

FMC Agreement No. 201127

AMENDED AND RESTATED SUBLEASE AGREEMENT
PIER 96 SOUTH AND 98 SOUTH ANNEX

THIS AMENDED AND RESTATED SUBLEASE AGREEMENT (“Lease”) is entered into and shall be effective as of this first (1st) day of January, 2002 (the “**Effective Date**”) by and between the **PHILADELPHIA REGIONAL PORT AUTHORITY (“PRPA” or “Lessor”)**, having an address at 3460 N. Delaware Avenue, Philadelphia, PA 19134 and **THE PASHA GROUP, trading as PASHA AUTO WAREHOUSING (“Pasha” or “Lessee”)**, a California corporation having an address at 5725 Paradise Drive, Corte Madera, CA 94925.

WITNESSETH:

WHEREAS, Pasha, as lessee, and PRPA, as successor lessor to the Philadelphia Port Corporation, are parties to a Construction and Sublease Agreement dated January 18, 1985 (“**Sublease**”) and to an Interim Agreement (“**Interim Agreement**”) dated January 28, 1985 (the Sublease and the Interim Agreement being sometimes collectively referred to herein as the “**Pasha/PRPA Leases**”); and

WHEREAS, Holt Cargo Systems, Inc. and PRPA entered into an Amended and Restated Lease and Operating Agreement for Packer Avenue Marine Terminal (“**PAMT**”) dated December 31, 1990, the tenant’s interest in which subsequently was assigned to Astro Holdings, Inc. (as amended and assigned to date, the “**Packer Lease**”); and

WHEREAS, Pasha and PRPA wish to terminate the Interim Agreement and to amend and restate the Sublease and to amend and restate in their entirety the understandings between themselves.



NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the premises herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. **TERMINATION OF INTERIM AGREEMENT; AMENDED SUBLEASE.**

The parties hereby agree that immediately upon execution of this Lease, the Interim Agreement shall be null and void and of no further effect and the sole remaining agreement between Pasha and PRPA shall be the Sublease as amended and restated hereby.

2. **DEFINITIONS.**

a. **"Compensation"** means all payments made or to be made by Lessee to Lessor in consideration for the sublease of the Premises (below defined), including all fixed rent, additional rent, throughput fees, dockage and wharfage, as more fully described in Paragraph 5 below.

b. **"Contract Automobile Facility"** means a facility providing services to manufacturers, distributors, importers and/or exporters of automobiles and operating as a contract terminal to the extent that the facility operator offers its services to more than one manufacturer, distributor, importer or exporter of automobiles.

c. **"Premises"** means that area of real property situated in and adjacent to the Port of Philadelphia, consisting of Pier 96 South, as shown on Exhibit 2(c)(1) attached hereto and made a part hereof ("**Pier 96**"), and Pier 98 Annex, as shown on Exhibit 2(c)(2) attached hereto and made a part hereof ("**98 Annex**"), together with all equipment, improvements and structures located on such property, which Premises shall be used by Lessee during the Term as its Contract Automobile Facility within the Port of Philadelphia.



“Proprietary Automobile Facility” means (i) a facility owned or operated by an automobile manufacturer or distributor, or (ii) a facility operated exclusively for a single automobile manufacturer, importer or exporter but owned by a party unaffiliated with such automobile manufacturer, importer or exporter.

d. **“Tariff”** means the Pasha Auto Warehousing Marine Terminal Tariff, including all amendments, additions and supplements thereto, or such other tariff as applies to the Premises as may be operated by Lessee during the Term. The Tariff shall include charges for all dockage, wharfage, storage and related services. A copy of the Tariff and all supplements and changes thereto shall be provided to Lessor, free of charge, immediately upon effect or as soon thereafter as possible.

3. **DEMISE; SUBLEASE.**

a. **Demise.** Lessee shall operate the Premises under the rules and regulations of the Tariff and under such rules and regulations as Lessor may promulgate from time to time during the Term, until the expiration of the Term or the earlier termination in accordance with the terms of this Lease.

b. **Sublease.** Whenever the Premises, or any part thereof, is not required by Lessee for the uses permitted hereunder, Lessor shall have the right, upon 24 hours' prior notice and subject to Lessee's consent, which shall not be unreasonably withheld, to sublease or license (as Lessor shall deem appropriate under the circumstances) the Premises or any part thereof, to other persons, firms and corporations for such period as shall be consistent with Lessee's anticipated future needs. In the event of such use of the Premises by Lessor or its sublessees or licensees, all tariff charges in connection therewith shall be billed by and payable to Lessor, and shall be the sole property of Lessor; provided, however, that Lessee may charge Lessor a reasonable fee to cover the operating cost of the subleased property to the extent that Lessee would otherwise be required to incur such cost pursuant to



Paragraph 5(c) hereof.

4. **TERM; QUIET ENJOYMENT; EARLY TERMINATION.**

a. **Term.** The term of this sublease ("**Term**") shall commence on the Effective Date hereof and shall continue for a period of ten (10) years, ending automatically and without notice at midnight on the day prior to the tenth (10th) anniversary of the Effective Date. Each one year period commencing on the Effective Date or an anniversary thereof during the Term shall be a "**Lease Year**".

b. **Quiet Enjoyment.** Lessor covenants and agrees that, so long as Lessee observes all of the terms and conditions of this Lease, Lessee shall at all times during the Term peaceably have and enjoy the use of the Premises and all rights and privileges granted to Lessee herein.

c. **Early Termination Rights.** Notwithstanding the provisions of Paragraph 4(a) above, the parties shall have the following early termination rights, exercisable by giving the other party written notice in accordance herewith at least ninety (90) days prior to the termination date: (i) Lessee shall have the right, in its sole discretion, to terminate this Lease on the fourth (4th) anniversary of the Effective Date; and (ii) Lessor shall have the right, in its sole discretion, to terminate the Lease on the fifth (5th) anniversary of the Effective Date.

5. **COMPENSATION.** Lessee's payment obligations to Lessor shall consist of the following ("**Compensation**"):

a. Rent and Fees.

(i) **Minimum Annual Guaranteed Rent ("MAG").** Lessee shall pay the following annual MAG:



<u>Lease Year</u>	<u>Rent</u>
1	\$150,000
2	\$175,000
3	\$350,000
4	\$425,000
5-10	\$600,000

MAG shall be payable, without prior notice or demand, in twelve (12) equal monthly installments, on the first day of each and every calendar month during the Term, commencing as of January 1, 2002.

(ii) **Additional Fixed Rent.** Lessee shall pay, as additional fixed rent, the total amount of Three Hundred Fifty Thousand Dollars (\$350,000) ("**Additional Fixed Rent**"), payable, in advance, in ten equal installments of Thirty-Five Thousand Dollars (\$35,000) each, on the first (1st) day of July of each Lease Year during the Term.

Notwithstanding the foregoing sentence, if and when Lessor exercises its right to terminate this Lease pursuant to Paragraph 4(c) above, Lessee shall only be required to make those payments, if any, of Additional Fixed Rent which became due and payable prior to the termination date.

In the event that Lessee exercises its right to terminate this Lease in accordance with Paragraph 4(c), all payments of Additional Fixed Rent then due and owing and those payments which would otherwise become due during the remaining Term of this Lease shall be immediately due and payable and shall accompany the written notice required by Paragraph 4(c) above.

(iii) **Throughput Fees.** Lessee shall pay to Lessor, as additional rent, a throughput fee of Four Dollars (\$4.00) per unit for all vehicles which enter 98 Annex without coming from or going to Pier 96 in connection with waterborne transportation, unless such vehicles arrive through PAMT as a result of the Premises



not being available through no fault of Lessee.

