FMC Agreement No. 201162-003

AMENDED AND RESTATED NYSA-ILA ASSESSMENT AGREEMENT

This Amended and Restated Agreement was made and entered into this 14th day of July, 2009, between New York Shipping Association, Inc. ("NYSA") and International Longshoremen's Association, AFL-CIO ("ILA").

W I T N E S S E T H:

WHEREAS, on September 24, 2004, the NYSA-ILA Assessment Agreement was entered into between the parties and filed with the Federal Maritime Commission (FMC) as FMC Agreement No. 201162; and

WHEREAS, on October 31, 2005, the parties amended the NYSA-ILA Assessment Agreement and filed the amendment with the FMC as FMC Agreement No. 201162-001; and

WHEREAS, on June 5, 2007, the parties amended the NYSA-ILA Assessment Agreement and filed the amendment with the FMC as FMC Agreement No. 201162-002; and

WHEREAS, as of the date of this Amended and Restated Agreement, the parties have again amended the NYSA-ILA Assessment Agreement, effective August 1, 2009;

WHEREAS, because the most recent amendments are numerous and extensive, the parties have decided to adopt this Amended and Restated Agreement, which incorporates both the most recent amendments and the previously filed amendments into a single restated agreement;

NOW, THEREFORE, in consideration of the promises and the covenants and agreements herein, the parties hereto agree as follows:

EFFECTIVE
JUL 20 2009
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

RECEIVED
2009 JUL 20 PM 3:00
FEDERAL MARITIME COMMISSION

ARTICLE I

PURPOSE

This Agreement establishes the assessment program for the funding of obligations arising under NYSA-ILA collective bargaining agreements. These obligations include fringe benefit costs and related expenses for pension, welfare, including contributions required under the Master Contract to the Management-ILA Managed Health Care Trust Fund, guaranteed annual income costs, vacations, holidays, supplemental cash benefits, and labor contract administrative costs, including the administrative expenses of NYSA. NYSA-ILA Assessment Agreement No. 201140 and amendatory agreement No. 201140-001 thereto, which were in effect prior to October 1, 2004, are hereby revoked and replaced by this Amended and Restated Agreement.

ARTICLE II

DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

Section 1

The term "Assessment Ton" shall mean 2,240 pounds or 40 cubic feet, whichever is greater.

Section 2

The term "Automobile Assessment" shall mean a unit assessment on automobiles, buses, and trucks at a rate per each automobile, bus, or truck weighing no more than 15,000 pounds. Any automobile, bus, or truck weighing more than 15,000 pounds shall be assessed at the rate for breakbulk cargo.

Section 3

The term "Banana Assessment" shall mean a unit assessment on uncontainerized shipments of bananas at a rate per individual box or carton of bananas. Containerized bananas shall be subject to the Container Unit Assessments.

Section 4

The term "Bermuda-Trade" shall apply to all cargoes and containers originating in or destined to Bermuda and shall exclude cargoes and containers which are merely transshipped, relayed, or restowed in a Bermudian port.

Section 5

The term "Center of the Port" shall mean Columbus Circle in the City, County, and State of New York.

Section 6

The term "Container" shall mean a receptacle or conveyance for the transport of cargo that measures at least 20 feet in length. The contents of any smaller receptacle or conveyance shall be assessed as breakbulk cargo.

Section 7

The term "Contract Year" shall mean the fiscal year ending September 30.

Section 8

The terms "Domestic Cargo" and "Domestic Trade" shall apply to cargoes and containers moving in the coastal or intercoastal trades of the United States but shall not include cargoes or containers moving to or from Puerto Rico, Hawaii, or Alaska, or any other point outside the continental limits of the United States.

Section 9

The term "Excepted Cargoes" shall include uncontainerized Domestic Cargo, uncontainerized bagged cocoa, lumber in shipload quantities, bulk cargo (carried without mark or count, including scrap and sugar), newsprint, and uncontainerized cargoes, such as steel products, raw unfabricated metals, linerboard, waste paper, cardboard, plywood, printing paper, and oil drilling rigs, which move in specified minimum lots to be fixed by the NYSA-ILA Contract Board and which are subject to such other conditions as shall be established by the NYSA-ILA Contract Board.

Section 10

The term "Excepted Cargo Assessment" shall mean a man-hour assessment applicable to all man-hours worked in or relating to the handling of Excepted Cargoes.

