



amended (“the Shipping Act”) and request for agency investigation, against Robert L. Flanagan, Secretary, Department of Transportation, State of Maryland, and Chairman, Maryland Port Commission, and F. Brooks Royster, III, Executive Director, Maryland Port Administration, (collectively, “the Respondents” or “the Directors”), respondents herein, and shows the Commission as follows:

### **INTRODUCTORY STATEMENT**

1. Premier, an import/export vehicle processor, has been a commercial tenant at the Dundalk Marine Terminal in Baltimore, Maryland (“the Terminal”), for over forty-one years. Premier’s long-term lease of Lot 90 at the Terminal ended in 2002, and since then, Premier has been a month-to-month tenant. Upon expiration of its long-term lease and thereafter, Premier tried to negotiate for a new lease with the Maryland Port Administration (“MPA”), which owns and operates the Terminal. Under the direction of the Respondents, however, MPA, in clear violation of the Shipping Act, has refused to offer Premier a lease on commercially reasonable terms that have been afforded to Premier’s competition at the Terminal. To the contrary, the “leases” offered by MPA to Premier, on their face, were illusory, untenable, commercially irrational and confiscatory. When Premier balked at signing the last proffered lease, MPA demanded that Premier vacate the premises (including a building that Premier had constructed, and which it owns for the duration of its tenancy). MPA is poised to lease the property, including the building, to a competitor of Premier that abandoned the Port of Philadelphia, has no history at the Terminal in Baltimore, and was recently convicted in federal court in Alexandria, Virginia, of two felonies – price fixing and criminal conspiracy.

2. Without limitation, the Respondents’ actions violate the Shipping Act’s prohibitions against: (a) failure by MPA to establish, observe and enforce just and reasonable

regulations relating to or connected with the receipt and handling of property by Premier; (b) unreasonable refusal by MPA to deal or negotiate with Premier; and (c) the undue or unreasonable preference or advantage afforded by MPA to Premier's competition at Premier's expense, and MPA's corresponding imposition of undue or unreasonable prejudice or disadvantage on Premier.

3. Faced with imminent eviction and the destruction of its business, Premier, in April, 2005, sought protection under federal bankruptcy laws. Adding insult to injury, MPA then invoked Premier's bankruptcy as grounds for refusing to consent to Premier's renewed sublease of a portion of another lot at the Terminal, Lot 401, which Premier had been subleasing for many years from APS North Terminal, Inc. ("Amports") and its predecessors in interest.

4. The United States Bankruptcy Court for the District of Maryland recently granted MPA's motion for relief from the automatic stay imposed by virtue of Premier's bankruptcy filing. Upon the Court's issuance of an Order and Opinion to that effect, Premier expects that MPA will immediately seek to have Premier evicted from Lot 90.

5. Premier now appeals to the Commission for statutory redress against the Directors of MPA, or alternatively, an investigation of their mistreatment of Premier in wholesale violation of the Shipping Act.

### **PARTIES**

6. Since 1964, Premier (formerly known as "The Maryland Undercoating Co., Inc."), a Maryland corporation, has been one of Baltimore's leading locally-based import/export vehicle processing centers for automobiles and trucks and military, agricultural and construction

equipment. Premier is a Marine Terminal Operator as that term is defined in the Shipping Act, 46 U.S.C. App. § 1701-1721 (*see*, 46 U.S.C. App. § 1702 (14)).

7. Premier is located at the Dundalk Marine Terminal, operated by the MPA, at the Port of Baltimore, on "Lot 90," consisting of 6.53 acres, and on "Lot 401," consisting of 3.8 acres. Premier's processing facilities on Lot 90 offer vehicle and heavy equipment manufacturers, importers and exporters a complete range of services including, but not limited to: vehicle and equipment receipt and release, vehicle and equipment assembly, accessory installation, body and paint work, warranty campaign work, storage and other pier-side services based on customer requirements. Premier has invested heavily in Lot 90, including the construction of a 27,500 square foot specialty building containing a body shop, paint shop, offices and wash line (the "Building"). Likewise, since the early 1970's, Premier has had part ownership of, and has operated, a 38,203 square foot building on Lot 401 at the Dundalk Marine Terminal, and subleased the surrounding real property from APS North Terminal, Inc. ("Amports") and its predecessors in interest. Premier uses Lot 401 and the building thereon for equipment assembly and storage of related parts. Premier cannot provide full services, much less compete for new business, without these critical facilities.

8. Robert L. Flanagan (one of the "Directors" or "Respondents") is the Secretary of the Maryland Department of Transportation ("DOT"), and Chairman of the Maryland Port Commission, and in those capacities, exercises authority over the MPA, including its operations at the Terminal. The MPA is a Marine Terminal Operator as that term is defined in the Shipping Act, 46 U.S.C. App. § 1701-1721 (*see*, 46 U.S.C. App. § 1702 (14)). This complaint is brought against Mr. Flanagan in his official capacity.

9. F. Brooks Royster, III, (one of the “Directors” or “Respondents”) is Executive Director of the MPA, with authority over its functions. This complaint is brought against Mr. Royster in his official capacity.

### **JURISDICTION**

10. The Commission’s jurisdiction is invoked pursuant to the Shipping Act, 46 U.S.C. App. §§ 1701-1721 (*see*, 46 U.S.C. App. § 1710). Premier acknowledges that the Commission’s jurisdiction has been truncated following *Ceres Marine Terminals Inc. v. Maryland Port Administration*, 2004 W.L. 1855494 (Docket No. 94-01) (F.M.C. 2004) (citing *F.M.C. v. South Carolina State Ports Auth.*, 535 U.S. 743, 747 (2001)). By Order dated July 18, 2002, however, in *South Carolina Maritime Services, Inc. v. South Carolina State Ports Authority*, Docket No. 91-22 (F.M.C. July 18, 2002)), the Commission took note of the Supreme Court’s observation, in *South Carolina State Ports. Authority*, *supra*, that the Commission “remains free to investigate alleged violations of the Shipping Act, either upon its own initiative or upon information supplied by a private party . . . and to institute its own administrative proceeding against a state-run port. 122 S. Ct. at 1878-1879 . . .” *Id.*, at 5. Likewise, the Commission found that it might still have jurisdiction to adjudicate a “privately-initiated complaint proceeding against the directors of a state-run port, rather than against the port.” *Id.* Accordingly, this pleading is submitted by Premier as a privately initiated verified complaint, or in the alternative, as notice of information regarding possible violations of the Shipping Act and a request that the Commission investigate the same.

### **STATEMENT OF FACTS**

11. Effective July 28, 1992, Premier and the MPA entered into a written lease for Lot 90 (“Lease”), comprising 6.53 acres located at the Dundalk Marine Terminal in Baltimore

(**Exhibit 1 hereto**). The Lease included other parcels not relevant to this complaint. Premier had occupied Lot 90 continuously since 1964 under prior leases, and at the start of its occupancy built a Building on Lot 90 which it owns, occupies and uses to perform Premier's business of paint and body work, a necessary and intrinsic part of its vehicle processing business at the Terminal. The tenancy under the Lease was to expire in 1997, with an option for a renewal for another five years, until July, 2002.

12. The Lease provided at paragraph 2.1, on page 4, that,

In the event that PREMIER holds over for any reason after the expiration of this LEASE, or after the expiration of the renewal term if this LEASE is renewed, without having renewed the same in the manner specified above, then it is agreed that such holding over shall constitute a tenancy from month-to-month only. Rental for such month-to-month tenancy will be based upon one hundred and twenty five percent (125%) of the MPA's standard rental rate schedule for Dundalk Marine Terminal, as the same may be changed from time to time.

Ex. 1 at 4.

13. At the conclusion of the Lease term, Premier renewed the Lease for five years, with a slightly reduced acreage effective November 20, 1998, amounting to 6.47 acres (**Exhibit 2 hereto**). The renewed Lease for Lot 90 expired on June 30, 2002. Thereafter, Premier, pursuant to paragraph 2.1 of the Lease, **Ex. 1 hereto**, has been occupying Lot 90 as a month-to-month tenant.

14. After expiration of the Lease, the MPA proposed a new five-year written lease to Premier that differed materially from the Lease (**Exhibit 3 hereto**). Among other provisions, the proposed new lease provided MPA with sole discretion, on 180 days' written notice, to relocate Premier to another lot at the Dundalk Marine Terminal, without the Building – or any adequate substitute building – that is an intrinsic and essential component of Premier's business. The new lease did not give Premier an option to terminate in the event of a forced relocation. The new

lease did not provide that in the event of Premier's forced relocation, the MPA would erect a replacement building at its expense.

15. Further, the new lease required that Premier guarantee to the MPA that Premier would receive, process and distribute "a minimum of 1,700 vehicles per acre of useable vehicle storage area of the Premises" per lease year (called "throughput"). Failure to do so would require Premier to pay additional fees to MPA, on a per vehicle basis, to cover the shortfall. The 1,700 vehicle figure may have been appropriate for operators processing automobiles, which take up relatively little space per car and are processed quickly. That throughput provision was oppressive as applied to Premier, however, because of Premier's business then and now – the processing of large industrial and agricultural equipment one unit of which can weigh ten times the weight of an automobile, take up far more space, and have different service and longer storage requirements (while Premier had the capacity to service automobiles throughout, it had shifted the focus of its business during the relevant time period, Deposition of Michael Robinson, **Exhibit 4 hereto**, at 44-58). What is more, the lease "offered" to Premier made no provision for reduction of the oppressive quota in the event that Premier were forced by the MPA to relocate to another parcel without benefit of the Building that was intrinsic to performance of Premier's services.

16. Premier considered the proffered new lease to be commercially untenable, irrational and confiscatory. On the one hand, MPA was requiring that Premier guarantee an onerous throughput that was inapplicable to Premier's business - heavy farm or industrial equipment - and even under the most advantageous conditions, would necessitate extensive use of Premier's building to attempt compliance. On the other hand, MPA was reserving the right to forcibly remove Premier to another lot *without the building that was an essential part of*

*Premier's ability to perform its contractual obligations to both Premier's customers and MPA.*

If that happened, Premier would (a) still be obligated on its lease; (b) be unable to fulfill its throughput requirement under any circumstances; (c) thereby incurring significant penalties in addition to its lease payment obligation; and (d) breach its contractual commitments to its customers, for want of a building in which to perform their contractual requirements. Not only would Premier be putting its existing customer base at risk by entering such a lease, any prospective customer aware of these lease provisions would think twice before committing to doing business with Premier. Premier declined the "offer" of the lease.

17. In February 2004, MPA tendered Premier a written month-to-month lease, which Premier deemed unacceptable because it was given no security regarding the lease term, preventing the company from entering into long-term contracts with customers or purchasing and amortizing new equipment over a reasonable period of time (**Exhibit 5 hereto**).

18. In April, 2004, MPA offered Premier a three-year lease with two one-year renewal options (**Exhibit 6 hereto**). Although Premier had asked that the required throughput of vehicles be modified in recognition of Premier's farm and industrial equipment processing business, MPA refused, insisting that the throughput rate be based on 1,700 vehicles per acre per year irrespective of the types of vehicles moving through the facility, the rate of turn-over or the types of the services performed.

19. Significantly, in a letter to Premier dated March 19, 2004, purporting to summarize the material terms of the proffered new lease, MPA made no mention of any relocation provision (**Exhibit 7 hereto**). Yet when the new lease was tendered, the oppressive relocation provision was in the new lease:

At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to cause PREMIER to relocate to another location with similar berth

access within the Dundalk Marine Terminal. MPA shall give PREMIER one hundred eighty (180) days written notice of its intent to require PREMIER to relocate. Within thirty (30) days of the expiration of the aforesaid notice period, MPA and PREMIER shall execute and deliver an amendment to the AGREEMENT & LEASE which shall substitute a description of the premises to which PREMIER is to relocate for the description of the Premises; otherwise all of the terms and conditions of this AGREEMENT & LEASE shall be applicable to PREMIER's occupancy of the new premises. The relocation of PREMIER shall be at MPA's sole cost and expense, provided that MPA shall have no obligation whatsoever to relocate the Pre-Existing Improvements.

**Ex. 6,** Draft undated lease, §1.4. Premier viewed this provision as commercially untenable for the same reasons it had rejected that provision in the prior proffered five-year lease. The threat of forced relocation meant that Premier had no assurance of continued use of the Building. Without that assurance, there was no way that Premier could guarantee the throughput on which MPA insisted, even assuming that Premier could otherwise meet such a burdensome quota. Even more egregious, the proffered lease did not allow Premier to terminate in the event of a forced relocation. Thus, at the whim of the MPA, Premier could not only be deprived of its Building but at the same time could be forced to meet previously mandated quotas and contract obligations to its customers that presumed use of the Building (which provided paint and body work that was an intrinsic part of Premier's business).

20. MPA gave Premier until May 15, 2004 to sign the lease. When the deadline lapsed, MPA directed Premier to vacate Lot 90 because, according to the MPA, another customer needed it (**Exhibit 8 hereto**). Premier protested that there were many unoccupied lots available throughout the Terminal property for use by another customer, and the effect of removing Premier from the unique site that housed its Building would be to prevent it from doing business. Premier asked that MPA find alternative space for its other customer, and allow Premier to continue to do business where it had been operating for forty years, with continued access to its Building.

21. By e-mail dated March 23, 2005, the DOT advised Premier that MPA had entered into “a long term Lease with another tenant effective May 1, 2005 for all of Lot 90 in addition to options for added contiguous [*sic*] expansion acerage [*sic*] as it comes available.” (**Exhibit 9 hereto**)

22. Premier subsequently learned that the prospective new tenant was its competitor, Pasha, which has a well-documented history of illegal conduct as a government contractor.<sup>1</sup>

23. On March 4, 2004, Pasha was suspended by the United States Army Suspension and Debarment Official from conducting business with the Military Service Deployment and Distribution Command. The suspension followed criminal charges filed by the United States against Pasha in the United States District Court for the Eastern District of Virginia (**Exhibit 12 hereto**). The suspension prohibited Pasha from receiving contracts or conducting business with the government as agents or representatives of other contractors. The criminal charges against Pasha included one count of conspiracy to restrain trade and one count of conspiracy to defraud the United States. Pasha was charged with entering into a conspiracy to eliminate competition by fixing and raising “through-rates” filed with the Department of Defense (“DOD”) for the transportation of household goods owned by military and civilian DOD personnel. Pasha was further charged with unlawfully, willfully and knowingly conspiring to defraud the United States by increasing the rates paid by the DOD to levels higher than would have existed in the absence

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<sup>1</sup> In fact, MPA’s representation that it had leased Lot 90 to Pasha was inaccurate. The first lease signed by Pasha, in January, 2005, simply provided that MPA was leasing Pasha a parcel of land “up to 6.5 acres, located in Lots 90, 91, 94, 100, 101, 102, 200, 201, to be determined by MPA.” (**Exhibit 10 hereto**, at Section 1.2). In other words, MPA was reserving the right *not to* lease Lot 90, but to create the leased parcel from other lots. Similarly, in the first amendment to the Pasha lease, signed in June, 2005, although MPA agreed to lease Lot 90 to Pasha commencing December 1, 2005, MPA reserved the right to change that date, and further cautioned in the lease that “[t]he lease of the aforesaid premises at Lot 90 is also subject to said premises being available to MPA for lease to Pasha in light of Premier’s continued occupancy of Lot 90 pursuant to the aforesaid bankruptcy proceedings.” (**Exhibit 11 hereto**, at Section 1). There can be no doubt that MPA has hedged its bets concerning the future tenancy of Lot 90.

of the conspiracy. On October 5, 2004, the District Court dismissed the first felony count over the government's objection and convicted Pasha of the second felony count.

24. The parties cross-appealed to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed Pasha's conviction on count two, and reversed and remanded the dismissal of count one, resulting in final judgment of conviction against Pasha on both felony counts, *United States v. Gosselin World Wide Moving, et al.*, 411 F.3d 502 (4th Cir. 2005) (**Exhibit 13 hereto**). A petition for certiorari is pending.

25. Joseph Robert Huber, MPA's Real Estate Administrator, responsible for leasing at the Dundalk Marine Terminal and other MPA facilities, has testified that he did not know of Pasha's criminal history when Pasha was contracting with MPA for space at the Dundalk Marine Terminal, or indeed, at any time until the question was asked at deposition (**Exhibit 14 hereto**). David Michael Thomas, Director of Operations for MPA, has likewise testified at deposition in this case that he had no awareness of Pasha's criminal history until Premier brought it to his attention, nor did he know whether any other MPA officials were aware. He has further testified that there are no written policies at MPA governing what types of tenants MPA will deal with, but that "common sense would prevail that we wouldn't do business with companies if we were aware of certain criminal activity" (**Exhibit 15 hereto**). Michael Miller, MPA Director of Maritime Commercial Management, has testified that he had no knowledge of Pasha's criminal history until Premier raised it, and that there were no standards at MPA that barred it from leasing property to a convicted felon (**Exhibit 16 hereto**).

26. In a letter dated March 29, 2005 from the MPA to Premier, MPA withdrew its proffered three-year lease tendered to Premier on April 9, 2004, and "direct[ed] Premier to vacate the Premises not later than May 1, 2005." (**Exhibit 17 hereto**)

27. By letter dated April 7, 2005, the MPA offered to allow Premier to remain at Lot 90 for an additional sixty days, up to and including June 30, 2005, provided that Premier waive any objections to vacating the premises by that date (**Exhibit 18 hereto**). That offer was illusory because it merely postponed the inevitable destruction of Premier's business. Premier counter-offered an agreement for a 60-day extension without waiver of its rights. MPA rejected Premier's counteroffer.

28. It became obvious that MPA had no interest in seeking a solution that would allow Premier to operate with a suitable building. Premier concluded that in order to protect its business, its employees and its obligations to customers, it must file for protection under Chapter 11 of the United States Bankruptcy Code. It did so on April 29, 2005 (**Exhibit 19 hereto**).

29. Contemporaneous with MPA's refusal to offer Premier reasonable terms on a new lease for Lot 90, MPA had leases with competitors of Premier at the Dundalk Marine Terminal (that, upon information and belief, rent their buildings from MPA, and do not own them) with more favorable provisions that MPA refused to give Premier. For example:

- ATC Logistics, Inc., had a lease with no forced relocation requirement (**Exhibit 20 hereto**) – *while MPA required that Premier agree to a forced relocation requirement as a condition for getting a new lease;*

- Wallenius Wilhelmsen Atlantic LLC had a lease providing for relocation to a comparable location only if Wallenius consented to the move, and only if comparable improvements were afforded at the new location (**Exhibit 21 hereto**) – *while MPA required, as a condition for Premier getting a new lease, that it agree to a forced relocation requirement without Premier's consent, whereby Premier would not be provided comparable improvements in the lot to which it would be forcibly relocated;*

- CaseNewHolland, Inc., a processor of large farm equipment like Premier, had a lease requiring throughput of 900 vehicles per acre per year in the first year of the lease, increased to 1,000 vehicles in the second and third years of the lease (**Exhibit 22 hereto**) – *while MPA required that Premier, in exactly the same business as CNH, agree to a throughput requirement of 1,700 vehicles per acre per year as a condition for getting a new lease;*

- Mercedes-Benz USA, LLC, had a lease that provided for forced relocation on notice from MPA, but if Mercedes-Benz objected, the lease was terminated (**Exhibit 23 hereto**) – *while MPA required that Premier, as a condition for getting a new lease, agree to a forced relocation provision with no option to terminate the lease in the event of objection to the relocation;*

- Bennett Distribution Services, a processor of large farm equipment like Premier, had a lease requiring throughput of 1,000 vehicles per acre per year (**Exhibit 24 hereto**) – *while MPA required that Premier, in exactly the same business as Bennett, agree to a throughput requirement of 1,700 vehicles per acre per year as a condition for getting a new lease; and*

- Pasha Automotive Services, to whom MPA has offered Premier's lot and building notwithstanding Pasha's criminal background and no history of performance at the Terminal, has a lease that provides for throughput of 1,700 vehicles per acre per year, but gives Pasha five years to reach an average of 1,700 vehicles per acre per year, and defers any payment obligation until completion of the fifth year of the lease and a calculation of the yearly average (**Ex. 10**) – *while MPA required that Premier, as a condition for getting a new lease, agree to a 1,700 vehicle throughput requirement with monthly reports and an obligation to pay annually any penalty for failure to meet the requirement during the previous year.*

30. Mr. Huber has testified that MPA has no written standards concerning throughput requirements to be applied to leases (**Exhibit 25 hereto**). David Thomas, MPA Director of Operations, has testified that he knows of no written policies at MPA respecting throughput requirements for tenants, and is unaware of any written policies regarding the standards to be applied in determining particular lease terms from tenant to tenant; leases are simply the product of individual negotiations (**Exhibit 26 hereto**). Mr. Thomas has also testified that there are no written policies or directives as to the types of tenants with whom MPA may deal (**Exhibit 27 hereto**). Mr. Miller has similarly testified that there are no written policies, standards or guidelines concerning any type of contracting by MPA, nor are there any policies or guidelines concerning MPA doing business with convicted felons (**Exhibit 28 hereto**).