(iv) **Dockage**. Lessee shall pay to Lessor, as additional rent, for vessels calling at Pier 96, dockage on a length overall basis, at the following rates: (a) for any vessel not exceeding 600 feet, \$3.36 per foot; (b) for any vessel exceeding 600 feet, but not exceeding 700 feet, \$4.13 per foot; and (c) for any vessel exceeding 700 feet, \$4.89 per foot.

(v) **Wharfage**. At all times during the Term when Lessee has the use of only one berth at Pier 96, Lessee shall pay wharfage to Lessor at the rate of (i) Four Dollars (\$4.00) per vehicle for the first forty thousand (40,000) vehicles per Lease Year and (ii) Three Dollars (\$3.00) per vehicle for all vehicles thereafter during said Lease Year. If, at any time during the Term, Lessee has use of a second berth at Pier 96 or as part of a marginal wharf to be developed by Lessor or Holt, the parties agree to reasonably negotiate the wharfage to be charged thereafter; provided, however, that at no time shall such wharfage rate be less than that set forth in this subparagraph.

(vi) **Guaranteed vessel calls**. Lessee hereby guarantees the following minimum number of annual vessel calls:

<u>Lease Years</u>	<u>Guaranteed Vessel Calls Per Year</u>
1 and 2	6
3 and 4	8
5 through 10	10

For each guaranteed vessel call which is not made, Lessee shall pay to Lessor, as additional rent, the sum of Five Thousand Dollars (\$5,000).

(vii) **Credits Against Compensation Obligations**. Lessee shall receive the following credits against the MAG for each Lease Year: (a) a credit for all throughput fees paid by Lessee during such Lease Year pursuant to Paragraph 5(a)(iii)



hereof ("**Throughput Credit**"); provided, however, that the Throughput Credit for each year during the Term shall not exceed fifty percent (50%) of the MAG for such Lease Year; and (b) a credit for all wharfage paid by Lessee during such year pursuant to Paragraph 5(a)(v) hereof ("**Wharfage Credit**"); provided, however, that the Wharfage Credit for each year during the Term shall not exceed fifty percent (50%) of the MAG for such year.

(viii) **Compensation Payments**. All MAG, Additional Fixed Rent, Dockage, Wharfage, Throughput Fees, additional rent and other charges and fees payable hereunder shall be payable by Lessee as set forth herein without prior written notice or demand at the office of Lessor located at 3460 N. Delaware Avenue, Philadelphia, PA 19134, or at such other place as Lessor may from time to time designate by notice in writing.

b. **Real Estate Taxes**. No real estate taxes are presently being imposed upon the Premises. In the event such taxes are imposed during the Term, Lessor shall pay all such taxes; provided that real estate taxes are not being imposed upon similarly situated properties located within the Port of Philadelphia, in which event such taxes shall be paid for by Lessee as additional rent within ten (10) days of receipt of a bill therefor from either Lessor or the City or agency thereof. Notwithstanding the foregoing, in the event of any such imposition of real estate taxes, either Lessor or Lessee may contest, at its sole cost and expense, such taxes, but Lessor reserves the right to approve of any and all settlements with respect thereto. Each party shall give prompt notice to the other of any such real estate tax or increase in assessment relating to the Premises.

c. **Operating Expenses**. Lessee agrees to furnish and pay for all labor, equipment, utilities, supplies and other incidental expenses incurred in connection with the Premises.



d. **Other Cargoes.** Lessee may handle cargoes other than automobiles at the Premises; provided, however that Lessor and Lessee shall have reached a written agreement with respect to compensation affecting such cargoes prior to the handling thereof.

e. **Annual Reconciliation.** Within thirty (30) days after receipt by Lessor of the annual report required to be filed by Lessee pursuant to Paragraph 22(c) below, Lessor shall make its determination as to whether all items of Compensation required to be paid by Lessee during the previous Lease Year have been paid. Lessor shall so notify Lessee and (i) to the extent full Compensation has not been paid as required, Lessee shall pay any such shortfall within ten (10) days of receipt of Lessor's notice to that effect, or (ii) if Lessee has overpaid Compensation due for the previous Lease Year, Lessee shall receive a credit toward the next succeeding payment(s) of MAG in the amount of any such overpayment.

6. **USE CLAUSE.** Lessee shall use the Premises only as a Contract Automobile Facility, and during the Term, Lessor shall not construct a Contract Automobile Facility for any other person or firm within the Port of Philadelphia. Notwithstanding the foregoing, Lessor shall have the right to (a) permit both existing and future tenants of Lessor to handle and transport miscellaneous volumes of automobiles and (b) establish one or more Proprietary Automobile Facilities within the Port of Philadelphia.

7. **MAINTENANCE.**

a. **Lessor's Maintenance Obligations.** Lessor shall repair and restore the foundations, walls and roofs in the event they are damaged by subsidence or structural failure caused by inherently faulty design or construction of the improvements, but Lessor shall not be required to undertake such repair or restoration if



it arises or is caused by the act or failure to act of Lessee, its officers, agents or employees, or third parties; provided, however, that Lessor's obligations hereunder shall be subject (i) to the provisions of Paragraph 21 below, and (ii) to the availability to Lessor of funds for such repair and restoration. Lessor also shall maintain the pavement, floor slabs, railroad tracks, underground water supply lines, fender systems, wharf and other structural members (such as trusses, columns, beams and the like) of the Premises, including the wharf and pier situated at Pier No. 96, and shall be responsible for repairs to items enumerated in subparagraph (b) below which are determined by Lessor to have resulted from structural settlement. However, where damage arises or is caused by the act or failure to act of Lessee, its officers, agents or employees, or third parties, Lessor shall not be required to make any necessary repairs, but if Lessor chooses to make such repairs, Lessee shall reimburse Lessor for the cost thereof. Lessor shall not be required at any time to make any improvements or repairs or provide any maintenance whatsoever in or for the benefit of the Premises, except as herein provided.

b. **Lessee's Maintenance Obligations.** Lessee, at its own cost and expense, shall be responsible for all maintenance, repair and restoration of the Premises of any nature except that to be performed by Lessor pursuant to subparagraph (a) above, and Lessee shall keep the Premises in good order, repair and condition, including without limitation, keeping in adjustment and good working order at all times the heating, plumbing, and lighting systems, the electric power system, car dewax wash, paintshop, compressor system and air lines, the lift and rolling doors, cargo chutes, cargo masts, elevators, sanitary lines, water supply lines with their operating devices (other than underground water supply lines) and all other equipment and machinery installed for Lessee's use, and Lessee shall replace, renew, or repair to Lessor's satisfaction, at Lessee's sole cost and expense, all equipment and machinery, and any and all parts thereof, that may become worn out, broken or destroyed. Lessee shall perform all necessary maintenance, repair or restoration occasioned by ordinary

and/or normal wear and tear.

c. **Fire Protection Equipment and Systems.** All fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems or appliances which have been or may be installed on the Premises shall be maintained by Lessee in an operative condition at all times and shall be replaced or repaired by Lessee when defective.

d. **Lessee's Failure to Maintain.** Should Lessee fail to perform the required maintenance or restoration or make any of the repairs for which it is responsible, Lessor shall have the option to do so immediately, in the event of an emergency, or in other circumstances, within thirty (30) days after delivery of written notice to Lessee to perform such maintenance or restoration or to make such repairs, and Lessee agrees to reimburse Lessor for the cost thereof within ten (10) days after receipt of a written request therefor. If Lessee fails to reimburse Lessor for the full cost of such maintenance, repair or restoration, said cost will be added to the amount of Compensation due Lessor under this Agreement. The making of any repairs or the performance of maintenance or restoration by Lessor, which is the responsibility of Lessee, shall in no event be construed as a waiver of the duty or obligation of Lessee to make future repairs or perform required maintenance or restoration as herein provided.

e. **Condition of Premises; Termination.** Lessee shall surrender the Premises in good condition and repair at the end of the term or sooner termination of this Lease, subject to Lessor's obligation under subparagraph 7(a) above to maintain the Premises.