Section 11

The term "House Container" shall mean a container handled at a waterfront facility in the Port intact without stuffing or stripping.

Section 12

The term "House Container Outside 260 Miles" shall mean either (1) a loaded export House Container that originates from a shipper at a point on the North American mainland that is more than 260 highway miles from the Center of the Port and is received at the gate of the marine terminal in the Port after transport by truck from its origin point to the Port or (2) a loaded import House Container that enters the Port at a berth after transport by vessel and is destined to be delivered to a consignee by truck at a point on the North American mainland that is more than 260 highway miles from the Center of the Port.

Section 13

The term "House Container Within 260 Miles" shall mean either (1) a loaded export House Container that originates from a shipper at a point on the North American mainland that is 260 highway miles or less from the Center of the Port and is received at the gate of the marine terminal in the Port after transport by truck from its origin point to the Port or (2) a loaded import House Container that enters the Port at a berth after transport by vessel and is destined to be delivered to a consignee by truck at a point on the North American mainland that is 260 highway miles or less from the Center of the Port.

Section 14

The term "Inland Container" shall mean a container delivered to a waterfront facility in the Port other than by water and transported other than by water to another port for export or an import container discharged in another port other than a United States West Coast port and delivered to a waterfront facility in the Port other than by water for delivery to a consignee.

Section 15

The term "Military Cargo" shall mean cargo owned by or transported for the account of the Armed Forces of the United States.

Section 16

The term "Military Container" shall mean a container loaded with Military Cargo.

Section 17

The term "Passenger Assessment" shall mean a man-hour assessment applicable to man-hours worked in passenger operations, where the carrier's revenue is derived almost exclusively from the sale of passenger accommodations.

Section 18

The term "Pier-Container" shall mean a container which is stuffed or stripped at a waterfront facility in the Port by longshore employees covered by NYSA-ILA collective bargaining agreements.

Section 19

The term "Port" shall mean the Port of New York and New Jersey.

Section 20

The term "Puerto-Rico-Trade" shall apply to all cargoes and containers originating in or destined to Puerto Rico and shall exclude cargoes and containers which are merely transshipped, relayed, or restowed in a Puerto Rican port.

Section 21

The term "Restowed Container" shall mean an in-transit loaded or empty container not consigned to the Port which in the same handling operation in the Port is unloaded from a vessel and then reloaded onto the same vessel for carriage to a final United States or foreign port of discharge.

Section 22

The term "Tonnage Assessment" shall mean the assessment on a tonnage basis applicable to Tonnage Assessable Cargoes.

Section 23

The term "Tonnage Assessable Cargoes" shall mean all uncontainerized breakbulk cargo transported by vessel in the Port, including but not limited to livestock, yachts, perishable fruit, and automobiles, buses and trucks in excess of 15,000 pounds, that is not subject to any other special assessment.

Section 24

The term "Transshipped or Relayed Container" shall mean an in-transit loaded container not consigned to the Port which is transferred from one vessel to another vessel in the Port for carriage to a final United States or foreign port of discharge.

Section 25

The term "Vessel" shall mean a ship, boat, barge, or other craft, whether or not self-propelled, used for the transport of cargo by water.

Section 26

The term "Rail Container" shall mean either (1) an import House Container loaded with cargo that enters the Port after being transported by vessel and which is delivered to the consignee by rail, or (2) an export House Container loaded with cargo which is received at the gate of a marine terminal in the Port after transport by rail from its inland origin point.

ARTICLE III

ASSESSMENTS

Section 1 - Special Assessments

The NYSA-ILA Contract Board shall establish the rates for the following special assessments: Automobile Assessment, Banana Assessment, Excepted Cargo Assessment, Passenger Assessment, and Tonnage Assessment. The rates for these special assessments in effect under the Amended and Restated NYSA-ILA Assessment Agreement are set forth in Exhibit A attached hereto.

Section 2 - Container Unit Assessments

Containerized cargoes shall be assessed on a per container basis each time the container is loaded on or unloaded from a vessel in the Port. The Container Unit Assessments shall be established by the NYSA-ILA Contract Board. The Container Unit Assessments in effect under the Amended and Restated NYSA-ILA Assessment Agreement are set forth in Exhibit A attached hereto.