31. In addition to its lease on Lot 90 at the Terminal, for years Premier has been leasing space on Lot 401, a portion of which (approximately 2.5) acres has been leased as a subtenant of Amports (a prime tenant of MPA at Lot 401) pursuant to two subleases that expired on June 30, 2005. (**Exhibits 29 and 30 hereto**). On March 31, 2005, in anticipation of the expiration of the subleases, and at the specific direction of MPA, Amports and Premier entered into a letter agreement for a new sublease, for a three-year term commencing on April 1, 2005 (**Exhibit 31 hereto**).

32. Under the terms of Amports' prime lease with MPA, MPA retains the right of approval of all subleases, including the proposed sublease by Amports to Premier on Lot 401. (**Exhibit 32 hereto**) MPA held such right under Premier's prior subleases from Amports on Lot 401, and had always granted its approval. By letter dated October 3, 2005, however, well after commencement of Premier's bankruptcy and this lawsuit, MPA advised counsel for Premier that MPA would not authorize the proposed renewed sublease by Amports to Premier on Lot 401

because Premier was in bankruptcy and thus did not appear to be a “credit worthy” tenant. (Exhibit 33 hereto.) The letter was silent on the fact that it was MPA’s deprivation of any possibility of a further lease on Lot 90 that drove Premier into bankruptcy in the first place. Further, the letter ignored the express prohibition of 11 U.S.C. § 525(a) against governmental entities denying leasehold interests to debtors in bankruptcy solely because they are bankrupt.

**COUNT I**

(Violation of 46 U.S.C. App. § 1709(d)(1))

33. Premier incorporates by reference the allegations in paragraphs 1-32 above, as though fully stated herein.

34. Title 46 U.S.C. App § 1709(d)(1) makes it is unlawful for a Marine Terminal Operator, *inter alia*, to fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property.

35. MPA and its Directors, the Respondents herein, together with their predecessors-in-interest, have violated this statutory provision by failing to establish, observe and enforce just and reasonable regulations and practices concerning the leasing of real property to Premier and other commercial tenants at the Terminal engaged in the receipt, handling, storing and/or delivery of property.

36. This violation of law commenced no later than the expiration of Premier’s long-term lease in 2002 and has been ongoing and continuous at all times – and indeed, magnified – since then, as described hereinabove and incorporated herein by reference.

**COUNT II**

(Violation of 46 U.S.C. App. § 1709(d)(3))

37. Premier incorporates by reference the allegations in paragraphs 1-36 above, as though fully stated herein.

38. Title 46 U.S.C. App §1709(d)(3), which incorporates 46 U.S.C. App. §1709(b)(10), makes it is unlawful for any Marine Terminal Operator to unreasonably refuse to negotiate with a tenant.

39. MPA and its Directors, the Respondents herein, together with their predecessors-in-interest, have violated this statutory provision by unreasonably failing to negotiate with Premier as described hereinabove.

40. This violation of law commenced at the expiration of Premier's long-term lease in 2002 and has been ongoing and continuous at all times – and indeed, magnified – since then.

**COUNT III**

(Violation of 46 U.S.C. App. § 1709(d)(4))

41. Premier incorporates by reference the allegations in paragraphs 1-40 above, as though fully stated herein.

42. Title 46 U.S.C. App § 1709(d)(4) makes it unlawful for any marine terminal operator to give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

43. MPA and its Directors, the Respondents herein, together with their predecessors-in-interest, have violated this statutory provision by giving undue and unreasonable preferences and advantages to Premier's competition as described hereinabove, and by imposing on Premier

an undue and unreasonable prejudice or disadvantage respecting the terms on which MPA would offer Premier a successor lease following termination of its prior lease.

44. This violation of law commenced no later than the expiration of Premier's long-term lease in 2002 and has been ongoing and continuous at all times – and indeed, magnified – since then.

**PRAYER FOR RELIEF**

WHEREFORE, having set forth its verified complaint, or in the alternative, notice of information regarding possible violations of the Shipping Act and request for agency investigation, Premier prays that:

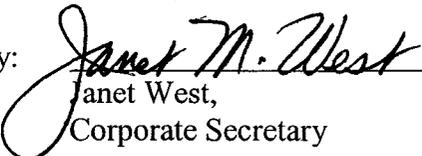
(A) Pending plenary consideration by the Commission, the Commission seek a temporary restraining order and preliminary injunction in the court of appropriate jurisdiction enjoining the Respondents from continuing their unlawful treatment of Premier as described in the body of this complaint, and from leasing Lot 90 at the Terminal to Pasha;

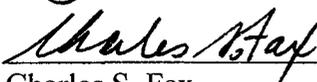
(B) The Commission, after due hearing, declare that the Respondents have violated the Shipping Act as described in the body of this complaint; direct the Respondents to cease all such violations immediately; direct the Respondents to offer Premier a new lease for Lot 90 on the commercially reasonable terms on which Premier's competition at the Terminal has been given leases; award Premier reparations for the Respondents' violations in such sum as is sufficient to compensate Premier for its actual injuries caused by the Respondents' illegal, discriminatory practices, plus pre-judgment and post-judgment interest; award Premier its costs of litigation and its attorneys' fees expended in such litigation; and such other and further relief as deemed just and proper;

(C) Such hearing be conducted in the District of Columbia; or, in the alternative,

(D) The Commission conduct a full investigation of the violations of the Shipping Act described hereinabove and institute its own administrative proceeding against the Respondents or such other persons or entities as deemed responsible by the Commission.

Premier Automotive Services, Inc.  
2700 Broening Highway  
Fifth and B Streets  
Baltimore, Maryland 21222

By:   
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Corporate Secretary

  
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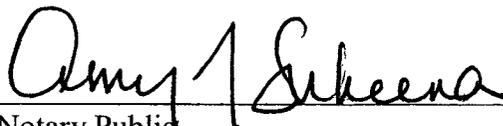
*Attorneys for Premier Automotive Services, Inc.*

**VERIFICATION**

City of Baltimore     )  
State of Maryland    ) ss.

Janet M. West, being first duly sworn on oath, deposes and says that she is Corporate Secretary of Premier Automotive Services, Inc. a Maryland corporation, acting in her corporate capacity; that she is the person who signed the foregoing verified complaint; that she has read the same; and that the facts stated therein are true to the best of her personal knowledge, information and belief.

Subscribed and sworn to before me, a notary public in and for the State of Maryland, City of Baltimore, this 27 day of January, 2006.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 1/1/2010

**FEDERAL MARITIME COMMISSION**

**AGREEMENT NO.**

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**LEASE BETWEEN MARYLAND PORT ADMINISTRATION  
AND  
PREMIER AUTOMOTIVE SERVICES, INC.**

Donald A. Krach  
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**LEASE**  
**BETWEEN**  
**MARYLAND PORT ADMINISTRATION**  
**AND**  
**PREMIER AUTOMOTIVE SERVICES, INC.**

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**LEASE BETWEEN MARYLAND PORT ADMINISTRATION**

**AND**

**PREMIER AUTOMOTIVE SERVICES, INC.**

THIS LEASE, made this 1st day of July, 19 92, by and between ~~MARYLAND PORT ADMINISTRATION, an instrumentality of the Department of~~ Transportation of the State of Maryland (hereinafter referred to as "MPA") and PREMIER AUTOMOTIVE SERVICES, INC., a Maryland corporation (hereinafter referred to as "PREMIER");

WHEREAS, PREMIER desires to lease property at Dundalk Marine Terminal for the purpose of receiving, processing and delivering import and export automobiles; and

WHEREAS, the MPA desires to lease land at Dundalk Marine Terminal to PREMIER for such purposes;

NOW, THEREFORE, THIS LEASE WITNESSETH, that in consideration of the sum of Ten Dollars (\$10.00) paid by each of the parties hereto to the other, and other good and valuable considerations, the receipt of which is hereby severally acknowledged, and of the covenants and agreements herein contained to be performed by the parties hereto, MPA and PREMIER hereby covenant and agree as follows:

**ARTICLE I**

**Description of Leased Premises**

1.1 MPA hereby demises and leases unto PREMIER and PREMIER agrees

to rent from MPA, upon the rentals hereinafter specified, all those lots and parcels of land consisting of: a) 6.53 acres in Area 90, and b) approximately 16.19 acres in Areas 202 and 94, located in Dundalk Marine Terminal, Baltimore, Maryland, as outlined in red on Exhibit A attached hereto and made a part of this LEASE; provided however, that this LEASE shall not take effect unless and until this LEASE is approved by the Maryland Department of Transportation and the Maryland Board of Public Works and receives an effective date from the Federal Maritime Commission (FMC) unless MPA is notified that such filing with the FMC is not required.

In the event that MPA, at any time during the term hereof, including any renewal term, shall reconstruct the roadway through Area 94 leading to Gateway Plaza, the leased acreage in Area 94 shall be reduced by the amount of acreage reasonably required for such reconstruction and MPA shall provide an equal amount of substitute acreage in Area 95 if sufficient acreage is available within Area 95 and if not, then said substitute acreage shall be provided in another area as close to Area 94 as is reasonably possible for the remainder of the term hereof, including any renewal term.

1.2 PREMIER shall have reasonable access to the leased premises over the roadways extending to the same from the main entrance to Dundalk Marine Terminal, or such other entrance as MPA shall designate. The course of such right of access may be changed from time to time by MPA but at all times, to the extent reasonably possible shall be suitable for use by heavy trucking to the extent the same is permitted on Maryland roadways, in addition to ordinary traffic. Use of such roadway facilities shall be in common with MPA and others

authorized by MPA subject to the reasonable rules and regulations of MPA.

1.3 MPA shall supply the leased premises with facilities for light, heat, water, electric current and sewage disposal to the degree which it deems essential. PREMIER shall pay all charges for light, heat, water, electric current and sewage disposal.

## ARTICLE II

### Term of Lease and Rentals

2.1 The initial term of this LEASE shall commence on the first day of the month next following delivery to PREMIER by the MPA of written notice that the Maryland Department of Transportation and Maryland Board of Public Works have approved this LEASE and the FMC has assigned the LEASE an effective-date. On the first day of the month next following delivery to PREMIER by the MPA of written notice that the Maryland Department of Transportation and the Maryland Board of Public Works have approved this LEASE and that a receipt of an effective date by the Federal Maritime Commission is not required, whichever event shall last occur, and shall end June 30, 1997.

If, at the end of said initial term, PREMIER is not in default, PREMIER shall have the option and privilege to be exercised by the giving of written notice to the MPA at least one hundred eighty (180) days prior to the expiration of said initial term, to renew this LEASE for an additional term of five (5) years upon the same terms and conditions as herein contained, except with respect to the option and privilege of renewal and except that the monthly rental for said additional five (5) year term shall be computed on the basis of the MPA tariff rental rate schedule for Dundalk Marine Terminal in effect at the time such renewal term

commences.

In the event that PREMIER holds over for any reason after the expiration of this LEASE, or after the expiration of the renewal term if this LEASE is renewed, without having renewed the same in the manner specified above, then it is agreed that such holding over shall constitute a tenancy from month-to-month only. Rental for such month-to-month tenancy will be based upon one hundred and twenty five percent (125%) of the MPA's standard rental rate schedule for Dundalk Marine Terminal, as the same may be changed from time to time.

2.2 For and in consideration of this LEASE and the permission and privilege herein granted, PREMIER shall pay rent to MPA for the whole of the initial term hereof, the total sum of Two Million, Forty Four Thousand, Eight Hundred Dollars (\$2,044,800.00) payable in equal monthly installments of Thirty Four Thousand, Eighty Dollars (\$34,080.00) in advance on the first day of each month until cancellation or termination hereof.

2.3 PREMIER shall pay all tariff charges in accordance with the MPA tariff prevailing from time to time, except for rental payment set out in provision 2.2 above.

2.4 PREMIER shall in addition to the rent reserved herein, pay or reimburse MPA for the payment of the following:

- (i) All charges for all utility services furnished to the leased premises including, but not limited to, light, heat, electricity, gas, water and sewage disposal.
- (ii) All sums provided to be added to rent upon expenditure by MPA, as, by way of example only, in Paragraphs 5.6 and 5.8 hereof.

(iii) All taxes or benefit assessments levied by any governmental authority with respect to the leased premises and the improvements now or hereafter erected thereon.

2.5 PREMIER shall pay to MPA annually, except to the extent that the improvements are taxed to PREMIER, a sum of money computed on the basis of the full cash value of the leased premises and improvements on it, less the allowance for inflation provided for in Article 81, Section 14(b), of the Annotated Code of Maryland, multiplied by the current Maryland and local real estate taxes. This payment shall be due and owing each lease year during the term. PREMIER's obligation pursuant to this Section 2.5 is satisfied by payment of the annual rent provided in Section 2.2. However, PREMIER shall be responsible for all customary licenses, permits, and governmental costs, fees and assessments associated with PREMIER's business operations at the leased premises.

### ARTICLE III

#### Use of Premises and Construction of Buildings

3.1 It is understood and agreed that the leased premises will be used by PREMIER solely for the purposes of cleaning, cosmolineing, decosmolineing, undercoating, and related servicing of motor vehicles in waterborne commerce. No other use shall be permitted without the prior written consent of MPA, which consent shall not be unreasonably withheld.

3.2 PREMIER shall use the leased premises and facilities for the purposes herein described and in no case shall use the same or allow the use of the same, or any part or portion thereof, for any unlawful purpose or maintain or permit any nuisance to be maintained

thereon.

PREMIER further agrees that it will comply at all times in every respect with any and all Federal, State, MPA and municipal laws, including environmental laws and all other ordinances, rules, regulations, orders and notices now or hereafter in force or effect which may be applicable to the use of the leased premises, and any improvements thereon, including ~~any buildings and improvements erected by PREMIER or any sublessee of PREMIER, in the~~ same manner and to the same extent as if PREMIER were the owner of the leased premises and improvements thereon. PREMIER further agrees that it will not commit any waste on the leased premises.

3.3 MPA shall have access at all reasonable time to any part of the leased premises for purposes of inspection, or for constructing or maintaining any improvements in, on or under the leased premises required to be maintained by MPA.

3.4 No hazardous waste shall be kept on the premises or sold either by wholesale or retail.

3.5 PREMIER will not erect or place, or allow to be erected or placed on the leased premises, any buildings, structures, fixtures or obstructions of any kind without the prior written approval of the Director of Engineering of MPA, which approval shall not be unreasonably withheld.

3.6 PREMIER shall not erect or place or allow to be erected or placed on the premises any sign or advertising matter except signs which have first been expressly approved in writing by the Director of Terminal Operations of MPA or by his duly authorized

representative, provided that under no circumstances shall PREMIER be denied the right to erect reasonable identifying signs. PREMIER shall erect or place on the premises any signing, for the purpose of regulating parking and traffic that the Director of Terminal Operations might direct.

#### ARTICLE IV

##### Ownership and Maintenance

4.1 Any and all improvements, structures or facilities constructed or erected by MPA upon the leased premises shall be, and continue to be, owned by the MPA.

4.2 Any and all buildings, fixtures, machinery, equipment or improvements installed, erected or caused to be erected by PREMIER upon the leased premises at PREMIER's expense shall be owned by PREMIER and must be removed by it at its expense upon the termination of this LEASE or any renewal thereof; or, in the event that PREMIER requests, in writing, MPA's permission to leave any and all buildings, fixtures, machinery, equipment or improvements erected and intact and MPA specifically notifies PREMIER in writing that MPA specifically allows and agrees that the buildings, fixtures, machinery, equipment or improvements, erected by PREMIER may remain in place, PREMIER shall be deemed to have abandoned all of its property in the buildings or other fixtures, machinery, equipment or improvements left behind to MPA.

In the event that MPA does allow and agree that the buildings, fixtures, machinery, equipment or improvements erected by PREMIER are to remain intact after the termination date of this LEASE or any renewal thereof, PREMIER agrees that ownership of all

the aforementioned buildings, fixtures, machinery, equipment or improvements shall pass to, and be made the property of MPA, free and clear of all liens and encumbrances, and without the payment of any consideration whatsoever therefor, and PREMIER shall promptly execute such documents as MPA may reasonably require in order to vest title to the same in MPA.

Furthermore, in the event that MPA does not allow or agree in writing, ~~which allowance or agreement shall not be unreasonably withheld, that the aforementioned~~ buildings, fixtures, machinery, equipment or improvements shall remain intact upon the leased premises after the termination date of this LEASE, or any renewal thereof, PREMIER at its own expense shall restore the leased premises, except pilings to the condition they were in prior to the installation or erection thereof and shall surrender possession of the leased premises in a neat and orderly condition, ordinary wear and tear excepted.

4.3 PREMIER shall at its sole cost and expense during the entire term of the LEASE, or any renewal thereof, keep the leased premises and improvements thereon and all parts thereof in good condition and repair, without trash and debris, both inside and outside, to the end that the leased premises are at all times maintained in a condition comparable to that existing upon the date of the commencement of this LEASE. Upon termination of this LEASE or any renewal thereof, the leased premises shall be returned to MPA in a condition comparable to their condition prior to this LEASE, ordinary wear and tear excepted.

4.4 PREMIER shall at its sole cost and expense during the entire term of the LEASE keep the leased premises and the improvements thereon in a neat and orderly appearance without accumulation of debris or trash. All paved areas shall be maintained in a swept

condition.

4.5 In the event PREMIER at any time refuses, neglects or fails to perform any of its obligations contained in this Article IV or in Paragraph 3.2 of this LEASE, MPA at its option may for PREMIER's account perform such obligations or cause them to be performed, and all amounts of money expended by MPA in connection therewith shall be paid by PREMIER to MPA as additional rent on the next rent payment date. Said additional rent shall be in addition to the rent specified in Paragraph 2.2 hereof.

4.6 Upon the expiration or termination of this LEASE, or of the renewals thereof if the same shall be renewed, PREMIER agrees to surrender peaceful possession of the premises.

## ARTICLE V

### Indemnity and Insurance

5.1 PREMIER agrees to indemnify, protect and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, losses, expenses and costs of every kind and description to which MPA, its agents and employees, may be subjected by reason of injury to or death of persons or damage to property of any person, firm or corporation whatsoever (including the parties hereto and their respective officers, agents or employees) in any manner due to, growing out of or connected with the occupation and use of the premises or any improvements thereon or parts thereof by PREMIER under this LEASE, unless solely caused by the negligence of MPA, regardless of whether such suits, actions, claims, damages, losses, expenses and costs be against or sustained by MPA, its agents and employees or be

against or sustained by others to whom MPA may become liable. If requested by MPA, PREMIER will undertake to defend, at its sole cost and expense, any and all suits brought against MPA in connection with the matters specified herein. PREMIER shall not be liable for injury to or death of persons or damage to property resulting solely from the negligence of MPA, its agents, employees, contractors, subcontractors, or other specifically authorized by MPA on or about the leased premises or any part thereof.

5.2 PREMIER covenants that without the consent of MPA it will not do nor permit to be done on or about or in proximity of the leased premises improvements, facilities, easements or common areas, any act or thing which will invalidate MPA's fire, casualty, liability or other insurance policies or violate the terms thereof provided that MPA furnish to PREMIER copies of such policies, or the relevant terms thereof.

5.3 PREMIER shall at all times during the term of this LEASE or any renewal thereof maintain such workmen's compensation or employers' liability insurance as may be required by law and shall indemnify and save harmless the MPA against any loss, claim or demand of employees, agents, contractors and sub-contractors of PREMIER.

5.4 PREMIER shall also maintain at its expense, and furnish MPA with, at all times during the term of this LEASE, or any renewal thereof, liability insurance policy or policies issued by a mutually acceptable company or companies and in such form as are satisfactory to MPA for the protection of PREMIER and MPA (as a named additional insured) against any claims, suits, demands or judgements by reason of personal injury including death and for any claims of damage to property occurring on or in proximity to the leased premises

or arising out of or as a result of the occupancy thereof by PREMIER. Such liability insurance shall provide limits of at least Five Hundred Thousand Dollars (\$500,000.00) for property damage, and One Million Dollars (\$1,000,000.00) in the event of injury or death of one or more persons, in any one occurrence.

The limits of insurance established herein shall be subject to increase upon request of MPA in such amounts as it may reasonably request in the event that future circumstances indicate their inadequacy, to the end that the limits of the same shall remain reasonable and prudent in view of current risks.

5.5 PREMIER at all times during the term of this LEASE and any renewal thereof, if the same shall be renewed, maintain on behalf of itself and MPA, fire and extended coverage insurance on all buildings erected on the leased premises at its own expense to the extent of at least eighty percent (80%) of the fair market value thereof.

In the event of fire or other casualty covered by insurance, PREMIER shall use the proceeds of all such insurance to the extent necessary to repair or replace the buildings; provided, however, that if the proceeds of insurance are insufficient for such purpose and PREMIER elects not to restore the buildings, fixtures or other facilities to the condition in which they were before such fire or other casualty then this LEASE may be terminated by MPA.

5.6 All insurance policies required by this LEASE shall provide that they cannot be cancelled or terminated until after at least thirty (30) days prior written notice has been given to MPA.