8. **LESSEE'S COVENANTS.** Lessee covenants that it will not, without Lessor's prior written consent:

a. Occupy or use the Premises other than as permitted by Paragraph



6 of this Lease;

b. Assign, mortgage or pledge its interest under this Lease or in the Premises, nor sublease or permit others than Lessee to use or occupy all or part of the Premises; and no assignment, mortgage, pledge or subletting by any assignee, mortgagee, pledgee or subtenant of Lessee shall be valid without Lessor's additional written consent thereto. Notwithstanding the foregoing Lessee may assign this Lease to any subsidiary of Lessee, to Pasha Group, Inc. or any subsidiary thereof, or to Pasha Maritime Services or any subsidiary thereof; provided, however, that Lessee shall remain liable under this Lease after any such assignment, and provided further that Lessor may terminate this Lease if Lessee or any of the foregoing companies or subsidiaries is sold to an unrelated third party after any such assignment. If Lessee, or any assignee or subtenant becomes embarrassed or insolvent, or makes an assignment for the benefit of creditors, or if a petition in bankruptcy, insolvency or like proceedings, or proceedings for the appointment of a receiver or for reorganization or for composition with creditors is filed by, for or against Lessee, or if any of its property or all or part of the Premises is attached, sold or levied upon, under process of law, the same shall be a violation of this covenant. Lessee hereby irrevocably constitutes Lessor its agent to collect the Compensation due by assignee or sublessee and apply the same to Compensation or other charges due by Lessee to Lessor under this Lease;

c. Make alterations, additions or improvements to the Premises;

d. Place or permit to be placed on the pier, cargo, freight or anything else that will cause the load on any square foot of the pier deck space on the first deck to exceed 500 pounds per square foot at any time, or otherwise place any weights in any portion of the Premises beyond the safe carrying capacity of the structure.

e. Remove, attempt or manifest any intention to remove any property from the Premises other than in the ordinary course of business;



- f. Vacate or permit the Premises to be abandoned; or
- g. Erect or maintain any signs on the Premises.

9. **LESSEE'S FURTHER COVENANTS.** Lessee further covenants that Lessee shall:

- a. Comply with all requirements of any public authority and with Federal, state or local statutes, ordinances, rules, regulations, orders, judgments, decrees and the like applicable to Lessor or Lessee or to the Premises or to the use or occupancy thereof by Lessee or any person or entity using or occupying the same from, through or under Lessee (including, without limitation, all rules and regulations for the operation and use of municipal piers promulgated by the City, as heretofore or hereafter amended) and pay and save Lessor harmless from failure to do so. If Lessee is required to undertake new construction or to make improvements at the Premises in order to comply with any of the foregoing requirements, Lessor shall pay all reasonable expenses and costs incurred by Lessee in connection therewith;
- b. Use every reasonable precaution against fire;
- c. Peaceably deliver up and surrender possession of the Premises to Lessor at the expiration of the Term or sooner termination of this Lease;
- d. Give Lessor immediate written notice of any fire, accident, or damage occurring to, on or from the Premises;
- e. Collect all dockage and wharfage charges with respect to the Premises as agent for Lessor unless and until Lessor becomes issuer of the Tariff;
- f. Pay as billed for all sewer charges, water, electricity and gas consumed at the Premises;
- g. Provide proper containers for trash and promptly remove all dirt,



rubbish and refuse matter from the Premises and keep the same clean and sanitary at all times to the satisfaction of Lessor, City and other governmental agencies having jurisdiction. Lessee shall not permit any offensive or refuse matter, or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, or any material detrimental to the public health, to be or remain on the Premises;

h. Not discharge, load or store, nor permit the discharging, loading or storage of explosives of any kind upon the Premises, or vessels, railroad cars, trucks or other vehicles moored to or upon the Premises except as permitted by the City's regulation of March 30, 1983 as heretofore or hereafter amended, any such discharge, loading or storage being hereby specifically prohibited;

i. Cause an approved "Sprinkler Systems Maintenance and Inspection Service" to carry out systematic inspection, adjustment and maintenance at monthly intervals. Lessee shall furnish reports on such "Sprinkler System" inspection to Lessor monthly;

j. Cause an approved "Elevator Maintenance and Inspection Service" to carry out systematic inspection, adjustment and maintenance at monthly intervals if elevators are put in service by Lessee or Lessor. Lessee shall furnish reports on such "Elevator" inspection to Lessor monthly;

k. Cause an approved "Boiler and Machinery Inspection Service" to make such inspections and certifications as are required by the Boiler and Unfired Pressure Vessel Regulations of the Pennsylvania Department of Labor and Industry, and furnish all reports of such inspection and all certifications resulting therefrom to Lessor; and

l. Promptly remove excessive accumulations of snow from the roof of the Premises, and keep the roof drains, eave boxes and the deck drains free from any



obstruction.

10. **LESSOR'S REMEDIES.** If Lessee does not pay in full when due any portion of Compensation, or any other charge, expense or cost to be paid by Lessee under this Lease, or otherwise fails to perform, violates or otherwise breaks any covenant of Lessee under this Lease, or fails to comply with any notice given under the terms of this Lease, (all of the foregoing events being referred to hereinafter individually as an "Event of Default" and collectively as "Events of Default") then:

a. Lessor shall be entitled to retain in full any and all cash or security deposited with Lessor pursuant to Paragraph 26 hereof. If such cash or security on deposit with Lessor is insufficient to compensate Lessor for its loss on account of the occurrence of an Event of Default, Lessee shall be liable for any deficiencies resulting therefrom.

b. IF MAG, ADDITIONAL RENT, RENT OR ANY FEES OR CHARGES HEREBY RESERVED AS COMPENSATION OR RENT, OR DAMAGES BY REASON THEREOF, OR ANY OTHER SUM DUE AND PAYABLE IN CONNECTION WITH THIS LEASE, INCLUDING WITHOUT LIMITATION ANY LATE FEES OR INTEREST ACCRUED OR ACCRUING THEREON, AND ANY REIMBURSEMENT FOR ATTORNEY FEES OWED BY LESSEE (COLLECTIVELY, THE "AMOUNTS DUE"), SHALL REMAIN UNPAID ON ANY DAY WHEN THE SAME IS/ARE DUE BEYOND ANY APPLICABLE GRACE PERIOD (IF ANY), WHETHER PRIOR TO OR AFTER THE TERMINATION OR EXPIRATION OF THIS LEASE, LESSEE HEREBY EMPOWERS ANY PROTHONOTARY, CLERK OF COURT OR ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR LESSEE IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT FOR THE AMOUNTS DUE, OR ANY PORTIONS THEREOF, OR FOR AMOUNTS AGREED TO BE PAID BY LESSEE, AND TO CONFESS JUDGMENT AGAINST LESSEE IN ANY COMPETENT COURT FOR THE RECOVERY OF ALL ITEMS OF COMPENSATION, INCLUDING ALL



