permanent Structure and Improvements:** Other permanent structures as may be required for the proper and customary operation of the **Leased Areas** as a modern marine public terminal, including such permanent infrastructure, storm sewer and drainage works, roadways, and the bridge described in **Article VII(C) (3) (b)** above, water, sewer, electrical energy supply and substations, telephone and telecommunications basic infrastructure and off-site connections to a central distribution point, fire protection connections equipment, surfaces, fenders, backstops, perimeter security fencing, entrance gates, terminal and area public lights, permanent improvements, capital replacement and refurbishing of surface and infrastructure equipment and installations, dredging of the front of the bulkhead area, the warehouse building as described in development **Phase Seven** in **Article VII(A) (1.1) (vii)** above to the extent of the **AUTHORITY's** contribution to the costs thereof, and other basic permanent structures, facilities, and improvements required by law for the safe and efficient operations of the **InterMarine Public Terminal**.

(d) **Right to Designate Additional AUTHORITY's IMPROVEMENTS:**

(1) **Updating Exhibit B:** From time to time, and pursuant to the terms and conditions of this **Agreement**, the parties hereto may amend **Exhibit B** to include such additional improvements, capital maintenance, and refurbishing as the parties may mutually deem advisable or required under law and applicable regulation, and/or customary and necessary for the continued safe and efficient operation of the **InterMarine Public Terminal**. Any designation or amendment to **Exhibit B** under this paragraph must be in writing, approved by the **AUTHORITY's** Board of Directors to the extent necessary, and subscribed by the Executive Director or, in his absence, by the Deputy Director or other duly designated and authorized officer of the **AUTHORITY**.

(2) **Special Designations by the Parties:** The parties further agree that nothing contained in this **Agreement** shall limit the right of the parties to designate, by mutual written agreement, any and all of the **TERMINAL IMPROVEMENTS**, due to their permanent nature and use, as **AUTHORITY's IMPROVEMENTS**, subject to adequate compensation or other arrangements accep-

table to the parties. If **LESSEE** specifically requests that **TERMINAL IMPROVEMENTS** be developed as an **AUTHORITY's IMPROVEMENT** because of the nature or permanent value to the **Inter-Marine Public Terminal**, and the **AUTHORITY** so agrees in writing, then and in that event, upon completion of the credit or reimbursement by the **AUTHORITY** of the **Approved Cost** of said improvements, **LESSEE** shall pay to the **AUTHORITY**, any corresponding and mutually agreed market rental (which has not otherwise previously established) for the facility in accordance with the **AUTHORITY's Tariffs**. Any such action that falls outside the scope of the Executive Director's authority shall be subject to prior written approval by the **AUTHORITY's** Board of Directors.

(3) **Title for Additional or Re-Designated AUTHORITY's IMPROVEMENTS:** Any additional items added or re-designated pursuant to this **Article VII(C) (5) (d)** shall be the property of the **AUTHORITY** under the terms of this **Agreement**, and title to any then existing property shall be transferred to the **AUTHORITY's** name.

(D) **PAYMENT OF THE COSTS OF THE AUTHORITY'S IMPROVEMENTS:**

The **AUTHORITY** has obtained project financing in the amount of Twenty-Five Million Dollars (\$25,000,000) from the **GDB** (the "**Project Financing**"), and agrees to utilize said **Project Financing**, in conformity with the terms and conditions thereof, to pay the **Approved Costs**. It is of the essence of this **Agreement** that sufficient funds be contractually made available under the **AUTHORITY's Project Financing** to cover the entire **Approved Cost** of the work for the **AUTHORITY's IMPROVEMENTS** under the terms of this **Agreement**, and that the **GDB** agrees to extend a direct obligation for the benefit of the **AUTHORITY's** and **LESSEE's** Architects, Engineers, Consultants, and servicing professionals, and the **AUTHORITY's** or **LESSEE's** Contractors and Subcontractors, subject to normal commercial construction financing terms and conditions, to fund and pay for the entire **Approved Cost** of the work, including progress payments under the **AIA Contract Documents**. A written construction loan or similar loan agreement in accordance with standard construction loan financing in Puerto Rico, satisfactory to **LESSEE** and its counsel, as to the amounts necessary to cover the costs of the design, engineering, permitting process, and the construction of the warehouse building, shall be subscribed by the **GDB** and the **AUTHORITY** specifying and reflecting the requisite terms and conditions of this subparagraph for such financing.



(1) Existing Costs Incurred by LESSEE: Pursuant to that certain Letter Agreement between the **AUTHORITY** and **LESSEE** dated May 24, 1995, as amended by letter agreement dated November 20, 1995 (the "**Pier M Interim Agreement**"), **LESSEE** has incurred costs in causing to be constructed certain improvements upon **Areas MP1-1, ME-1, ME-2, NE-3, and OE-2**, and further identified in the **Pier M Interim Agreement** (the "**Interim Improvements**"). Such costs properly incurred by **LESSEE** prior to the execution of this **Agreement**, and any authorized development work carried out thereafter but prior to the **Project Financing** becoming available, shall be reimbursed by the **AUTHORITY** as provided herein. **LESSEE** shall submit to the **AUTHORITY** such documentation as is required pursuant to the terms of **Article VII(D) (2) (d)** below in order for the **AUTHORITY** to determine the **Approved Costs** associated with said **Interim Improvements** (the "**Approved Interim Costs**"). Failure of the **AUTHORITY** to either approve, disapprove, or request additional information and either approve or disapprove any portion of such submission not related to the additional information requested, within sixty (60) days of the **AUTHORITY's** receipt of such submission, shall be deemed to be an approval of such submission without further action of the parties. Within thirty (30) days of the **AUTHORITY's** approval of the **Approved Interim Costs**, and subject to the prior funding of the **Project Financing**, the **AUTHORITY** shall pay any outstanding balance of the **Approved Interim Costs**, less any payments or credits made to **LESSEE** pursuant to the **Pier M Interim Agreement**, the credit offset mechanisms of which shall continue under this **Agreement** until the initial funding of the **Project Financing**. The amount outstanding, if any, upon subscription of the **Project Financing** shall be disbursed from the first draw or at the earliest possible time thereafter from the next monthly draw.

(2) Future Costs Incurred by LESSEE: Except for **Approved Interim Costs** associated with the **Interim Improvements**, any costs or expenses incurred by **LESSEE** and/or its contractors, subcontractors, and suppliers in completing or causing the completion of the design, engineering, permits, and construction of the warehouse building and the bridge, which form part of the **AUTHORITY's IMPROVEMENTS** (the "**Authority Improvements Costs**"), shall be in accordance with the terms of this **Agreement**, and once submitted and verified as provided in this **Agreement** and the **Project Financing**, shall be considered an "**Approved Cost**" and shall be paid by the **AUTHORITY**, or on the **AUTHORITY's** behalf by the **GDB**, under the following terms and conditions:

(a) Prior Approval; Project Ceiling Price: The aggregate for each phase's **Authority Improvement Costs** to be car-

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ried out by LESSEE must be approved by the **AUTHORITY**, in writing and in advance, as a part of the **Formal Plan**. No **Authority Improvements Costs** that exceed the applicable phase's **Project Ceiling Price** (the "**Excess Costs**") shall be payable as **Approved Costs** unless the **AUTHORITY** has given its written approval of such **Excess Costs** prior to LESSEE incurring such costs. The **AUTHORITY** agrees that it will not unreasonably withhold its approval of the **Excess Costs**, except as provided for in **Article VII(D)(2)(b)** below, where such **Excess Costs** are approved in advance pursuant to a change order under the terms of the **AIA Contract Documents** and are due to any one or more of the following conditions, which had not been reasonably anticipated:

(i) site or subsurface conditions not known at the time that the applicable **Project Ceiling Price** was established; (ii) increases in the cost of labor and/or material and other cost components of the project from those costs prevailing as of the date that the **Formal Plan** was submitted to the **AUTHORITY**; (iii) changes in design, equipment or material requirements or other construction costs due to or caused by applicable law or regulations that become effective, applied, or reinterpreted after the date that the **Formal Plan** was submitted to the **AUTHORITY**; (iv) extended overhead or additional costs resulting from Acts of God or similar delays in the work for the reasons listed in **Article XVI** hereof; (v) normal construction changes and change orders under the **AIA Contract Documents** typical of any such work.

(b) **Aggregate Ceiling Price:** Any terms hereof to the contrary notwithstanding, the **AUTHORITY** shall not be required to pay for any **Authority Improvements Costs** which, when aggregated with other **Authority Improvement Costs** and any **Approved Interim Costs**, exceed the **Project Financing** (the "**Aggregate Ceiling Price**"). In the event LESSEE is denied a development or construction permit by the U.S. Corps of Engineers for **Areas OP1-1 and OE-1**, or the **AUTHORITY** determines, as previously provided, that the development of such **Areas** is not feasible, the **Aggregate Ceiling Price** shall be reduced by an amount to be agreed upon by the parties, which amount shall be not less than **FIVE MILLION DOLLARS (\$5,000,000)**.

(c) **Progress Payments as to Authority Improvement Costs:**
All **Progress Payments**, as defined in the **AIA Contract Documents**, for the **Authority Improvement Costs** for each phase that



has an approved **Formal Plan** shall be made upon the **AUTHORITY's** behalf by the **GDB** from the **Project Financing** in accordance with the terms of the **Project Financing's** construction loan agreement and the **AIA Contract Documents** with the Contractors, Subcontractors, and Suppliers.

(d) **Establishment of Final Certified Project Cost:** No later than forty-five (45) days after the date of completion by **LESSEE** or **LESSEE's** contractors and subcontractors of each phase of the project that is the subject of a **Formal Plan** and is constructed and carried out by **LESSEE**, **LESSEE** shall submit to the **AUTHORITY** a detailed explanatory summary, together with invoices, design, engineering and construction contracts, and other similar objective verifiable evidence, of the cost of the completed phases of the **AUTHORITY's IMPROVEMENTS** of subject project above the advanced **Progress Payments**, which submittal shall be herein referred to as the "**Certified Cost Submittal**". The **Certified Cost Submittal** shall also include the following:

(i) a certificate signed by a duly authorized officer of **LESSEE** to the effect that: (A) the sums represented by the documents have been legitimately incurred in designing, constructing, or otherwise appropriately developing the **AUTHORITY's IMPROVEMENTS**; (B) that the items for which the sums were incurred are included in the description of **AUTHORITY's IMPROVEMENTS** set forth in **Exhibit B** hereof or authorized under the terms of this **Agreement**; and (C) that said items have been completed in accordance with the terms of this **Agreement**;

(ii) if applicable, a certificate from the State Insurance Fund stating that the Workmen's Compensation Insurance policies furnished by **LESSEE's** subcontractors doing such work have been liquidated;

(iii) a certificate of completion from, as applicable, the architect or engineer of the project certifying the completion of the project;

(iv) releases from the insurance companies issuing any payment and performance bond, as applicable;

(v) forms of releases to be executed (immediately upon the **AUTHORITY's** payment hereunder) by, as applicable, **LESSEE**, **LESSEE's** subcontractors on the project which




is the subject of the **Certified Cost Submittal**, and the suppliers of said subcontractors, which evidence full payment and release of any form of materialman's or other lien or encumbrance on the **Leased Areas** and/or the **AUTHORITY's IMPROVEMENTS**; and

(vi) such additional documentation as the **AUTHORITY** may reasonably request.

(e) **Inspection and Acceptance of Work:** Within thirty (30) days after **LESSEE** has given the **AUTHORITY** written notice that the project which is the subject of a **Formal Plan** and has been carried out by or on behalf of **LESSEE** has been completed, the **AUTHORITY** or its representative(s) shall inspect the work with **LESSEE** and, upon finding that said work is complete and complies with the **Formal Plan** and the **AIA Contract Documents**, issue a certificate of acceptance ("**Acceptance Certificate**"). In the event that the **AUTHORITY** or the **AUTHORITY's** representative(s) reject any or all work performed, **LESSEE**, at its sole cost and expense, shall make, or cause to be made, any and all corrections as may be required by the **AUTHORITY** within such reasonable time frame specified by the **AUTHORITY** and the **AIA Contract Documents**.