In the event that PREMIER at any time refuses, neglects or fails to secure

)and maintain in full force and effect any and all of the insurance required under the terms and provisions of this LEASE, MPA at its option may procure or renew such insurance and all amounts of money expended by MPA in connection therewith shall be paid by PREMIER to MPA as additional rent on the next rent payment date. Said additional rent shall be in addition to rent paid in accordance with Paragraph 2.2

5.7 ~~All insurance policies or appropriate endorsements, certificates or other satisfactory evidence of insurance required to be procured by PREMIER under the terms and provisions of this LEASE shall be subject to approval by MPA and copies thereof shall be delivered to MPA. No acceptance or approval of any policy by MPA shall relieve or release PREMIER from any liability, duty or obligation assumed by or imposed upon it by the terms and provisions of this LEASE. In the event that PREMIER at any time refuses, neglects or fails to~~ secure and maintain in full force and effect any and all of the insurance required under the terms and provisions of this LEASE, MPA at its option may procure or renew such insurance and all amounts of money expended by MPA in connection therewith shall be paid by PREMIER to MPA as additional rent on the next rent payment date.

5.8 Nothing contained herein shall require MPA to ensure against or be liable for any loss occasioned by fire or other casualty to tangible personal property or fixtures of PREMIER, its agents or employees, assignees, sublessees, or invitees or of any other person, firm or corporation upon any part of the leased premises occurring for any cause other than the sole negligence of MPA, its agents or employees.

PREMIER shall promptly pay any and all costs and expenses and all

judgements and decrees which may be incurred by or obtained against MPA from time to time, (a) in enforcing the covenants, terms or provisions of this LEASE of any renewal thereof, (b) in obtaining possession, as the result of any default by PREMIER or otherwise, of the leased premises, (c) in defending any action or suit for damages because of any failure, neglect, or default on the part of PREMIER in respect to any obligation herein contained on its part to be kept and performed. If MPA shall, without fault on its part, be made party to any litigation in respect to any matter directly or indirectly growing out of this LEASE or any renewal thereof or relating to the leased premises, and PREMIER is at fault, PREMIER shall pay all judgments, decrees and costs incurred by or imposed upon MPA in connection therewith. All such judgements, decrees and reasonable costs when paid by MPA shall become due and payable immediately by PREMIER to MPA as additional rent. Said additional rent shall be in addition to rent paid in accordance with Paragraph 2.2. PREMIER shall have no obligation under this Paragraph unless MPA give PREMIER prompt notice of any suit or proceeding referred to herein and offers PREMIER the opportunity to defend the same.

## ARTICLE VI

### Taxes

6.1 All City, County and State real (except as prescribed in Section 2.5 of this AGREEMENT & LEASE) and personal property taxes which may be assessed on the leased premises, the improvements thereon, the fee or leasehold interests, easements and fixtures and personal property contained herein shall be paid by PREMIER, including such taxes with respect to the same as may be billed directly to MPA.

## ARTICLE VII

### Default

7.1 The following shall constitute events of default hereunder:

- (a) Non-payment when due of any installment of rent.
- (b) The failure by PREMIER for any cause or reason, at any time to perform, observe or comply with any of the terms, covenants, provisions and conditions of this LEASE.
- (c) Abandonment by PREMIER of all or a portion of the leased premises provided that non-use of a portion of the same which may not be needed for the operation of PREMIER's business shall not be construed as an abandonment.
- (d) The appointment of a receiver or liquidator of the leased premises or any part thereof or of PREMIER, its assets or any part thereof, or if PREMIER shall be adjudicated as bankrupt or shall be insolvent, or if PREMIER shall file a voluntary petition under the Federal Bankruptcy Act or any Chapter thereof, or make an assignment for the benefit of creditors or admit in writing its inability

to pay its debts generally as they become due.

- (e) Assignment of this LEASE, the leased premises or any portion thereof, or the sublease of the leased premises or any portion thereof without the written consent of MPA.
- (f) Failure of PREMIER to provide insurance as required in this AGREEMENT & LEASE.

7.2 If PREMIER shall commit any of the events of default in Article 7.1 hereof, and shall fail to correct and rectify any such default within thirty (30) days after receipt of written notice thereof from MPA, MPA shall have the right immediately to terminate this LEASE upon the giving of not less than ten (10) days written notice thereof to PREMIER, without prejudice, however, to the right of MPA to recover all rent due to the time of such termination and without prejudice to MPA's right to exercise any and all other rights given to it as landlord by law. MPA shall also have the right to distrain on any property of PREMIER or any other property subject to distraint. MPA shall also have the right to re-enter and take possession of the leased premises and to let the same upon any reasonable terms approved by it, and in the event of such reletting PREMIER shall remain liable to MPA for the rentals payable hereunder by PREMIER to MPA less such amounts as may actually be received by MPA as a result of such reletting.

## ARTICLE VIII

### Termination

8.1 If the premises, or any substantial part thereof, shall be appropriated and taken for any public use by virtue of eminent domain or condemnation proceeding, or sold under the threat thereof, PREMIER shall have the right to terminate this LEASE upon written notice to MPA and rental shall be paid only to the time when PREMIER surrenders possession of the premises and any rental paid in advance beyond such time shall be returned by MPA to ~~PREMIER on demand. PREMIER in the event of partial appropriation as aforesaid, may elect~~ to continue in possession of that part of the premises not so appropriated; under the same terms and conditions hereof, except that in such case PREMIER shall be entitled to an equitable reduction in the rental payable hereunder.

In the event of the total destruction of the lease premises or in the event that the leased premises are damaged to such an extent as to render them inoperative for the purpose of the LEASE, either party hereto may terminate this LEASE by giving written notice thereof to the other party, and the rental shall be paid only to the time of such termination and any rental paid in advance beyond the date of such termination shall be returned by MPA to PREMIER on demand.

8.2 Upon the termination of this LEASE or any renewal thereof at the end of the term or by the exercise by MPA of any of its rights hereunder, the right, title and interest of PREMIER and any person, firm or corporation, receiver or trustee claiming by, through or under it, shall cease and determine and MPA shall have the right and authority to enter and take full possession of the leased premises by force or otherwise, without legal process, to effect the removal of any parties who may occupy any part of said leased premises. Upon such

termination PREMIER agrees to surrender peaceful possession of the leased premises and to remove at its sole cost and expense all buildings, structures, improvements and equipment, including all tangible personal property located on or about the leased premises which PREMIER has heretofore or shall hereafter place upon the leased premises, and, in addition, to restore the area from which the same shall be removed to its condition prior to the placing of the same on the leased premises.

## ARTICLE IX

### General

9.1 PREMIER shall not, without the prior written consent and approval of MPA assign this LEASE nor its rights hereunder, nor sublet any or all of the lease premises which consent and approval will not be unreasonably withheld. In the event that PREMIER during the term of this LEASE or any renewal thereof desires to sell its interest in the building, fixtures, machinery, equipment, or improvements owned by PREMIER to another party and to sublet the lease premises or assign the LEASE to said other party and MPA approves of said sale and approves of said sublease or assignment then PREMIER shall have the right to so sell said interest. Consent by MPA to any assignment or subletting shall not operate to release PREMIER from any of its obligations set forth under the terms and conditions of this LEASE.

9.2 The MPA shall not have any duty or obligation to establish, construct or rehabilitate any facilities for PREMIER.

9.3 Any specific written waiver at any time and under any circumstance by either party of any breach of, or any default in, any one or more of the terms, covenants,

provisions and conditions of this LEASE, whether before or after any suit or judgment has been filed or obtained in connection with any of the provisions of the LEASE, shall not be construed to be a waiver of any other terms, covenants, provisions and conditions of this LEASE or a waiver of any breach or default other than that specifically waived. The acceptance at any time and under any conditions or circumstances of any sum or sums of money paid by PREMIER to MPA after any breach or default by Lessee of any one or more of the terms, covenants, provisions and conditions of this LEASE shall not constitute a waiver of any such breach or default provided, however, that where such default consists of the non-payment of any sum or sums of money due by PREMIER to MPA under the terms and provisions of this LEASE and PREMIER pays such amount in default in full and MPA accepts such payment without reservation, such acceptance shall constitute a waiver of such breach or default.

9.4 It is understood and agreed that nothing contained in this LEASE is intended or shall be construed in any manner or under any circumstance whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture, between the parties hereto or as constituting either party as the agent or representative of the other, for any purpose or in any manner whatsoever.

9.5 Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto by or under the terms and provisions of this LEASE shall be taken and construed to be cumulative and the mention of any specific duty, liability or obligation, imposed upon or assumed by either party shall be taken and construed to be cumulative and the mention of any specific duty, liability of obligation, imposed upon or

assumed by either party hereto, under the terms and provisions hereof, shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities or obligations imposed upon or assumed by, either of the parties hereto under the terms and provisions of this LEASE.

9.6 PREMIER is aware that it has a constitutional right to be free from any ~~State action which would, in summary fashion without prior notice and a prior opportunity to~~ contest the action in a neutral forum, deprive it of any right of property to which it may be entitled under this LEASE. With knowledge of that right, PREMIER does hereby waive the exercise thereof, and does hereby consent to all of the summary remedies reserved to MPA under this LEASE including, by way of example but not by way of limitation: MPA's right to add certain sums to rent, to terminate the LEASE and to re-enter and repossess the premises, without prior notice except such notice as is specified herein, and without an opportunity for PREMIER to contest in advance in any neutral forum otherwise available the summary action of MPA in exercise of its rights reserved as landlord herein. Nothing in this paragraph shall be construed to deprive PREMIER of any right to bring any claim to which it is entitled by law or equity to challenge any action of MPA after the action has been taken; this paragraph simply consents to summary action against PREMIER and removes from among all possible bases of attack on that action the one ground that the action constituted a deprivation of liberty or property without due process of law on account of a failure to provide notice of the proposed action and an opportunity to be heard thereof prior to the action.

9.7 All remedies provided in this LEASE shall be taken and construed to be

cumulative that is, in addition to any and all other remedies provided herein.

9.8 This LEASE shall be taken and deemed to have been fully made and executed by the parties hereto in the State of Maryland for all purposes and intents and that Maryland law shall govern this AGREEMENT & LEASE.

9.9 Any notice given by either party to the other under any of the provisions hereof shall be deemed to have been properly delivered when registered or certified and deposited in the United States mail with adequate postage affixed, addressed, as the case may be to Maryland Port Administration, The World Trade Center Baltimore, Baltimore, Maryland 21202, or the Premier Automotive Services, Inc., 2700 Broening Highway, Dundalk Marine Terminal, Baltimore, Maryland 21222, or as the same may be changed from time to time in writing.

9.10 It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those which are necessarily implied from the powers which are expressly granted, and that in the event MPA is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this LEASE, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by PREMIER or any other legal entity in connection with, or as the result of or growing out of any such prevention, restriction or delay.

9.11 This LEASE, and all the provisions hereof, shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns, but no assignment thereof or subletting of the premises, or any part thereof, other than by operation of law or to a successor of PREMIER shall be valid without the prior consent in writing of MPA.

(END)

IN WITNESS WHEREOF, the parties hereto have caused this LEASE to be duly executed as of the day and year first above written.

ATTEST

Kathleen Kotula

MARYLAND PORT ADMINISTRATION

Adrian G. Teel  
Adrian G. Teel, Executive Director

ATTEST

Janet M. West

PREMIER AUTOMOTIVE SERVICES, INC.

James G. Johnson, Pres.

APPROVED FOR LEGAL FORM AND SUFFICIENCY:

Donald A. Krach  
Donald A. Krach  
Assistant Attorney General and  
Counsel for the Maryland Port  
Administration

STATE OF MARYLAND  
SS:

I HEREBY CERTIFY that on this 7<sup>th</sup> day of July,

1992, before

me, the subscriber, a Notary Public of the State of Maryland, in and for the County

of Baltimore, personally appeared

JAMES B. ROBINSON, known to me (or satisfactorily

proven) to be the person whose name is subscribed to the foregoing instrument, who

acknowledged the foregoing instrument to be the act and deed of the ~~MARYLAND~~

~~Administration~~ PREMIER AUTOMOTIVE SERVICES, INC..

WITNESS my hand and Notarial Seal the day and year last above written.

Kelly Ann Nevedale

NOTARY PUBLIC

KELLY ANN NEVEDALE  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires October 19, 1994

MY COMMISSION EXPIRES: October 19, 94

STATE OF MARYLAND

SS:

\_\_\_\_\_

I HEREBY CERTIFY that on this 28th day of July,

1992, before

me, the subscriber, a Notary Public of the State of Maryland, in and for the City

Baltimore of Baltimore, personally appeared

Adrian Teel, known to me (or satisfactorily

proven) to be the person whose name is subscribed to the foregoing instrument, who

acknowledged the foregoing instrument to be the act and deed of the ~~PERSONAL REPRESENTATIVE~~

~~PERSONAL REPRESENTATIVE~~ MARYLAND PORT ADMINISTRATION.

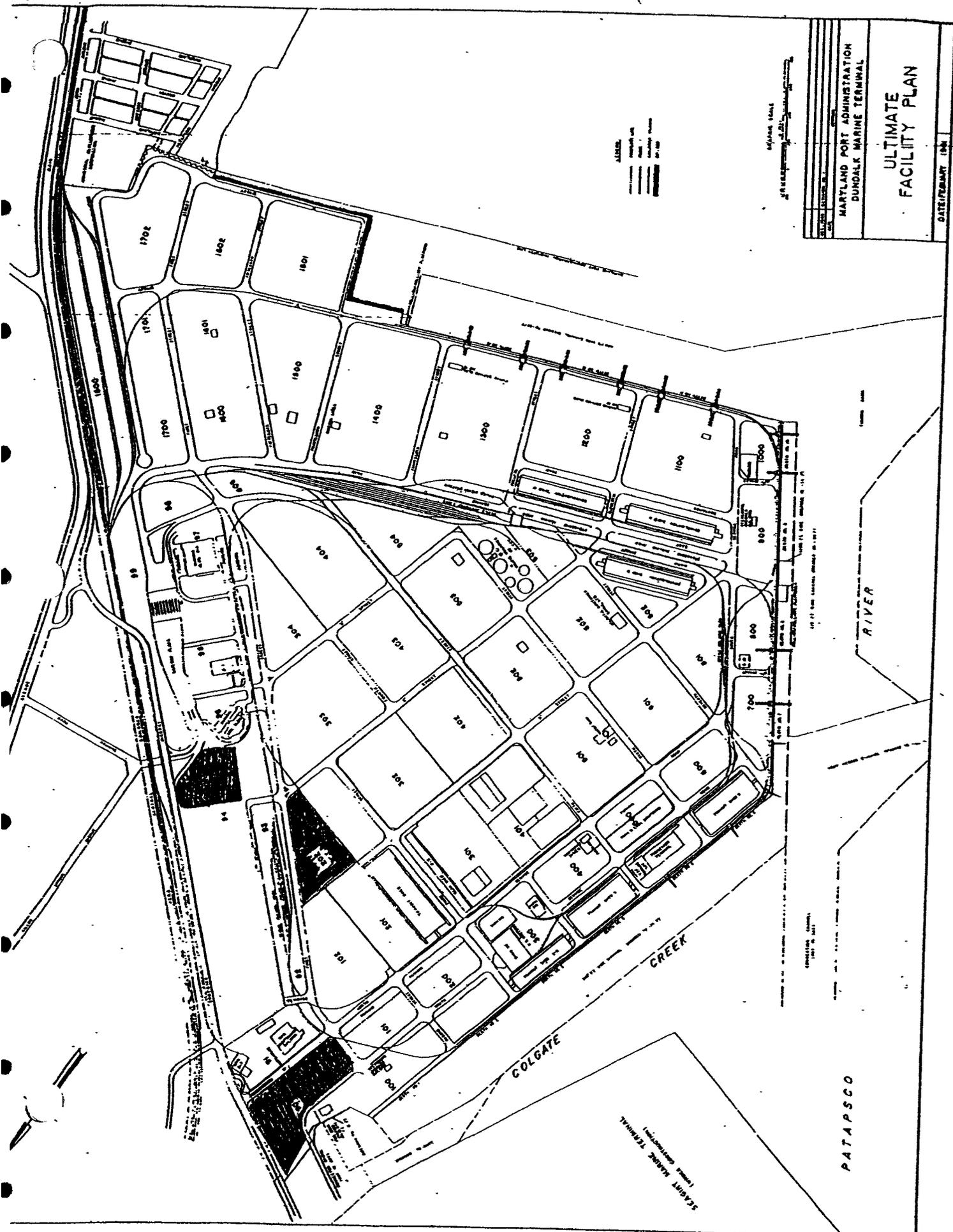
WITNESS my hand and Notarial Seal the day and year last above written.

*Janet M. Harter*

NOTARY PUBLIC

NOTARY PUBLIC STATE OF MARYLAND  
MY COMMISSION EXPIRES JANUARY 1, 1993

MY COMMISSION EXPIRES:



*Prepared*

DATE/FEBRUARY 1964

ULTIMATE FACILITY PLAN

DUNDALK MARINE TERMINAL

MARYLAND PORT ADMINISTRATION

APPROVED SCALE

LEGEND

ALIENS

IMPROVEMENTS

EXISTING UTILITIES

PROPOSED UTILITIES

PATAPSCO

SKAGIT MARINE TERMINAL

COLGATE

CREEK

RIVER

**SECOND AMENDMENT TO LEASE**  
**BETWEEN**  
**THE MARYLAND PORT ADMINISTRATION**  
**AND**  
**PREMIER AUTOMOTIVE SERVICES, INC.**

This **SECOND AMENDMENT** to the **LEASE** is made this 20<sup>th</sup> day of November, 1998, by and between the **MARYLAND PORT ADMINISTRATION**, an instrumentality of the Department of Transportation of the State of Maryland (hereinafter referred to as "**MPA**") and **PREMIER AUTOMOTIVE SERVICES, INC.**, a corporation, (hereinafter referred to as "**PREMIER**").

**WHEREAS**, on July 1, 1992, the **MPA** and **PREMIER** entered into a **LEASE** for 6.53 acres of land in Area 90 and 16.19 acres of land in Areas 202 and 94 all located in the **MPA**'s Dundalk Marine Terminal in the Port of Baltimore; and

**WHEREAS**, on July 22, 1994, the **MPA** and **PREMIER** amended the **LEASE** to reflect a reduction in the leased area by eliminating the acreage in Area 202. The leased area was amended to read, 6.53 acres in Area 90 and 7.0 acres in Area 94 ( First Amendment ); and

**WHEREAS, MPA, as a result of recent gate and entrance improvements to the Dundalk Marine Terminal, needed to acquire from PREMIER a total of .06 acres in Area 90 for road widening and fence construction and PREMIER agreed to this reduction of their leased area. This acquisition of land has therefore reduced the total PREMIER leased acreage in Area 90 from 6.53 acres to 6.47 acres; and**

**NOW, THEREFORE, THIS SECOND AMENDMENT to LEASE WITNESSETH that MPA and PREMIER hereby agree to the total acreage reduction in Area 90 from 6.53 acres to 6.47 acres and to reduce the monthly billing to reflect this acreage reduction.**

**MPA and PREMIER therefore understand and agree that the monthly rental effective August 1, 1997 shall be reduced from \$22,476.71 per month to \$22,377.04 per month. This reduction in rent shall be for the remaining term of the LEASE and shall be in accordance with all remaining terms and conditions of the original LEASE and the FIRST AMENDMENT.**

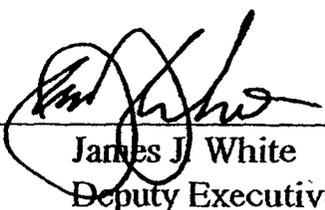
**In all other respects MPA and PREMIER understand and agree that their LEASE as amended shall remain in full force and effect.**

IN WITNESS WHEREOF, the parties hereto have caused this **SECOND AMENDMENT to LEASE** to be duly executed as of the day and year first written above.

**MARYLAND PORT ADMINISTRATION**

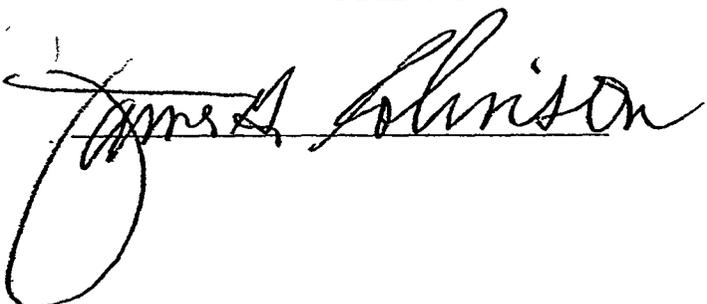
  
\_\_\_\_\_  
~~Fay Yoshitani~~  
Executive Director

11/20/98 (date)

  
\_\_\_\_\_  
James J. White  
Deputy Executive Director

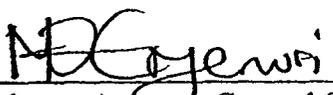
11/20/98 (date)

**PREMIER AUTOMOTIVE SERVICES, INC.**

  
\_\_\_\_\_  
James A. Robinson

10-26-98 (date)

**APPROVED TO FORM AND LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
Assistant Attorney General for the  
Maryland Port Administration

11/19/98 (date)

**RENEWAL OPTION AGREEMENT**  
**BETWEEN**  
**MARYLAND PORT ADMINISTRATION**  
**AND**  
**PREMIER AUTOMOTIVE SERVICES, INC.**

THIS RENEWAL OPTION AGREEMENT is made this 1st  
day of July, 19 97, by and between the Maryland Port  
Administration (hereinafter "MPA") and PREMIER AUTOMOTIVE  
SERVICES, INC. (hereinafter referred to as "PREMIER").

