

201132

FMC Agreement No. 201132-002



Port Authority Lease No. L-PN-264
Supplement No. 2

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of November 26, 2001, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and PORT NEWARK CONTAINER TERMINAL LLC (hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of December 1, 2000, the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at Port Newark, in the City of Newark, County of Essex and State of New Jersey; and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

NOW, THEREFORE, for and in consideration of the foregoing and the agreements hereinafter contained the Port Authority and the Lessee hereby agree as follows:

1. (a) The Lessee has previously made representations to the Port Authority in Section 48 of the Lease regarding the entities having direct or indirect beneficial ownership of the Lessee, which Section 48 imposes restrictions on the transfer of certain ownership interests of certain of the aforesaid entities such that such transfers are subject to the Lessee's obtaining the prior written approval of the Port Authority. One such restriction applies to any transfer of the five hundred (500) membership interests in the Lessee (constituting fifty percent (50%) of all of the membership interests in the Lessee) owned by P&O Nedlloyd B.V. (which corporation is hereinafter called "PONLBV" and its five hundred (500) membership interests are hereinafter collectively called "the Nedlloyd Membership Interest"), a corporation organized and existing under the laws of the Netherlands and having an office and place of business at Boompjes 40, 3011 XB Rotterdam, Netherlands. The Lessee has requested that the Port Authority grant its approval to the transfer of the Nedlloyd Membership Interest to Farrell Lines Incorporated (hereinafter called "Farrell"), a corporation organized and existing under the laws of the State of Delaware and having an office and place of

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business at One Meadowlands Plaza, East Rutherford, New Jersey 07094. The Lessee hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that the following two corporations have been formed for the purpose of effecting the transfer of the Nedlloyd Membership Interest from PONLBV to Farrell: (1) P&O Nedlloyd Container Terminals and Shipping B.V. (hereinafter called "Nedlloyd Container Terminals"), a corporation organized and existing under the laws of the Netherlands and having an office and place of business at Boompjes 40, 3011 XB Rotterdam, Netherlands, and which is a wholly-owned subsidiary of PONLBV; and (2) P&O Nedlloyd Terminal Holdings, Inc. (hereinafter called "Nedlloyd Terminal Holdings"), a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at One Meadowlands Plaza, East Rutherford, New Jersey 07094, and which is a wholly-owned subsidiary of Nedlloyd Container Terminals. The Lessee hereby further represents, knowing that the Port Authority is relying on the accuracy of such representation, that P&O Nedlloyd Limited (hereinafter called "Nedlloyd Limited"), a corporation organized and existing under the laws of England and having an office and place of business at One Meadowlands Plaza, East Rutherford, New Jersey 07094, has one hundred percent (100%) of the direct beneficial ownership of Farrell. The Lessee hereby further represents, knowing that the Port Authority is relying on the accuracy of such representation, that the transfer of the Nedlloyd Membership Interest from PONLBV to Farrell will be effected as follows: (i) Nedlloyd Limited will transfer all of the issued and outstanding capital stock of Farrell to Nedlloyd Terminal Holdings, such that Farrell will be a wholly-owned subsidiary of Nedlloyd Terminal Holdings; (ii) PONLBV will thereafter cause the Nedlloyd Membership Interest to be contributed to Nedlloyd Container Terminals; (iii) Nedlloyd Container Terminals will thereafter cause the Nedlloyd Membership Interest to be contributed to Nedlloyd Terminal Holdings; and (iv) Nedlloyd Terminal Holdings will thereafter cause the Nedlloyd Membership Interest to be contributed to Farrell.