RENT, MAG, ADDITIONAL FIXED RENT, ADDITIONAL RENT AND OTHER FEES AND CHARGES, PAYMENTS, COSTS AND EXPENSES. IN SUCH SUITS OR ACTIONS, LESSEE EMPOWERS SUCH PROTHONOTARY, CLERK OF COURT OR ATTORNEY TO CONFESS JUDGMENT AGAINST LESSEE FOR ALL OR ANY PART OF THE COMPENSATION SPECIFIED IN THIS LEASE AND THEN UNPAID OR ANY OTHER AMOUNT DUE, INCLUDING THE COMPENSATION FOR THE ENTIRE UNEXPIRED BALANCE OF THE TERM, AND FOR INTEREST AND COSTS, TOGETHER WITH AN ATTORNEY'S COMMISSION EQUAL TO THE GREATER OF \$10,000.00 OR FIVE (5%) OF THE AMOUNT SO CONFESSED. SUCH AUTHORITY SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF, BUT JUDGMENT MAY BE CONFESSED AS AFORESAID FROM TIME TO TIME AS OFTEN AS ANY COMPENSATION, RENT OR ANY OTHER AMOUNT DUE SHALL FALL DUE OR BE IN ARREARS, INCLUDING WITHOUT LIMITATION FOR THE SAME AMOUNTS DUE AS PREVIOUSLY CONFESSED IF AND TO THE EXTENT THAT A PREVIOUS CONFESSION OF JUDGMENT SHALL BE STRICKEN OR OTHERWISE INVALIDATED WITHOUT A FINAL DECISION ON THE MERITS OF THE CLAIM. SUCH POWERS MAY BE EXERCISED AS WELL AFTER THE EXPIRATION OF THE TERM AND/OR AFTER THE TERMINATION OF THIS LEASE.

c. WHEN THIS LEASE SHALL BE TERMINATED BY REASON OF AN EVENT OF DEFAULT BY LESSEE OR ANY OTHER REASON WHATSOEVER, AND ALSO WHEN THE TERM SHALL HAVE EXPIRED, IT SHALL BE LAWFUL FOR ANY ATTORNEY AS ATTORNEY FOR LESSEE TO CONFESS JUDGMENT IN EJECTMENT IN ANY COMPETENT COURT AGAINST LESSEE AND ALL PERSONS CLAIMING UNDER LESSEE FOR THE RECOVERY BY LESSOR OF POSSESSION OF THE PREMISES, FOR WHICH THIS LEASE SHALL BE LESSOR'S SUFFICIENT WARRANT. UPON SUCH CONFESSION OF JUDGMENT FOR POSSESSION, IF LESSOR SO DESIRES, A WRIT OF EXECUTION OR OF POSSESSION MAY ISSUE FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDINGS WHATSOEVER. IF

FOR ANY REASON AFTER SUCH ACTION SHALL HAVE BEEN COMMENCED, THE SAME SHALL BE DETERMINED AND THE POSSESSION OF THE PREMISES SHALL REMAIN IN OR BE RESTORED TO LESSEE, THEN LESSOR SHALL HAVE THE RIGHT UPON ANY SUBSEQUENT OR CONTINUING DEFAULT OR DEFAULTS, OR AFTER EXPIRATION OR TERMINATION OF THIS LEASE AS HEREINBEFORE SET FORTH, TO CONFESS JUDGMENT IN EJECTMENT AGAINST LESSEE AS HEREINBEFORE SET FORTH TO RECOVER POSSESSION OF THE PREMISES.

d. IN ANY ACTION OF EJECTMENT AND/OR FOR RENT IN ARREARS OR OTHER AMOUNT DUE, LESSOR SHALL CAUSE TO BE FILED IN SUCH ACTION AN AFFIDAVIT MADE BY LESSOR OR SOMEONE ACTING FOR LESSOR SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT, OF WHICH FACTS SUCH AFFIDAVIT SHALL BE CONCLUSIVE EVIDENCE. IF A TRUE COPY OF THIS LEASE SHALL BE FILED IN SUCH ACTION (AND OR THE TRUTH OF THE COPY SUCH AFFIDAVIT SHALL BE SUFFICIENT EVIDENCE), IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL LEASE AS A WARRANT OF ATTORNEY, ANY RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING.

e. LESSEE EXPRESSLY AGREES, TO THE EXTENT NOT PROHIBITED BY LAW, THAT ANY JUDGMENT, ORDER OR DECREE ENTERED AGAINST IT BY OR IN ANY COURT OR MAGISTRATE BY VIRTUE OF THE POWERS OF ATTORNEY CONTAINED IN THIS LEASE SHALL BE FINAL, AND THAT LESSEE WILL NOT TAKE AN APPEAL, CERTIORARI, WRIT OF ERROR, EXCEPTION OR OBJECTION TO THE SAME, OR FILE A MOTION OR RULE TO STRIKE OFF OR OPEN OR TO STAY EXECUTION OF THE SAME, AND RELEASES TO LESSOR AND TO ANY AND ALL ATTORNEYS WHO MAY APPEAR FOR LESSEE ALL ERRORS IN THE SAID PROCEEDINGS AND ALL LIABILITY



THEREFOR.

f. Lessor may itself or by agent, without notice, enter upon the Premises, either by force or otherwise, and eject and expel Lessee and all others therefrom, any law, usage or custom to the contrary notwithstanding, without being liable to any prosecution or action therefor, the consent of Lessee being hereby given to Lessor and to any officer or agent of Lessor holding a warrant of distress or writ of execution issued by any court against Lessee to break or otherwise open all locked doors or windows, for the purpose of such entry, and upon such entry, Lessor or any officer or agent of Lessor holding such warrant of distress or writ of execution may distrain and levy upon any goods therein found. **LESSEE HEREBY WAIVES AND RELEASES UNTO LESSOR THE BENEFIT OF ALL LAWS WHICH DO NOW OR HEREAFTER EXEMPT ANY PROPERTY UPON THE PREMISES OR ELSEWHERE BELONGING TO LESSEE FROM LEVY AND SALE UPON SUCH DISTRESS;** and

g. Lessor may sublease the Premises, or any portion thereof, to such person or persons as may in Lessor's discretion seem best and, if Lessor subleases the Premises hereunder, it shall credit against Compensation due and owing by Lessee the rents, if any, received by Lessor from such person or persons in respect of any period during which Lessor shall seek to hold Lessee liable hereunder.

11. **CURING OF DEFAULT.** Notwithstanding the foregoing, upon the occurrence of an Event of Default hereunder, Lessor shall give written notice thereof to Lessee, and Lessee shall have a period of ten (10) days, in the case of the nonpayment of any Compensation, and, in all other cases, a period of thirty (30) days after receipt of such written notice to cure any such default. Lessor agrees that it will not exercise any remedy for default hereunder until after the expiration of the appropriate period, and further agrees that it will not exercise any remedy for the breach of a non-monetary default if, within the abovementioned thirty (30) day period, Lessee commences action



in good faith to cure such default and then proceeds to cure such default within sixty (60) days after the occurrence of the Event of Default.

Notwithstanding the foregoing, if either a monetary default or a non-monetary default occurs more than two (2) times during the term of this Lease, Lessor shall have the right to exercise any of the remedies set forth in this Lease without observing any of the cure provisions contained in this paragraph.

12. **LANDLORD'S ADDITIONAL REMEDIES.** Upon the occurrence of an Event of Default hereunder which has not been cured in accordance with the terms hereof, Lessor may, in addition to any other rights and remedies it may have under this Lease or under law or at equity, exercise any one or more of the following remedies:

a. Lessor may accelerate the MAG, Additional Fixed Rent and all other additional rent payable by Lessee for the balance of the Term or such lesser period as Lessor may elect.

b. Lessor may terminate this Lease and the Term hereby created, without any right on the part of Lessee to waive the forfeiture by payment of any sum due or by other performance of any condition, term or covenant, by giving Lessee a notice of termination, which notice shall specify the date of such termination and shall be delivered not less than sixty (60) days prior to that date; and, in the event of such termination, Lessor shall be entitled to recover, in addition to any and all sums and damages for violation of Lessee's obligations hereunder in existence at the time of such termination, damages for Lessee's default in an amount equal to the amount of the MAG, Additional Fixed Rent and all other additional rent reserved for the balance of the Term, as well as all other fees, charges, payments, costs and expenses herein agreed to be paid by Lessee, all discounted to their then present value, less the fair rental value of the Premises for the remainder of said Term, all of which amount shall be immediately due and payable from Lessee to Lessor.