WHEREAS, by AGREEMENT & LEASE dated *July 1, 1992*, MPA and  
PREMIER entered into a FIVE (5) year AGREEMENT & LEASE to lease  
certain parcels of property located at the Dundalk Marine Terminal, with the option  
and privilege of renewing this AGREEMENT & LEASE for one (1) additional  
FIVE (5) year term; and

WHEREAS, by FIRST AMENDMENT to AGREEMENT & LEASE  
dated July 22, 1994, PREMIER reduced the amount of acreage leased in the

original **AGREEMENT & LEASE** by 9.19 acres; and

**WHEREAS, PREMIER** as the current lessee of 13.53 acres of outside space located in area 90 ( 6.53 acres) and area 94 ( 7.00 acres) at the Dundalk Marine terminal, all as outlined in Red on the attached **Exhibit "A"**, has requested to exercise the right to renew the **AGREEMENT & LEASE** for an additional term of **FIVE (5) years, effective on July 1, 1997** and terminating on **June 30, 2002**, on the same terms and conditions, except with respect to the amount of future rent.

**NOW, THEREFORE as to, THIS RENEWAL OPTION to AGREEMENT & LEASE WITNESSETH** that in consideration of the sum of Five Dollars (\$ 5.00) paid by each of the parties hereto to the other and other good and valuable considerations, the receipt of which are hereby severally acknowledged, and of the covenants and agreements hereinafter contained to be performed by the parties hereto, **MPA and PREMIER** for themselves, their successors and assigns, hereby covenant and agree as follows:

**MPA hereby grants to PREMIER the exercise of its RENEWAL OPTION for a term of FIVE (5) years. The rental under this AGREEMENT & LEASE shall be TWO HUNDRED AND SIXTY NINE THOUSAND/SEVEN HUNDRED AND TWENTY DOLLARS AND FIFTY-FIVE CENTS (\$ 269,720.55) PER ANNUM payable in equal monthly installments of**

**TWENTY-TWO THOUSAND/FOUR HUNDRED AND SEVENTY-SIX DOLLARS AND SEVENTY-ONE CENTS (\$ 22,476.71) (Note: the current prevailing MPA Terminal Services tariff rate is \$ 19,935.00 per acre/per year) effective JULY 1, 1997 thru JUNE 30, 1998. For each succeeding lease year of this RENEWAL OPTION, the parties understand and agree that PREMIER will pay and the MPA will invoice PREMIER an amount equal to rent charged for the first lease year adjusted annually for the cumulative charge in the Consumer Price Index, Urban Consumers. This yearly increase will be applied at the beginning of each lease year which has been established as July 1.**

The parties acknowledge that the **AGREEMENT & LEASE** dated July 1, 1992, remains in full force and effect.

The parties further understand and agree that this **AGREEMENT & LEASE** modification may be subject to approval by the Board of Public Works of Maryland.

**(END)**

IN WITNESS WHEREOF, MPA and PREMIER have hereunto executed this RENEWAL OPTION as the day and year first written above.

Carol Ann Hatter  
ATTEST

Carol Ann Hatter  
ATTEST

Tay Yoshitani  
Tay Yoshitani, Executive Director  
Maryland Port Administration

James J. White  
James J. White, Deputy Executive Director  
Maryland Port Administration

Wendy Lynn Williams  
ATTEST

Janet M. West  
PREMIER AUTOMOTIVE SERVICES, INC.

approved for legal form and sufficiency:

Donald A. Krach 7/1/97  
Donald A. Krach, Assistant Attorney General for  
Maryland Port Administration

Date: 6-27-97

STATE OF MARYLAND  
SS:  
CITY OF BALTIMORE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of July, 1997, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared James J. White Dep. Executive Director, and he acknowledged the foregoing instrument to be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal, the day and year last written above.

My commission expires January 1, 2000

Fred Rotnick  
Notary Public

STATE OF Maryland  
SS:  
COUNTY OF Baltimore

I HEREBY CERTIFY that on this 27 day of June, 1997, before me, the subscriber, a Notary Public of the State of MARYLAND, in and for the County of BALTIMORE, personally appeared JANET M. WEST, and he acknowledged the foregoing instrument to be duly authorized act and deed of PREMIER AUTOMOTIVE SERVICES, INC.

WITNESS my hand and Notarial Seal, the day and year last written above.

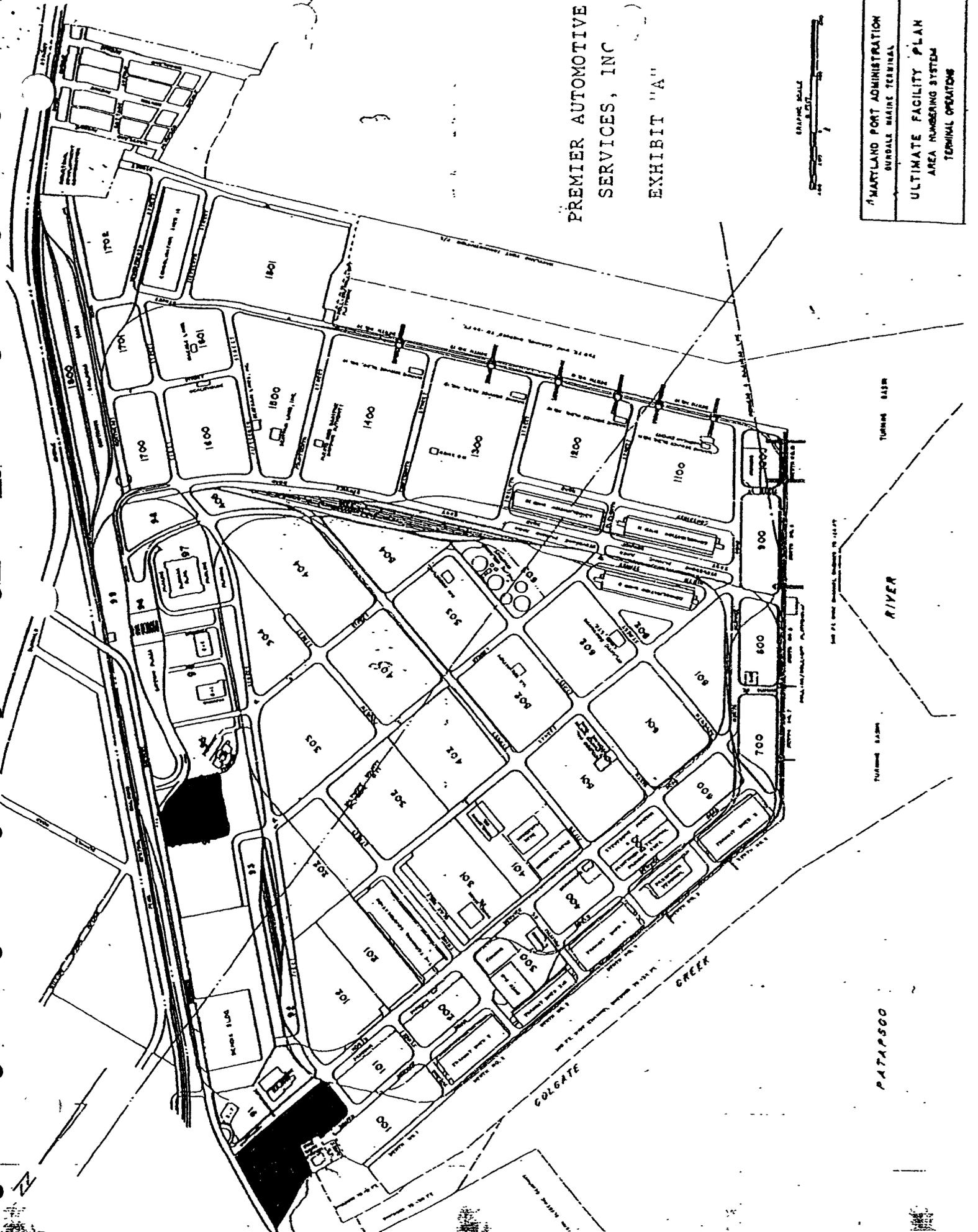
My Commission Exps. April 17, 2000  
My commission expires \_\_\_\_\_

[Signature]  
Notary Public  
6/27/97

PREMIER AUTOMOTIVE  
SERVICES, INC  
EXHIBIT "A"

GRAPHIC SCALE  
0 100 200  
FEET

MARYLAND PORT ADMINISTRATION  
BURBANK MARINE TERMINAL  
ULTIMATE FACILITY PLAN  
AREA NUMBERING SYSTEM  
TERMINAL OPERATIONS





Maryland Port Administration  
The World Trade Center  
Baltimore, Maryland 21202-0011

Parris N. Glavinage  
Governor

Maryland Port Administration  
John H. Purcell  
Chairman

J. Owen Cole  
Thomas T. Koch  
William V. Meyers  
Milton H. Miller, Sr.  
Robert I. Sewall  
Fred L. Winkland

July 22, 2002

Gregory J. White  
Executive Director

Mr. Michael J. Robinson,  
Vice President General Manager  
Premier Automotive Services, Inc.  
Dundalk Marine Terminal  
2700 Broening Highway  
Dundalk, Maryland 21222

Dear Mr. Robinson:

Enclosed is a draft lease between Maryland Port Administration and Premier Automotive Services, Inc. for 13.47 acres in areas 90 and 94 at the Dundalk Marine Terminal in the Port of Baltimore.

You will note specific acreage has been linked to an account "to be determined". Based on our discussions, we are not in a position to offer the ramp-up clause requested as this is directly associated to business new to the Port of Baltimore. Once you identify the customer we can finalize the lease and send you two originals for signature.

Should you have any questions, please give me a call.

Very truly yours,

  
J. Robert Huber, RPA  
Real Estate Administrator

JRH/trv  
Enclosures

cc: Michael W. Miller, General Manager of Property Management  
Gene Bailey, Director of Operations

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**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
PREMIER AUTOMOTIVE SERVICES, INC.**

**THIS AGREEMENT & LEASE** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between the **MARYLAND PORT ADMINISTRATION**, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "**MPA**"), and **PREMIER AUTOMOTIVE SERVICES, INC.** (hereinafter referred to as "**PREMIER**").

**WHEREAS, PREMIER** desires to lease certain land and improvements at the Dundalk Marine Terminal for the purpose of receiving, processing, storing and delivering import and export vehicles.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, **MPA** and **PREMIER** hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 TERM.** The term of the **AGREEMENT & LEASE** shall be for Five (5) years beginning on September 1, 2002 ("Effective Date" and terminating on August 31, 2007 ("Termination Date")("Term") subject to

- (1) approval of the **AGREEMENT & LEASE** by:
  - a) The Maryland Port Commission, and
  - b) The Maryland Board of Public Works; and
- (2) Execution of this **AGREEMENT & LEASE** by the parties hereto.

The first "Lease Year" shall commence on the Effective Date and shall end at the close of one (1) calendar year following the Effective Date; thereafter each Lease Year shall consist of successive periods of one (1) calendar year.

**1.1.1 Renewal Option.** Provided **PREMIER** has complied with all of the terms of this **AGREEMENT & LEASE**, is not in default hereunder and subject to the Board's approval, **PREMIER** shall have the option to renew this **AGREEMENT & LEASE** for three (3) additional period of five (5) consecutive Lease Years each ("Renewal Period") at terms and conditions to be mutually agreed upon.

In order to exercise the option, **PREMIER** shall provide **MPA** with at least

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one hundred eighty (180) days' written notice, prior to expiration of the Term, of its intent to renew. Failure by PREMIER to so notify MPA timely shall be considered a forfeiture by PREMIER of this option to renew. MPA and PREMIER shall in good faith negotiate reasonable terms and conditions of the renewal agreement, provided that if the parties fail to come to an agreement, then this Section 1.1.1 shall not be enforceable by either party.

**1.2 Premises.** MPA leases to PREMIER and PREMIER rents from MPA, a total of 13.47 acres of land consisting of 6.47 acres in Area 90 and 7.00 acres in Area 94 at the Dundalk Marine Terminal ("DMT") in Baltimore City, Maryland, as more fully identified and described as "Premises" on Exhibit "A" attached hereto.

**1.2.1 TBN Acreage.** PREMIER agrees that Area 94 totaling 7.00 acres, as more fully identified on Exhibit "B" attached hereto ("TBN Acreage") is being leased to PREMIER to enable PREMIER to service its account with TBN in the Port of Baltimore ("TBN account").

**1.2.1.1** MPA reserves the absolute right at its sole discretion, with thirty (30) days written notice to PREMIER, to relocate the TBN Acreage.

**1.2.1.2** Should PREMIER fail to retain the TBN account, MPA reserves the right to terminate this AGREEMENT & LEASE as to the TBN Acreage effective the day of termination of the TBN account. In that event, the rental under Section 3 shall be adjusted proportionately and the parties shall execute an Amendment to the AGREEMENT & LEASE, which shall substitute a description of the Premises as reduced for the description of the Premises. The rights and obligations of the parties in respect of the TBN Acreage shall cease as of the date of termination of the lease pertaining to the TBN Acreage, subject to Section 13.10 infra, provided, however, all of the terms and conditions of this AGREEMENT & LEASE shall otherwise be applicable to PREMIER occupancy of the redescribed Premises.

**1.2.2 Buildings & Improvements.** MPA recognizes that PREMIER owns certain buildings and improvements within the Premises described as a large metal framed building consisting of approximately 25,152 sq. ft. located in Area 90. PREMIER agrees that at the expiration of this AGREEMENT & LEASE it will at MPA's sole option and discretion either convey those buildings and improvements to MPA free and clear of all liens and encumbrances without the payment by MPA of any consideration therefor, or remove the buildings and return the premises to the original condition prior to the building construction.

**1.3 MPA Terminal Services Schedule.** Where applicable the prevailing MPA Terminal Services Schedule filed with the Federal Maritime Commission, posted

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on the Internet ([www.mpa.md.state.us](http://www.mpa.md.state.us)), or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by MPA pursuant to Federal, State or other applicable laws ("Schedule"), is hereby incorporated by reference into this **AGREEMENT & LEASE** as if set forth at length and such shall govern and control this **AGREEMENT & LEASE** except where same conflicts with this **AGREEMENT & LEASE**. In such event this **AGREEMENT & LEASE** shall prevail.

*Explain*

**1.4 Ingress and Egress.** MPA and PREMIER understand and agree that it is MPA's intention to utilize properties contiguous to the Premises. Accordingly, PREMIER expressly agrees that it shall coordinate with MPA or MPA's designate so that free and unencumbered ingress and egress will be allowed to MPA or its designate in transiting across the Premises in order for MPA and its designate to utilize the aforementioned contiguous properties. The location of ingress and egress shall be mutually agreed to by MPA and PREMIER and neither party will unreasonably withhold consent as to the original location of ingress and egress or subsequent changes thereto.

**1.5 Relocation.** At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to relocate the Premises or any portion thereof, to a comparable facility with similar berth access within the Dundalk Marine Terminal. MPA shall give PREMIER one hundred eighty (180) days written notice of its intent to relocate the Premises, provided that MPA shall provide thirty (30) days written notice of its intention to relocate the TBN Acreage as provided in Section 1.2.1.1 supra. Within thirty (30) days of the expiration of the aforesaid notice period, MPA and PREMIER shall execute and deliver an amendment to the **AGREEMENT & LEASE** which shall substitute (or add) a description of the premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this Lease shall be applicable to PREMIER's occupancy of the new Premises. The relocation of the Premises shall be at MPA's sole cost and expense.

## **2.0 USE OF PREMISES/APPURTENANTS RIGHTS/RESERVED RIGHTS:**

### **2.1 Use of Premises.**

a) **Import/Export Vehicles.** PREMIER shall use the Premises for receiving, processing and distribution of motor and industrial vehicles, parts and accessories. PREMIER shall use the Premises primarily for vehicles having a prior or subsequent international waterborne movement over an MPA pier, berth or wharf ("Import/Export Vehicles") subject to Section 2.1 (c) infra.

b) **Vehicle Guarantee.** PREMIER guarantees MPA that it will

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receive, process and distribute a minimum of 1,700 vehicles per acre per Lease Year for the Premises. **PREMIER** further agrees that if **MPA** provides additional land, **PREMIER** guarantees **MPA** that **PREMIER** will receive, process and distribute a minimum of 1,700 vehicles per acre per Lease Year for the additional Premises. The relevant acreage will be calculated based on useable vehicle storage area (not including the area under and around the buildings), being Eleven and One-half (11 ½) acres out of the total Thirteen and Forty-seven One Hundredths (13.47) acre Premises.

**PREMIER** understands and agrees that the vehicle guarantee will therefore amount to a minimum of 19,550 vehicles per Lease Year ("Minimum Guarantee").

**PREMIER** shall process a minimum of 1,700 vehicles per acre (19,550 vehicles per Lease Year over 11 ½ acres) in each Lease Year. **PREMIER** shall be required to pay the shortfall charge, if any, at the end of each Lease Year.

c) **Domestic Vehicles.** **PREMIER** may use the Premises to receive, process and distribute vehicles not having a prior or subsequent international movement over an **MPA** pier, berth or wharf ("Domestic Vehicles"), provided that without the written approval of **MPA** the total number of such Domestic Vehicles shall not exceed fifteen (15%) percent of the total annual volume of vehicles received, processed or distributed by **PREMIER** at the Premises during any Lease Year. **MPA** and **PREMIER** agree that Domestic Vehicles do count toward the Minimum Guarantee.

**PREMIER**, with ten (10) days written notice, may request from **MPA** additional domestic vehicle processing on behalf of TBN Acreage at terms and conditions to be mutually agreed upon.

**MPA** and **PREMIER** shall in good faith negotiate reasonable terms and conditions of the domestic vehicle provision, provided that if the parties fail to come to an agreement, then this Section 2.1.d shall not be enforceable by either party.

**2.2 Labor Peace and Harmony.** **PREMIER** shall conduct its operations at the Premises in a manner promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. **PREMIER** shall not engage in any activity, which works to destroy any labor harmony in the Port of Baltimore. **MPA** will use its best efforts to promote other tenants of **MPA** to conduct their operations in a manner promoting peace and harmony in the commercial sector.

**2.3 MPA's Reserved Rights with Respect to the Premises.** **MPA** reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with **PREMIER's** use of the Premises.

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### **3.0 RENT AND RENTAL PAYMENTS:**

**3.1 Rental Payment Schedule.** Beginning on the Effective Date, PREMIER shall pay to MPA as rental a facility use fee of \$22,377.04 per calendar month for the Premises and improvements. (The current land rental charge is \$19,935 per acre per Lease Year.

**3.2** The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this AGREEMENT & LEASE), deduction or set off in advance on or before the first day of each and every month that this AGREEMENT & LEASE continues in effect ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate. PREMIER and MPA further understand and agree that in Lease Years two (2) through five (5), MPA will adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). This yearly adjustment will be applied at the beginning of each Lease Year.

**3.3 Domestic Vehicles.** For each Domestic Vehicle delivered to the Premises, PREMIER shall pay MPA a surcharge equal to the amount specified in Section IV (A)(2)(e) of MPA's Terminal Services Schedule No., 15, or such similar provision in any tariffs or schedules as subsequently may be issued by MPA.

**3.4 Shortfall.** In the event PREMIER does not meet its Minimum Guarantee, PREMIER shall become liable for such shortfall and shall pay to MPA as liquidated damages and not as a penalty, a "shortfall charge" equal to \$5.48 per vehicle times the number of vehicles necessary to bring PREMIER volumes up to the Minimum Guarantee. Said shortfall payments shall be made at the conclusion of the Lease Year after such has been billed by MPA, subject to Section 2.1.b.

### **4.0 INTENTIONALLY LEFT BLANK.**

### **5.0 MAINTENANCE:**

#### **5.1 Maintenance Obligations.**

a) PREMIER shall, at its sole cost and expense, repair, replace and maintain in good condition the Premises and every part thereof, including the buildings and equipment located therein, whether installed and/or owned by MPA or PREMIER and shall perform all such items of repair, maintenance, alterations or improvements as may from time to time be required by a governmental body or agency having jurisdiction

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thereof. PREMIER shall keep the Premises and all areas thereof clean and orderly.

b) MPA shall have the responsibility to remedy any inherent defects in the structural members of the portions of the Premises constructed by it, or any other defects in the Premises which defects are proximately caused by inherent defects in or deterioration of said structural members and in no way caused by the operation of PREMIER.

c) MPA shall only be responsible for any of the aforementioned maintenance and repairs upon receipt of written notice from PREMIER specifying the work to be performed. MPA will respond and complete work in a timely fashion upon receipt of written notice and inspection.

d) MPA will maintain new light fixtures installed by MPA; however PREMIER is responsible for light bulb replacement.