(f) **Payment:** Within thirty (30) days after the **AUTHORITY** has received a complete and proper **Certified Cost Submittal** and issued an **Acceptance Certificate**, the **AUTHORITY** shall authorize payment to **LESSEE** or its contractor, as applicable, of all withholdings of **Authority's Improvements Costs** under the **AIA Contract Documents** that are verified through the **Certified Cost Submittal**. If **LESSEE** (or its contractors and subcontractors) have substantially completed a project, but there are items to be completed or corrections to be made, the **AUTHORITY** may, under the terms of the **AIA Contract Documents**, pay for that portion of the project that is complete and withhold sufficient funds to ensure the completion or correction of the remaining items.

ARTICLE VIII. RELOCATION FROM ISLA GRANDE AND PIERS 11/12.

(A) INTERSHIP Release and Move from the Isla Grande Terminal Facilities:

INTERSHIP shall vacate the **Isla Grande Terminal** facilities which **INTERSHIP** has been occupying and utilizing pursuant to two separate lease agreements entered into in 1984 and 1986 respectively, as subsequently amended and extended (the "**Isla Grande Con-**

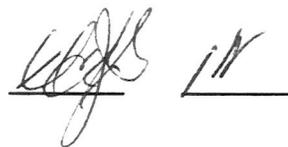
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tracts"), presently continuing on a month-to-month basis, within ninety (90) days after receipt of written notice from the **AUTHORITY** that each of the following conditions has been met, and, conditioned upon such conditions having been met, and at the conclusion of such ninety (90) days, **INTERSHIP** shall release all rights under the **Isla Grande Contracts** and any other agreements or understandings with respect to any further use of the **Isla Grande Terminal** facilities:

- (1) The **AUTHORITY** has delivered to **LESSEE** Area OE-2, and Areas NE-4, NE-5, NE-6, and ME-3 free and clear of their present occupants and use encumbrances;
- (2) The development and construction of Areas OE-2, ME-3, NE-4, NE-5, and NE-6, as contemplated in Article VII above has been completed and will be ready for operations within the said ninety (90) days; and
- (3) The **AUTHORITY** will ensure **LESSEE** Guaranteed Berthing at Piers J, K, L, and M, until the anticipated nine hundred (900) feet of Piers N and O is completed and is operational, for the weekly scheduled service of **Sea-Barge Line** or any successor, presently at two sailings per week and anticipated to add a third sailing, all anticipated to require six berthing days per week. "Guaranteed Berthing", as used in this Article, shall mean that the **AUTHORITY** will ensure the availability of a berth for such vessels from among the specified berths, comparable to a right of first preference but not limited to a specific berth, provided that **LESSEE** complies with the vessel scheduling notice requirements of Article V(B)(2) above; once berthed, each said vessel will enjoy the right to remain at the assigned berth until the completion of the unloading, loading, and servicing of the vessel, comparable to a vessel having the first preferential right to use such berth, subject to the terms and conditions of Article V(B) above.

(B) **INTERSHIP Release and Move from the Piers 11/12 Terminal Facilities:**

INTERSHIP shall vacate the **Piers 11/12 Terminal** facilities, which **INTERSHIP** has been occupying and utilizing pursuant to three separate lease agreements entered into in 1985, 1991, and 1992 respectively, as subsequently amended and extended (the "**Piers 11/12 Contracts**"), presently continuing on a month-to-month basis,

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within ninety (90) days after INTERSHIP's receipt of written notice from the **AUTHORITY** that each of the following conditions has been met, and, conditioned upon such conditions having been met, and at the conclusion of such ninety (90) days, INTERSHIP shall release all rights with respect to any further use of **Piers 11 and 12**:

- (1) The **AUTHORITY** has delivered to **LESSEE Areas ME-4, LE-3, LE-4, LE-5, LE-6, LE-7, and LE-8**, or comparable areas as specified in **Article III(B)(4)** above, free and clear of their present occupants and any use encumbrances on their behalf;
 - (2) The development and construction of **Areas ME-4, LE-3, LE-4, LE-5, LE-6, LE-7, and LE-8**, as contemplated in **Article VII** above, or of any alternate areas as specified in **Article III(B)(4)** above, has been, or will be, completed and will be ready for operations within the said ninety (90) days;
 - (3) The construction of the warehouse contemplated in **Article VII(A)(1.1)(vii)** above has been, or will be, completed within the said ninety (90) days, provided that **LESSEE** has diligently pursued permits for and, once permits have been obtained, construction of the same (failing which such condition shall be deemed waived); and
 - (4) The **AUTHORITY** will ensure **LESSEE Guaranteed Berthing** at **Piers H, J, K, L, M, N, and O** for the vessels and carriers presently being serviced at **Piers 11/12**, or any successors thereto at such **Piers**, on a comparable basis to what **INTERSHIP** during the past year at **Piers 11/12**.
- (C) **INTERSHIP's Interim Right to Remain at Isla Grande and Piers 11/12:**

(1) **INTERSHIP** shall have the right to remain and continue its operations at the **Isla Grande Terminal** facilities which **InterShip** has been occupying and utilizing, and the **Isla Grande Contracts** shall continue on a month-to-month basis, until the conditions in **Article VIII(A)** above have been satisfied.

(2) **INTERSHIP** shall have the right to remain and continue its operations at the **Piers 11/12 Terminal** facilities which **InterShip** has been occupying and utilizing, and the **Piers 11/12 Contracts** shall continue on a month-to-month basis until the conditions in **Article VIII(B)** above have been satisfied.

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ARTICLE IX. FEES AND RENTAL PAYMENTS.

(A) Preferential Areas Fees: LESSEE shall pay to the AUTHORITY the following amounts:

(1) For the first preferential use of **Area MP1-1**, the amount of \$.05 per square foot per annum for the 150,000 square feet of **Operations Platform and Cargo-in-Transit Area** therein, equal to \$7,500.00 per annum, or \$625.00 per month.

(2) For the first preferential use of **Area NP1-1**, the amount of \$.05 per square foot per annum for the estimated 114,000 square feet of **Operations Platform and Cargo-in-Transit Area** to be developed therein, equal to \$5,700.00 per annum, or \$475.00 per month; provided that LESSEE shall not be required to pay such preferential use fees for **Area NP1-1** until the earlier of (a) the substantial completion by the AUTHORITY of the improvements contemplated in Phase Six under **Article VII(A)(1.1)** above with respect to **Area NP1-1**, and the delivery of such improved Area for use as a marine terminal under this **Agreement**, or (b) the date on which LESSEE begins to use said Area as a marine terminal area.

(3) For the first preferential use of **Area OP1-1**, the amount of \$.05 per square foot per annum for the estimated 57,000 square feet of **Operations Platform and Cargo-in-Transit Area** to be developed therein, equal to \$2,850.00 per annum, or \$237.50 per month; provided that LESSEE shall not be required to pay such preferential use fees for **Area OP1-1** until the earlier of (a) the substantial completion by the AUTHORITY of the improvements contemplated in Phase Six under **Article VII(A)(1.1)** above for **Area OP1-1**, and the delivery of such improved Area for use as a marine terminal under this **Agreement**, or (b) the date on which LESSEE begins to use said Area as a marine terminal area.

(B) Exclusive Area Rentals: LESSEE shall pay to the AUTHORITY for the lease and use of **Exclusive Areas ME-1, ME-2, and NE-3** the following amounts:

(1) For the exclusive use of **Area ME-1**, the amount of \$24,806.00 per cuerda per annum, for the 6.3986 cuerdas of land therein, equal to \$158,723.67 per annum, or \$13,226.97 per month.

(2) For the exclusive use of **Area ME-2**, the amount of \$24,806.00 per cuerda per annum for the 7.7670 cuerdas of land therein, equal to \$192,668.20 per annum, or \$16,055.68 per month.



(3) For the exclusive use of **Area NE-3**, the amount of \$24,806.00 per cuerda per annum for the 2.1447 cuerdas of land therein, equal to **\$53,201.43 per annum, or \$4,433.45 per month.**

(C) Rentals on Exclusive Areas (Other than Areas OE-1 and NE-1) to Be Developed: LESSEE shall pay to the **AUTHORITY** as follows:

(1) For the exclusive use of **Area ME-3**, the amount of \$24,806.00 per cuerda per annum for the 2.4853 cuerdas of land therein, equal to **\$61,650.35 per annum, or \$5,137.53 per month.**

(2) For the exclusive use of **Area NE-4**, the amount of \$24,806.00 per cuerda per annum for the 1.0635 cuerdas of land therein, equal to **\$26,381.18 per annum, or \$2,198.43 per month.**

(3) For the exclusive use of **Area NE-5**, the amount of \$24,806.00 per cuerda per annum for the 1.5411 cuerdas of land therein, equal to **\$38,228.53 per annum, or \$3,185.71 per month.**

(4) For the exclusive use of **Area NE-6**, the amount of \$24,806.00 per cuerda per annum for the 0.7902 cuerdas of land therein, equal to **\$19,601.70 per annum, or \$1,633.48 per month.**

(5) For the exclusive use of **Area LE-3**, the amount of \$24,806.00 per cuerda per annum for the 0.6481 cuerdas of land therein, equal to **\$16,076.77 per annum, or \$1,339.73 per month.**

(6) For the exclusive use of **Area LE-4**, the amount of \$24,806.00 per cuerda per annum for the 0.6929 cuerdas of land therein, equal to **\$17,188.08 per annum, or \$1,432.34 per month.**

(7) For the exclusive use of **Area LE-5**, the amount of \$24,806.00 per cuerda per annum for the 0.7666 cuerdas of land therein, equal to **\$19,016.28 per annum, or \$1,584.69 per month.**

(8) For the exclusive use of **Area LE-6**, the amount of \$24,806.00 per cuerda per annum for the 1.2146 cuerdas of land therein, equal to **\$30,129.37 per annum, or \$2,510.78 per month.**

(9) For the exclusive use of **Area LE-7**, the amount of \$24,806.00 per cuerda per annum for the 1.0770 cuerdas of land therein, equal to **\$26,716.06 per annum, or \$2,226.34 per month.**

(10) For the exclusive use of **Area LE-8**, the amount of \$24,806.00 per cuerda per annum for the 3.5923 cuerdas of land therein, equal to **\$89,110.59 per annum, or \$7,425.88 per month.**



(11) For the exclusive use of **Area OE-2**, the amount of \$24,806.00 per cuerda per annum for the 8.7575 cuerdas of land therein, equal to **\$217,238.55 per annum, or \$18,103.21 per month.**

With respect to each of the Areas referenced in this **Article IX(C)**, **LESSEE** shall not be required to pay the exclusive use fees for such Area until the earlier of (a) **LESSEE's** receipt of delivery of such Area and a certificate of substantial completion of the **AUTHORITY's IMPROVEMENTS** at such Area by the **Project Architect or Engineer**, or a Use Permit if applicable, or (b) the date on which **LESSEE** begins to regularly use such Area as a marine terminal area. The parties may agree in writing from time to time during the construction period to permit **LESSEE** to use any area under development for such period of time as may be necessary to maximize operations and resolve any operational problems, in which event **LESSEE** shall pay one-half of the stipulated rental for such area for the period of the actual use thereof.

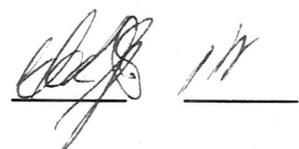
(D) Rentals on Exclusive Areas NE-1 and OE-1 to Be Developed: **LESSEE** shall pay to the **AUTHORITY** as follows:

(1) For the exclusive use of **Area NE-1**, the amount of \$24,806.00 per cuerda per annum for the 1.9058 cuerdas of land therein, equal to **\$47,275.27 per annum, or \$3,939.61 per month.**

(2) For the exclusive use of **Area OE-1**, the amount of \$24,806.00 per cuerda per annum for the estimated 1.8752 cuerdas of land therein, equal to **\$46,516.21 per annum, or \$3,876.35 per month.**

With respect to each of the Areas referenced in this **Article IX(D)**, **LESSEE** shall not be required to pay such exclusive use fees for an Area until the earlier of (a) **LESSEE's** receipt of delivery of such Area and a certificate of substantial completion of the **AUTHORITY's IMPROVEMENTS** at such Area by the **Project Architect or Engineer**, or a Use Permit if applicable, or (b) the date on which **LESSEE** begins to regularly use such Area as a marine terminal area. The parties may agree in writing from time to time during the construction period to permit **LESSEE** to use any area under development for such period of time as may be necessary to maximize operations and resolve any operational problems, in which event **LESSEE** shall pay one-half of the stipulated rental for such areas for the period of the actual use thereof.