Beginning August 1, 2009, the categories for "Containers Loaded with Wastepaper, Cardboard, Used Clothing or Rags," "Military Containers" and "Pier-Containers" are eliminated, and a container previously assessed in these categories, except for "Pier-Containers"shall be assessed as any other containerized cargo. A Pier-Container shall be assessed as a House Container Within 260 Miles.

Beginning in Contract Year 2012, the Bermuda-Trade and Puerto-Rico-Trade sub-categories shall be eliminated, and House Containers Within 260 Miles in the Bermuda-Trade and the Puerto-Rico-Trade shall be assessed at the same rate applicable to all other trades, namely $109.00 per container. Beginning August 1, 2009, House Containers Outside 260 Miles in the Bermuda-Trade and the Puerto-Rico-Trade shall be assessed at the same rate applicable to all other trades, namely $21.00 per container.

Restowed Containers and empty containers transshipped or relayed by barge are not subject to any Container Unit Assessment.

Section 3 - Adjustments

The NYSA-ILA Contract Board may adjust prospectively the Container Unit Assessments and Special Assessments from time-to-time on the basis of experience with respect to costs, hours, tonnages, and other relevant facts. An adjustment may be an increase or a decrease in rates or other assessment changes. Any adjustment shall be effective for future periods on such date as the Contract Board shall establish.

Section 4 - Savings Clause

All tonnage definitions, measurement conversion factors, excepted cargo categories, and special assessments in effect under NYSA-ILA Tonnage Assessment Agreement No. LM-86, NYSA-ILA Assessment Agreement No. 201-000091, NYSA-ILA Assessment Agreement No. 201-011077, NYSA-ILA Assessment Agreement No. 201-200063, and NYSA-ILA Assessment Agreement No. 201140 shall continue in effect under this Agreement except as expressly modified herein.

ARTICLE IV

COLLECTIONS

Section 1

Each carrier (both private and governmental) shall be solely responsible for the payment of any assessments provided for in this Agreement. Any direct employer who performs work for any carrier that has not subscribed to the NYSA-ILA collective bargaining agreements, including this Assessment Agreement, shall be responsible for those assessments that should have been paid by such carrier. The ILA may refuse to supply labor to work the vessels or cargo of any carrier which

has failed to comply with the provisions of this Assessment Agreement or to work for any direct employer that has failed to pay the assessments of non-subscribing carriers.

Section 2

The assessments provided for in this Agreement shall be paid to NYSA for transmittal to the NYSA-ILA Fringe Benefits Escrow Fund, after deduction therefrom of those portions designed to fund pension obligations and NYSA administrative expenses. The pension portion shall be paid by NYSA directly to the NYSA-ILA Pension Trust Fund and NYSA-ILA Money Purchase Pension Fund and Plan. The portion designed to fund NYSA's administrative expenses shall be retained by NYSA, and the union members of the Contract Board shall have no voice in the amount or use of that part of the assessments raised for the administrative support of NYSA.

ARTICLE V

ADMINISTRATION

Section 1

The administration and implementation of this Assessment Agreement shall reside in the NYSA-ILA Contract Board. The Contract Board shall have all powers necessary to implement this Agreement including, but not limited to, the following:

(a) To require the filing by carriers and direct employers of such reports on man-hours, container movements, and tonnages as it may deem necessary;

(b) To provide the time and conditions under which assessment payments are to be made, as well as to require such surety bonds from carriers, carrier agents, and direct employers as may be necessary to assure payment of the assessments provided for in this Agreement;

(c) To carry out the provisions of this Agreement, including but not limited to, the fixing and modification of the assessment rates and charges provided for in article III of this Agreement;

(d) To provide for the audit of any assessment reports, to collect deficiencies indicated by such audits, and to set up procedures to assure proper reporting and payment;

(e) To issue interpretations and rulings with respect to any of the provisions of this Agreement; and,

(f) To provide hearings meeting all the reasonable requirements of due process to any and all persons desiring to be heard on any assessment issue.