13. **REMEDIES CUMULATIVE.** All of the remedies herein given to Lessor and all rights and remedies given to it by law, shall be cumulative and concurrent. No termination of this Lease or the taking or recovering of the Premises shall deprive Lessor of any of its other remedies or actions hereunder, nor shall the exercise of any such remedy or action be construed as a waiver of the right to obtain possession of the Premises.

14. **CONDEMNATION.**

a. If the entire Premises is permanently taken under the power of eminent domain, this Lease shall terminate on the date title to the Premises vests in the condemnor.

b. If a part of the Premises is so taken, this Lease shall terminate on the date title vests in the condemnor as to the portion taken, and Compensation shall be adjusted in a manner which is acceptable to Lessor and Lessee; provided, however, that if the remaining portion of the Premises is not usable by Lessee for the purposes stated in Paragraph 6 hereof, Lessee or Lessor may terminate this Lease upon thirty (30) days prior written notice to the other party to be delivered within (30) days after the date of vesting.

c. If the taking is for a temporary use, Compensation shall abate during the period the condemnor is in possession in the manner specified in subparagraph (b).

d. Lessee waives any claim against Lessor arising out of any taking under the power of eminent domain, or out of any partial or total termination of this Lease under this Paragraph 14 resulting therefrom. In the event of any condemnation or taking hereinabove mentioned of all or part of the Premises, Lessor shall be entitled to receive the entire award in the condemnation proceeding, including any award made for the value of the estate vested by this Lease in Lessee and Lessee hereby expressly



assigns to Lessor any and all right, title and interest of Lessee now or hereafter arising in or to any such award or the value of the estate vested by this Lease in Lessee and Lessee hereby expressly assigns to Lessor any and all right, title and interest of Lessee now or hereafter arising in or to any such award or any part thereof, and Lessee shall be entitled to receive no part of such award, except to the extent that an award shall specifically include amounts in respect of Lessee's moving expenses and business dislocation damages.

15. **ACCESS RIGHTS.** Lessee shall permit Lessor and the City or their respective servants, agents, employees or any other person authorized by either of them, to have free access to the Premises to examine the same and to make such repairs or alterations as either Lessor or the City may see fit; provided, however, that in the exercise of such rights of access neither Lessor nor the City shall interfere unreasonably with the use and occupancy of the Premises by Lessee.

16. **RAILROAD TRACKS.** Lessee agrees that any railroad tracks upon the Premises shall be operated on the Belt Line principle, i.e., all railroads shall have the right to deliver and receive railroad cars to and from the Premises.

17. **DREDGING.**

a. Promptly after the Effective Date and every two (2) years thereafter during the Term, Lessor shall, at its expense, dredge the berth on the south side of Pier 96 to a depth of thirty-two (32) feet mean low water ("**MLW Depth**").

b. If, notwithstanding Lessor's compliance with subparagraph (a) above, a vessel scheduled to call at Pier 96 is unable to dock at Pier 96 due to insufficient MLW Depth, then Lessee shall be entitled to credits for that vessel as a guaranteed vessel call as provided for in Paragraph 5(a)(vi) above and for the payment of wharfage as required by Paragraph 5(a)(v) above.

c. Lessor assumes all liability, under applicable Federal and state statutes, for wire, steel and the like, that may be encountered by dredges working in the



docks and waterways adjacent to the Premises, and shall remove and dispose of such materials, when encountered, without expense to Lessee; provided, however, that if such materials to be removed and disposed of result from an act or failure to act or the negligence of Lessee, its officers, agents, licensees or employees, Lessee agrees to assume all liability hereunder and further agrees to pay for all expenses incurred in connection with such removal or disposal of materials by Lessor.

18. **NOTICES.** Any notices required or permitted hereunder must be in writing and sent by registered or certified mail, return receipt requested, or by nationally-recognized overnight courier, in the following manner:

a. If to Lessor, to the attention of its Executive Director, at 3460 N. Delaware Avenue, Philadelphia, PA 19134;

b. If to Lessee, to the attention of its President, at 5725 Paradise Drive, Corte Madera, CA 94925.

19. **FAIR EMPLOYMENT PRACTICES.**

a. Lessee agrees to provide equal employment opportunities in connection with the exercise of the privileges herein granted. Lessee further agrees;

(i) Not to discriminate nor permit discrimination against any employee or applicant for employment with respect to hiring, tenure of employment, promotion, terms, conditions or privileges or employment on account of race, color, religion, national origin or sex.

(ii) To keep posted in conspicuous and readily accessible places customarily frequented by applicants for employment and in at least one place customarily frequented by employees at or near each location where services are performed by such employees, copies of notices provided by the Commission on Human Relations of the City, setting forth the substance of clause (i) of this

subparagraph.

(iii) To comply with those requirements of any public authority, and with federal, state or local statutes, ordinances, rules, directive, regulations, orders, judgments and the like, which provide that minority and female owned businesses be accorded the opportunity to participate in certain contracts and other transactions.

(iv) To insert the provisions of clauses (i), (ii) and (iii) of this subparagraph as covenants to be performed by the sublessee in any sublease of all or part of the Premises which may hereafter be entered into by Lessee.

b. Lessee agrees that any failure to comply with any of the foregoing requirements shall constitute a substantial breach of this Lease.

20. **BOOKS AND RECORDS**. Lessee shall keep full and accurate books, records and accounts, relating to its operations on the Premises, including, without limitation, the tonnage of net revenue cargo handled. Lessee also shall keep full and accurate inbound and outbound manifests, with respect to each vessel entering or leaving the Premises, which shall be maintained in accordance with all applicable Federal, state and local laws and regulations, and each of which shall be retained by Lessee for at least two years. Lessor shall have the right and privilege, through its representatives and at all reasonable times, to inspect such books, records, accounts and manifests in order to verify the accuracy of the amounts of Compensation due, owing and paid to Lessor hereunder, and Lessee agrees that such books, records, accounts and manifests shall be made available to Lessor at Lessee's office in the City. In connection with the foregoing, Lessee shall file, or cause to be filed, with Lessor the following statements and reports, each of which shall be verified by the oath of Lessee's president or other due authorized representative:

a. A statement, to be filed on or before the tenth (10th) day following the departure of each vessel docking at the Premises, showing with reference to each



such vessel (i) all charges which shall have accrued for dockage, wharfage, wharf storage and wharf demurrage and (ii) a list of all automobiles received and delivered through the Premises.

b. A statement, to be filed on or before the tenth (10th) day of each calendar month, showing all charges which shall have accrued for wharfage where the departure of a vessel is not involved and all wharf demurrage, wharf storage and other charges, if any, during the preceding calendar month.

c. An annual report, to be filed on or before the thirtieth (30th) day following the end of each year of this Lease showing, with respect to such year, the number of ships docked, total berth days, the total number of automobiles and other cargoes received and delivered through the Premises and the total amount of charges which have accrued for dockage, wharfage, wharf storage and wharf demurrage and all other charges related to the Premises.

All such statements and reports shall be treated as confidential by Lessor, unless Lessee specifically waives such treatment. Lessor reserves the right, however, to use in the conduct of its business as it deems necessary, summaries of any one or more of the foregoing statements or reports with one or more like statements or reports supplied to Lessor by one or more of its other tenants.