(E) Adjustment to Rentals Upon Final Measurements: The preferential use fees and rentals stipulated in this **Article IX** are

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subject to adjustment to reflect the final measurement of each specified Area, with appropriate debits or credits for prior payments.

(F) **Full Rental Payment Upon Completion of All Development:** Subject to the terms and conditions of this **Agreement**, the initial fees, rental payments, and minimum wharfage and dockage guarantee payments under this **Agreement**, upon completion of the anticipated full development of the **AUTHORITY's IMPROVEMENTS** of the **InterMarine Public Terminal**, is estimated to be the aggregate annual sum of \$1,700,772.24, equal to \$141,731.02 per month, subject to such adjustments as provided in this **Agreement**.

(G) **Payment Term of Rentals and Fees:** All amounts payable to the **AUTHORITY** under **Article IX(A)** through (D) above shall be paid by **LESSEE**, in advance, on the 10th day of each month. Any payment due on a weekend or holiday shall be paid on the next business day.

(H) **Rent Abatement:** Until the berthing area of **Area NP1-1** is developed and in operational use, **LESSEE** shall be entitled to an abatement of rent for any part of **Areas LE-3, LE-4, LE-5, LE-6, LE-7, LE-8, LE-9, ME-3, NE-1, NE-3, NE-4, NE-5, NE-6, OE-1, and OE-2** which **LESSEE** is unable to use directly and solely because of the use by others of **Berth M** or the holder of the first preferential rights makes use of the adjacent **Piers J, K, and L** in such a manner that **LESSEE** cannot berth two (2) vessels at the same time at **Berths J through M**. **LESSEE**, upon written notice to the **AUTHORITY** setting forth the relevant circumstances entitling **LESSEE** to such abatement, may from time to time discontinue use and stop rental payments. The period of abatement for each of such **Area(s)** shall last only during such times as **LESSEE** cannot make effective use of any such **Area** as a direct and exclusive result of any inability to berth two vessels at the same time at the **Leased Areas** or adjacent berths.

(I) **Payment of Wharfage, Docking, and Mooring Charges:**

(1) **Assessment of Charges:** **LESSEE** and/or its serviced vessels and/or cargo shall pay wharfage, dockage, and mooring charges normally assessed by the **AUTHORITY**, plus demurrage, and any other charges which would normally be assessable to **LESSEE** by the **AUTHORITY** against any vessel or cargo using the **Preferential Areas** when **LESSEE** acts as port agent for the vessel.

(2) **Payment of Invoices:** Any invoice of the **AUTHORITY** for wharfage, dockage, and mooring of vessels, which is properly



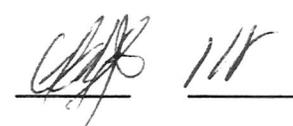


charged to **LESSEE** or its serviced vessels by the **AUTHORITY**, shall be paid to the **AUTHORITY** by **LESSEE** or on behalf of any vessel or other third party making use of the facilities, within twenty (20) days of the date of such invoice.

(3) **Minimum Guarantee of Wharfage, Docking and Mooring:** **LESSEE** guarantees annual revenues of not less than **TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000)** for wharfage, mooring, and dockage charges normally assessed by the **AUTHORITY**, under applicable **Tariffs**, shall be billed and earned with respect to vessels serviced by **LESSEE** in each of **Preferential Areas MP1-1, NP1-1, and LP2-1** (pro rated as to **LP2-1** based upon the number of days of actual berth usage by **LESSEE** to 365 days per fiscal year), and **OP1-1** (pro rated as to **OP1-1** per the ratio of the length of the berthing area developed to six hundred (600) feet per berth), commencing upon the effective date as to **Areas MP1-1 and LP2-1**, and upon each of the other preferential areas becoming operational and capable of receiving vessels to be loaded and unloaded as provided in this **Agreement**. **LESSEE** shall assume and pay any shortfall or difference in the minimum guaranteed revenues to the **AUTHORITY** within sixty (60) days after the end of each fiscal year of the **AUTHORITY**. Such guarantee shall be prorated for any period less than a full fiscal year. **LESSEE** shall receive credit against the minimum guaranteed annual revenues of **Preferential Areas MP1-1, NP1-1, and OP1-1** for any vessel which **LESSEE** is permitted to handle at **Piers J and K**, and for any vessel which **LESSEE** is required to berth at other facilities due to the unavailability of the **Preferential Areas** due to a prior assignment of the **Preferential Areas** for use by any third party. The **AUTHORITY** shall timely provide **LESSEE** a copy of all applicable invoices for wharfage, mooring, and dockage charges for vessels serviced by **LESSEE** on behalf of any third party using the **Preferential Areas**.

(J) **New Tariffs and Rental Rates:** Any new fees or charges for facilities or for services rendered by the **AUTHORITY** at the **Leased Areas** to the **LESSEE** as lessee, terminal operator, general agent, stevedore, or operator, not mentioned in this **Agreement**, shall be charged in accordance with the published **Tariffs** of the **AUTHORITY**, or if not covered by such **Tariffs**, by mutual agreement. To the extent required by law, the Federal Maritime Commission, or any successor agency, will be notified of any such published **Tariffs** prior to implementation.

(K) **Change of Charges and Applicable Tariffs:** It is understood and agreed that the rental and use charges stated in this **Agreement** have been computed on the basis of the **AUTHORITY's** pres-

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ently established charges and policies, and such charges are subject to prospective readjustment from time to time by the **AUTHORITY** in published **Tariffs** or otherwise. **LESSEE** shall be given a reasonable notice period, or such notice as may be provided in accordance with the **AUTHORITY's** tariff ratemaking policies and regulations when established, before any such changes become effective so that **LESSEE** may adjust its service charges to carriers, vessels, and/or consignees. The **AUTHORITY** has already given notice, and **LESSEE** so acknowledges, that the rental rate for exclusive use maritime lands presently at \$24,806 per cuerda since August 1, 1996, will increase to \$25,000 per cuerda effective August 1, 1997.

(L) **Amounts Due at Termination:** In the event of the termination of this **Agreement**, any amounts due from **LESSEE** that remain unpaid on the date of the **Notice of Termination** shall be immediately paid by **LESSEE**.

(M) **Payment for Operating Utilities:** **LESSEE** shall be responsible for, and shall pay promptly to the agency or entity furnishing or providing, any or all utilities and public services to **LESSEE** in the **Leased Areas** in connection with the operation of the **InterMarine Public Terminal** when said services or utilities are not provided or furnished by the **AUTHORITY**.

(N) **Penalty Interest Payment:** Without waiving and without prejudice to any other terms of this **Agreement**, any sums due and payable by either party to the other under this **Agreement**, if not paid within thirty (30) days from the date of the invoice thereof unless otherwise assigned or reserved under the terms of this **Agreement**, shall bear interest at the rate of nine percent (9%) per annum from the payment due date until such payment is actually received, without any need for a notice of default.

(O) **Penalty Rent for Non-Maritime Related Use:** **LESSEE** shall pay to the **AUTHORITY** a penalty equal to twenty-five percent (25%) of the gross rental revenues, plus any additional rental amount above the one provided for in this **Agreement**, obtained by **LESSEE** from any non-maritime related operation conducted in the **Leased Areas** or any sub-lease which is not authorized under the terms of this **Agreement**. At any time the **AUTHORITY** understands that the **LESSEE** has entered into any unauthorized sub-lease or is engaging in a non-maritime related use, the **AUTHORITY** shall give **LESSEE** written notice to said effect, specifying the prohibited act or use and location within the **Leased Areas** and requesting that **LESSEE** discontinue the same. In the event that **LESSEE** disregards said notice and continues to carry out the prohibited use, to the extent

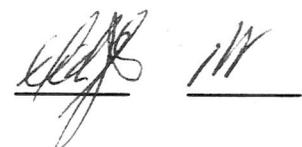
that a prohibited use has been made, a material default shall occur under the terms of this **Agreement**. The penalty imposed herein shall apply from the start of any such prohibited use, regardless of the timing of the **AUTHORITY's** written notice, and shall continue to the termination of such prohibited use, and shall be due and payable to the **AUTHORITY** within thirty (30) days of the date of the **AUTHORITY's** notice for all prohibited use to the date of such notice, and continuing monthly thereafter until said prohibited use is terminated. This paragraph shall not be construed as an authorization to perform activities not specifically covered by this **Agreement**, and the assessment and collection of this penalty shall not constitute a waiver of the **AUTHORITY's** right to cancel the entire **Agreement** for reason of such default.

(P) **Permitted Uses and Normal Operation of InterMarine Public Terminal:** Nothing contained in this **Agreement** shall limit **LESSEE's** right, in the normal operations of the **InterMarine Public Terminal**, to assess and make charges against shippers, vessels, cargo, passengers, and consignees for **LESSEE's** services in the **Leased Areas**, including charging demurrage in the **Exclusive Areas**, or to collect from any serviced carrier or vessel or the cargo any amount as **LESSEE** and such other affected entities may mutually negotiate to cover any improvement, service, general, or overhead cost of **LESSEE** for any marshaling or operations areas set aside for specific carriers or to service and store the cargo, equipment, or vehicles, including preparation for delivery of the cargo and vehicles, handled through the **InterMarine Public Terminal**. Any such authorized use shall not be subject to the penalty imposed in **ARTICLE IX(O)** of this **Agreement** or be deemed an assignment or sublet under **Article XXIV**.

(Q) **Timely Payment of the Essence:** Prompt and timely payment of all lawful amounts due to the **AUTHORITY** under this **Agreement** is of the essence, and any failure by **LESSEE** to pay all invoiced rental, wharfage, and dockage due under this **Agreement** in a timely manner, unless disputed under **Article XXXII**, shall be deemed a material breach of this **Agreement** if such failure to pay continues for more than ten (10) days from the date such payment is due, and shall entitle the **AUTHORITY** to terminate the **Agreement** in accordance with **ARTICLE XV** below.

ARTICLE X. SECURITY FOR PAYMENT OF RENTALS AND OTHER CHARGES.

At or prior to the execution of this **Agreement**, **LESSEE** shall deliver to the **AUTHORITY**, as a guarantee for the payment of ren-



tals, fees, and other charges, and the faithful performance of **LESSEE's** obligations under this **Agreement**, one of the following forms of security (the "**Security Deposit**"), which may be changed from time to time and which shall be in such form as is reasonably acceptable to the **AUTHORITY**:

1. A cash deposit in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000)**;
2. A letter of credit from a bank doing business in Puerto Rico evidencing the opening by **LESSEE** of a pledged savings account in favor of the **AUTHORITY** in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000)**, and stating, among other things, that the bank shall pay to the **AUTHORITY**, upon demand, any debts due under this **Agreement** up to the amount stated in the savings account without any need for judicial action against the bank;
3. A letter of credit from a bank doing business in Puerto Rico evidencing the opening by said bank of an irrevocable credit in favor of the **AUTHORITY** in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000)**, and stating, among other things, that the bank shall pay to the **AUTHORITY**, upon demand, any debts due under this **Agreement** up to the total amount of said irrevocable credit without any need for judicial action against the bank;
4. Face value of **AUTHORITY** bonds and obligations in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000)**; or
5. Any other security or guarantee acceptable to the **AUTHORITY** and approved by its Board of Directors.

ARTICLE XI. INDEMNIFY AND HOLD HARMLESS.

LESSEE and the **AUTHORITY** each agrees to respectively indemnify and save forever harmless the other and their respective officers, directors, principals, employees, agents, and permitted assigns from all claims, suits, or other actions brought by third parties against one of them, including any liability, damages, or other costs relating thereto (including attorneys' fees) that arise from or in connection with the use, improvement, occupancy, or operation of any of the **Leased Areas** or the **InterMarine Public Terminal** by **LESSEE** or the **AUTHORITY** respectively, or their respective employees and servants, or any other person acting at their respective direc-

tion, license, or permit (including, without limitation, each other's respective contractors), except to the extent of each other's respective negligence. **LESSEE** and the **AUTHORITY** shall respectively defend any said aforementioned claims, suits, or other actions brought by third parties respectively against the **AUTHORITY** and **LESSEE**. **LESSEE** and the **AUTHORITY** each shall permit the other the opportunity to control or, at a minimum, participate in the defense or settlement of such claims, suits, or other actions brought by third parties that are the subject of this **Article XI**.