**5.2 Alterations & Improvements.** PREMIER shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from MPA, which approval shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by PREMIER, such alterations, improvements or fixtures shall, upon request of MPA, be removed promptly by PREMIER at PREMIER's expense and the Premises restored to their original condition upon the expiration or sooner termination of this AGREEMENT & LEASE. If PREMIER is not so instructed to remove said alterations, improvements or fixtures, the same shall become the property of MPA without MPA paying any compensation therefor. Moveable furniture and trade fixtures which are removable without injury to the Premises shall be and remain the property of PREMIER but must be promptly removed at the termination of this AGREEMENT & LEASE.

**5.3 PREMIER's Obligations to MPA Property.** PREMIER shall be solely responsible to MPA for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to MPA and any improvements thereon, or for which MPA is responsible, for the Premises only, unless such loss, theft or damage is caused by MPA or its employees and except for moveable items that are placed on the Premises without PREMIER's knowledge.

**5.4 Inspection by MPA.** MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**5.5 Pre and Post Inspections.** MPA and PREMIER shall conduct a pre-

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inspection of the Premises and improvements thereon at the beginning of the Term. MPA and PREMIER will also conduct a post inspection of the Premises and improvements thereon which will serve as the basis of PREMIER's restoration responsibilities as set forth in Section 10.0 "Termination".

## **6.0 PREMIER'S ADDITIONAL RESPONSIBILITIES:**

**6.1 Reports.** PREMIER shall submit to MPA a monthly statement of the number of vehicles handled by make, model, manufacturer, VIN number and origination/destination. The report shall be due on the 15<sup>th</sup> day of each month for the month preceding.

**6.2 Utilities & Maintenance.** Except as otherwise provided herein, PREMIER shall contract and pay for all utility or maintenance services provided to the Premises, including water, gas, electricity, telephone, sewage, janitorial, snow removal and other maintenance services.

**6.3 Security of Premises.** PREMIER shall assume complete responsibility for security of the Premises, and the facility improvements, buildings and property located thereon and therein. MPA assumes no responsibility to PREMIER for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection therewith.

**6.4 Liens and Encumbrances.** PREMIER shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

**6.5 Qualification to do Business in Maryland.** At all times during the Term PREMIER is and shall continue to be legally qualified to do business in the State of Maryland.

**6.6 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA.

**6.7 Rules, Regulations and Laws.** PREMIER agrees to comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, MPA's tenants, invitees, licensees and the general public. PREMIER further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. PREMIER further agrees to indemnify, defend and hold

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harmless MPA, its agents and employees from any liability or penalty which may be imposed upon MPA by governmental authority by reason of any violation by PREMIER or its agents.

## **7.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE:**

**7.1 Liability.** MPA shall not be liable to PREMIER for any loss, injury or damage to PREMIER or PREMIER's property from any cause unless such cause is due to MPA negligence.

### **7.2 Environmental Responsibilities.**

a) **PREMIER's Responsibilities.** PREMIER shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to PREMIER's performance of its obligations pursuant to this AGREEMENT & LEASE and/or PREMIER's use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). PREMIER shall establish and maintain a program of compliance with all applicable Environmental Standards. PREMIER shall monitor its compliance with Environmental Standards and immediately halt and correct any incident of non-compliance.

b) **Non-Compliance.** In the event of any incident of non-compliance with Environmental Standards, PREMIER shall:

1) Give MPA immediate notice of the incident, providing as much detail as possible;

2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,

3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

c) **PREMIER's Liability for Non-Compliance.** PREMIER shall be liable for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards.

### **7.3 Insurance & Indemnity.**

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a) **PREMIER** agrees to indemnify, protect, defend and save harmless **MPA**, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which **MPA**, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation by reason of negligence of **PREMIER** or its officers, agents or employees, contractors, sub-contractors, invitees and licensees, unless caused by the negligence of **MPA**, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by **MPA**, its agents and employees or be against or sustained by others to whom **MPA**, its agents or employees, may become liable.

b) **PREMIER** shall at all times during the Term of this **AGREEMENT & LEASE**, maintain such worker's compensation or employer's liability insurance as may be required by law.

c) **PREMIER** shall also maintain at its expense, liability insurance with minimum limits of \$ 5,000,000. per occurrence and \$ 5,000,000 per aggregate for bodily injury and property damage and \$ 100,000 (any one fire) for Fire Legal Liability for the protection of **MPA** and **PREMIER** against any claims, suits, demands, or judgements by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by **PREMIER**. **MPA** shall be named as Additional Insured under said insurance and Certificates of Insurance shall be forwarded to **MPA** providing proof of coverage.

d) **PREMIER** shall also maintain throughout the Term of this **AGREEMENT & LEASE**, at its sole cost and expense, property insurance to insure against damage to or loss of the improvements on the Premises, including all fixtures and equipment, said property insurance to be in the amount sufficient to provide coverage for the full replacement and restoration of the Improvements.

e) Nothing contained herein shall require **MPA** to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of **PREMIER**, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

f) **PREMIER** shall not use the Premises in such a manner (unless permitted under this **AGREEMENT & LEASE**) which would cause an increase in the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of **MPA**, the full amount of any resulting increase in premiums paid by **MPA** with respect to the buildings

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or structures of which the Premises are a part, and to the extent allocable to the Term of this **AGREEMENT & LEASE**, may be added to the amount of rental specified in Section 3 supra and shall be paid by **PREMIER** to **MPA** upon the monthly rental day next thereafter occurring.

**7.4 Liens.** At all times prior to termination of this **AGREEMENT & LEASE**, **PREMIER** shall defend, indemnify and hold harmless **MPA** against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of **PREMIER** or its contractors, agents or employees.

**7.5 Defense Against Suits.** **PREMIER** shall promptly pay any and all costs or expenses (including actual attorney's fees and consultant fees) which may be incurred by **MPA** as well as any judgments or decrees in favor of **MPA**:

- a) in enforcing the obligations of **PREMIER** under the covenants, terms or provisions of this **AGREEMENT & LEASE**;
- b) in obtaining possession of the Premises as the result of any default by **PREMIER** or otherwise;
- c) in defending any suit or proceeding brought against **MPA** for the violation by **PREMIER** of any law, ordinance, rule or regulation;
- d) in defending any action or suit for damages because of any failure, neglect or default on the part of **PREMIER**.

**7.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, **PREMIER** shall immediately notify **MPA** in writing and shall promptly thereafter furnish to **MPA** copies of all reports given to **PREMIER's** insurance carrier or carriers.

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## **8.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**8.1 Partial Destruction.** If, during the Term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this **AGREEMENT & LEASE**. If the existing laws do not permit the restoration, either party can terminate this **AGREEMENT & LEASE** immediately by giving notice to the other party. MPA and **PREMIER** agree that **PREMIER's** rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed Premises are refurbished and available for use.

**8.2 Total Destruction.** If, during the Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

a) to provide **PREMIER** with a reasonable approximation of the time necessary to conduct necessary repairs or restoration and repair or restore the damage within the designated time period (which in no event shall be longer than two hundred forty (240) days), in which event such destruction shall not terminate this **AGREEMENT & LEASE**; or

b) to give notice to **PREMIER** within thirty (30) days of such destruction terminating this **AGREEMENT & LEASE** as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the giving of the notice. If the existing laws do not permit the restoration, either party can terminate this **AGREEMENT & LEASE** immediately by giving notice to the other party. Total destruction shall be any destruction which precludes **PREMIER** from performing any significant portion of its operations at the Premises.

## **9.0 DEFAULT AND REMEDIES:**

**9.1 Default.** The occurrence of any of the following shall constitute a default by **PREMIER**:

a) **Default in Rent.** Failure to pay when due any rental or other charge, if the failure continues for ten (10) business days after notice has been given to **PREMIER**;

b) **Default in Other Covenants.** Failure to perform any other provision of this **AGREEMENT & LEASE** if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to **PREMIER**. If the default cannot be

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reasonably cured within thirty (30) days, PREMIER shall not be in default if PREMIER commences to cure the default within the thirty (30) day notice period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably practicable;

c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of PREMIER; an assignment by PREMIER for the benefit of creditors; the filing by PREMIER of a voluntary petition in bankruptcy; an adjudication that PREMIER is bankrupt or the appointment of a receiver for the properties of PREMIER; the filing of an involuntary petition of bankruptcy and failure of PREMIER to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on PREMIER's lease hold interest hereunder and failure of PREMIER to secure a discharge of the attachment or release of the levy of execution with sixty (60) days; and

d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

**9.2 Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that PREMIER performs the relevant provision of this AGREEMENT & LEASE or pay the rental or charges which are in arrears, as the case may be, within the applicable period time.

**9.3 MPA Remedies in Case of PREMIER Default.** MPA shall have the following remedies if PREMIER is in default and such default is not cured. These remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy at a later time.

a) **Termination of Agreement & Lease and Right to Possession.** MPA may, at its option, terminate this AGREEMENT & LEASE and terminate PREMIER's right to possession by giving written notice of termination to PREMIER. Upon receipt of such notice, PREMIER shall vacate the Premises immediately and within thirty (30) days thereafter remove any property of PREMIER, including any fixtures that PREMIER is required to remove at the end of the Term and perform any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the Term of this AGREEMENT & LEASE, and deliver all keys to the MPA.

b) **Re-entry and Distraint.** MPA may, at its option, terminate this AGREEMENT & LEASE and re-enter the Premises and distraint upon any of PREMIER's property.

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c) **Liquidated Damages.** MPA shall have the right to receive from PREMIER as of the date of termination the following sums as liquidated damages and not as a penalty:

1) The amount of the unpaid rental accrued and due at the time of the termination of this **AGREEMENT & LEASE**;

2) The amount, at the time of the award of a subsequent lease to a third party, by which the unpaid rental for the rest of the Term of this **AGREEMENT & LEASE** exceeds the rental obtained from a subsequent lease to a third party provided that the amount of the loss of rental does not exceed such amount that PREMIER proves could have been reasonably avoided by MPA mitigation; and

3) Any other amount, and court costs, necessary to compensate MPA for all detriment proximately caused by PREMIER's default, including the reasonable costs of any cleanup, refurbishing, removal of PREMIER's property and fixtures, or any other expense occasioned by PREMIER's failure to quit the Premises upon termination and to leave them in condition specified herein.

4) The shortfall charge for each and every Lease Year remaining in the Term, including the Lease Year of termination, and without prejudice to recovery by MPA of any shortfall charge due at the time of termination of the **AGREEMENT & LEASE**.

**9.4 Use of Abandoned Property.** Provided MPA gives prior written notice to PREMIER, MPA may:

a) use all or any part of PREMIER's personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this **AGREEMENT & LEASE** without compensation to PREMIER and without liability for such use or damage; or

b) store all or any of PREMIER's personal property and trade fixtures for the account of and at the expense of PREMIER.

**9.5 MPA Obligation to Relet.** Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or to relet to a person or entity that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term

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of this **AGREEMENT & LEASE**, upon any reasonable terms and conditions. If **MPA** relets the Premises, rental that **MPA** receives from reletting shall be applied to the payment of:

First, any indebtedness from **PREMIER** to **MPA** other than rental due from **PREMIER**;

Second, all costs, including for maintenance, incurred by **MPA** in reletting;

Third, rental due and unpaid under this **AGREEMENT & LEASE**. After deducting the payments referred to in this subsection, any sum remaining from the rental **MPA** receives from reletting shall be held by **MPA** and applied in payment of future rental as rental becomes due under this **AGREEMENT & LEASE**. In no event shall **PREMIER** be entitled to any excess rent received by **MPA**. If, on the date rent is due under this **AGREEMENT & LEASE**, the rental received from the reletting is less than the rental due on that date, **PREMIER** shall pay to **MPA**, in addition to the remaining rental due, all costs, including for maintenance, **MPA** incurred in reletting that remain after applying the rental received from the reletting as provided in this subsection.

## **10.0 TERMINATION:**

**10.1 Surrender.** Upon expiration or earlier termination of this **AGREEMENT & LEASE**, **PREMIER** shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises, except for alterations which **PREMIER** has a right to remove or is obligated to remove. **PREMIER** shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any alterations or removal of **PREMIER**'s personal property.

**10.2 PREMIER Termination.** **PREMIER** may elect to terminate this **AGREEMENT & LEASE** upon ninety (90) days written notice to **MPA** if **PREMIER** is prohibited from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority in the United States of America.

**10.3 MPA Termination.** **MPA** may terminate this **AGREEMENT & LEASE** upon ninety (90) days written notice to **PREMIER** if **MPA** is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority in the United States of America.

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**11.0 POWERS OF MPA:**

It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. MPA is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this **AGREEMENT & LEASE**, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by PREMIER or any other legal entity in connection with, or as the result of, or growing out of any such prevention, restriction or delay. MPA represents and warrants that it is presently empowered under Maryland law to enter into this **AGREEMENT & LEASE** and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this **AGREEMENT & LEASE**.

**12.0 FORCE MAJEURE:**

a) MPA and PREMIER shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, order by any agency or commission of the United States of America, public emergency, strikes, boycotts, picketing, and work stoppages.

b) Except for a strike, riot, act of God or any act or state of war or public emergency or Government regulations, no abatement, diminution or reduction of the rent or other charges payable by PREMIER shall be claimed by or allowed to PREMIER for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present law, rule, requirement, order direction, ordinance or regulation of the United States of America, or of the State, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any cause or causes beyond the control of MPA, nor shall this **AGREEMENT & LEASE** be affected by any such cause.

c) PREMIER or the MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

**13.0 GENERAL PROVISIONS:**

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**13.1 Assignment & Subletting.** PREMIER shall not assign this AGREEMENT & LEASE nor sublet the Premises in whole or in part, without the prior written consent of MPA and approval of the Maryland Board of Public Works. Consent by MPA to any assignment or subletting shall not operate to release PREMIER from any of its obligations under the terms of this AGREEMENT & LEASE. Without prejudice to the foregoing, and subject to Board of Public Works prior approval, PREMIER may sublet the Premises to any automobile manufacturers deemed reputable by MPA.

**13.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

**TO PREMIER:**

President  
Premier Automotive Services, Inc.  
ADDRESS  
ADDRESS

**TO MPA:**

Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

**13.3 Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this AGREEMENT & LEASE shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**13.4 Applicable Law.** It is expressly understood and agreed that this AGREEMENT & LEASE and all questions arising thereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this AGREEMENT & LEASE shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

**13.5 Binding Effect.** This AGREEMENT & LEASE shall bind the parties, their

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successors and assigns.

**13.6 Authority.** Each individual executing this **AGREEMENT & LEASE** on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this **AGREEMENT & LEASE** on behalf of such party.

**13.7 Severability.** The invalidity of any provision of this **AGREEMENT & LEASE** as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this **AGREEMENT & LEASE**.

**13.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this **AGREEMENT & LEASE**.

**13.9 Quiet Enjoyment.** MPA covenants and agrees that so long as **PREMIER** is not in default hereunder, it shall quietly enjoy the Premises.

**13.10 Survival.** All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this **AGREEMENT & LEASE** or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this **AGREEMENT & LEASE**, including (without limitation) the obligations of **PREMIER** pursuant to Section 7 hereof, shall survive the termination of this **AGREEMENT & LEASE**.

**13.11 AGREEMENT & LEASE for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this **AGREEMENT & LEASE** shall be for the sole benefit of the parties and that no other person, corporation or other entity is intended to be a beneficiary of this **AGREEMENT & LEASE**.

**13.12 Amendments.** This **AGREEMENT & LEASE** may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this **AGREEMENT & LEASE** and signed by both parties, subject to the approval of the Maryland Board of Public Works.

**13.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this **AGREEMENT & LEASE** shall be taken and construed to be cumulative.

**13.14 Remedies Cumulative.** All remedies provided in this **AGREEMENT & LEASE** shall be taken and construed to be cumulative; that is, in addition to any and all

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other remedies provided to the parties at law or in equity.

**13.15 Integration.** This **AGREEMENT & LEASE** constitutes the entire agreement between **MPA** and **PREMIER** with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this **AGREEMENT & LEASE.**

(END)

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**IN WITNESS WHEREOF**, the parties hereto have caused this **AGREEMENT & LEASE** to be duly executed as of the day and year first above written.

**PREMIER AUTOMOTIVE SERVICES, INC.**

By: \_\_\_\_\_  
James G. Robinson  
President

**MARYLAND PORT ADMINISTRATION**

BY: \_\_\_\_\_  
James J. White  
Executive Director

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Assistant Attorney General

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STATE OF MARYLAND  
SS:

\_\_\_\_\_ OF MARYLAND

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the subscriber, a Notary Public of the State of Maryland, in and for the \_\_\_\_\_ of Baltimore, personally appeared James J. White, Executive Director, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, who acknowledged the foregoing instrument to be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

(SEAL)

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STATE OF

SS:

\_\_\_\_\_ OF

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, in and for the \_\_\_\_\_ of \_\_\_\_\_ personally appeared James G. Robinson who acknowledged himself to be the President of **PREMIER AUTOMOTIVE SERVICES, INC.** and that he, as such being authorized so to do, acknowledged the foregoing instrument to be the duly authorized act and deed of **PREMIER AUTOMOTIVE SERVICES, INC.**

WITNESS my hand and Notarial Seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

(SEAL)

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CONFIDENTIAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION

IN RE: Chapter 11

PREMIER AUTOMOTIVE

SERVICES, INC.

Case No.: 05-20168

Debtor

\* \* \* \* \*  
PREMIER AUTOMOTIVE SERVICES, Adversary No.:

INC.

05-01378

Plaintiff

vs.

ROBERT L. FLANAGAN, et al.

Defendants

\_\_\_\_\_ /

The deposition of MICHAEL ROBINSON was held on Monday, October 17, 2005, commencing at 9:40 a.m. at the offices of Maryland Port Administration, The World Trade Center, Baltimore, Maryland 21202 before Susan M. Wootton, Notary Public.

REPORTED BY: Susan M. Wootton, RPR, CLR

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1 (A discussion was held off the record.)

2 (The witness returned to the room.)

3 (The reporter read back the last question  
4 and answer as requested.)

5 MR. FAX: Just to clarify, this is in the  
6 context of whatever discussions he has recently had?

7 MR. SMITH: That is correct. What do you  
8 process for CNH?

9 THE WITNESS: A number of different  
10 agricultural and construction vehicles.

11 Q Can you describe those vehicles for us?  
12 You say agricultural and construction. What are you  
13 talking about?

14 A Maxim, or you can go compact tractors,  
15 Maxim tractors, Magnum tractors, that is kind of like  
16 small, medium, large, wheel loaders, tractor loader,  
17 back hoes, excavators, balers, combines. I think I've  
18 got them all.

19 Q When you describe a vehicle as a baler,  
20 what are you talking about? What does it look like?

21 Is that like --

1           A        Are you familiar with the term, I guess  
2       like bale of hay and all that? You've got like, you've  
3       got two types of balers that are like round or square  
4       depending on the way that it makes the hay go.

5           Q        Okay.

6           A        So, the particular balers that we handle  
7       have, have wheels on them, and then you would actually  
8       attach a tractor hitch to the baler and then go ahead  
9       and move it around the field to do whatever you, you  
10      know, particularly do, and we handle both import and  
11      export balers.

12          Q        When you use the term, describe the  
13      equipment as an excavator, a vehicle as an excavator,  
14      what are you talking about?

15          A        A metal dinosaur with metal tracks.

16          Q        It has an arm and a reach, but it has the  
17      bucket on it --

18          A        That is correct.

19          Q        -- where the operator sits on it and scoops  
20      into the dirt and pulls dirt up?

21          A        Exactly.

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1 Q Can you drive these tractors into the  
2 building at lot 90?

3 A Some yes, some no.

4 Q What is the nature of the work that you do  
5 for Hino trucks?

6 A We receive, process, store and accessorize  
7 units.

8 Q When you say accessorize, what does that  
9 mean?

10 A It means to add different accessories to  
11 the, to a base model truck.

12 Q You said add accessories to a base model  
13 truck. Can you give us an example of an accessory that  
14 you add?

15 A Sure, air conditioning.

16 Q Okay. Anything else?

17 A Well, there is plenty, dual fuel tanks,  
18 radio cassettes, I guess nowadays it's radio DVDs, tire  
19 swaps, block heaters.

20 MR. FAX: What?

21 THE WITNESS: Block heaters, decals, pin

1 stripes.

2 Q What is the relationship between Hino and  
3 Toyota?

4 A Well, Hino is a subsidiary of Toyota, an  
5 independent subsidiary of Toyota.

6 Q What type of work do you do for McCormick?

7 A We receive, process and store, store  
8 tractors that come in via container in knock-down form  
9 and units that are already assembled.

