



FMC Agreement No. 201132-006

Port Authority Lease No. L-PN-264
Supplement No. 6

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of the 15th day of February, 2003, 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 (the said agreement of lease, as it has heretofore been amended, modified and supplemented, being hereinafter called the "Lease") covering certain premises at Port Newark, in the City of Newark, County of Essex and State of New Jersey; and

WHEREAS, in connection with the issuance of bonds by the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (hereinafter called the "EDA") for the financing of certain improvements to the premises under the Lease, the Lessee proposes to enter into a sublease agreement with the Lessee as sub-lessor and the EDA as sub-lessee dated as of February 15, 2003 (hereinafter called the "EDA Sublease"), pursuant to which the Lessee would sublease such premises to the EDA, and further in the same agreement proposes to enter into a sub-sublease agreement with the EDA as sub-sub-lessor and the Lessee as sub-sub-lessee, dated as of February 15, 2003 (hereinafter referred to as the "Financing Sublease"; the EDA Sublease and the Financing Sublease, being hereinafter collectively called the "Subleases") pursuant to which the EDA simultaneously with the execution of the EDA Sublease would sub-sublease the said premises back to the Lessee;

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. Notwithstanding anything to the contrary set forth in the Lease, including without limitation thereto the provisions of subparagraph (6) of paragraph (a) of Section 8 thereof, of paragraphs (a) and (b) of Section 18 thereof, and of subparagraph (4) of paragraph (a) of Section 25 thereof, the Lessee may enter into the Subleases, subject to the prior written consent of the Port Authority.

2. Except as hereby amended, all the terms, provisions, covenants and conditions of the Lease shall be and remain in full force and effect.

CONFORMED COPY

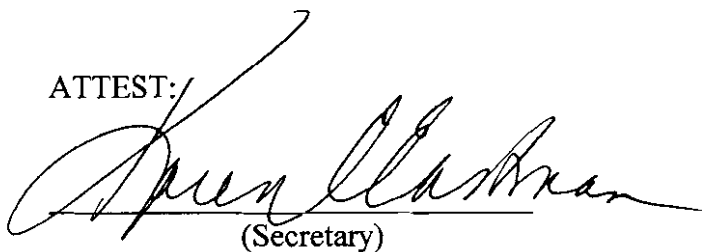
3. The Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation or execution of this Agreement.

4. 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.


5. 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:


(Secretary)

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY


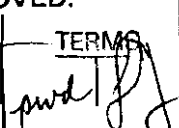
By 
~~RICHARD M. LARRABEE~~
MURKIN POM'S (Title) ~~DEP.~~ DIRECTOR, PORT COMMERCE DEPT.
(Seal)

WITNESS:



PORT NEWARK CONTAINER
TERMINAL LLC

By 
(Title) Manager

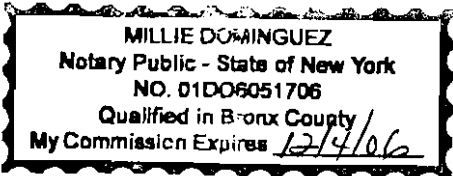
APPROVED:
FORM  TERMS 

ACKNOWLEDGEMENT

FOR THE PORT AUTHORITY

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

On the 21ST day of FEBRUARY in the year 2003, ^{Myron Ronis}~~Richard M. Larrabee~~ **DEP. DIRECTOR, PORT COMMERCE DEPT.** undersigned, a Notary Public in and for said state, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Millie Dominguez
(notarial seal and stamp)

FOR THE LESSEE

STATE New Jersey)
)ss.
COUNTY OF Middlesex)

On the 19TH day of February in the year 2003, before me, the undersigned, a Notary Public in and for said state, personally appeared Gary Willmot, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Michael Bellifemini
MICHAEL BELLIFEMINI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 24, 2007
(notarial seal and stamp)

**UNANIMOUS WRITTEN CONSENT
OF MANAGERS OF
PORT NEWARK CONTAINER TERMINAL L.L.C.**

The undersigned, being all of the managers of Port Newark Container Terminal L.L.C., a Delaware limited liability company (the "Company"), acting in lieu of a meeting pursuant to Article 9.8 of that certain Limited Liability Agreement dated as of August 1, 2000, by and among P&O Ports North America Inc., P&O Nedlloyd B.V., and the Company, as amended, hereby consent to the adoption of the following resolutions and actions set forth herein as of the date and year set forth below:

WHEREAS, the Company, as lessee, and The Port Authority of New York and New Jersey (the "Port Authority"), as lessor, are parties to a certain Lease Agreement dated December 1, 2000 (No. L-PN-264) (as amended, the "Lease") covering a certain marine terminal facility located in Port Newark, New Jersey (the "Terminal");

WHEREAS, the Company has undertaken extensive demolition, construction and improvements at the Terminal (the "Project"), as required or otherwise allowed or contemplated under the Lease, which Project is more particularly described on Exhibit A to these Resolutions;

WHEREAS, the Company has made application to The New Jersey Economic Development Authority ("NJEDA") to obtain financial assistance for the Project and, by preliminary resolution adopted on August 8, 2000, NJEDA has accepted the application of the Company;

WHEREAS, by further resolution dated November 12, 2002 (the "Bond Resolution"), NJEDA has authorized the issuance of its Special Facility Revenue Bonds (Port Newark Container Terminal LLC Project) Series 2003 (the "Bonds"), in an amount not to exceed \$125,000,000, to provide funds to finance the Project, including the payment of issuance costs incurred by the Company for the Bonds;

WHEREAS, in connection with the issuance of the Bonds, and the transactions contemplated thereby (collectively, the "Bond Transactions"), there has been presented to the managers for their consideration a substantially final draft of the bond documents listed on Schedule A hereto (the "Bond Documents"), the Port Authority documents listed on Schedule B hereto (the "Port Authority Documents"), the bank documents listed on Schedule C hereto (the "Bank Documents") (the Bank Documents and the Bond Documents shall be collectively referred to herein as the "Transaction Documents"), and the Preliminary Official Statement (the "Preliminary Official Statement").