21. INSURANCE.

a. Property Insurance; 98 Annex.

(i) Lessee shall keep 98 Annex continuously insured during the Term against "all risk" of direct physical loss including, without limitation, loss or damage resulting from fire, lightning and other perils covered by the standard Pennsylvania form of Fire Insurance and Extended Coverage on a replacement cost basis in the amount of FIVE MILLION DOLLARS (\$5,000,000.00), or such greater amounts as provided for in Section 21(a)(ii). Lessee shall cause the policy evidencing



such insurance to name Lessor and the Commonwealth of Pennsylvania (the “**Commonwealth**”) as additional insureds and loss payees, as their interests may appear.

(ii) Lessor may from time to time cause an engineer, appraiser or other representative of Lessor to inspect the Premises to determine the replacement value of the Premises and, upon written notice of any valuation so determined in excess of the amount specified in Section 21(a)(i), the amount of insurance therein specified shall, at Lessor’s option, be increased, upon notice to Lessee, to an amount not to exceed the valuation so determined, and Lessee shall in that event promptly cause the insurance required by Section 21(a)(i) to be increased appropriately in amount at Lessee’ expense.

(iii) Lessee shall keep the contents of the Premises, including without limitation the property of others and improvements and betterments, and “contractor’s equipment”, continuously insured during the Term against “all risks” of direct physical loss, on a legal liability basis with respect to property of others, and on an actual cash value basis with respect to all other contents, improvements and betterments, and “contractor’s equipment”. Lessee shall cause the policy evidencing such insurance to name Lessor and the Commonwealth as additional insureds and loss payees, as their interests may appear.

(iv) No policy of insurance maintained by Lessee under this Paragraph 21(a) shall contain a deductible feature in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) unless otherwise previously approved in writing by Lessor.

b. **Property Insurance – Pier 96.** Lessor shall keep the wharf and pier at Pier 96 continuously insured against loss or damage resulting from fire, lightning, collapse or other perils as are covered by the standard Pennsylvania form of Fire



Insurance and Extended Coverage (including Pier and Wharf Extended Coverage endorsement) on a replacement cost basis, said replacement value to be determined from time to time by an engineer, appraiser or other representative of Lessor.

c. **Liability Insurance.**

(i) During the Term, Lessee shall continuously keep in effect comprehensive general liability insurance of at least TEN MILLION DOLLARS (\$10,000,000.00), single limit, as to personal injury, death or property damage. Lessee shall cause the policy evidencing such insurance to name Lessor and the Commonwealth as additional insureds, and shall cause such policy to incorporate a cross liability endorsement provision as follows (or a substantially identical provision satisfactory to Lessor): "Cross Liability – it is understood and agreed that the insurance afforded by this policy for more than one named insured shall not operate to increase the limits of the Company's liability, but otherwise shall not operate to limit or void the coverage of any one named insured with respect to claims against the said named insured by any other named insured or the employees of any such other named insured".

(ii) Lessee shall also cause any and all contractors, subcontractors, stevedores or other agents it uses to name Lessor, and the Commonwealth as additional insureds on said party's liability insurance policies.

d. **Workers' Compensation Insurance.** During the Term, Lessee itself shall maintain, and shall also require that any and all contractors, subcontractors, stevedores or other agents with which it contracts for services at the Premises maintain, in full force and effect at all times during the Term of this Lease, statutory worker's compensation insurance and employers' liability insurance; United States Longshoremen's and Harbor Workers' Compensation Act insurance, Jones Act insurance, Occupational Disease Act insurance, and any Disability Benefits Act

insurance required by federal, state or local law.

e. **Automobile Insurance.** During the Term, Lessee shall continuously keep in effect comprehensive automobile liability insurance in the amount of TEN MILLION DOLLARS (\$10,000,000.00) per each accident for bodily injury and property damage combined, naming Lessor and the Commonwealth as additional insureds.

f. **Waiver of Subrogation.** All property insurance policies carried by either party covering the Premises and Lessee's operations at the Premises shall expressly waive any right on the part of the insurer against the other party.

g. **Insurance: General.**

(i) **Lessor's Purchase.** If Lessee fails to maintain any insurance required in this Lease to be maintained by it, Lessor may, at its option, procure same wherever available at a reasonable price, at Lessee's expense, and Lessee shall pay to Lessor the cost thereof, and such other costs incurred by Lessor in connection therewith, including without limitation Lessor's reasonable attorneys' fees, on demand as additional rent.

(ii) **Requirements.** Every policy of insurance required by this Lease to be maintained by Lessee shall contain a provision prohibiting cancellation thereof or changes therein without at least thirty (30) calendar days prior written notice to Lessor and the Commonwealth at the addresses designated from time to time by Lessor and the Commonwealth, respectively. On or before the Commencement Date, and thereafter at least ten (10) calendar days before expiration of any policy, Lessee shall deliver to Lessor two copies of the certificates of insurance and within a reasonable time period thereafter two copies of the policies evidencing each of the coverages that it is required to carry under this Article whether carried by Lessee, its



contractors, subcontractors, stevedores, or other agents.

(iii) **Form of Policy.** All policies required hereunder and any renewals thereof (A) shall be in form satisfactory to Lessor, including as to the amount of the deductible, (B) shall be issued by companies satisfactory to Lessor and authorized to engage in the insurance business in the Commonwealth or otherwise satisfactory to Lessor, and (C) shall be maintained in full force and effect during the Term.

(iv) **Additional Insurance.** Lessee shall also provide such additional types of insurance in such amounts as Lessor shall from time to time reasonably require. In the event that any such additional insurance is required, Lessee shall deliver two copies of each policy to Lessor.

(v) **Use of Premises.** Lessee agrees not to use the Premises in any manner that will result in the cancellation or increase in cost of any insurance policy that is required to be carried under this Amendment.

(vi) **Separate Insurance.** Lessee shall not take separate insurance that is concurrent in form with, or which contributes to an event or events of loss which are covered by, either the insurance required to be furnished by Lessee under this Paragraph 21 or the insurance the Lessee may reasonably be required to furnish under this Paragraph 21, unless Lessor and the Commonwealth are named in such policies as insureds, with loss payable as provided in this Lease. Lessee shall immediately notify Lessor of the taking out of any such separate insurance and shall cause the policies therefore to be delivered to Lessor as required herein.

(vii) **Claims Made Policies.** Lessee shall not obtain any insurance through policies written on a "claims made" basis without Lessor's prior express written consent, which consent shall not unreasonably be withheld if the

proposed policy and Lessee satisfy all of the following requirements: (1) the policy retroactive date shall coincide with or precede Lessee's occupancy or use of any portion of the Premises; and (2) Lessee shall maintain such policy for at least four years following the termination or expiration of the Term (whichever is later); and (3) if such insurance is prematurely terminated for any reason, Lessee shall, in addition to securing immediate replacement coverage for such insurance, purchase an extended reporting provision of at least four years duration to report claims arising from this Lease or Lessee's occupancy; and (4) the policy shall allow for the report of circumstances or incidents which might give rise to future claims.