ARTICLE XII. INSURANCE.

(A) **LESSEE's Requirement to Carry Insurance:** **LESSEE** shall carry public liability insurance with insurance companies authorized to do business in Puerto Rico, and acceptable to the **AUTHORITY**, insuring **LESSEE** against all liability for personal injury, including bodily injury, and property damage caused by **LESSEE's** use, improvement, occupancy, or operation of any of the **Leased Areas** or the **InterMarine Public Terminal** and **LESSEE's** operations at any other **AUTHORITY** facilities. Failure to maintain such insurance in effect shall be deemed a material breach and cause for termination of this **Agreement** per **Article XV(A)(4)** below.

(B) **Policy Limits:** The policy limits of aforesaid public liability insurance shall not be less than a combined limit of **ONE MILLION DOLLARS (\$1,000,000)** for any one occurrence involving personal injury, including bodily injury or death to each person; **ONE MILLION DOLLARS (\$1,000,000)** for each occurrence involving more than one person; and **ONE MILLION DOLLARS (\$1,000,000)** for property damages.

(C) **Fire Damage and Property Insurance:** **LESSEE** shall carry property insurance with insurance companies authorized to do business in Puerto Rico, and acceptable to the **AUTHORITY**, insuring **LESSEE** and the **AUTHORITY**, as their respective interests may appear, against fire, earthquake, windstorm, and extended property damage coverage for the insurable value up to the amount of **FOUR MILLION DOLLARS (\$4,000,000)** to cover any damage to the above ground warehouse structure(s) developed under this **Agreement**, including fixtures permanently attached thereto. The property insurance policy shall provide that any such loss shall be paid to the **AUTHORITY** and **LESSEE** as their respective interests may appear. The insurance proceeds shall be deposited with **LESSEE**, in trust, in a special account to be used for the repair and replacement of the damage, which repair and replacement shall be conducted in accordance with

the **Formal Plans** development requirements and procedures of **Article VII** above.

(D) **Required Endorsement:** **LESSEE's** public liability and property insurance policies shall contain an endorsement reading as follows:

"The coverage of this policy will not be amended for the purpose of decreasing the protection below the limits specified herein, nor can the policy be canceled, without giving the Puerto Rico Ports Authority thirty (30) days prior written notice. Thirty (30) days advance written notice shall also be given to the Puerto Rico Ports Authority in the event of any expiration of this policy."

In addition, **LESSEE's** public liability insurance policy shall contain an endorsement of contractual liability, including the **AUTHORITY** as an additional named insured, and also a hold harmless agreement endorsement which shall read essentially as follows:

"Insured shall save harmless the **Puerto Rico Ports Authority** from and against any and all claims, demands, suits, judgments, or awards which result in bodily injury or property damage covered under this policy which may be brought or recovered against the **Puerto Rico Ports Authority**, or on account of, or arising out of, any act, happening, or event, which results in bodily injury or property damage arising out of the operations of Insured and its affiliated companies."

(E) **Workers Compensation Insurance:** **LESSEE** also shall maintain any **Worker's Compensation Insurance** required under law or under any policy issued by the Puerto Rico State Insurance Fund or successor agency.

(F) **Replacement Policies:** **LESSEE** further agrees that, no later than thirty (30) days after the expiration of any insurance policy required by this **Agreement**, **LESSEE** shall deliver to the **AUTHORITY** a Certificate of Insurance for, or a certified copy of, an appropriate replacement insurance policy.

(G) **Insurance at Commencement:** No later than ten (10) working days after the delivery to **LESSEE** of an executed copy of this **Agreement**, **LESSEE** shall furnish the **AUTHORITY** a copy of the aforementioned insurance policies.

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(H) Replacement Policies: Without prejudice to any other provisions of this **Agreement** and the rights of the **AUTHORITY** hereunder, the **AUTHORITY** shall, upon expiration of the first month after the expiration of any insurance policy, fine **LESSEE**, **ONE HUNDRED DOLLARS (\$100.00)** for each and every day, or part thereof, that the successor or replacement Certificate of Insurance or insurance policy is not submitted to the **AUTHORITY**.

(I) AUTHORITY's Insurance: The **AUTHORITY** shall carry similar public liability insurance against the **AUTHORITY's** negligence in the public areas. The **AUTHORITY** shall provide **LESSEE** a copy of such insurance policy or a certificate evidencing the same, including any replacement policy.

(J) Reimbursement of Expenses: Each of **LESSEE** and the **AUTHORITY** agree to reimburse the other for all reasonable costs and expenses, including attorneys fees, incurred by the other as a result of any non-compliance by the other of their respective obligations under this **ARTICLE XII**.

ARTICLE XIII. REPAIRS AND ALTERATIONS.

(A) Condition at Time of Delivery of Leased Areas: **LESSEE** has examined and knows the conditions and state of repair of the subject premises, accepts them as such, and hereby acknowledges that the **AUTHORITY** has made no agreement or promises to alter, improve, adapt, or repair any of such premises or facilities, or any part thereof, except as expressly provided in this **Agreement**. **LESSEE** further acknowledges that no representation concerning the condition, or state of repair, of any item of the premises or facilities, or any part thereof, has been made by the **AUTHORITY** prior to, or at the time of the execution of this **Agreement**, which is not set forth herein. In the event any parcel of land leased or licensed under this **Agreement** shall turn out to be environmentally dangerous and unfit for the use intended due to pollution adverse to human use or habitation, **LESSEE**, upon written notice to the **AUTHORITY**, shall have the right to remove that parcel or any portion thereof from the terms of this **Agreement**, which exclusion shall be deemed retroactive and effective before delivery and taking possession of the same under the terms of this **Agreement** except as to any payments for **LESSEE's** use thereof to the date of such notice, and the **AUTHORITY** shall hold **LESSEE** harmless against any and all claims by reason of the condition thereof. In such event, and provided that **LESSEE's** notice is received within three years of the effective date of this **Agreement**, or within six (6)





months of the particular parcel of land being delivered to **LESSEE**, whichever is later, the **AUTHORITY** shall provide comparable marine terminal exclusive operations areas at or in the vicinity of the **InterMarine Public Terminal**.

(B) **Right of the AUTHORITY to Make Repairs and Improvements:**
The **AUTHORITY** reserves the right to make such repairs and improvements to the **Leased Areas** during the term of this **Agreement** as the **AUTHORITY** shall deem necessary and appropriate. **LESSEE** shall have no claim for any and all reasonable inconvenience, annoyance, or injury to its business arising from the **AUTHORITY** diligently repairing or making replacements in the **Leased Areas**. The **AUTHORITY** shall coordinate all such work with **LESSEE**, and shall carry out the same in such a manner so as not to unreasonably interrupt the operations of **LESSEE** and its serviced carriers.

(C) **AUTHORITY Right to Improve Premises for Its Personnel:**
The **AUTHORITY** shall have the right to design, build, and maintain such facilities in the **Preferential Areas** as may be legally required or determined necessary by the **Authority** to accommodate its operating personnel.

ARTICLE XIV. SUBSTANTIAL IMPROVEMENTS AND STRUCTURAL ALTERATIONS.

(A) **Authorization Granted to LESSEE:** Subject to the **AUTHORITY's** prior written approval, **LESSEE** may make substantial or structural alterations, additions, improvements, and betterments to the **Leased Areas**, and may remove any and all presently existing structures and facilities in the **Leased Areas** other than the berths, docks, and attendant utilities and pipelines.

(B) **Title to Improvements Upon Termination of the Agreement:**
Except as expressly provided herein, legal title to all substantial or structural alterations, additions, buildings, structures, improvements, and betterments, made and installed by **LESSEE** as **TERMINAL IMPROVEMENTS** shall remain in **LESSEE** during the term of this **Agreement** as such may be extended, and upon the termination of this **Agreement**, whether by expiration or for any cause, such legal title shall be transferred to the **AUTHORITY**, subject to the provisions of **Article XV** below where applicable.

(C) **Removal of Non-Permanent Buildings and Structures:** The **AUTHORITY**, at its sole discretion, reserves the right to require **LESSEE**, by written notice given prior to or within thirty (30) days after the termination date, to remove or demolish any or all non-





permanent buildings and structures, alterations, additions, improvements, and betterments, and to restore the facilities to the condition as originally existing prior to development of the **TERMINAL IMPROVEMENTS**, except for reasonable wear, tear, weathering, force majeure, and conditions over which **LESSEE** has no control. Such removal and restoration shall be commenced within thirty (30) days after the later of (1) the date **LESSEE** receives the notice of the **AUTHORITY's** exercise of such right, or (2) the termination date of the **Agreement**, and shall be diligently completed. If **LESSEE** does not proceed with the removal of such property as herein provided, **LESSEE** shall be deemed to have abandoned to the **AUTHORITY** all said property, and the **AUTHORITY** shall have the right to restore, remove, or dispose of the same in any manner that the **AUTHORITY** deems advisable or convenient, at **LESSEE's** expense.

ARTICLE XV. TERMINATION, DEFAULT, NON-PERFORMANCE AND HOLDOVER:

(A) **Termination of Agreement:** The **AUTHORITY** may terminate this **Agreement** by giving **LESSEE** written notice of termination upon the happening of any one of the following events, each of which shall be deemed to constitute a default immediately upon its occurrence unless an express period for cure is permitted:

(1) **Abandonment:** Abandonment of any of the **Leased Areas** by **LESSEE**, or the liquidation of **LESSEE's** assets;

(2) **Undischarged Attachment:** The occupancy or seizure by any third party under a court mandate or the attachment of **LESSEE's** assets located in the **Leased Areas**, if such occupancy, seizure or attachment is not discharged, terminated, or bonded, pending judicial determination, within thirty (30) days following the date of such seizure or attachment;

(3) **Non-Payment:** Any **LESSEE** failure to pay directly to the **AUTHORITY** all rentals, use fees, or **Tariff** charges, not otherwise subject to a claim or **Dispute** under **Article XXXII** below, shall constitute an immediate and material default under this **Agreement** if **LESSEE** does not cure the same by tendering payment within ten (10) calendar days of the original due date provided under the terms of this **Agreement**, without the need for any prior notice by the **AUTHORITY**;

(4) **Failure to Maintain Insurance:** Any failure by **LESSEE** to maintain the insurance coverage required in **Article XII** above which continues for a period of ten (10) days after expiration

of the prior insurance coverage shall, to the extent such insurance is otherwise available within the market, constitute a material default and be grounds for immediate termination of this **Agreement** without any other notice; or

(5) **Non-performance and Cure of Defaults:** Non-performance by **LESSEE** of any of its other obligations, covenants, or agreements under this **Agreement** not covered by subparagraphs (1) through (4) above, if such non-performance is material and not cured within thirty (30) days after **LESSEE** is requested to do so by the **AUTHORITY** in writing. To the extent that the default is of such a nature that the same cannot be cured within thirty (30) days, but **LESSEE** has acted diligently and is in the process of so curing said default, the cure period shall be extended to such period as may be reasonably necessary to cure said default, provided **LESSEE** continues to act diligently to cure said default.

Upon the happening of any one of the events recited above in **Articles XV(A)(1)** through **(4)** above, or upon expiration of the cure period as to any default under **Article XV(A)(5)** above, the **AUTHORITY** may terminate this **Agreement** by giving **LESSEE** a written "**Notice of Termination**" signed by the **Executive Director**, or on his behalf by the **Acting Executive Director**, indicating the **AUTHORITY's** exercise of its termination right, specifying the cause for termination and the effective termination date. Ten (10) working days after the termination date specified in the **Notice of Termination**, the **AUTHORITY** may enter and take possession of the premises. Both parties may meet after **LESSEE's** receipt of the **Notice of Termination** to provide for an orderly delivery and removal of chattels, and the orderly disposition of other matters provided for in this **Agreement**.

(B) **Payment of Outstanding Depreciated Value of Certain Terminal Improvements:**

(1) **Election to Pay or Assume Warehouse Financing:** Notwithstanding anything to the contrary in this **Agreement**, in the event of the cancellation or early termination of this **Agreement** by the **AUTHORITY** for any reason before the end of the **Initial Term** or any previously exercised **Extension Term**, the **AUTHORITY**, at its exclusive election, may either (a) pay **LESSEE** or its financial assigns in title or interest an amount equal to **LESSEE's** portion of the depreciated value of the warehouse building described in **Article VII(A)(1.1)(vii)** using a straight line useful life depreciation method as said useful life is determined under applicable tax law

guidelines by **LESSEE's** external independent auditors, herein referred to as the "**Depreciated Book Value**", or (b) unconditionally assume in writing the payment of said **Depreciated Book Value** under any financing agreement outstanding and authorized under **Article XX** of this **Agreement** including all obligations thereunder. Upon receipt of payment or the settlement of any such financing assumption, **LESSEE** shall convey to the **AUTHORITY LESSEE's** right, title, and interest in and to the warehouse building free and clear of any other obligations.