(b) Subject to the terms and conditions set forth below in this subparagraph and in subparagraph (c) of this paragraph, the Port Authority hereby grants its approval under Section 48 of the Lease to the transfer of the Nedlloyd Membership Interest from PONLBV to Farrell by means of the transactions described in subparagraph (a) of this paragraph. The Lessee agrees that from and after the effective date of said transfer of the Nedlloyd Membership Interest from PONLBV to Farrell, Section 48 of the Lease shall be and be deemed amended as follows: (1) Farrell shall be and be deemed substituted for PONLBV in paragraph (a)(1) of said Section 48 as the owner of

five hundred (500) of the membership interests in the Lessee; (2) Farrell shall be and be deemed substituted for PONLBV in paragraph (a)(3) of said Section 48 as one of the two entities subject to the restrictions on the transfer of membership interests in the Lessee, and all of said restrictions shall apply to Farrell as the direct owner of five hundred (500) membership interests in the Lessee; (3) the second sentence of paragraph (a)(4) of said Section 48 shall be and be deemed deleted therefrom and the following sentence shall be and be deemed substituted in lieu thereof: "The Lessee further represents and agrees for itself, PONL and Farrell, and any successor in interest thereof, respectively, that without the prior written approval of the Port Authority, PONL shall maintain direct or indirect beneficial ownership of one hundred percent (100%) of PONLBV and Farrell."; and (4) subdivision (ii) of paragraph (a)(6) of said Section 48 shall be and be deemed deleted therefrom and the following subdivision (ii) shall be and be deemed substituted in lieu thereof: "(ii) said acquiring corporation shall also acquire the direct or indirect beneficial ownership of one hundred percent (100%) of PONLBV and Farrell and said acquiring corporation shall continue the operation of the Shipping Business."

(c) The Lessee acknowledges and agrees that P&O Nedlloyd Container Line Limited (hereinafter called "PONL"), a corporation organized and existing under the laws of England and having an office and place of business at Beagle House, Braham Street, London E1 8EP, England, is engaged in "the Shipping Business" as defined in Section 48(a)(2) of the Lease, and Farrell is not engaged in the Shipping Business for any purpose of said Section 48.

2. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect, including without limitation all of the terms, provisions, covenants and conditions of Section 48 thereof.

3. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

4. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument

in writing duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed these presents as of the date first above written.

ATTEST:

[Handwritten Signature]
Acting Secretary

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By *[Handwritten Signature]*
RICHARD M. LARRABEE
(Title) DIRECTOR, PORT COMMERCE DEPT.
(Seal)

WITNESS:

[Handwritten Signature]

PORT NEWARK CONTAINER TERMINAL LLC

By *[Handwritten Signature]*
(Title) Manager

APPROVED:
FORM | TERMS
[Handwritten Signatures]



PORT NEWARK CONTAINER TERMINAL L.L.C.

UNANIMOUS WRITTEN CONSENT OF THE
BOARD OF MANAGERS IN LIEU OF A MEETING
Pursuant to Delaware General Corporation Law

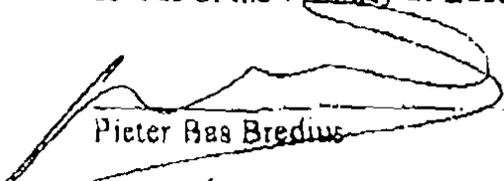
The undersigned, being all of the Managers of Port Newark Container Terminal L.L.C., a limited liability Delaware corporation (the "Corporation"), hereby adopt the following resolutions:

RESOLVED, that the form, terms and transactions contemplated by Supplemental Agreement No. 2 to Lease Agreement between The Port Authority of New York and New Jersey and Port Newark Container Terminal L.L.C. dated as of December 1, 2000, covering premises at Port Newark, State of New Jersey, a copy of which Supplemental Agreement No. 2 has been attached to and made a part of this Consent, be, and it hereby is in all respects, authorized, approved, adopted and ratified; and be it further

RESOLVED, that the form, terms and transactions contemplated by the Novation and Amendment Agreement novating the membership interest of P&O Nedlloyd B. V. to its indirect wholly-owned subsidiary, Farrell Lines Incorporated, a copy of which has been attached hereto, be in all respects, authorized, approved, adopted and ratified.