(viii) **Blanket Policies.** Any insurance required of Lessee under this Lease may be effected by a blanket or multi-peril or all-risk policy or policies issued to Lessee and covering the Premises as well as other properties owned by or leased to Lessee, provided that (a) such policy or policies shall be satisfactory to and approved by Lessor and shall comply in all respects with the provisions of this Lease and (b) the amount of insurance allocated thereunder to Lessee's property located in the Premises shall be specified either in such policy or policies or in an endorsement thereto and shall equal the amounts required under this Lease.

h. **Accident Reports.** Lessee shall provide a report to Lessor in writing, as soon as practicable but in any event within two (2) calendar days after Lessee, its officers, employees or agents have knowledge of any accident or occurrence involving death of or injury to any person or persons or loss or damage in excess of TEN THOUSAND DOLLARS (\$10,000.00) to the Premises or property of any person other than Lessee occurring upon or about the Premises. All such reports shall include, to the extent available and appropriate, (1) the names and addresses of the persons involved; (2) a general statement as to the nature and extent of the injury or damage; (3) the date and hour of the occurrence; (4) the names and addresses of witnesses; and (5) such other information as may be reasonably requested by Lessor.



i. **Liability for Damages Caused by Third Parties.** Lessee shall maintain the necessary security on the Premises to assure that the Premises is not used by anyone not having the permission of the Lessee or Lessor. Lessee is and shall be solely liable for all damage to the Premises which is caused by third parties not authorized to be upon the Premises, or by Lessee's employees, agents, contractors, invitees or licensees if said damage is due to the negligence or misconduct of Lessee.

j. **Release and Indemnification.**

(i) Lessee agrees that Lessor, its successors and assigns, and the Commonwealth, and their respective agents, employees, officers, directors, shareholders and partners shall not be liable to Lessee and Lessee hereby releases said parties from any liability, for any personal injury, loss of income or damage to or loss of persons or property, or loss of use of any property, in or about the Premises from any cause whatsoever unless such damage, loss or injury results from the negligence or willful misconduct of Lessor, its officers, employees or agents. Furthermore, Lessor and the Commonwealth, and their respective agents, employees, officers, directors and partners shall not be liable to Lessee for any such damage or loss, whether or not such damage or loss so results from their negligence, to the extent Lessee is compensated therefore by Lessee' insurance.

(ii) Lessee shall defend, indemnify, save and hold harmless Lessor, the Commonwealth, and their respective agents, employees, officers, directors, shareholders and partners from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including reasonable attorneys' fees, court costs, administrative costs and costs of appeals which may be imposed upon or incurred by or asserted against any of them by reason of the following which shall occur during the Term or during any holdover period after expiration or termination of the Term:



(A) any work or act done in, on or about the Premises or any part thereof at the direction of or caused by Lessee, its agents, contractors, subcontractors, servants, employees, licensees or invitees;

(B) any negligence, tort or other wrongful act or omission on the part of Lessee or any of its agents, contractors, subcontractors, servants, employees, subtenants, licensees or invitees;

(C) any accident, injury or damage to any persons or property occurring in, on or about the Premises or any part thereof, unless caused by Lessor's failure to perform its obligations under Paragraph 7 or the negligence or willful misconduct of Lessor, its employees or agents; and

(D) any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease.

(iii) The obligation of Lessee to indemnify contained in Section (ii) shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Lessee, its agents or contractors under workers' or workman's compensation acts, disability benefit acts or other employee benefits acts, or under any other insurance coverage Lessee may obtain.

(iv) The release and indemnification given in this Section 21(j) shall survive the expiration or termination of this Lease.

22. **PERFORMANCE BOND**. Neither this Lease nor any rights of Lessee hereunder shall be effective, unless Lessee shall furnish, as of the date of execution of this Lease, and throughout the term of this Lease and any renewal thereof shall keep in full force and effect, a good and sufficient surety bond or bonds in the sum of Four Hundred Thousand Dollars (\$400,000.00), or, in lieu of such surety bond, Lessee may



deposit with Lessor an equivalent amount in cash, negotiable securities, a time certificate of deposit, an assignment of a deposit in a bank or a savings and loan association authorized to transact a banking or savings and loan business in the Commonwealth of Pennsylvania, a letter of credit or other type of security, conditioned upon and to assure Lessee's full, prompt and faithful performance of all the terms, covenants and conditions of this Lease on Lessee's part to be kept and performed.

Any such surety bond submitted to Lessor pursuant to this paragraph shall be procured from a surety company authorized to transact a surety business in the Commonwealth of Pennsylvania and shall be submitted to Lessor for approval as to form and as to sufficiency. The surety company issuing said bond may terminate said bond on any anniversary date by giving Lessor written notice of its intention to do so at least thirty (30) days prior to the next anniversary date of said bond, and said bond shall thereupon terminate on such anniversary date. Lessee, in the event any surety bond is terminated as provided above, shall, on or before the effective date of such termination, either procure another surety bond acceptable to Lessor, or deposit with Lessor cash, negotiable securities, a time certificate of deposit, as assignment of a deposit in a bank or a savings and loan association, a letter of credit or other type of security in the amount and in accordance with the conditions set forth herein.

In the event Lessee elects to deposit negotiable securities, a time certificate of deposit, an assignment in a bank or a savings and loan association, a letter of credit or other type of security, in lieu of a surety bond or cash as provided above, such security must be acceptable to Lessor, approved as to form and as to sufficiency by Lessor and be of such kind nature as to be readily convertible into cash by Lessor without further execution of any documents or endorsements on the part of Lessee. The decision to accept or refuse any such security shall rest solely with Lessor.

In the event this Lease is terminated, but not on account of the occurrence of an Event of Default, any cash or security held by Lessor shall be returned to Lessee within ninety (90) days after said termination.



If any cash or security is used by Lessor to compensate it under Paragraph 10(a) hereof for any loss or damage resulting from the occurrence of an Event of Default and this Lease is not terminated by reason thereof, Lessee shall deposit additional cash or security with Lessor forthwith so as to maintain on deposit at all times cash or security in the amount of Fourth Hundred Thousand Dollars (\$400,000.00).

23. **NO WAIVER.** Lessor's failure at any time to enforce any one or more of the covenants or conditions contained in, or to exercise any one or more of its rights or remedies under this Lease shall not be construed to be a waiver of Lessor's right thereafter to enforce any such covenant or conditions, or to exercise any such right or remedy.

24. **BUSINESS INTERRUPTION.** Lessor shall not be liable for damages by reason of any inconvenience or interruption to the business of Lessee arising from any taking under the power of eminent domain, any loss or damage to or destruction of the Premises by fire, casualty or other cause whatsoever, or from the making of additions, alterations or repairs to the Premises.

25. **MISCELLANEOUS.** Any term used in this Lease as singular shall be construed to include both singular and plural, and any term used in this Lease as plural, shall be construed to include both plural and singular.

a. This Lease sets forth all the promises, agreements, conditions and understandings between Lessor and Lessee with respect to the Premises. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be effective unless reduced to writing and executed by Lessor and Lessee.

b. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors and assigns of said parties.



c. The headings of the several paragraphs of this Lease are for convenience of reference only and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

26. **CONTRACTOR'S INSURANCE.** Lessor will require any contractor engaged by it to perform work on the Premises to furnish contractor's comprehensive liability insurance covering the performance of the work and including Lessee as a named insured.

27. **COUNTERPARTS.** This Lease may be executed in counterparts all of which taken together shall constitute an original of this Lease.

28. **FEDERAL MARITIME COMMISSION.** This Amendment amends the Construction and Sublease Agreement dated January 18, 1985. This Amendment is being filed with the Federal Maritime Commission pursuant to Section 5 of The Shipping Act of 1984, as amended.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to set their hands and seals to this Amended and Restated Sublease Agreement as of this 1st day of January, 2002.