10 Q Do you do any work for Toyota independently  
11 of Hino?

12 A No.

13 Q Does there currently exist a contract  
14 between Premier and Hino for the processing work that  
15 you perform at Premier?

16 A No, we are working off a pricing letter.

17 MR. FAX: What? Excuse me.

18 THE WITNESS: We are working off of a  
19 pricing letter.

20 Q What is a pricing letter?

21 A Just it shows, I should say pricing

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1 schedule. It shows the time frame and then the price,  
2 you know, per unit, per accessory you effect, in other  
3 words, anything that is done.

4 Q Is there a duration on the rates that you  
5 give them for the work, for the pricing letter?

6 A Yes.

7 Q When does the current pricing letter with  
8 Hino expire?

9 A I'm not sure.

10 Q Have you been involved in any discussions,  
11 negotiations with Hino for future work?

12 A No.

13 Q Have you been involved in any discussions  
14 internally in which Hino has been discussed as a future  
15 client of Premier?

16 A Can you repeat that again?

17 Q Have you been involved in any internal  
18 discussions as to whether Hino, whether there is any  
19 prospect for Hino as a future client?

20 A Yes.

21 Q Based on those internal discussions, is

1 Hino, is Hino, will Hino still be a customer at the end  
2 of this year?

3 MR. FAX: I'm not sure I understand the  
4 question. I've got to object.

5 MR. SMITH: Okay. Let me see if I can't  
6 clean it up. It's a little ragged, okay.

7 Has Hino informed you whether they will  
8 still do business with you by, at the end, after the  
9 end of this year, after December 2005?

10 THE WITNESS: No.

11 Q Is that, no, they haven't told you or, no,  
12 that they would not be doing business with you?

13 A No, they haven't told us that we are not  
14 going to be doing business with them.

15 Q Have you been involved in any internal  
16 discussions regarding Hino moving its operations to the  
17 West Coast at the end of this year?

18 A Yes.

19 Q Has Hino informed you that it will be  
20 moving its operations to the West Coast at the end of  
21 this year?

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1 A Yes.

2 Q At the end of this year, will Premier still  
3 be a processor for Hino trucks?

4 A I'm not sure.

5 Q To your knowledge, does Premier have a  
6 contract with McCormick?

7 A No.

8 Q Can you describe for us the arrangements  
9 that you have with any entity for doing McCormick's  
10 work?

11 A We do work based on the pricing letter.

12 Q Can you tell us who you offered the pricing  
13 letter to? Was it directly to McCormick or was it to  
14 somebody else?

15 A No, it's to McCormick directly.

16 Q And is that pricing letter valid for a  
17 year, or is there some other arrangement?

18 A It's actually an ongoing letter.

19 Q How many vehicles do you process for  
20 McCormick?

21 A Approximately 500-plus.

1 MR. FAX: In what time frame are we talking  
2 about?

3 MR. SMITH: I'm trying to find out. When  
4 you say 500, is that 500 a month or 500 a year?

5 THE WITNESS: I would say it's a yearly  
6 basis.

7 Q You also rent from the Maryland Port  
8 Administration, lot 401 at Dundalk, Dundalk Marine  
9 Terminal, is that correct?

10 A That is correct.

11 Q Do you do different work at 401 than you do  
12 at lot 90?

13 A Some different, some similar.

14 Q Okay. What do you do differently at lot  
15 401 than you do at lot 90?

16 A Loader installation and assembly of  
17 tractors.

18 Q Is there a building located on lot 401?

19 A Yes.

20 Q Do you own the building at lot 401?

21 A Yes.

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1 Q What is the size of that building?

2 A I don't have the specific dimensions with  
3 me, but I mean it's approximately 27,500 feet.

4 Q Is the building, to your knowledge, is the  
5 building on lot 401 larger than the building at lot 90?

6 (A discussion was held off the record.)

7 Q I will repeat the question. Is the  
8 building at lot 401 larger than the building at lot 90?

9 A What do you mean by larger?

10 Q In terms of dimensions.

11 A Yes.

12 Q Does the building at lot 401 have a paint  
13 and body shop?

14 A No.

15 Q Does it have a wash line?

16 A No.

17 Q Has Premier processed vehicles for CNH at  
18 lot 401?

19 A Yes.

20 Q Has Premier processed vehicles for Hino on  
21 lot 401?

1 A Yes.

2 Q Has Premier processed vehicles for  
3 McCormick at lot 401?

4 A Yes.

5 Q For lot 90, have you told, can you think of  
6 anything else that you process on lot 90 than what  
7 you've already told us?

8 A No.

9 Q Since January 1, 2001, have you processed  
10 any vehicle that did not have its point of origin from  
11 water-borne commerce?

12 Stated differently, have you processed any  
13 vehicles that didn't come in on a ship?

14 MR. FAX: Well, he said they were  
15 processing --

16 THE WITNESS: You're talking about, I guess  
17 more, are you talking about water-borne or are you  
18 talking about -- water-borne, okay, that is fine,  
19 either coming in or out?

20 MR. SMITH: Yes. We will get to going out.  
21 I'm dealing with both ways. I just broke it out for

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1 clarity.

2 THE WITNESS: You're saying water-borne  
3 commerce means in or out, export or import?

4 MR. SMITH: Right, that's correct.

5 THE WITNESS: That's what you're getting  
6 at. No.

7 MR. SMITH: Okay.

8 MR. FAX: Well, no, he said point of origin  
9 from water-borne commerce.

10 MR. SMITH: That's correct. Right.

11 MR. FAX: If it's export, its point of  
12 origin.

13 MR. SMITH: That's correct. Right.

14 MR. FAX: The point of origin might be  
15 somewhere on land. It's point of destination is the  
16 water-borne --

17 MR. SMITH: Let's go off the record a  
18 second.

19 (A discussion was held off the record.)

20 MR. SMITH: Have you processed any vehicles  
21 at lot 90 that, in terms of, that did not come into

1 this port via ship? I will just do it that way.

2 THE WITNESS: No.

3 MR. SMITH: Okay. Have you processed any  
4 vehicles at lot 90 that were prepared, that were not  
5 prepared for exporting via ship?

6 MR. FAX: Time frame?

7 MR. SMITH: Since January 1, 2001.

8 THE WITNESS: Could you repeat that again?

9 Q Okay. Have you processed any vehicles  
10 since January 1st, 2001 on lot 90 that wasn't being  
11 prepared for export?

12 A Yes.

13 Q Okay. Can you tell us what those were?

14 A The import units that we were processing.

15 Q Okay. Since January 1, 2001, have you  
16 worked on any vehicles on lot 90 not recently imported  
17 by water into the port of Baltimore at the Dundalk  
18 Marine Terminal or any other terminal?

19 A What do you mean by worked on?

20 Q Worked on, okay, I will use your term in  
21 terms of process.

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1                   Have you processed any vehicles not  
2 recently imported by water into the port of Baltimore?

3           A       We have done maybe a few, what I would call  
4 like body and paint repair for private cars, but no,  
5 but no storing or processing or handling.

6           Q       Okay. Do you have work that is performed  
7 on lot 90 that couldn't be performed at lot 401?

8                   MR. FAX: I'm sorry?

9                   MR. SMITH: Do you have work, like do you  
10 have processing work, when you process a vehicle, is  
11 there work that, that you couldn't perform at lot --

12                   MR. FAX: Could not perform?

13                   MR. SMITH: -- could not perform at lot  
14 401?

15                   THE WITNESS: Yes.

16           Q       What is that?

17           A       Body and paint and certain, certain  
18 warranty and campaign work.

19           Q       Okay. Is that because 401 doesn't have a  
20 body and paint shop?

21           A       That is correct.

1 (A discussion was held off the record.)

2 Q Mr. Robinson, you testified that Premier  
3 was doing work for BDS on behalf of AGCO?

4 A That is correct.

5 Q Who is AGCO?

6 A It's a large manufacturer of farm and  
7 construction equipment headquartered in, in Georgia.

8 Q How often are you doing this work for BDS?

9 (A discussion was held off the record.)

10 THE WITNESS: Bob, David, Sam.

11 Q What was that?

12 A Bob, David, Sam. Approximately every week,  
13 every other week.

14 Q Do you know how many vehicles that you're  
15 processing?

16 A Well, it's in, a big chunk of our work is  
17 actually body and paint repair, and in the past we have  
18 done warranty campaigns as well.

19 But, to give you an idea, in the last six  
20 months we have probably, alone we have probably painted  
21 over, done about, I want to say, 70 different, you

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1 know, different applications of paint, painting work.

2 Q Is your view that, if Premier must limit  
3 its activity at Dundalk Marine Terminal to just  
4 lot 401, Premier cannot continue its operation and will  
5 be forced out of business?

6 A Repeat the question again?

7 Q If you didn't have lot 90 and only had  
8 lot 401, is it your view that Premier then would be  
9 forced out of business?

10 A Yes.

11 Q What is the basis for that position?

12 A My opinion?

13 Q Yes, what is the basis for that position?

14 You've stated that you agreed with that.

15 A Well, I think the nature, the nature of our  
16 business, it's necessary to have certain facilities  
17 that 90 provides, lot 90 provides and it's important in  
18 solicitation of new business.

19 Q To your knowledge, has Premier looked for  
20 space off the Dundalk Marine Terminal to carry on its  
21 operations?



Maryland Port Administration  
The World Trade Center  
Baltimore, Maryland 21202-3041

Robert L. Ehrlich, Jr.  
Governor

Maryland Port Commission

Robert L. Flanagan  
Chairman

Wayne K. Curry  
George C. Doub, III  
Thomas T. Koch  
Milton H. Miller, Sr.  
Robert I. Sewall  
Fred L. Wineland

James J. White  
Executive Director

February 9, 2004

Mr. Michael J. Robinson,  
Vice President General Manager  
Premier Automotive Services, Inc.  
Dundalk Marine Terminal  
2700 Broening Highway  
Dundalk, Maryland 21222

Dear Mr. Robinson:

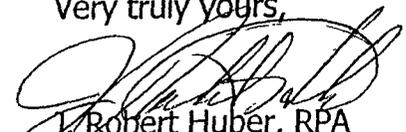
As you know, the Maryland Port Administration and Premier Automotive Services, Inc. have been in negotiation to provide Premier a new lease that would replace the expired agreement. These negotiations have continued since the lease expiration of June 30, 2002 and the MPA agreed to place the lease in a holdover status recognizing our continued negotiations. To date, these negotiations have been unsuccessful.

It is the policy of the MPA to require automobile tenants to guarantee a specific throughput rate for each acre of land that they occupy. Since Premier Automotive has been unable to provide the business commitment to meet the throughput rate, we feel that it is in the best interest of both parties to discontinue any long-term lease provisions and issue a month-to-month lease for the premises presently occupied by Premier.

We have enclosed, for your signature, a month-to-month lease for a total of 6.47 acres in Area 90 at the Dundalk Marine Terminal. We would ask that you sign the agreement as soon as possible and return it to the MPA for execution. We are hoping to receive the signed agreements from you by February 24, 2004.

Should you have any questions about the lease agreement or our throughput policy, please give me a call.

Very truly yours,

  
J. Robert Huber, RPA  
Real Estate Administrator

JRH/trv  
Enclosure

# LEASE

## PREMIER AUTOMOTIVE SERVICES, INC.

THIS LEASE made as of this \_\_\_\_ day of \_\_\_\_\_ 2004, by and between **MARYLAND PORT ADMINISTRATION**, an instrumentality of the Department of Transportation of the State of Maryland (hereinafter referred to as "**MPA**") and **Premier Automotive Services, Inc.** (hereinafter referred to as "**Premier**").

In consideration of the mutual covenants and agreements hereinafter contained and the rents hereinafter reserved **MPA** and **Premier** agree as follows:

### SECTION 1: DEMISE.

**MPA** hereby leases to **Premier** and **Premier** leases from **MPA** the land and improvements consisting of approximately 6.47 acres in Area 90, Dundalk Marine Terminal, 2700 Broening Highway, Dundalk, Maryland 21224, as more fully identified and described on Exhibit A attached hereto ("Premises") from month to month commencing on February 1, 2003 ("Effective Date"). **MPA** recognizes that **Premier** has constructed, installed and owns certain buildings and related improvements, appurtenances and fixtures pre-existing on the Premises at the Effective Date hereof, described as including a large metal-framed building consisting of approximately 23,750 square foot ("Pre-Existing Improvements")

### SECTION 2: MPA TERMINAL SERVICES SCHEDULE.

Where applicable the prevailing **MPA** Terminal Services Schedule filed with the Federal Maritime Commission, posted on the Internet (<http://www.mpa.state.md.us/>, or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by **MPA** pursuant to Federal, State or other applicable law ("Schedule"), is hereby incorporated by reference into this Lease as if set forth at length and such shall govern and control this Lease except where same conflicts with this Lease. In such event this Lease shall prevail.

### SECTION 3: RENT.

**Premier** shall pay as rent for the Premises the sum of **Eleven Thousand Eight Hundred Sixty-one Dollars and Sixty-Seven Cents (\$11,861.67)** per month (6.47 acres @ \$22,000 per acre/per year) the first month's rent being due on the Effective Date. Thereafter, the rent for each month shall be paid to **MPA** in advance on or before the first day of each and every month that this Lease continues in effect ("Monthly Rental Day") without notice, demand, abatement (except as otherwise specifically provided in this Lease), deduction or set-off, and shall be payable at such place as **MPA** may hereinafter designate. If the Effective Date shall be on a day other than the

first day of a month, the rent for any such month shall be prorated and paid on a per diem basis.

**Premier shall pay to MPA as additional rent ("Additional Rent") all other sums of money, which shall become due and payable under this Lease. Unless a date for payment is otherwise specified herein, all Additional Rent shall be due and payable within thirty (30) days of invoicing by MPA. Premier's obligation to pay the rent and Additional Rent shall be independent of MPA's obligations under this Lease.**

Should **MPA** increase rental rates in the Schedule, those increased charges shall immediately apply to this **Lease** and all rental rates and monthly charges in this **Lease** shall be changed to reflect that increase with effect from the date of increase.

**SECTION 4: SECURITY DEPOSIT.**

**Premier shall pay to MPA a security deposit equal to one month's rent, which amount shall be paid on the Effective Date and shall be held as security for the performance by Premier of its obligations under this Lease. The security deposit shall be refundable on the termination of the Lease without interest, provided the Lease has been complied with in all aspects by Premier. If Premier shall default in any obligation, MPA shall be entitled to apply the security deposit, pro tanto, against any damages which it may sustain, but such application shall not preclude MPA from recovering greater damages if the same can be established.**

**SECTION 5: TERMINATION.**

Either party hereto may terminate this **Lease** at anytime by giving not less than thirty (30) days prior written notice to the other party, unless a lesser period is prescribed under any other section hereof, and subject to Section 35 hereof.

If this **Lease** is terminated for any reason whatsoever other than for default by **Premier** or pursuant to Section 21 hereof, the rent and other charges set forth herein shall be apportioned as of the date of termination and **Premier's** account credited with respect to any pre-paid rent or charges, or debited accordingly. Any balance owing by one party shall be paid to the other within a reasonable time.

If **MPA** terminates the **Lease** as a result of default by **Premier** or pursuant to Section 21 hereof, **Premier** shall nevertheless remain liable for (a) any rent and damages which may be due or sustained prior to such termination, all reasonable costs, fees and expenses, including, but not limited to reasonable attorneys' fees, incurred by **MPA** in pursuit of its remedies hereunder, or in renting the Premises to others, together with (b) liquidated damages of one month's rent.

**SECTION 6: USE OF PREMISES.**

Premier shall have the right to use the Premises exclusively for receiving, processing and distribution of motor, commercial and industrial vehicles, parts and accessories and it shall not be used for any other purpose without the prior written approval of MPA.

**SECTION 7: UTILITIES.**

Utilities for which service shall be provided to the Premises by MPA and those to be furnished by Premier are as set forth below. Premier shall pay MPA for such utilities provided by MPA upon receipt of MPA's billing. Premier shall be fully responsible for and shall promptly pay, as and when the same shall become due and payable, all charges for all other utilities used or consumed in the Premises. In the event the Premises are part of a building or any larger premises ("Area") Premier shall pay MPA its pro rata share of MPA's costs of supplying utilities to all the tenants in the area and such pro rata share may be computed by MPA on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

	<u>Provided By</u>	<u>Paid By</u>
ELECTRICITY	MPA	Premier
WATER	Premier	Premier
TRASH DISPOSAL	Premier	Premier
SNOW REMOVAL	Premier	Premier

**SECTION 8: ACCEPTANCE OF PREMISES.**

Prior to the Effective Date, the parties shall conduct an inspection of the Premises and agree in writing ("Inspection Report") upon the condition of the Premises. Premier accepts the Premises in the condition "as is". MPA gives no warranties as to the condition of the Premises or its suitability for Premier's operations at the Premises. Upon termination of this Lease, Premier and MPA shall again conduct a joint inspection of the Premises and Premier agrees to return the Premises to MPA in the same condition as that agreed to in the Inspection Report, reasonable wear and tear and damage by Casualty (as defined in Section 26 hereof) excepted.

**SECTION 9: RETURN OF PREMISES.**

At the expiration or sooner termination of this Lease, Premier shall return the Premises to MPA in the same condition in which received, reasonable wear and tear and damage by Casualty excepted.

Any and all buildings, fixtures, machinery, equipment or improvements installed, erected or caused to be erected by Premier upon the leased premises at Premier's

expense shall be owned by **Premier** and must be removed by it at its expense upon the termination of this **Lease** or any renewal thereof; or, in the event that **Premier** requests, in writing, **MPA's** permission to leave any and all buildings, fixtures, machinery, equipment or improvements erected and intact and **MPA** specifically notifies **Premier** in writing that **MPA** specifically allows and agrees that the buildings, fixtures, machinery, equipment or improvements, erected by **Premier** may remain in place, **Premier** shall be deemed to have abandoned all of its property in the buildings or other fixtures, machinery, equipment or improvements left behind to **MPA**.

In the event that **MPA** does allow and agree that the buildings, fixtures, machinery, equipment or improvements erected by **Premier** are to remain intact after the termination date of this **Lease** or any renewal thereof, **Premier** agrees that ownership of all the aforementioned buildings, fixtures, machinery, equipment or improvements shall pass to, and be made the property of **MPA**, free and clear of all liens and encumbrances, and without the payment of any consideration whatsoever thereof, and **Premier** shall promptly execute such documents as **MPA** may reasonably require in order to vest title to the same in **MPA**.

Furthermore, in the event that **MPA** does not allow or agree in writing, which allowance or agreement shall not be reasonably withheld, that the aforementioned buildings, fixtures, machinery, equipment or improvements shall remain in tact upon the leased premises after the termination date of this **Lease**, or any renewal thereof, **Premier** at its own expenses shall restore the leased premises, except pilings to the condition they were in prior to the installation or erection thereof and shall surrender possession of the leased premises in a neat and orderly condition, ordinary wear and tear excepted.

If **Premier** abandons any buildings, fixtures, machinery, equipment or improvements, **MPA** may remove them at **Premier's** cost and expense. **Premier** agrees to pay **MPA** for all reasonable costs of removal.

#### **SECTION 10: ALTERATIONS & IMPROVEMENTS.**

**Premier** shall make no alterations or improvements to or upon the Premises without first obtaining written approval from **MPA**. In the event any alterations or improvements shall be made by **Premier**, with or without **MPA's** consent, title to all leasehold improvements (meaning any property other than Lessee's Personal Property as hereinunder defined) installed in the Premises at any time, whether by or on behalf of **Premier** or by or on behalf of **MPA**, shall immediately vest in **MPA** without payment of any nature to **Premier**, shall not be removed from the Premises at any time, unless such removal is consented to in advance or requested by **MPA** and the cost of removal is borne solely by **Premier**, and at the termination of this **Lease**, all such leasehold improvements shall remain upon and be surrendered to **MPA** with the Premises, unless removal thereof is consented to in advance or requested by **MPA** and the cost of removal is borne solely by **Premier**.

All Lessee's Personal Property shall remain the property of **Premier** and shall be removable at any time, provided **Premier** is not then in default of any of its obligations under the **Lease**; provided **Premier** shall repair, at its sole cost and expense, any damage to the Premises caused by the removal of said Lessee's Personal Property and shall restore the Premises to substantially the same condition as existed prior to the installation thereof.

"Lessee's Personal Property" means all equipment, machinery, furniture, furnishings and/or other property now or hereafter installed or placed in or on the Premises by and at the sole expense of **Premier** and which (a) is not used or was not procured for use, in connection with the operation, maintenance or protection of the Premises; (b) is removable without damage to the Premises and (c) is not a replacement of any property of **MPA**, whether such replacement is made at **Premier's** expense or otherwise.

Any property belonging to **Premier** or any other person which is left in the Premises after the date the **Lease** is terminated for any reason shall be deemed to have been abandoned. In such event, **MPA** shall have the right to declare itself the owner of such property and to dispose of it in whatever manner **MPA** considers appropriate without waiving its right to claim from **Premier** all expenses and damages caused by **Premier's** failure to remove such property, including costs of removal and storage, and **Premier** shall not have any right to compensation or claim against **MPA** as a result.