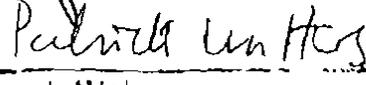
RESOLVED, that Michael J. White be, and he hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver Supplemental Agreement No. 2 and to take all such other actions as may be necessary, appropriate or advisable in connection with the said Supplemental Agreement No. 2 as such person executing the same deems necessary or appropriate, the execution and delivery thereof by such person constituting conclusive evidence of such person's authority so to do.

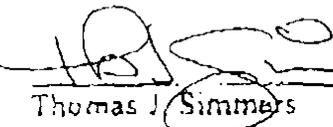
IN WITNESS WHEREOF, the undersigned have executed this Unanimous Consent as of the 1st day of December, 2001

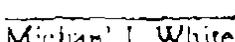

Pieter Bas Bredius


Rutger van Slobbe


Robert Scavone


Patrick Walters


Thomas J. Simmers


Michael J. White

PORT NEWARK CONTAINER TERMINAL L.L.C.

UNANIMOUS WRITTEN CONSENT OF THE
BOARD OF MANAGERS IN LIEU OF A MEETING
Pursuant to Delaware General Corporation Law

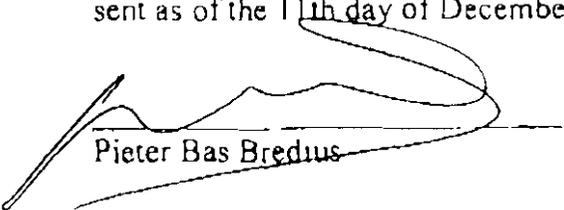
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RESOLVED, that the form, terms and transactions contemplated by Supplemental Agreement No. 2 to Lease Agreement between The Port Authority of New York and New Jersey and Port Newark Container Terminal L.L.C. dated as of December 1, 2000, covering premises at Port Newark, State of New Jersey, a copy of which Supplemental Agreement No. 2 has been attached to and made a part of this Consent, be, and it hereby is in all respects, authorized, approved, adopted and ratified; and be it further

RESOLVED, that the form, terms and transactions contemplated by the Novation and Amendment Agreement novating the membership interest of P&O Nedlloyd B. V. to its indirect wholly-owned subsidiary, Farrell Lines Incorporated, a copy of which has been attached hereto, be in all respects, authorized, approved, adopted and ratified.

RESOLVED, that Michael J. White be, and he hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver Supplemental Agreement No. 2 and to take all such other actions as may be necessary, appropriate or advisable in connection with the said Supplemental Agreement No. 2 as such person executing the same deems necessary or appropriate, the execution and delivery thereof by such person constituting conclusive evidence of such person's authority so to do

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Consent as of the 11th day of December, 2001

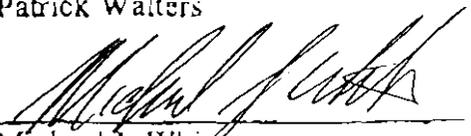

Pieter Bas Bredius


Rutger van Slobbe

Robert Scavone

Patrick Walters

Thomas J. Simmers

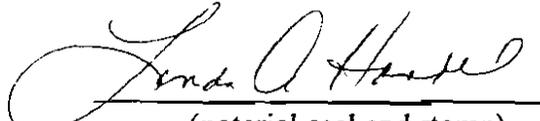

Michael J. White



STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 15th day of January in the year 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared **RICHARD M. LARRABEE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

DIRECTOR, PORT COMMERCE DEPT.


(notarial seal and stamp)

LINDA C HANDEL
Commission Expires
January 3 2006
No. 01HA6035589

STATE OF *New Jersey*)
) ss.
COUNTY OF *Bergen*)

On the 21st day of Dec in the year 2001, before me, the undersigned, a Notary Public in and for said state, personally appeared **MICHAEL J. WHITE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


(notarial seal and stamp)

KATHLEEN LOVATT
Notary Public of New Jersey
Commission Expires 6/29/2002