(2) **Title and Election Not to Acquire Cranes:** As to the gantry crane equipment, the **AUTHORITY**, in its sole discretion, may elect, within thirty (30) calendar days after the effective day of delivery of the premises, to acquire such cranes and equipment. In such event, the **AUTHORITY** shall reimburse **LESSEE** the **Depreciated Book Value** of the same at a closing. The cost of the incorporated structural leasehold improvements for the installation of the cranes and rail tracks on the wharfs operating platform apron shall be includable in determining the **Depreciated Book Value** of the cranes. Otherwise, the **LESSEE** shall be free to sell the same to the new tenant or to carriers or other ports in or outside Puerto Rico.

(C) **Hold Over Rental With Consent:** Should **LESSEE**, with the express or implied consent of the **AUTHORITY**, hold-over the use of any of the **Leased Areas** after this **Agreement** has terminated in any manner, such holding over shall be deemed merely a holding from month to month.

(D) **Hold Over Rental Without Consent:** If **LESSEE** is requested to vacate and surrender the premises because of the expiration or termination of this **Agreement** for any cause, or because of any other reason agreed upon by the parties, and **LESSEE** does not surrender the premises under the terms of this **Agreement** as requested, then, and in that event, and without waiving any other rights of the **AUTHORITY** under this **Agreement** or the law, **LESSEE** shall pay to the **AUTHORITY**, as a penalty, an amount per day equal to ten percent (10%) of the then applicable monthly **Preferential Areas** fees and **Exclusive Areas** rentals as determined per **Article IX** of this **Agreement** for each day or part thereof after the effective date of the termination of this **Agreement**. In addition, **LESSEE** shall pay to the **AUTHORITY** a sum equivalent to the rental and fees fixed in this **Agreement** as compensation for the use and occupancy of the premises.




ARTICLE XVI. FORCE MAJEURE AND IMPOSSIBILITY OF PERFORMANCE.

Neither party shall be in default or liable for damages due to being unable to perform or delayed in the performance of any covenant of this **Agreement** herein by reason of the inability to obtain and utilize labor, material, or supplies, or by reason of circumstances directly and indirectly the result of any state of war or national or insular emergency, or by reason of any laws, rules, orders, regulatory requirement of any federal, commonwealth or municipal government or instrumentality now or hereafter in force, or by reason of any other cause beyond such party's respective reasonable control, or by reason of any act or neglect of the other party or its servants, agents, employees, and licensees. Acts of subcontractors, suppliers, or licensees which are not similarly beyond the control of such entities shall not be deemed beyond the control of the non-performing party to this **Agreement**.

ARTICLE XVII. REMOVAL OF FIXTURES AND CHATTELS.

Within fifteen (15) days after the date of termination of this **Agreement** for any reason, upon proper notice pursuant to the terms of this **Agreement**, **LESSEE** shall remove from the **Leased Areas**, at **LESSEE's** expense, all equipment, personal property, fixtures, signs, removable structures and improvements, machinery, and goods or merchandise constructed, built, kept, or deposited by **LESSEE** on the **Leased Areas**. If **LESSEE** does not proceed with the removal of said property as herein provided, **LESSEE** shall be deemed to have abandoned to the **AUTHORITY** all said property, and the **AUTHORITY** shall have the right to dispose of the same in any manner that the **AUTHORITY** deems advisable or convenient, at **LESSEE's** expense.

ARTICLE XVIII. COMPLIANCE WITH THE LAW.

LESSEE agrees to obey and comply with all applicable federal, Commonwealth, and municipal laws, ordinances, rules, and regulations, including the **Tariffs** and other regulations of the **AUTHORITY** and the regulations of the **United States Coast Guard**, and any judicial and administrative orders or judgments relative to **LESSEE's** occupation and operations covered by this **Agreement**, including, without limitation, any construction on or other development of the **Leased Areas**.

If **LESSEE** fails to obey and comply with all lawful and applicable federal, commonwealth, and municipal laws, ordinances, rules,

and regulations, including the regulations of the **AUTHORITY** and the **United States Coast Guard**, and with any judicial and administrative orders or judgments relative to **LESSEE's** occupation and operations, and thereby causes an imposition of a pecuniary or other penalty upon the **AUTHORITY**, **LESSEE** shall reimburse the **AUTHORITY** the corresponding amount of any such penalty, as well as any related costs, including legal fees, incurred by the **AUTHORITY**.

ARTICLE XIX. PRESERVATION AND MAINTENANCE OF FACILITIES.

LESSEE hereby expressly agrees to conserve, protect, preserve, and maintain, at its sole cost and expense, the **Leased Areas**, including the **AUTHORITY's IMPROVEMENTS** and **TERMINAL IMPROVEMENTS** thereon, in a good state of repair, as well as in a clean, wholesome, and sanitary condition at all times during the term of this **Agreement**. **LESSEE** further agrees to return the premises to the **AUTHORITY** upon the termination of this **Agreement** in the same condition as that to which the premises are developed except for normal wear and tear.

ARTICLE XX. LIENS.

(A) **In rem Liens:** **LESSEE** shall not do, or suffer anything to be done, upon or in connection with the land of the **Leased Areas**, which may subject the land, or any part thereof, to any liens or rights in rem; and shall promptly discharge, or cause to be discharged, any lien or right in rem which may arise or exist at any time with respect to the facilities or to any alterations, additions, betterments, or modifications thereof.

(B) **Mortgages and Liens for Loans and Leases:** The **TERMINAL IMPROVEMENTS** to which **LESSEE** retains title may be encumbered with real and personal property mortgages and other security agreements under such terms and conditions as are usual and customary for property term financing and leasehold interests in Puerto Rico, but any loans guaranteed by such liens shall not have a contract term exceeding the **Initial Term** of this **Agreement** and/or any exercised extension thereof as provided in **ARTICLE VI**, without the **AUTHORITY's** prior written consent.

(C) **Conversion of Agreement to Public Deed:** This **Agreement** may be converted into a Public Deed at the request of either party, and both parties shall execute such Deed, and **LESSEE**, with the **AUTHORITY's** consent, and to the extent such does not adversely

impact any existing interest of the **AUTHORITY's** bondholders, may create and grant leasehold mortgage for **LESSEE's** benefit and/or for the benefit of the financing creditors of the **TERMINAL IMPROVEMENTS**.

ARTICLE XXI. LIABILITY FOR LOSS OR DAMAGE.

LESSEE assumes all risk of, and hereby indemnifies the **AUTHORITY** against, any loss of, or damage to, (i) the **Exclusive Areas**, and (ii) the other **Leased Areas** during **LESSEE's** use thereof, including the facilities thereon, resulting from **LESSEE's** negligent operation of the **Intermarine Public Terminal** and/or in not complying with the provisions of this **Agreement**.

ARTICLE XXII. FIRE EXTINGUISHING EQUIPMENT.

LESSEE shall furnish and supply in the **Exclusive Areas** and, during **LESSEE's** use, the other **Leased Areas**, such fire extinguishing equipment as **LESSEE** reasonably deems necessary or appropriate, and as required by the regulations of the U.S. Coast Guard or the local Fire Service Department, or as reasonably may be required by the **AUTHORITY**.

ARTICLE XXIII. RIGHT OF ACCESS BY THE AUTHORITY.

(A) **Repair and Replacements:** The **AUTHORITY** shall have the right to enter the **Leased Areas** to make any repairs, replacements, and alterations which the **AUTHORITY** may deem necessary. Any such action of the **AUTHORITY** shall not release **LESSEE** from its obligations to maintain and repair its own facilities and equipment, as well as the **Leased Areas** (including, without limitation, the **AUTHORITY's IMPROVEMENTS** and **TERMINAL IMPROVEMENTS**). The **AUTHORITY**, its agents, and employees shall notify and coordinate such visits with **LESSEE**.

(B) **Right to Inspect:** The **AUTHORITY** also shall have the right, through its duly authorized agents and representatives, to inspect the **Leased Areas** and installations, facilities, and other improvements on the **Leased Areas** at any time during regular business hours, and to determine **LESSEE's** compliance with its obligations under this **Agreement**. The **AUTHORITY**, its agents, and employees shall notify and coordinate with **LESSEE** as to any such visits outside of regular working hours.

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ARTICLE XXIV. ASSIGNMENTS.

(A) Permitted Assignment:

(1) **To Controlled LESSEE:** LESSEE may assign this Agreement, on a one-time basis, to a wholly-owned subsidiary of LESSEE or an affiliate whose stock ownership upon assignment is controlled by no less than 80% of LESSEE's current shareholders as a group (the "Assignee"). LESSEE and Assignee shall provide the AUTHORITY appropriate documents evidencing the creation, identity, ownership, and capitalization of the Assignee as stipulated in this Agreement.

(2) **Responsibilities of the Assignee and LESSEE:** Upon transfer and assignment of all of the rights and obligations pursuant to this Agreement, Assignee shall thereafter be the LESSEE under this Agreement and shall be exclusively responsible for the development and operation of the InterMarine Public Terminal, except as to the obligations of INTERSHIP under Article VIII of this Agreement and as otherwise set forth herein. The Assignee shall, upon the occurrence of an assignment in accordance with the terms of this Article XXIV(A), be capitalized with cash and other assets with an aggregate value of not less than SEVEN MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$7,250,000) (the "Assignee Minimum Capitalization"). Such Assignee Minimum Capitalization may be accomplished by LESSEE transferring or causing to be transferred to Assignee, as a capital or subordinated equity contribution, by means of cash, partnership interest contributions, common or preferred stock, or subordinated debentures and/or financings or assets contributions which may include: (a) assignment of revenue generating stevedoring and terminal business, capitalized at the amount of not less than TWO MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$2,750,000), (b) the transfer of operating and container handling equipment, cranes, and material handling equipment with a value of not less than THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000), and (c) the contribution of not less than ONE MILLION DOLLARS (\$1,000,000) in cash or readily marketable securities to cover the cost, in part, of Phases One and Two of the Development Plan, as set forth in Article VII above. Upon the completion of the development of the InterMarine Public Terminal as contemplated in Article VII above, the Assignee shall be capitalized through partnership interest contributions, common or preferred stock, and subordinated equity contributions with an aggregate fair market value of assets and cash of not less than TEN MILLION DOLLARS (\$10,000,000).

The foregoing notwithstanding, prior to any assignment from **LESSEE** to **Assignee** which is permitted hereunder, **LESSEE** shall provide the **AUTHORITY** or **AUTHORITY's** representative(s) copy of **Assignee's** Financial Statements or Pro-Forma Financial Statements evidencing **Assignee's Minimum Capitalization**. No assignment to the **Assignee** shall be effective unless and until the **AUTHORITY** has given its written approval of **Assignee's** financial capability as provided herein, which such approval shall not be unreasonably delayed or denied.

Even though the value of the operating assets being transferred are sustained by valuations and a third party buyer would be allowed to recognize said current purchase in its GAAP Financial Statements, **LESSEE** has been advised by its independent accountants that, since the proposed **Assignee** is controlled by **INTERSHIP** or its controlling stockholders, the transaction would be characterized as a "non-monetary transaction" under GAAP, and the **LESSEE's** Financial Statements will have to reflect **INTERSHIP's** cost basis and not the current value of the operating assets. **LESSEE** shall report both current value and GAAP Financial Statements value.

(B) **Assignments Generally:** Except as provided in **Subparagraph (A)** above, neither this **Agreement** nor any interest herein contained shall be sold, assigned or otherwise transferred by **LESSEE** without the prior written approval of the **AUTHORITY**, acting through its Board of Directors, which approval may be withheld in the **AUTHORITY's** sole discretion. Moreover, the **AUTHORITY** may, in its absolute discretion, withhold consent as to any proposed transferee's different use of the **Leased Areas**, including if any proposed use involves the use, storage, generation, or disposal of hazardous substances. Any assignment which the **AUTHORITY** may approve shall be under the same terms and conditions and for the same maritime purposes as stipulated in this **Agreement**, and shall not release **LESSEE** from any liability hereunder except to the extent expressly provided in the **AUTHORITY's** written approval of the assignment. Any consent by the **AUTHORITY** to any sale, assignment, or other transfer of this **Agreement** shall not constitute a waiver of the necessity of obtaining such consent as to any subsequent sale, assignment, or other transfer.