To protect **MPA** in the event **Premier** defaults hereunder, **Premier** hereby grants to **MPA** a security interest in Lessee's Personal Property which are or may be put into the Premises during the term of this **Lease** and all proceeds of the foregoing. Said security interest shall secure all amounts to be paid by **Premier** to **MPA** under this **Lease**, including all costs of collection and other costs specified in Sections 5 and 20 hereof, and any other indebtedness of **Premier** to **MPA**. **Premier** agrees to sign any financing statement or security agreement requested by **MPA** in order to perfect such security interest. The security interest granted hereunder shall be in addition to any Landlord's or Warehousemen's lien that may now or at any time hereafter be provided by law.

#### **SECTION 11: MAINTENANCE AND REPAIRS.**

a) At its expense, **MPA** shall repair or remedy any defects in the Premises, which defects are proximately caused by inherent defects in or natural deterioration of the Premises, provided it receives written notice from **Premier** specifying the work to be performed.

b) Notwithstanding the foregoing provisions of this Section 11, **Premier** (and not **MPA**) shall be responsible at its expense for any construction, maintenance or

repair to the Premises required because of any type of casualty or damage to the Premises arising from Premier's negligence, abuse or improper use thereof.

c) At its expense, Premier shall keep the Premises in good order and condition and shall promptly, with or without notice from MPA, perform all necessary repairs, maintenance, and/or replacements to the Premises, other than those specifically denoted as MPA's responsibility in paragraph (a). Failure of Premier to complete such repairs, maintenance and/or replacements, within thirty (30) days of receipt of notice from MPA to effect such repairs, shall be a breach of this Lease.

d) Premier shall be liable to MPA for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to MPA, or for which MPA is responsible, unless such loss, theft or damage is caused by the MPA or its employees.

e) Existing Buildings & Improvements. At the expiration or sooner termination of this Lease, Premier, at Premier's sole cost and expense, shall remove the Pre-Existing Improvements, as defined in Section 1, above, and return the Premises to their original condition prior to construction or installation.

#### **SECTION 12: ACCESS TO PREMISES.**

MPA reserves the right to enter the Premises at any and all reasonable times to inspect the same and to enforce or carry out any provisions of this Lease including determining what maintenance, repairs or replacements are necessary and making the repairs for which it is responsible hereunder; provided that it shall not interfere unduly with Premier's operations except that in an emergency MPA may enter the Premises at any time upon such notice to Premier, if any, as may be feasible in the circumstances. The right to inspect reserved to MPA hereunder shall impose no obligation on MPA to make inspections to ascertain the condition of the Premises, and shall impose no liability upon MPA for failure to make such inspections.

#### **SECTION 13: SIGNAGE.**

No signs or other advertising matter, symbols, canopies or awnings ("Advertising Matter") shall be attached to or painted on or within the Premises, including the windows and doors thereof, without the prior written consent of MPA, which consent shall not be unreasonably withheld. Premier shall, at its expense, maintain such Advertising Matter as may be permitted hereunder in good condition and repair at all times. At the termination of this Lease, all such Advertising Matter shall be removed by Premier at its expense, and Premier shall repair any damage or injury to the Premises, and restore the Premises to its original condition, reasonable wear and tear excepted.

#### **SECTION 14: INGRESS AND EGRESS.**

Premier shall have the right of ingress and egress over the roadway or

roadways leading from and to the Premises. Such right of ingress and egress shall be in common with **MPA** and others authorized by **MPA**.

**SECTION 15: INSURANCE AND INDEMNIFICATION**

(a) **Premier** agrees to indemnify, protect, defend and save harmless **MPA**, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which **MPA**, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation whatsoever (including the parties hereto and their respective officers, agents or employees) occasioned wholly or in part by any act or omission of **Premier**, its officers, agents, employees, contractors, subcontractors, invitees or licensees, in any manner due to, growing out of or connected with the occupation and use of the Premises by **Premier**, unless caused by the negligence or willful misconduct of **MPA**, regardless of whether such suits, actions, claims, demands, damages, losses, expenses and costs be against or sustained by **MPA**, its agents and employees or be against or sustained by others to whom **MPA**, its agents or employees, may become liable.

(b) **Premier** shall at all times during the term of this **Lease** maintain such workers' compensation insurance as may be required by law to include employer's liability insurance in the amount of \$500,000 per occurrence and in the aggregate.

(c) **Premier** shall also maintain at its expense, liability insurance with minimum limits \$5,000,000 (per occurrence) and \$5,000,000 (per aggregate) for bodily injury and property damage and \$ 100,000 (any one fire) for Fire Legal Liability for property damage for the protection of **MPA** and **Premier** against any claims, suits, demands, or judgments by reason of personal injury including death and for any claims of damage to property occurring on or in proximity to the Premises or in any manner arising out of any act or omission of **Premier** or as a result of the occupancy, use or maintenance of the Premises by **Premier**.

(d) Nothing contained herein shall require **MPA** to insure against or be liable for any loss occasioned by fire or other casualty to tangible personal property or fixtures of **Premier**, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

(e) **Premier** shall not use the Premises in such a manner as to invalidate any of **MPA's** policies covering or to increase the existing rates of insurance applicable to the Premises or the Area. If it nevertheless does so, then, at the option of the **MPA**, the full amount of any resulting increase in premiums paid by **MPA** with respect to the Premises or the Area may be added to the amount of rent hereinabove specified and shall be paid by **Premier** to **MPA** upon the Monthly Rental Day next thereafter occurring.

(f) All insurance policies required hereunder shall provide that they shall not be canceled, materially changed or not renewed without at least thirty (30) days prior written notice to **MPA**.

(g) **MPA** shall approve the company writing any insurance required hereunder together with the form of such insurance. Copies of each such policy, or a certificate thereof, shall be delivered to **MPA** promptly after the Effective Date. No acceptance or approval of any policy by **MPA** shall relieve or release **Premier** from any liability, duty or obligation assumed by or imposed upon it by the terms of this **Lease**.

(h) **Premier** shall cause its insurance contractor to name **MPA** as an additional insured party under all insurance policies required under this **Lease**.

(i) **Premier** shall be liable for and promptly pay any and all costs, expenses (including, without limitation, reasonable attorneys' fees), judgments and decrees which may be incurred by or obtained against **MPA** from time to time (i) in enforcing the obligations of **Premier** contained in this **Lease**; (ii) in obtaining possession, as the result of any default by **Premier** or otherwise, of the Premises, (iii) in defending any suit or proceeding brought against **MPA** for the violation by **Premier** of any law, ordinance, rule or regulation, (iv) in defending any action or suit for damages because of any failure, neglect or default on the part of **Premier** in respect to **Premier's** obligations contained in this **Lease**, or (v) in defending any action brought by **Premier** with respect to this **Lease**, if **MPA** is successful in such action.

(j) In the event of any injury or damage to persons or property, **Premier** shall immediately notify **MPA** verbally and in writing, providing pertinent information to enable **MPA** to adopt whatever measures may be necessary to prevent further losses.

#### **SECTION 16: POSSESSION.**

If **MPA** shall be unable for any reason to deliver possession of the Premises, or any portion thereof, on the Effective Date, **MPA** shall not be liable for any damage caused thereby to **Premier** and **Premier** shall have the option to terminate this **Lease** by at least thirty (30) days written notice, unless **MPA** shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If **Premier** shall take possession of any portion of the Premises, it shall pay on a proportionate basis for such portion. If **Premier** shall, with **MPA's** consent, take possession of all or any part of the Premises prior to the Effective Date, all of the terms and conditions of this **Lease** shall immediately become applicable, with the exception that **Premier** shall not be obligated to pay any rent for the period prior to the commencement of this **Lease** unless otherwise mutually agreed.

**SECTION 17: TAXES AND FEES.**

**Premier** shall be liable for, and shall pay throughout the term of this **Lease**, all license and excise fees and occupation taxes, if any, covering the business conducted on the Premises, and all taxes, if any, on the personal property of **Premier** on the Premises and any taxes on the leasehold interest created by this **Lease** and any other public charges imposed upon the Premises.

**SECTION 18: RULES AND REGULATIONS.**

**Premier** shall comply with all applicable prevailing rules and regulations of **MPA** pertaining to its port facilities, and to the Area. **Premier** shall also comply with all applicable federal, state, and municipal laws, ordinances and regulations, and any applicable tariffs.

**SECTION 19: BOARD OF PUBLIC WORKS.**

The **Lease** shall be subject to the approval of the Maryland Board of Public Works ("Board") if necessary.

**SECTION 20: DEFAULT.**

Time is of the essence of this agreement, and in the event of the failure of **Premier** to pay the rent or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth, to be kept and performed, **MPA** may elect to terminate this **Lease** at any time; and/or reenter and take possession of the Premises and any property thereon with or without process of law and by any peaceable means whatsoever including locking out **Premier**; and/or exercise any other legal, equitable or contractual remedy it may have, including but not limited to the right of distress; provided, however, that **Premier** shall be given fifteen (15) days notice in writing stating the nature of the default in order to permit such default to be remedied by **Premier** within said fifteen (15) day period, except that **MPA** shall not be required to give such notice where the nature of the breach is the failure by **Premier** to pay the rent or other charges when due.

**SECTION 21: BANKRUPTCY.**

If **Premier** shall file a petition in bankruptcy, or if **Premier** shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of **Premier** shall be appointed in any proceeding brought by or against **Premier**, or if **Premier** shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on **Premier's** interest in the Premises or on any personal property kept or maintained on the Premises by **Premier**, **MPA** may, at its option, terminate this **Lease** at any time.

**SECTION 22:        SURRENDER OF PREMISES.**

At the termination of this Lease, Premier shall promptly surrender possession of the Premises to MPA and shall deliver to MPA all keys that it may have to any and all parts of the Premises.

**SECTION 23:        HOLDOVER.**

If Premier shall hold over with MPA's consent or during good faith lease negotiations after the termination of this Lease, the resulting tenancy at will shall continue on a month-to-month basis for a period of six (6) months ("Negotiation Period"). After the Negotiation Period or if Premier is holding over without MPA's consent or in the absence of good faith lease negotiations, Premier shall pay to MPA a sum equal to 125% of the rent as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this Lease insofar as they may be pertinent. Any holdover under this Section 23 shall be subject to the approval of the Board, if necessary.

**SECTION 24:        PREMIER'S OBLIGATIONS.**

If Premier shall fail to do any act or thing required to be done by it under the terms of this Lease other than the payment of rent, after advance written notification to Premier and a fifteen (15) day period to allow compliance by Premier, MPA may, at its sole option, do such act or thing on behalf of Premier, and upon notification to Premier of the cost thereof to MPA, Premier shall promptly reimburse MPA for such costs. MPA may exercise that remedy without any notice to Premier if MPA, in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of Premier is an emergency.

**SECTION 25:        LIENS.**

Premier shall keep the Premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the Premises by Premier. At MPA's request, Premier shall furnish MPA with written proof of payment of any item which would or might constitute the basis for such a lien on the Premises if not paid. Premier shall have the right to dispute claims against its contractors and/or materialmen at its cost and expense, and shall, to MPA's satisfaction, bond or insure over any liens against the Premises arising from such disputes. Premier shall hold MPA harmless from any loss, cost, expense or liability arising out of such dispute and promptly discharge such lien upon final judgment.

**SECTION 26:        DESTRUCTION OF PREMISES.**

In the event of the total destruction of the Premises by fire or other casualty (not

caused or contributed to by Premier) (any such cause being referred to as "Casualty") or in the event that the Premises are damaged as a result of Casualty to such an extent as to make it unreasonable to expect Premier to continue to operate its business in the Premises, Premier and/or MPA shall each have the right to terminate this Lease. If neither party elects to terminate the Lease, MPA shall adjust the rent pro rata at its sole discretion. Premier shall have no obligations to reconstruct or repair the Premises in the event of Casualty.

**SECTION 27:        EMINENT DOMAIN.**

In the event that any governmental entity, agency or instrumentality shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, MPA may, at its option, terminate this Lease as of the date of such taking.

**SECTION 28:        WAIVER.**

The acceptance of rent by MPA for any period or periods after a default by Premier hereunder shall not be deemed a waiver of such default unless MPA shall so intend and shall so advise Premier in writing. No waiver by MPA of any default hereunder by Premier shall be construed to be or act as a waiver of any other or subsequent default by Premier. After any default shall have been cured by Premier, it shall not thereafter be used by MPA as a ground for the commencement of any action under the provisions of Section 20 hereof.

**SECTION 29:        FORCE MAJEURE - INABILITY TO PERFORM.**

MPA and Premier shall not be liable for any failure, delay or interruption in performing their obligations hereunder due to causes or conditions beyond their control and not the fault of the party asserting "Force Majeure", including without limitation thereto, acts of God, acts and/or omissions of third parties, an order of any agency or commission of the United States of America, act or state of war, public emergency, strikes, boycotts, picketing, slowdown, work stoppages or labor troubles of any other type (whether affecting MPA, Premier, their contractors or subcontractors) herein referred to as "Force Majeure". It is hereby provided that financial inability of either party shall not amount to Force Majeure.

**SECTION 30:        QUIET ENJOYMENT.**

MPA warrants that so long as Premier is not in default hereunder, it shall quietly enjoy the Premises.

**SECTION 31:        SECURITY.**

Premier shall provide security for the Premises and everything placed on or in

the Premises at its sole cost, risk and expense, as it deems advisable.

**SECTION 32:        LABOR PEACE AND HARMONY.**

Premier shall conduct its operations at the Premises in a manner promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community.

**SECTION 33:        COOPERATION WITH ADJACENT TENANTS.**

Premier shall accommodate, coordinate and cooperate with adjacent tenants so as not to unnecessarily or unreasonably interfere with their operation.

**SECTION 34:        NOTICES.**

Any notices required or permitted to be given by either party to the other hereunder shall be in writing and sent by certified or registered mail, return receipt requested, and such notices and other communications shall be addressed as follows:

**MPA:            Property Management Department  
Maryland Port Administration  
World Trade Center - 20th Floor  
Baltimore, Maryland 21202**

**Tenant:        President  
Premier Automotive Services, Inc.  
2700 Broening Highway  
Baltimore, Maryland 21222**

Such addresses may be changed by either party by notifying the other party in writing.

**SECTION 35:        SURVIVAL.**

All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination of this Lease, including (without limitation) Premier's obligations pursuant to Section 15 (a), shall survive the termination of this Lease.

**SECTION 36:        SEVERABILITY.**

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this

**Lease** or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**SECTION 37: MARYLAND LAW.**

This **Lease** was entered into in the State of Maryland and the law of Maryland and any applicable federal law shall govern its interpretation, application and the rights and obligations of the parties hereunder. **Premier** hereby consents and submits to the exercise over it of jurisdiction by the courts of and in the State of Maryland, and also waives any objection it might have with respect to venue in the City of Baltimore, in any legal or equitable action brought against **Premier** by **MPA** to enforce any obligation of **Premier** under this **Lease**, including the payment of rent.

**SECTION 38: QUALIFICATION TO DO BUSINESS.**

**Premier** certifies that it is qualified to do business in the State of Maryland and that it is not in arrears in the payment of taxes or any other payment due and owing any governmental entity.

**SECTION 39: NO ESTATE IN LAND.**

This **Lease** shall create the relationship of landlord and tenant between **MPA** and **Premier**; no estate other than the periodic estate created hereby shall pass out of **MPA**; and **Premier** has only a usufruct which is not subject to levy and sale. This **Lease** does not create a joint venture, agency or partnership between **MPA** and **Premier**.

**SECTION 40: ASSIGNMENT & SUBLETTING.**

**Premier** shall not assign this **Lease** nor sublet the Premises in whole or in part, without the prior written consent of **MPA** and the Board. Consent by **MPA** to any assignment or subletting shall not operate to release **Premier** from any of its obligations under the terms of this **Lease**.

**SECTION 41: AMENDMENTS.**

This **Lease** may be amended from time to time in writing executed by both parties and attached to the original executed copies of this **Lease**. Any amendment to this **Lease** shall be subject to filing with or approval by the Board, if necessary.

**SECTION 42: REMEDIES, DUTIES, LIABILITIES, OBLIGATIONS CUMULATIVE.**

Any and all of the duties, liabilities, or obligations imposed upon, or assumed by,

either party hereto by or under the terms and provisions of this Lease shall be taken and construed to be cumulative. Each remedy provided in this Lease shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided at law or in equity.

**SECTION 43: WAIVER OF JURY TRIAL; COUNTERCLAIM.**

**MPA** and **Premier** hereby mutually waive any and all rights which either may have to request a jury trial in any action, proceeding or counterclaim (except for those involving personal injury or property damage) arising out of this Lease or **Premier's** occupancy of or right to occupy the Premises.

**Premier** further agrees that in the event **MPA** commences any summary proceeding for non-payment of rent or possession of the Premises, **Premier** will not interpose and hereby waives all right to interpose any counterclaim of whatever nature in any such proceeding. **Premier** further waives any right to remove said summary proceeding to any other court or to consolidate said summary proceeding with any other action, whether brought prior or subsequent to the summary proceeding.

**SECTION 44: WAIVER OF RIGHT OF REDEMPTION.**

The Premises are leased exclusively for business, commercial and mercantile purposes. Accordingly, **Premier** hereby expressly waives (to the extent legally permissible) for itself and all persons claiming by, through or under it, any right of redemption or right to restore the operation of this Lease under any present or future law in the event **Premier** is dispossessed for any proper cause, or in the event **MPA** shall obtain possession of the Premises pursuant to the terms of this Lease.

**SECTION 45: AUTHORITY.**

If **Premier** is a corporation, partnership or other entity, the person executing this Lease on behalf of **Premier** represents and warrants that **Premier** is duly organized and validly existing; that this Lease has been authorized by all necessary parties, is validly executed by an authorized officer or agent of **Premier** and is binding upon and enforceable against **Premier** in accordance with its terms.

**SECTION 46: POWERS OF MPA**

**MPA** is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. **MPA** is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event **MPA** is temporarily or permanently prevented, restricted or delayed by statute, regulation or administrative or court decision in the

performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this **Lease**, **MPA** and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to, suffered or incurred by **Premier** or any legal entity in connection with, or as the result of, or growing out of any such prevention, restriction or delay. **MPA** is presently empowered under Maryland law to enter into this **Lease** and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this **Lease**.

In the event **MPA** is prevented, restricted or delayed by statute, regulation, administrative or court decision, or other reason beyond its control in the performance of its duties and obligations hereunder in such a way as to prevent **Premier** from obtaining the benefits conferred by this **Lease**, rent shall be suspended for such a period.

**SECTION 47: ENTIRE AGREEMENT.**

This **Lease** contains the entire agreement between the parties hereto, and any prior understanding or representation of any kind preceding or made after this **Lease** shall not operate to change, modify, terminate or discharge this **Lease** in whole or in part except to the extent incorporated in this **Lease** or made pursuant to Section 41 hereof.

(END)

**IN WITNESS WHEREOF, MPA and Premier** have hereunto executed this Lease as of the day and year first hereinabove written.

**ATTEST:**

**MARYLAND PORT ADMINISTRATION**

\_\_\_\_\_

\_\_\_\_\_  
**James J. White, Executive Director**

**ATTEST:**

**PREMIER AUTOMOTIVE SERVICES, INC.**

\_\_\_\_\_

By: \_\_\_\_\_  
**James G. Robinson, Chairman**

Maryland Port Administration  
The World Trade Center  
Baltimore, Maryland 21202-3041



Robert L. Ehrlich, Jr.  
Governor

Maryland Port Commission

Robert L. Flanagan  
Chairman

Wayne K. Curry  
George C. Doub, III  
Thomas T. Koch  
Milton H. Miller, Sr.  
Robert I. Sewall  
Fred L. Wineland

James J. White  
Executive Director

April 9, 2004

Mr. Michael J. Robinson,  
Vice President General Manager  
Premier Automotive Services, Inc.  
Dundalk Marine Terminal  
2700 Broening Highway  
Dundalk, Maryland 21222

Dear Mr. Robinson:

Enclosed are two (2) originals of the lease between Maryland Port Administration and Premier Automotive Services, Inc. for 6.47 acres in area 90 at the Dundalk Marine Terminal in the Port of Baltimore.

Please have both originals of the Agreement signed as indicated and return them to my attention as soon as possible.

All leases must be fully executed by an officer of the corporation authorized to bind the company to all terms and conditions of this Agreement. Any individual signing this Agreement, other than a company president or vice-president, must furnish proof, by attaching the proper corporate documents showing that they have been granted full power by the corporation to execute and bind the corporation to the terms and conditions of this Agreement.

A fully executed original will be returned to you after signature by Maryland Port Administration.

Should you have any questions, please give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Miller". The signature is written in a cursive, flowing style.

Michael W. Miller,  
General Manager of Property Management

MWM/trv  
Enclosures

**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
PREMIER AUTOMOTIVE SERVICES, INC.**

THIS AGREEMENT & LEASE is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the MARYLAND PORT ADMINISTRATION, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "MPA"), and PREMIER AUTOMOTIVE SERVICES, INC. (hereinafter referred to as "PREMIER").