Section 2

The Contract Board is empowered to modify the assessments, rates, and charges provided for in this Agreement, to alleviate peculiar and isolated hardships for specific carriers, trades, or commodities by exempting them in whole or in part from any of the assessments provided for in this Agreement, to modify the definition of an Assessment Ton with respect to any specific cargo, to devise conversion factors determining the cubic measurement of any specific cargo, to develop factors or formulae for determining man-hours, tonnages, or other data necessary to facilitate the imposition and collection of the assessments prescribed in this Agreement, and to establish special assessments for specific cargoes. The Contract Board shall have the right to take these actions upon its own motion or pursuant to a request filed by any carrier, direct employer, or other interested party. Any such request should be properly supported by statistical or other proof. In hearing and determining such requests, the Contract Board shall take into consideration all pertinent factors, including but not limited to:

(a) prevention of any potential diversion of cargo from the Port;

(b) maintenance of equitable and non-discriminatory rules with respect to all cargo;

(c) assurance that any assessment charges bear a reasonable relationship to responsibility for fringe benefit costs;

(d) continued ability to meet obligations under the NYSA-ILA collective bargaining agreements; and;

(e) encouragement of the utilization of longshore labor in the Port.

Section 3

Decisions of the Contract Board under this Agreement shall be final and binding and shall have the same force and effect as an arbitration award. Any matter resulting in a deadlock vote on the Contract Board shall be referred to immediate arbitration in accordance with the grievance and arbitration provisions of the NYSA-ILA collective bargaining agreements.

ARTICLE VI

EFFECTIVE DATE

Section 1

This Agreement shall become effective on August 1, 2009, and shall continue in effect until the later of (a) September 30, 2012 or (b) the expiration date of the current NYSA-ILA collective bargaining agreement or any extensions thereof. Either party, however, shall have the right to renegotiate this Agreement whenever the NYSA-ILA collective bargaining agreement expires and is subject to renegotiation.

Section 2

If for any reason this Agreement may not be implemented as written because of any governmental action, the ILA shall have the right upon 60 days' written notice to cancel this Agreement and to renegotiate a new agreement on the method of funding fringe benefits. If agreement is not reached within such 60 day period, the ILA shall have the right not to work, and NYSA employers shall have the right not to order in ILA employees for work. The provisions of this section shall not be arbitrable.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their principal officers on the day and year first above written.

NEW YORK SHIPPING ASSOCIATION, INC.

By _____
FRANK M. MCDONOUGH, ESQ.,
President

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

By _____
HAROLD J. DAGGETT,
Executive Vice President

EXHIBIT A
Amended and Restated NYSA-ILA Assessment Agreement
I. Container Assessments

	Contract Year			
	2009	**2010**	**2011**	**2012**
House Containers Within 260 Miles –				
Bermuda-Trade	$49.00	$72.00	$95.00	*
Puerto-Rico-Trade	$60.00	$79.00	$98.00	*
All Other Trades	$115.00	$115.00	$113.00	$109.00
House Containers Outside 260 Miles –				
Bermuda-Trade	**	**	**	**
Puerto-Rico-Trade	**	**	**	**
All Other Trades	$21.00	$21.00	$21.00	$21.00
Empty Containers	$25.00	$30.00	$35.00	$40.00
Transshipped or Relayed Containers	$25.00	$25.00	$25.00	$25.00
Inland Containers	$55.00	$55.00	$55.00	$55.00
Rail Containers	$10.00	$10.00	$10.00	$10.00

* The Bermuda-Trade and Puerto-Rico-Trade sub-categories shall be eliminated in Contract Year 2012, and a container previously assessed in either sub-category shall be assessed at the same rate applicable to all other trades, namely $109.00 per container.

** Beginning August 1, 2009, the Bermuda-Trade and Puerto-Rico-Trade sub-categories shall be eliminated, and a container previously assessed in either sub-category shall be assessed at the same rate applicable to all other trades, namely $21.00 per container.

Note: Beginning August 1, 2009, the categories for "Containers Loaded with Wastepaper, Cardboard, Used Clothing or Rags," "Military Containers" and "Pier-Containers" are eliminated, and a container previously assessed in these categories, except for "Pier-Containers"shall be assessed as any other containerized cargo. A Pier-Container shall be assessed as a House Container Within 260 Miles.

II. Special Assessments

	Contract Year			
	2009	**2010**	**2011**	**2012**
Automobile Assessment (per each automobile, bus or truck weighing no more than 15,000 lbs.)	$4.25	$5.00	$7.00	$8.15
Banana Assessment (per box or carton for uncontainerized shipments)	$.07	$.08	$.09	$.09
Excepted Cargo Assessment (per man-hour)	$6.50	$9.00	$11.50	$14.00
Passenger Assessment (per man-hour)	$6.50	$9.00	$11.50	$14.00
Tonnage Assessment (Breakbulk Cargo – per Assessment Ton)	$3.50	$4.00	$5.00	$6.00