Any assignment, except the assignment authorized in **Paragraph (A)** above, for the benefit of **LESSEE** by operation of law shall not be effective to transfer or assign **LESSEE's** interest under this **Agreement** unless the **AUTHORITY** shall have first consented thereto in writing. Neither **LESSEE's** interest in this **Agreement**, nor any

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estate created hereby in **LESSEE**, nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may be specifically provided in this **Agreement** or the **Bankruptcy Code**.

If any equity interest of **LESSEE** (including, without limitation, corporate shares of stock or any partnership or membership interest) is transferred, by sale, assignment, bequest, inheritance, operation of law, or otherwise, so as to result in a change of ownership or control of, in the aggregate, forty per cent (40%) or more of said equity interest at one time, or in any series of transactions during any two (2) year period other than by inheritance or other inter-vivos transfer to any blood relative within two degrees of consanguinity of the then current stock or equity holders of **LESSEE**, the same shall be deemed an assignment for the purpose of this **Article**, shall require the **AUTHORITY's** prior written consent, and **LESSEE**, upon **LESSEE** having knowledge thereof, shall notify the **AUTHORITY**, in writing, of any such proposed change. **LESSEE** shall give the **AUTHORITY** prompt written notice of any ownership change.

(C) **Subletting:** **LESSEE** shall not sublet any of the **Leased Areas**, or any part thereof, without the **AUTHORITY's** prior written consent, which consent may be withheld for any reason whatsoever.

ARTICLE XXV. LIMITATIONS OF LESSEE'S RIGHTS.

This **Agreement** does not constitute **LESSEE** as an agent, officer, or employee of the **AUTHORITY** for any purposes whatsoever except as may be specifically stipulated in this **Agreement**.

ARTICLE XXVI. AGREEMENTS WITH THE UNITED STATES.

This **Agreement** and **LESSEE's** rights and interests granted hereunder, to the extent the use intended is not materially affected, shall be subordinated to the provisions of any existing or future agreement between the **AUTHORITY** and the United States relative to the operation or maintenance of the **Leased Areas**, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the bulkhead areas.

ARTICLE XXVII. NOTICES.

All notices to the **AUTHORITY** shall be in writing and either delivered by hand, by fax with a hard copy sent by first class mail, postage prepaid, or sent by certified or registered mail, return receipt requested, addressed or delivered to the Executive Director, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, Puerto Rico 00936-2829, or at the **AUTHORITY's** physical address at Isla Grande Terminal, San Juan, P.R., and/or to such additional or other person or address as may be directed in a written notice to **LESSEE**. Notices to **LESSEE** that are required hereunder shall be in the same manner addressed to: Mr. David R. Segarra, President, InterMarine Public Terminals Inc., P. O. Box 2748, San Juan, Puerto Rico 00903, or at **LESSEE's** physical address at Pier 11, Fernández Juncos Avenue, San Juan, P.R., or such other person or address as may be directed in a written notice from **LESSEE** delivered to the **AUTHORITY** as set forth above.

ARTICLE XXVIII. ENTIRE AGREEMENT.

This **Agreement** constitutes the entire agreement between the parties as to the subject matter of this **Agreement** and may not be changed, modified, discharged, or extended, except by written amendment duly approved and executed by the duly authorized representatives of the respective parties, and filed, as may be required by law, with any appropriate government agency(ies).

ARTICLE XXIX. NONDISCRIMINATION CLAUSE.

In connection with the utilization of the **Leased Areas** covered by this **Agreement**, **LESSEE** agrees not to discriminate against any person, employee, or applicant for employment, because of race, religion, color, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoffs, or termination; rates or any other form of compensation, and selection for training, including apprenticeship. **LESSEE** agrees to post, in conspicuous places, available for employees and applicants for employment, notices to be provided by the **AUTHORITY** setting forth the text of this nondiscrimination clause. **LESSEE** assures that no person shall be excluded or discriminated from participating in or receiving the services or benefits of any program or activity covered by applicable law. **LESSEE** assures that it will require that its covered organizations provide assurances to the **AUTHORITY** that

they similarly agree not to discriminate against any person, employee, or applicant for employment, because of race, religion, color, or national origin.

ARTICLE XXX. PREMISES SECURITY.

LESSEE shall not permit nor allow unauthorized personnel to enter the operations areas or any other area in the **Exclusive Areas** or, during **LESSEE's** use, in the other **Leased Areas**, which is restricted by local or federal regulation. If the **AUTHORITY** is penalized or fined by any local or federal agency or court for violation of any law or regulation related to the entering of restricted areas, and such violation is due to **LESSEE's** failure to comply with this **Article XXX**, said penalty or fine and all related costs and expenses, including legal fees, shall be reimbursed by **LESSEE** to the **AUTHORITY** within thirty (30) days after the **AUTHORITY's** request for such reimbursement.

ARTICLE XXXI. LESSEE'S RESPONSIBILITY REGARDING HAZARDOUS SUBSTANCES.

(A) Definition of Hazardous Substances:

(1) **Hazardous Substances Generally:** The term "**Hazardous Substances**," as used in this **Agreement**, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyl (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

(2) **Hazardous Substances and Release:** The terms "**hazardous substance**" and "**release**" shall have the meanings specified in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq. ("**CERCLA**"), and the regulations promulgated thereunder.

(3) **Solid Waste, Disposal, or Disposed:** The terms "**solid waste**" and "**disposal**" or "**disposed**" shall have the meanings specified in the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq. ("**RCRA**"), and the regulations promulgated thereunder.

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(4) Future Amendments and Expansion of Definitions: In the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply as of the effective date of such amendment, and provided further, to the extent that the laws of the Commonwealth of Puerto Rico or the Municipality of San Juan, the jurisdiction where the **Leased Areas** are located, establish an applicable meaning for "hazardous substance", "release", "solid waste", "disposal," or "disposed," which is broader than specified in either CERCLA or RCRA, such broader meaning shall apply.

(B) LESSEE'S Operation of the InterMarine Public Terminal:

(1) Compliance with Environmental Laws: LESSEE shall comply with all applicable environmental laws and regulations, including all Federal, Commonwealth, and local or municipal laws, statutes, ordinances, codes, and rules and regulations promulgated under the aforementioned Federal, Commonwealth, and local or municipal laws and statutes, relating to the protection of the environment and the workplace, public and industrial health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, or disposal of **hazardous substances, solid wastes** and other regulated substances, within or outside the workplace.

(2) Applying for and Obtaining Permits and Licenses: Prior to beginning operations in the **Leased Areas**, including, without limitation, any construction or other development, LESSEE shall request and obtain all applicable environmental permits and licenses from the concerned Federal, Commonwealth, and Local agencies with jurisdiction, such as, but not limited to, the Environmental Protection Agency, the United States Army Corps of Engineers, the Junta de Calidad Ambiental, the Departamento de Recursos Naturales, and the Administracion Para el Manejo de los Deperdicios Solidos.

(3) Conduct of Operations:

(a) Storage, Generation, or Disposal of Material: Except in compliance with all applicable law, ordinances, and regulations pertaining thereto, and except as for such **hazardous substances** as are necessary or useful to the LESSEE'S business, in reasonable amounts, LESSEE shall not cause or permit **hazardous substances** to be used, stored, generated, or **disposed** of by LESSEE or LESSEE'S agents, employees, contractors, or users of the facilities who are under the direct control and supervision of LESSEE on or in the **Exclusive Areas**, and in the other **Leased Areas** during LESSEE'S

use thereof, without first obtaining the **AUTHORITY's** written consent.

(b) Use of Proper Containers: Any hazardous material permitted on the **Leased Areas**, and in all containers utilized in **LESSEE's** operations, shall be used, kept, stored, and **disposed** of in a manner that complies with all Federal, Commonwealth, and local laws or regulations applicable to such **hazardous material**.

(c) Discharge, Leaks, and Emissions: **LESSEE**, and **LESSEE's** agents, employees, contractors, or users of the facilities who are under **LESSEE's** control and/or supervision, shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, from the **Leased Areas** any **hazardous substances** into the atmosphere, ground, sewer system, or any body of water, if such material would pollute or contaminate the receiving body, damage the health, welfare, or the security of people, whether located on the **Leased Areas** or elsewhere, or interfere with the condition, use, or enjoyment of the **Leased Areas** or any other real or personal property.

(4) Inspection and Monitoring by the AUTHORITY: During the term of this **Agreement** the **AUTHORITY** and its employees and/or agents shall have the right to enter upon the subject property and monitor **LESSEE's** performance to insure that **LESSEE** is in compliance with all applicable environmental laws and regulations, permits and licenses. These monitoring activities may include, among other things: physical inspections, tests, and sampling; installation, service, and inspection of environmental monitoring devices; examination and copying of documents or records dealing with **LESSEE's** compliance with environmental laws, regulations, licenses, and permits; and interviews with **LESSEE's** personnel and contractors regarding **LESSEE's** environmental performance and compliance. The **AUTHORITY** also reserves the right to request and obtain reports and notices concerning **LESSEE's** environmental performance. During the term of this **Agreement**, **LESSEE** shall not tamper with, or disturb in any manner, any monitoring devices.

(5) Reporting of Notices of Violations: **LESSEE** shall immediately notify the **AUTHORITY** as to any known violation in the **Exclusive Areas**, and, during **LESSEE's** use, in the other **Leased Areas**, of the applicable environmental laws, regulations, licenses, permits, or any other matter that may give rise to environmental liability on behalf of the **LESSEE** or the **AUTHORITY** and, within seventy-two (72) hours of becoming aware of such violation or other matter, shall submit to the **AUTHORITY** a written report which describes the circumstances thereof.





(6) Information, Reports and Environmental Clean-up:

(a) Submission of Information and Reports: LESSEE shall, at LESSEE's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Environmental Authorities") under applicable laws.

(b) Environmental Clean-Up: Should any Environmental Authorities or any third party demand that a clean-up plan be prepared, and that a clean-up be undertaken, because of any deposit, spill, discharge, or other release of hazardous substances that occurs during the term of this Agreement, at or from the Exclusive Areas, and, during LESSEE's use, in the other Leased Areas, or which arises at any time from LESSEE's use or occupancy of the Leased Areas, then LESSEE shall, at LESSEE's expense, prepare and submit the required plans and all related bonds and other financial assurances; and LESSEE shall, at LESSEE's expense, carry out all such clean-up plans.

(c) Information Requests: LESSEE shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of hazardous substances by LESSEE that is requested by the AUTHORITY.

If LESSEE fails to fulfill any duty imposed under this Article XXXI(B)(6) within a reasonable time, the AUTHORITY may do so at LESSEE's expense; and in such case, LESSEE shall cooperate with the AUTHORITY to determine the applicability of the laws to the Leased Areas due to LESSEE's use thereof and for any such compliance therewith, and LESSEE shall execute all applicable and reasonable documents promptly upon the AUTHORITY's request. No such action by the AUTHORITY, and no attempt made by the AUTHORITY to mitigate damages under any law, shall constitute a waiver of any of LESSEE's obligations under this Article XXXI(B)(6) or the AUTHORITY's rights.

(7) Corrective Action by the AUTHORITY: If, during the term of this Agreement, LESSEE violates any applicable environmental law, regulation, license, or permit, or acts in any way that might give rise to any environmental liability on behalf of the AUTHORITY, the AUTHORITY shall first request, in writing, that LESSEE take the necessary corrective action, and the AUTHORITY reserves the right to:

(a) **Perform Remedial Action:** At LESSEE's expense, perform remedial actions as defined in CERCLA and RCRA, and any other pertinent law, statute, ordinance, code, rule, or regulation, be it federal, local, or municipal, or take any other action necessary to cure immediately the environmental non-compliance.

(b) **Compel LESSEE's Remedial Action:** Compel LESSEE, at LESSEE's own cost, to perform the remedial action mentioned in Article XXXI(B)(7)(a) above. There shall be no right to rent abatement while any remedial action is being performed.