NOW, THEREFORE, it is

RESOLVED, that the form, terms and provisions of the Transaction Documents be, and hereby are, authorized, adopted and approved, in such form and containing such terms and conditions, with such changes, additions, deletions, amendments or modifications, as the manager executing the same deems necessary, proper or advisable; and it is further

RESOLVED, that the Bond Transactions be, and hereby are, authorized and approved, and that the form of the Preliminary Official Statement (and any final Official Statement derived therefrom) be, and hereby is, approved and deemed final, and that such Preliminary Official Statement (and any final Official Statement derived therefrom) be delivered in accordance with the Bond Transactions; and it is further

RESOLVED, that all actions taken by the managers of the Company prior to the date of this Unanimous Written Consent which are within the authority conferred hereby are ratified and approved; and it is further


RESOLVED, that the managers and officers of the Company be, and they hereby are, authorized and directed to take such action and execute and deliver on behalf of the Company such documents, certificates and/or instruments as may be necessary to accomplish the intent of the resolutions herein; and it is further

RESOLVED, that the managers and officers of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute, deliver and cause the performance of the Transaction Documents, in the name and on behalf of the Company, with such changes therein, deletions therefrom or additions thereto as the manager or officer executing the same shall approve, the execution and delivery thereof to be conclusive evidence of the approval and ratification thereof by such manager or officer and by the Board of Managers; and it is further

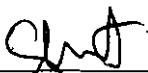
RESOLVED, that the managers and officers of the Company be, and each of them acting alone hereby is, authorized and empowered to take, from time to time in the name and on behalf of the Company, such actions and execute and deliver such certificates, instruments, notices and documents, including amendments thereto, as may be required from time to time or as such manager or officer may deem necessary, advisable or proper in order to carry out and perform the obligations of the Company under the Transaction Documents, or any other instrument or documents executed pursuant to or in connection with the Transaction Documents; all such certificates, instruments, notices and documents to be executed and delivered in such form as the manager executing the same shall approve, the execution and delivery thereof by such manager to be conclusive evidence of the approval and ratification thereof by such manager or officer and by the Board of Managers of the Company.

The actions taken by the execution of this Unanimous Written Consent shall have the same force and effect as if taken at a meeting of the Board of Managers of the Company duly called and constituted in accordance with the laws of the State of Delaware.


IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of this ____ day of January, 2003.



Rob Scavone



Gary Willmot



Chris Lytle

Rutger van Slobbe



Pieter Bas Bredius



Michael White

EXHIBIT A

Project Description

The Project will include one or more of the following: (a) the upgrading of the waterside crane beam, extension of the landside crane beam, and installation of new crane rails; (b) the removal, repair and/or upgrading of the existing pavement, where necessary, and the construction of new heavy duty pavement; (c) the construction of a new entry complex, including gatehouse, weigh houses and pre-check facilities, together with outfitting thereof; (d) the construction or renovation of administration buildings, maintenance and repair facilities and other ancillary buildings, together with outfitting thereof; (e) the removal or demolition of buildings and other structures not required by PNCT; (f) the strengthening of adjacent berths to permit dredging to fifty feet; (g) the dredging of two berths to accommodate vessels having fifty foot alongside drafts; (h) the upgrading of the container yard, including the installation of high mast lighting towers, water mains, underground high voltage electrical systems, storm drains, utility pipes, reefer racks and conduits; (i) the installation of a closed circuit TV system and security fencing for the entire terminal; (j) the purchase and installation of additional piling, including pile coating, pile extensions and stiffeners to permit strengthening of the wharf to accommodate increased alongside drafts; (k) the construction of new substations for the new high voltage system; (l) the excavation and disposal of materials; (m) the installation of rail switches and removal and replacement of railroad tracks and ties, where necessary; (n) the installation of traffic improvements; and (o) improvements to the PNCT rail yard.

Schedule A

Bond Documents

- Lease Agreement between NJEDA and the Company (Draft No. 11 dated January 6, 2003)
- Guaranty Agreement from the Company to Deutsche Bank Trust Company Americas (Draft No. 8 dated January 6, 2003)
- Administration Expense Guaranty Agreement from the Company to NJEDA (Draft No. 8 dated January 6, 2003)
- Letter of Representation from the Company to Solomon Smith Barney Inc. and NJEDA (Draft dated January __, 2003)
- Bond Purchase Agreement between NJEDA and Solomon Smith Barney Inc., as approved and accepted by the Company (Draft dated January __, 2003)
- Remarketing Agreement between the Company and Solomon Smith Barney Inc. (Draft dated January __, 2003)
- Tax Certificate and Agreement (Draft dated January __, 2003)

Schedule B

Port Authority Documents

- Lease Supplement No. 6 between the Port Authority and the Company (Draft transmitted for review by Neil Reid of the Port Authority under cover of his e-mail dated November 19, 2002)
- Consent to Subleases Agreement by and among the Port Authority, the Company, NJEDA and Deutsch Bank (Draft No. 9 dated January 6, 2003)

Schedule C

Bank Documents

- Reimbursement Agreement by and among Citibank, N.A., as Issuing Lender and as Administrative Agent, the Lenders (as defined in the Reimbursement Agreement) other than Citibank N.A., and the Company (MTHM Draft 1/10/03)