PHILADELPHIA REGIONAL
PORT AUTHORITY

By: James J. McDermott
Name:
Title: Executive Director

THE PASHA GROUP, trading as
PASHA AUTO WAREHOUSING

By: _____
Name:
Title:

[Signatures continued on next page]

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PHILADELPHIA REGIONAL
PORT AUTHORITY

THE PASHA GROUP, trading as
PASHA AUTO WAREHOUSING

By: _____
Name:
Title:

By: *Gungor Pasha*
Name:
Title:

[Signatures continued on next page]



[Signatures continued from previous page]

Approved as to Legality
And Form:

By: [Signature]
Name:
Title:

Approved as to Propriety and
Availability of Funds:

By: [Signature]
Name: BRUCE J. COCCI
Title: ADMINISTRATOR OF FISCAL SERVICES

OFFICE OF THE ATTORNEY
GENERAL

By: _____
Name:
Title:

OFFICE OF THE BUDGET

By: _____
Name:
Title:



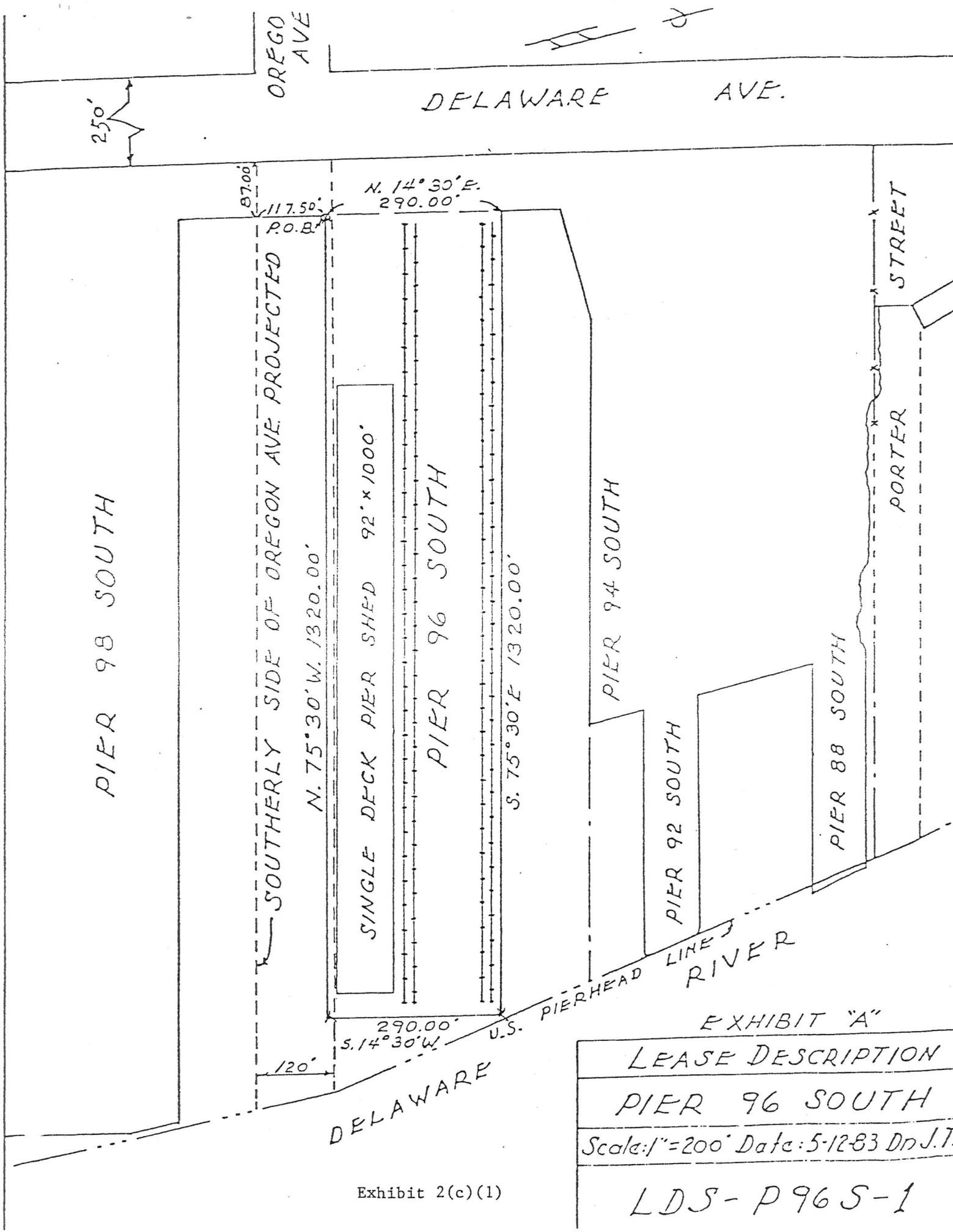


EXHIBIT "A"
LEASE DESCRIPTION
PIER 96 SOUTH
Scale: 1" = 200' Date: 5-12-83 Dn J.T.
LDS-P96S-1

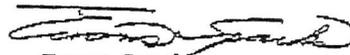
Exhibit 2(c)(1)

DESCRIPTION OF PROPERTY
PREPARED FOR PREMISES KNOWN
AS PIER 98 SOUTH ANNEX

All that certain lot or piece of ground with the buildings and improvements erected thereon, Situate in the 39th Ward of the City of Philadelphia and described in accordance with a Plan of Property made by Evans Sparks, Surveyor and Regulator of the Second Survey District dated May 14, 1990 as follows:

BEGINNING at the point of intersection of the southerly side of Oregon Avenue (120' wide) and the westerly side of Delaware Avenue (250' wide); THENCE extending S 14° 30' 00" W along the westerly side of said Delaware Avenue, crossing the head of a certain Right-of-way for Drainage purposes (60' wide), the distance of 1537.062' to a point; thence extending N 75° 11' 45" W along a line, the distance of 337.732' to a point; thence extending westwardly along an arc curving to the right having a radius of 800.00', subtending an angle of 9° 24' 23", the arc distance of 131.338' to a point of arc intersect; thence extending southeastwardly along an arc curving to the right having a radius of 736.458', subtending an angle of 8° 18' 10", the arc distance of 106.721' to a point of tangency; thence extending S 46° 18' 20" E along a line, the distance of 287.800' to a point of curve; thence extending southeastwardly along an arc curving to the right partly crossing another Right-of-way reserved for Drainage purposes (75' wide), having a radius of 487.656', subtending an angle of 17° 44' 40", the arc distance of 151.024' to a point on the westerly side of said Delaware Avenue; thence extending S 14° 30' 00" W crossing the southerly side of last mentioned Right-of-way, the distance of 69.518' to a point on the northerly side of a certain Driveway Easement (30' wide); thence extending N 72° 28' 07" W along the northerly side of said Driveway Easement, the distance of 1355.327' to a point within the bed of aforesaid Right-of-way (75' wide); thence extending N 14° 30' 00" E along a line crossing the northerly side of last mentioned Right-of-way, the distance of 642.294' to a point; thence extending N 50° 24' 40" E along a line, the distance of 107.893' to a point of curve; thence extending northeastwardly along an arc curving to the left having a radius of 254.328', subtending an angle of 24° 50' 40", the arc distance of 114.834' to a point of tangency; thence extending N 25° 34' 00" E along a line, the distance of 141.500' to a point within the bed of aforesaid Right-of-way (60' wide); thence extending S 75° 30' 00" E along a line within the bed of last mentioned Right-of-way, the distance of 398.802' to a point; thence extending N 14° 30' 00" E along a line crossing the northerly side of last mentioned Right-of-way, the distance of 314.562' to a point; thence extending S 75° 30' 00" E along a line, the distance of 15.219' to a point; thence extending N 14° 30' 00" E along a line, the distance of 550.00' to a point on the southerly side of said Oregon Avenue; thence extending S 75° 30' 00" E along the southerly side of said Oregon Avenue, the distance of 926.552' to the first mentioned point and place of beginning.

Containing in Area 1,967,855 Square Feet
or 45.17574 Acres



Evans Sparks
Surveyor and Regulator
Second Survey District

May 14, 1990