(8) **Hold Harmless and Indemnity:** LESSEE shall indemnify, defend, and hold harmless the AUTHORITY, and the AUTHORITY's officers, directors, employees, and agents, from (a) all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees and costs, and consultants' and experts' fees and costs), (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to **hazardous substances**; (c) any lawsuit brought or threatened, settlement reached, or government order relating to **hazardous substances**; or (d) any violation of any law applicable thereto arising out of or in any way connected with any deposit, spill, **discharge**, or other **release of hazardous substances**, which arises and is caused by LESSEE or LESSEE's agents, employees, contractors, or users who are under LESSEE's control or supervision in the **Leased Areas** during the term of this **Agreement**, or arises at any time from LESSEE's use or occupancy of the **Leased Areas**, or from LESSEE's failure to provide all information, make all submissions, and take all steps required by all **Environmental Authorities** under applicable law and regulation. Third party users of the **Puerto Nuevo Terminal Preferential Areas** shall not be deemed to be under LESSEE's control.

(9) **Survival of Covenants and Agreements:** The provisions of this **Article** shall be in addition to any other obligations and liabilities which LESSEE may have to the **AUTHORITY** at law or equity, and shall survive the transactions contemplated herein and shall survive the termination of this **Agreement**.

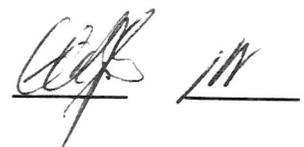
ARTICLE XXXII. CLAIMS AND DISPUTES.

(A) Claim Resolution:

(1) **LESSEE Claims:** Any claims by **LESSEE** arising under or relating to this **Agreement**, including, but not limited to, any claim for monetary relief or damages, must be submitted in the first instance directly to the **AUTHORITY** in writing with, to the extent available and known as of the date of the filing of the claim after diligent inquiry, (i) a detailed explanation of the facts and circumstances asserted to entitle **LESSEE** to relief, (ii) an itemized breakdown of any monetary relief claimed, (iii) copies of any relevant documents or correspondence, and (iv) a certification under oath by a duly authorized corporate officer of **LESSEE** attesting, of such person's own personal knowledge and based on such person's personal review of the matter, to the accuracy of **LESSEE's** claim and **LESSEE's** good faith belief that **LESSEE** is entitled to the relief claimed. All such complaints shall be clearly referenced at the beginning of the communication as an "**Article XXXII Claim and Dispute**"

Any such **LESSEE** claim shall be addressed and delivered to the **AUTHORITY's Executive Director**, who will refer the claim to a designated officer of the **AUTHORITY** for review and processing. **LESSEE** shall fully cooperate with and facilitate the **AUTHORITY's** review of such claim by timely providing any additional requested information, and by meeting with the officer designated by the **Executive Director** as requested to discuss and attempt to clarify and resolve the claim.

The **AUTHORITY** shall notify **LESSEE** in writing of the **AUTHORITY's** agreement or disagreement with **LESSEE's** claim within twenty (20) working days of the **AUTHORITY's** receipt of the claim, and, if the **AUTHORITY** disagrees with **LESSEE's** claim, shall additionally submit in the reply a written statement of the facts and circumstances, and copies of any relevant documents or correspondence, supporting the **AUTHORITY's** challenge to **LESSEE's** claim. If **LESSEE** disagrees with the **AUTHORITY's** initial reply to **LESSEE's** claim and wishes to further maintain and pursue the same, **LESSEE** shall formally so notify the **AUTHORITY** within ten (10) working days of **LESSEE's** receipt of the aforesaid written reply and statement, and shall request a full review of the matter under the procedures established in this **Article XXXII**. The **AUTHORITY's Executive Director** or designated **Review Officer** shall meet with **LESSEE's** applicable personnel in an attempt to resolve the claim on a mutually satisfactory basis. **LESSEE** shall fully cooperate with and facili-



tate the **Executive Director's** review by timely providing any additional requested information, and by meeting with the **Executive Director** or **Review Officer** as requested. The **Executive Director** shall issue the **AUTHORITY's** final written decision with respect to **LESSEE's** claim within twenty-one (21) working days of the **AUTHORITY's** receipt of **LESSEE's** written request for review.

(2) **AUTHORITY Claims:** Any claims by the **AUTHORITY** arising under or relating to this **Agreement**, including, but not limited to, any claim for monetary relief or damages, shall be submitted to **LESSEE** in writing, and shall set forth, to the extent available and known as of the date of the filing of the claim after diligent inquiry, (i) a detailed explanation of the facts and circumstances asserted to entitle the **AUTHORITY** to relief, (ii) an itemized breakdown of any monetary relief claimed, (iii) copies of any relevant documents or correspondence, and (iv) a certification under oath by a duly authorized corporate officer of the **AUTHORITY** attesting, of such person's own personal knowledge and based on such person's personal review of the matter, to the accuracy of the **AUTHORITY's** claim and the **AUTHORITY's** good faith belief that the **AUTHORITY** is entitled to the relief claimed. All such complaints shall be clearly referenced at the beginning of the communication as an "**Article XXXII Claim and Dispute**".

Any such **AUTHORITY** claim shall be addressed and delivered to **LESSEE's** **President**, who will refer the claim to **LESSEE's** **Secretary**, or, in his absence and on his behalf, to a duly designated officer of the corporation, for review and processing. The **AUTHORITY** shall fully cooperate with and facilitate the **Secretary's** or **Designated Officer's** review by timely providing any additional requested information, and by meeting with the **Secretary** or **Designated Officer** as requested to discuss and attempt to clarify and resolve the claim.

LESSEE shall notify the **AUTHORITY** in writing of **LESSEE's** agreement or disagreement with the **AUTHORITY's** claim within twenty (20) working days of **LESSEE's** receipt of the claim, and, if **LESSEE** disagrees with the **AUTHORITY's** claim, shall additionally submit in the reply a written statement of the facts and circumstances, and copies of any relevant documents or correspondence, supporting **LESSEE's** disagreement with and challenge to the **AUTHORITY's** claim. If the **AUTHORITY** disagrees with **LESSEE's** initial reply to the **AUTHORITY's** claim, and wishes to preserve and maintain the claim, the **AUTHORITY** shall formally so notify **LESSEE** within ten (10) working days of the **AUTHORITY's** receipt of the aforesaid written reply and statement, and shall request a full review of the matter under the



procedures established in this **Article XXXII**. **LESSEE's President** or designated **Review Officer** shall meet with the **AUTHORITY's** applicable personnel in an attempt to resolve the claim on a mutually satisfactory basis. The **AUTHORITY** shall fully cooperate with and facilitate **LESSEE's President's** review by timely providing any additional requested information, and by meeting with the **President** or **Review Officer** as may be requested. **LESSEE's President** shall issue **LESSEE's** final written position with respect to the **AUTHORITY's** claim within twenty-one (21) working days of **LESSEE's** receipt of the **AUTHORITY's** written request for review.

(B) **Extension of Administrative Terms:** The parties may mutually agree in writing (i) to waive a prior failure by any party to reply, or to offer, or to notify the other of, any written statements or decisions, or (ii) to extend any term for such actions provided herein. Failure to issue an initial reply, offer the written statement, or to issue the final decision by either party within the times stipulated in this **Article**, shall be deemed a final negative decision, and the mediation provisions of **Article XXXII(C)** below shall be fully applicable.

(C) **Dispute Resolution:**

(1) **Mediation:** In the event that **LESSEE** and/or the **AUTHORITY** disagrees in whole or in part with any final decision with respect to either a **LESSEE** claim or an **AUTHORITY** claim, such disagreement shall constitute a dispute ("**Dispute**") if either party notifies the other of a "**Request for Mediation**" within seven (7) working days of the date the final written decision was received. The term **Dispute** shall mean any controversy, claim, or dispute arising out of or in connection with this **Agreement**, including, without limitation, the meaning or application of any provision of this **Agreement** or the performance of any obligation under this **Agreement**, but excluding any dispute arising out of revisions to the **AUTHORITY's** applicable **Tariffs**. All **Tariff** disputes shall be handled in accordance with applicable law.

If, in the opinion of either party, the parties are unable to agree on a mediator or the time and place for mediation, the parties hereto agree that the **Dispute** shall be submitted to the American Arbitration Association ("**AAA**"), in San Juan, Puerto Rico, for mediation, and the **AAA** shall appoint a mediator and shall designate the time, place, and procedure for mediation. The parties agree to attend and participate in any such mediation until the **Dispute** is settled to the parties' mutual satisfaction, they are released by the mediator, or thirty (30) calendar days after the

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written notice of the **Request for Mediation** (the "**Mediation Term**") has expired. Any mediation award must be reduced to a written decision and signed by both parties upon approval by their respective Boards of Directors within a period not to exceed ten (10) working days from the date of the meeting settling the **Dispute**.

(2) **Complaint:** In the event that the parties are unable to settle any dispute through **Mediation**, or the **Mediation Term** has expired without a mutually agreed settlement, either party may preserve and assert the **Dispute** by filing a formal complaint ("**Complaint**") to the appropriate court or other forum in accordance with applicable United States and Puerto Rico law. Such **Complaint** must be filed within thirty (30) calendar days after the **Mediation Term** has expired.

(D) **Interest:** The prevailing party as to any monetary claim shall be entitled to interest on the amount of any ultimate recovery calculated from the date of the **AUTHORITY's** initial receipt of a **LESSEE** claim or the **LESSEE's** initial receipt of an **AUTHORITY** claim, as the case may be, or such other earlier date as may be provided in this **Agreement**, to the date of issuance of a check in payment of such recovery, at 9% per annum.

(E) **Superseding Provision:** The provisions of this **Article XXXII** supersede and replace to the extent applicable, for purposes of this **Agreement**, the procedures for dispute resolution adopted and published by the **AUTHORITY**, pursuant to Regulation 4034, dated October 13, 1989, titled Regulations to Regulate the Adjudication Procedure of the Puerto Rico Ports Authority According to the Commonwealth of Puerto Rico Uniform Administrative Procedures Act, and any amendment or substitution thereof.

(F) **Continuation of Performance:** Until such time as a **Claim** is settled both parties shall comply with their respective obligations under the terms of this **Agreement**.

Either party may request a court to issue such injunctive or other temporary relief as such party may deem appropriate once the **Mediation Term** has expired.

ARTICLE XXXIII. OTHER PROVISIONS.

(A) **Release of Claims:** **INTERSHIP** hereby releases and waives any and all claims, including all claims for damages or reparations, which **INTERSHIP** may have against the **AUTHORITY** up to and

including the date of this **Agreement**, whether known or unknown, which arise out of or in any way relate to the allegations and assertions set forth in **INTERSHIP's** Complaint against the **AUTHORITY** filed in FMC Docket No. 94-25, except as reserved in Paragraph 1 of the Settlement Agreement between the **Authority** and **Intership** being executed contemporaneously with the execution of this **Agreement**, and except as to **INTERSHIP's** request for a declaratory judgment as to the validity of the Antilles Isla Grande Agreement, and **INTERSHIP** agrees to voluntarily dismiss, with prejudice, such Complaint, except as to the request for a declaratory judgment as to the validity of the Antilles Isla Grande Agreement.

(B) **No Waiver:** The failure of the **AUTHORITY** or **LESSEE** to insist, in any one or more instances, upon performance of any of the terms, covenants, and conditions of this **Agreement** shall not be construed as a waiver or relinquishment of the **AUTHORITY's** or **LESSEE's** right as applicable, to the past, present, and future performance of any such terms, covenants, or conditions; and the **AUTHORITY's** or **LESSEE's** obligations in respect of said performance shall continue in full force and effect; and the receipt and acceptance of rent shall not be deemed to be a waiver of any breach or default by the **AUTHORITY** or **LESSEE** of any provisions of this **Agreement**, nor shall such acceptance of rent invalidate or impair the efficacy of any termination, or notice of termination hereunder, unless expressly so agreed in writing by the **AUTHORITY** or **LESSEE**, as applicable.

(C) **Successors in Title or Interest:** The covenants and conditions herein contained shall apply to the successors, executors, administrators, and assigns of **LESSEE** and the **AUTHORITY**.

(D) **Applicable Law:** This **Agreement** shall be interpreted in accordance with the applicable laws of the Commonwealth of Puerto Rico, and, to the extent applicable, the maritime and admiralty laws of the United States.

(E) **Headings:** The terms and conditions of the **Agreement** are established by the text of the document. All headings and titles to Articles, Sections, or Paragraphs are solely for the convenience of the reader and are not intended to modify, interpret, or establish any additional or different right or conditions. All references in this **Agreement** to Articles, Sections, Paragraphs, or other provisions are references to Articles, Sections, Paragraphs, or other provisions of this **Agreement** unless the context otherwise requires. The terms "herein", "hereof," or "hereunder," or similar terms used in this **Agreement**, refer to this entire document and not





to the particular provisions in which the terms are used unless the context otherwise requires.

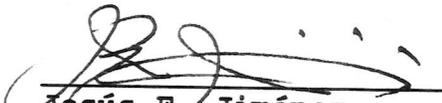
(F) **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(G) **Effectiveness of Agreement:** This Agreement shall be effective upon its execution by both parties acting through their respective duly authorized representatives. The parties hereby acknowledge that, at the time of the execution of this Agreement, INTERSHIP has provided to the AUTHORITY the security deposit and proof of insurance required under Articles X and XII above. The AUTHORITY shall file this Agreement with the FMC promptly after the same is executed by both parties.

(H) **Termination of the Pier M Interim Agreement:** Upon the effectiveness of this Agreement, the Pier M Interim Agreement shall be deemed terminated in accordance with its terms and superseded by this Agreement, which shall hereafter govern LESSEE'S rights with respect to the use of the areas covered by the Pier M Interim Agreement.

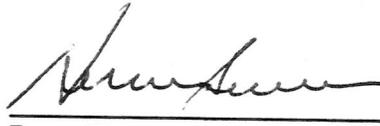
IN WITNESS WHEREOF, the parties hereto have signed this Agreement, each page of which bears the initials or signature of each party's respective duly authorized representative, on the date first stated above.

ATTEST:


Jesús E. Jiménez

PUERTO RICO PORTS AUTHORITY

By:

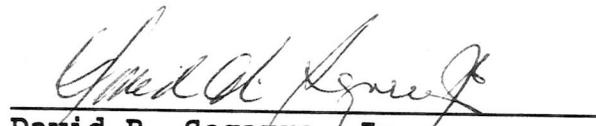

Dr. Herman Sulsona
Executive Director

ATTEST:


Manuel H. Dubon
Secretary

INTERNATIONAL SHIPPING AGENCY, INC.

By:


David R. Segarra, Jr.
President



PLANNED IMPROVEMENTS AT PIERS M, N, & O
PHASES I, II, III, IV, V, VI, VII & VIII

ITEM A - AUTHORITY'S IMPROVEMENTS:

Phase I - Areas LP2-1, MP-1-1, ME-1, and ME-2:

1. Clearing and Grubbing
2. Sub-base
3. Asphalt Payments
4. Fencing and Gates
5. High Mast Lighting
6. Backing Logs, Line Stripping
7. Capital Maintenance of Pier L

Sub-Total - \$1,200,000^{1/}

Phase II - Areas OE-1 and NE-3:

1. Clearing and Grubbing (including Roadway)
2. Sub-base
3. Asphalt Payments (including Roadway)
4. Fencing and Gates
5. High Mast Lighting
6. Backing Logs, Line Stripping
7. Provide Storm Sewer, Water and
Power Infrastructure

Sub-Total - 1,600,000

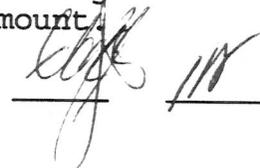
Phase III - Access Bridge

1. Design and Contract for the Construc-
tion of an Access Bridge from Kennedy
Avenue

Sub-Total - 500,000^{2/}

^{1/} Except as otherwise expressly noted, all costs represent estimates only.

^{2/} The Authority's share of the costs of the construction of this Access Bridge is capped at \$500,000, with Intership being responsible for all construction costs above such amount.



Phase IV - Areas ME-3, NE-4, NE-5, and NE-6:

1. Clearing and Grubbing (including Roadway)
2. Sub-base
3. Asphalt Payments (including Roadway)
4. Fencing and Gates
5. High Mast Lighting
6. Backing Logs, Line Stripping
7. Upgrade Substation

Sub-Total - 705,000

Phase V - Areas ME-4, LE-3, LE-4, LE-5, LE-6, LE-7, LE-8, and LE-9 (as made available):

1. Clearing and Grubbing (including Roadway)
2. Sub-base
3. Asphalt Payments (including Roadway)
4. Fencing and Gates
5. High Mast Lighting
6. Backing Logs, Line Stripping
7. Gate and Road Control, and Maintenance

Sub-Total - 1,750,000

Phase VI - Piers N & O:

1. Mobilization
2. Furnish & Drive Piles
3. Furnish & Drive BZ 42 Sheetpile
4. FPS Rear the Back
5. FPS Caps
6. FPS Deck
7. Install Miscellaneous

Sub-Total - 12,000,000

Phase VII - Warehouse Construction:

1. Breakbulk & Customs Warehouse

Sub-Total - 2,000,000^{3/}

^{3/} The Authority's share of the warehouse construction costs is capped at \$2 million.

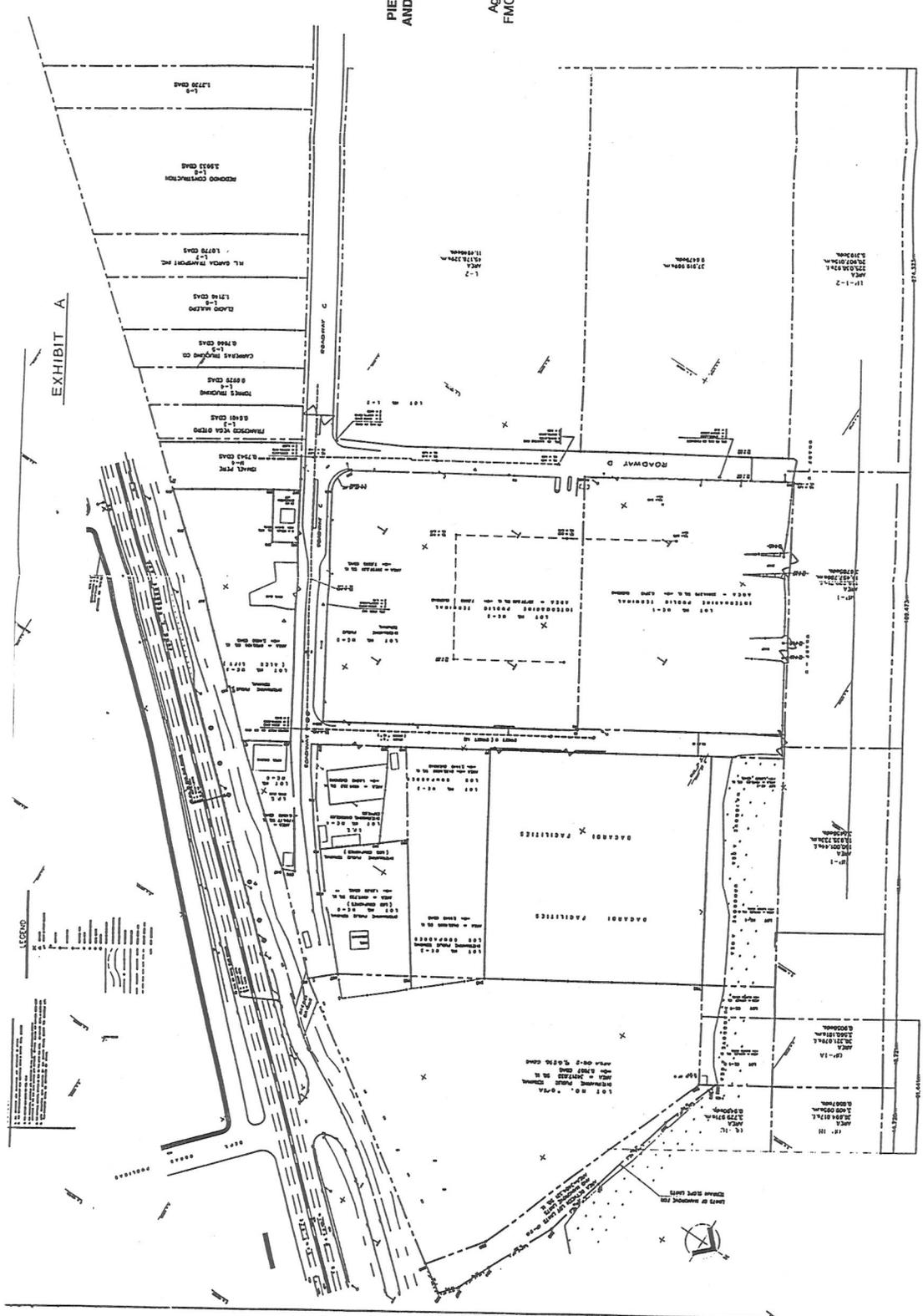
TOTAL AUTHORITY'S IMPROVEMENTS	19,655,000
Reserve for Contingencies, Construction Interest, and Closing and Financing Costs	- <u>5,245,000</u>
TOTAL AUTHORITY INVESTMENT	- <u>\$25,000,000</u>
 <u>ITEM B - TERMINAL IMPROVEMENTS:</u>	
<u>Phase VI - Piers M, N & O:</u>	
1. Container and Gantry	5,400,000
2. Improvement to Apron	<u>350,000</u>
Sub-Total	- 5,750,000
<u>Phase VII - Warehouse and Other Facilities:</u>	
1. Development Breakbulk & Customs Warehouse	
2. Office Building	
3. Maintenance Facilities	
Sub-Total	- <u>2,900,000</u>
TOTAL TERMINAL IMPROVEMENTS	- 8,650,000
<u>ITEM C - OPERATING ASSETS & EQUIPMENT:</u>	<u>10,850,000</u>
TOTAL TERMINAL INVESTMENT	- <u>\$19,500,000</u>
TOTAL PROJECT INVESTMENT	- <u>\$44,500,000</u>



Inter-Marine Public Terminals, Inc.
 Pro-Forma Terminal Equipment Inventory
 January 1, 1996

<u>#</u>	<u>Equipment Description</u>	<u>Model</u>	<u>Book Value</u>
1	Crane Manitowoc 230T, Cont. Fited.	M-4100	\$ 1,000,000
1	Forklift Truck, Kalmar, 15T LMV, '94	Side Pick	145,000
2	Top Loaders, Kalmar, 45T LMV, '96	Reach Stk. 4161	900,000
1	Top Loader, Kalmar, 41T LMV, '93	Reach Stk. 4160	400,000
4	Yard Hustlers, Capacity TJ, '95	7000	200,000
2	Fork Lifts, Hyster 18T, '96	H360XLS	170,000
4	Fork Lifts, Hyster 4.5T, '96	H90XLS	160,000
50	Chassis, Hercules-Ajax, 20', '96	20' Flash Back	350,000
50	Chassis, Various, 20', '80s	20'	150,000
250	Chassis, Various, 40', '95	40'	1,350,000
3	Chassis, Various, 45', '85	45'	18,000
9	Flat Beds, Platform	4/40', 5/42'	64,000
2	Spreaders, Bromas, 35T, '95	40'	30,000
1	Elec. Gen. Set, Capterpillar, 92'	165 KW, Wheeled	34,000
1	Light Set/Power Plant, Coleman, '92	4/ 1000w Reflectors	5,000
1	Compressor, Ingersoll.-Rand, '95	Wheeled	4,000
1	Welder, Lincoln, 95'	Wheeled	5,000
1	Office Trailer, '95	32'	<u>15,000</u>
TOTAL EQUIPMENT			<u>\$ 5,000,000</u>

[Handwritten signatures]



**PIERS W/N/O TERMINAL LEASE
AND DEVELOPMENT AGREEMENT**

Exhibit A

Agreement No. AP-96-97(4)-032
FMC Agreement No. 224-

AS-BUILT SURVEY AND TOPOGRAPHIC PLAN
INTERSHIP INC. PUERTO RICO HARBOR
SAN JUAN, PUERTO RICO

P. C. M. SURVEYING SERVICES
PROFESIONALES EN TOPOGRAFIA, GEODESIA Y CATASTRO
CALLE DE LAS PALMAS, P.O. BOX 10000, SAN JUAN, P.R. 00910
TEL: (787) 734-1111 FAX: (787) 734-1112

PREPARED BY:
INTERSHIP, INC.
117 SUBDIVISION