WHEREAS, PREMIER desires to lease certain land and improvements at the Dundalk Marine Terminal for the purpose of receiving, processing, storing and delivering import and export vehicles.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, MPA and PREMIER hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 TERM.** The term of the AGREEMENT & LEASE shall be for Three (3) years beginning on May 1, 2004 ("Effective Date") and terminating on April 31, 2007 ("Termination Date")("Term") subject to

- (1) approval of the AGREEMENT & LEASE by:
  - a) The Maryland Port Commission, and
- (2) Execution of this AGREEMENT & LEASE by the parties hereto.

The first "Lease Year" shall commence on the Effective Date and shall end at the close of one (1) calendar year following the Effective Date; thereafter each Lease Year shall consist of successive periods of one (1) calendar year.

**1.1.1 Renewal Option.** Provided PREMIER has complied with all of the terms of this AGREEMENT & LEASE, is not in default hereunder and subject to the Board's approval, PREMIER shall have the option to renew this AGREEMENT & LEASE for two (2) additional period of one (1) consecutive Lease Year ("Renewal Period") at terms and conditions to be mutually agreed upon.

In order to exercise the option, PREMIER shall provide MPA with at least

one hundred eighty (180) days' written notice, prior to expiration of the Term, of its intent to renew. Failure by PREMIER to so notify MPA timely shall be considered a forfeiture by PREMIER of this option to renew. MPA and PREMIER shall in good faith negotiate reasonable terms and conditions of the renewal agreement, provided that if the parties fail to come to an agreement, then this Section 1.1.1 shall not be enforceable by either party.

**1.2 Premises.** MPA leases to PREMIER and PREMIER rents from MPA, land and improvements consisting of 6.47 acres in Area 90 at the Dundalk Marine Terminal ("DMT") in Baltimore City, Maryland, as more fully identified and described as "Premises" on Exhibit "A" attached hereto. MPA recognizes that PREMIER has constructed, installed and owns certain buildings and related improvements, appurtenances and fixtures pre-existing on the Premises at the Effective Date hereof, described as including a large metal-framed building consisting of approximately 23,750 square foot ("Pre-Existing Improvements").

**1.3 MPA Terminal Services Schedule.** Where applicable the prevailing MPA Terminal Services Schedule filed with the Federal Maritime Commission, posted on the Internet ([www.mpa.md.state.us](http://www.mpa.md.state.us)), or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by MPA pursuant to Federal, State or other applicable laws ("Schedule"), is hereby incorporated by reference into this AGREEMENT & LEASE as if set forth at length and such shall govern and control this AGREEMENT & LEASE except where same conflicts with this AGREEMENT & LEASE. In such event this AGREEMENT & LEASE shall prevail.

**1.4 Ingress and Egress.** MPA and PREMIER understand and agree that it is MPA's intention to utilize properties contiguous to the Premises. Accordingly, PREMIER expressly agrees that it shall coordinate with MPA and MPA's designees so that free and unencumbered ingress and egress will be allowed to MPA and its designees in transiting across the Premises in order for MPA and its designees to utilize the aforementioned contiguous properties. The location of ingress and egress shall be mutually agreed to by MPA and PREMIER and neither party will unreasonably withhold consent as to the original location of ingress and egress or subsequent changes thereto.

**1.5 Relocation.** At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to cause PREMIER to relocate to another location with similar berth access within the Dundalk Marine Terminal. MPA shall give PREMIER one hundred eighty (180) days written notice of its intent to require PREMIER to relocate. Within thirty (30) days of the expiration of the aforesaid notice period, MPA and PREMIER shall execute and deliver an amendment to the AGREEMENT & LEASE which

shall substitute a description of the premises to which PREMIER is to relocate for the description of the Premises; otherwise all of the terms and conditions of this AGREEMENT & LEASE shall be applicable to PREMIER's occupancy of the new premises. The relocation of PREMIER shall be at MPA's sole cost and expense, provided that MPA shall have no obligation whatsoever to relocate the Pre-Existing Improvements.

## **2.0 USE OF PREMISES/APPURTENANTS RIGHTS/RESERVED RIGHTS:**

### **2.1 Use of Premises.**

a) **Import/Export Vehicles.** PREMIER shall use the Premises for receiving, processing and distribution of motor, commercial, and industrial vehicles, parts and accessories. PREMIER shall use the Premises primarily for vehicles having a prior or subsequent international waterborne movement over an MPA pier, berth or wharf ("Import/Export Vehicles") subject to Section 2.1 (b).

b) **Domestic Vehicles.** PREMIER may use the Premises to receive, process and distribute vehicles not having a prior or subsequent international movement over an MPA pier, berth or wharf ("Domestic Vehicles"), provided that, without the written approval of MPA, the total number of such Domestic Vehicles shall not exceed fifteen (15%) percent of the annual Minimum Guarantee of vehicles received, processed or distributed by PREMIER at the Premises during any Lease Year.

c) **Vehicle Guarantee.** PREMIER guarantees MPA that it will receive, process and distribute a minimum of 1,700 vehicles per acre of useable vehicle storage area of the Premises (not including the area under and around the Pre-Existing Building), per Lease Year. The useable vehicle storage area of the Premises is Three and Four Hundredths (3.04) acres out of the total Six and Fourty-seven Hundredths (6.47) acre Premises. The vehicle guarantee shall, therefore, amount to a minimum of 15,504 vehicles for the three (3) year Term ("Minimum Guarantee"). Domestic Vehicles shall not count toward the Minimum Guarantee. PREMIER understands that the Minimum Guarantee in this AGREEMENT & LEASE applies and is distinct to this AGREEMENT & LEASE only. Vehicles being handled by PREMIER which are counted towards a minimum guarantee existing in a separate agreement, whether between MPA and a third party, between MPA and PREMIER, or otherwise, can not be counted towards the Minimum Guarantee in this AGREEMENT & LEASE.

**2.2 Labor Peace and Harmony.** PREMIER shall conduct its operations at the Premises in a manner promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. PREMIER shall not engage in any activity, which works to destroy any labor harmony in the Port of Baltimore. MPA will use its best efforts to

promote other tenants of MPA to conduct their operations in a manner promoting peace and harmony in the commercial sector.

**2.3 MPA's Reserved Rights with Respect to the Premises.** MPA reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with PREMIER's use of the Premises.

### **3.0 RENT AND RENTAL PAYMENTS:**

**3.1 Rental Payment Schedule.** Beginning on the Effective Date, PREMIER shall pay to MPA as rental a facility use fee of \$11,861.67 per calendar month for the Premises and improvements. (The facility use fee is based on the current land rental charge of \$22,000 per acre per Lease Year). In Lease Years two (2) and three (3), MPA shall adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). This yearly adjustment will be applied at the beginning of each Lease Year. Renewal option years will also be subject to the cumulative annual CPI increase.

The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this AGREEMENT & LEASE), deduction or set off in advance on or before the first day of each and every month of the Term ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate.

**3.2 Domestic Vehicles.** For each Domestic Vehicle delivered to the Premises, PREMIER shall pay MPA a surcharge equal to the amount specified in Section IV (A)(2)(e) of MPA's Terminal Services Schedule No. 16, or such similar provision in any tariffs or schedules as subsequently may be issued by MPA.

**3.3 Shortfall.** In the event PREMIER does not meet its Minimum Guarantee, PREMIER shall become liable for such shortfall and shall pay to MPA as liquidated damages and not as a penalty, a "shortfall charge" equal to \$5.48 per vehicle times the number of vehicles necessary to bring PREMIER's numbers up to the Minimum Guarantee. Said shortfall payments shall be made at the conclusion of the Lease Year after such has been billed by MPA.

### **4.0 INTENTIONALLY LEFT BLANK.**

## **5.0 MAINTENANCE, REPAIR, IMPROVEMENTS AND ALTERATIONS:**

### **5.1 Maintenance and Repair Obligations.**

PREMIER shall keep and maintain in good order and condition the Premises and every part thereof, including all the improvements, buildings, appurtenances and equipment located thereon and therein, and, subject to Section 5.3., shall perform or cause to be performed all necessary repair, maintenance, replacements, alterations or improvements, exterior, interior, structural and non-structural, including, but not limited to, such items as may from time to time be required by a governmental body or agency having jurisdiction thereof. PREMIER shall keep the Premises and all areas thereof clean and orderly. MPA shall have no responsibility whatsoever in respect of maintenance or repair, it being intended that PREMIER shall have full responsibility for the Premises. PREMIER shall perform the foregoing maintenance and repair obligations promptly, at its sole cost and expense, and with or without notice from MPA.

**5.2. Existing Buildings & Improvements.** At the expiration or sooner termination of this AGREEMENT & LEASE or upon relocation of PREMIER as provided in Section 1.5, MPA shall have the sole PREMIER, at PREMIER's sole cost and expense, shall remove the Pre-Existing Improvements, as defined in Section 1.2, and return the Premises to their original condition prior to construction or installation. Any and all buildings, fixtures, machinery, equipment or improvements installed, erected or caused to be erected by PREMIER upon the leased premises at PREMIER's expense shall be owned by PREMIER and must be removed by it at its expense upon the termination of this AGREEMENT & LEASE or any renewal thereof; or, in the event that PREMIER requests, in writing, MPA's permission to leave any and all buildings, fixtures, machinery, equipment or improvements erected and intact and MPA specifically notifies PREMIER in writing that MPA specifically allows and agrees that the buildings, fixtures, machinery, equipment or improvements, erected by PREMIER may remain in place, PREMIER shall be deemed to have abandoned all of its property in the buildings or other fixtures, machinery, equipment or improvements left behind to MPA.

In the event that MPA does allow and agree that the buildings, fixtures, machinery, equipment or improvements erected by PREMIER are to remain intact after the termination date of this AGREEMENT & LEASE or any renewal thereof, PREMIER agrees that ownership of all the aforementioned buildings, fixtures, machinery, equipment or improvements shall pass to, and be made the property of MPA, free and clear of all liens and encumbrances, and without the payment of any consideration whatsoever thereof, and PREMIER shall promptly execute such documents as MPA may reasonably require in order to vest title to the same in MPA.

Furthermore, in the event that MPA does not allow or agree in writing, which allowance or agreement shall not be reasonably withheld, that the aforementioned

buildings, fixtures, machinery, equipment or improvements shall remain in tact upon the leased premises after the termination date of this AGREEMENT & LEASE, or any renewal thereof, PREMIER at its own expenses shall restore the leased premises, except pilings to the condition they were in prior to the installation or erection thereof and shall surrender possession of the leased premises in a neat and orderly condition, ordinary wear and tear excepted.

**5.3 Future Alterations & Improvements.** PREMIER shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from MPA, which approval shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by PREMIER, such alterations, improvements or fixtures shall, upon request of MPA, be removed promptly by PREMIER at PREMIER's sole cost and expense and the Premises restored to their original condition upon the expiration or sooner termination of this AGREEMENT & LEASE, provided that PREMIER shall not be obligated to remove any alterations, improvements or fixtures pre-authorized in writing by MPA until the expiration or sooner termination of this AGREEMENT & LEASE. If PREMIER is not so instructed to remove said alterations, improvements or fixtures, the same shall become the property of MPA without MPA paying any compensation therefor. Moveable furniture and trade fixtures which are removable without injury to the Premises shall be and remain the property of PREMIER but must be promptly removed at the termination of this AGREEMENT & LEASE at PREMIER's sole cost and expense.

**5.4 PREMIER's Obligations to MPA Property.** PREMIER shall be solely responsible to MPA for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to MPA in or on the Premises, unless such loss, theft or damage is caused by acts or omissions of MPA or its employees.

**5.5 Inspection by MPA.** MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**5.6 Pre and Post Inspections.** MPA and PREMIER shall conduct a pre-inspection of the Premises and improvements thereon at the beginning of the Term. MPA and PREMIER will also conduct a post inspection of the Premises and improvements thereon, which will serve as the basis of PREMIER's restoration responsibilities as set forth in Section 10.0 "Termination".

## **6.0 PREMIER'S ADDITIONAL RESPONSIBILITIES:**

**6.1 Reports.** PREMIER shall submit to MPA a monthly statement of the number of vehicles handled by make, model, manufacturer, VIN number and origination/destination. The report shall be due on the 15<sup>th</sup> day of each month for the month preceding. PREMIER shall allow MPA access to its vehicle quantity records for audit purposes provided MPA gives fifteen (15) business days' written notice of its intention to audit.

**6.2 Utilities & Maintenance.** Except as otherwise provided herein, PREMIER shall contract and pay for all utility or maintenance services provided to the Premises, including water, gas, electricity, telephone, sewage, janitorial, snow removal and other maintenance services.

**6.3 Security of Premises.** PREMIER shall assume complete responsibility for security of the Premises, and the improvements, buildings and property located thereon and therein. MPA assumes no responsibility to PREMIER for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection therewith.

**6.4 Liens and Encumbrances.** PREMIER shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

**6.5 Qualification to do Business in Maryland.** At all times during the Term PREMIER is and shall continue to be legally qualified to do business in the State of Maryland.

**6.6 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA.

**6.7 Rules, Regulations and Laws.** PREMIER agrees to comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, MPA's tenants, invitees, licensees and the general public. PREMIER further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. PREMIER further agrees to indemnify, defend and hold harmless MPA, its agents and employees from any liability or penalty which may be imposed upon MPA by governmental authority by reason of any violation by PREMIER or its agents.

## **7.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE:**

**7.1 Liability.** MPA shall not be liable to PREMIER for any loss, injury or damage to PREMIER or PREMIER's property from any cause unless such cause is due to MPA negligence.

### **7.2 Environmental Responsibilities.**

a) **PREMIER's Responsibilities.** PREMIER shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to PREMIER's performance of its obligations pursuant to this AGREEMENT & LEASE and/or PREMIER's use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). PREMIER shall establish and maintain a program of compliance with all applicable Environmental Standards. PREMIER shall monitor its compliance with Environmental Standards and immediately halt and correct any incident of non-compliance.

b) **Non-Compliance.** In the event of any incident of non-compliance with Environmental Standards, PREMIER shall:

- 1) Give MPA immediate notice of the incident, providing as much detail as possible;
- 2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,
- 3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

c) **PREMIER's Liability for Non-Compliance.** PREMIER shall be liable and shall indemnify, defend and hold harmless MPA, its agents and employees for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards.

### **7.3 Insurance & Indemnity.**

a) PREMIER agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason of injury to or death of persons or by

reason of injury or damage to, or destruction of property of any person, firm or corporation occasioned wholly or in part by any act or omission of PREMIER or its officers, agents or employees, contractors, sub-contractors, invitees and licensees, in any manner due to, growing out of or connected with the occupation or use of the Premises by PREMIER, unless caused by the negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by MPA, its agents and employees or be against or sustained by others to whom MPA, its agents or employees, may become liable.

b) PREMIER shall at all times during the Term of this AGREEMENT & LEASE, maintain such worker's compensation or employer's liability insurance as may be required by law and under the Federal Longshoremen's and Harbor Worker's Compensation Act.

c) PREMIER shall also maintain at its expense, liability insurance with minimum limits of \$ 5,000,000 per occurrence and \$ 5,000,000 per aggregate for bodily injury and property damage for the protection of MPA and PREMIER against any claims, suits, demands, or judgments by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by PREMIER. MPA shall be named as additional insured under said insurance and certificates of insurance shall be forwarded to MPA providing proof of coverage.

d) Nothing contained herein shall require MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of PREMIER, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

e) PREMIER shall not use the Premises in such a manner (unless permitted under this AGREEMENT & LEASE) which would cause an increase in the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term of this AGREEMENT & LEASE, may be added to the amount of rental specified in Section 3, and shall be paid by PREMIER to MPA upon the monthly rental day next thereafter occurring.

**7.4 Liens.** At all times prior to termination of this AGREEMENT & LEASE, PREMIER shall defend, indemnify and hold harmless MPA against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of PREMIER or

its contractors, agents or employees.

**7.5 Defense Against Suits.** PREMIER shall promptly pay any and all costs or expenses (including actual attorney's fees and consultant fees) which may be incurred by MPA as well as any judgments or decrees in favor of MPA:

a) in enforcing the obligations of PREMIER under the covenants, terms or provisions of this AGREEMENT & LEASE;

b) in obtaining possession of the Premises as the result of any default by PREMIER or otherwise;

c) in defending any suit or proceeding brought against MPA for the violation by PREMIER of any law, ordinance, rule or regulation;

d) in defending any action or suit for damages because of any failure, neglect or default on the part of PREMIER.

**7.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, PREMIER shall immediately notify MPA in writing and shall promptly thereafter furnish to MPA copies of all reports given to PREMIER's insurance carrier or carriers.

## **8.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**8.1 Partial Destruction.** If, during the Term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises, excluding the Pre-Existing Improvements, to substantially the same condition as they were in immediately before destruction, subject to appropriations and availability of insurance proceeds. Such destruction shall not terminate this AGREEMENT & LEASE. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. MPA and PREMIER agree that PREMIER's rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed Premises are refurbished and available for use.

**8.2 Total Destruction.** If, during the Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

a) to provide PREMIER with a reasonable approximation of the time necessary to conduct necessary repairs or restoration of the Premises, excluding the Pre-Existing Improvements, and repair or restore the damage to the Premises,

excluding the Pre-Existing Improvements, within the designated time period (which in no event shall be longer than two hundred forty (240) days), in which event such destruction shall not terminate this AGREEMENT & LEASE; or

b) to give notice to PREMIER within thirty (30) days of such destruction terminating this AGREEMENT & LEASE as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the giving of the notice.

If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party.

Total destruction shall be any destruction which precludes PREMIER from performing any significant portion of its operations at the Premises.

**8.3. Condemnation.** In the event that any governmental entity, agency or instrumentality shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, MPA may, at its option, terminate this Lease as of the date of such taking.

## **9.0 DEFAULT AND REMEDIES:**

**9.1 Default.** The occurrence of any of the following shall constitute a default by PREMIER:

a) **Default in Rent.** Failure to pay when due any rental or other charge, if the failure continues for ten (10) business days after notice has been given to PREMIER;

b) **Default in Other Covenants.** Failure to perform any other provision of this AGREEMENT & LEASE if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to PREMIER. If the default cannot be reasonably cured within thirty (30) days, PREMIER shall not be in default if PREMIER commences to cure the default within the thirty (30) day notice period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably practicable and provided that PREMIER shall complete the cure of the default within sixty (60) days of the aforesaid written notice;

c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of PREMIER; an assignment by PREMIER for the benefit of creditors; the filing by PREMIER of a voluntary petition in bankruptcy; an adjudication that PREMIER is bankrupt or the appointment of a receiver for the properties

of PREMIER; the filing of an involuntary petition of bankruptcy and failure of PREMIER to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on PREMIER's lease hold interest hereunder and failure of PREMIER to secure a discharge of the attachment or release of the levy of execution within sixty (60) days; and

d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

**9.2 Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that PREMIER performs the relevant provision of this AGREEMENT & LEASE or pay the rental or charges which are in arrears, as the case may be, within the applicable period time.

**9.3 MPA Remedies in Case of PREMIER's Default.**

**9.3.1 Remedies.** Subject to applicable law, MPA shall have the right, in addition to such remedies and rights as are provided by applicable law and equity, if PREMIER is in default and such default is not cured as provided in Section 9.1. b), immediately to terminate this AGREEMENT & LEASE and terminate PREMIER'S right to possession. PREMIER shall vacate the Premises, removing any property of PREMIER, including the Pre-Existing Improvements and any fixtures, alterations or improvements that PREMIER is required to remove at the end of the Term, performing any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the Term of this AGREEMENT & LEASE, and delivering all keys to the MPA.

**9.3.2 Damages.** MPA shall have the right to receive from PREMIER as of the date of termination the following sums:

- 1) The amount of the unpaid rental accrued and due at the time of the termination of this AGREEMENT & LEASE;
- 2) Subject to Section 9.5., the amount, at the time of the award of a subsequent lease to a third party, by which the unpaid rental for the rest of the Term of this AGREEMENT & LEASE exceeds the rental obtained from a subsequent lease to a third party provided that the amount of the loss of rental does not exceed such amount that PREMIER proves could have been reasonably avoided by MPA mitigation; and
- 3) Any other amount, and court costs, necessary to compensate MPA for all detriment proximately caused by PREMIER's default, including the

reasonable costs of any cleanup, refurbishing, removal of PREMIER's property and fixtures, or any other expense occasioned by PREMIER's failure to quit the Premises upon termination and to leave them in condition specified herein.

4) The shortfall charge for each and every Lease Year remaining in the Term, including the Lease Year of termination, and without prejudice to recovery by MPA of any shortfall charge due at the time of termination of the AGREEMENT & LEASE.

**9.4 Use of Abandoned Property.** MPA may:

a) use all or any part of PREMIER's personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this AGREEMENT & LEASE without compensation to PREMIER and without liability for such use or for any damage; or

b) store all or any of PREMIER's personal property and trade fixtures for the account of and at the expense of PREMIER.

**9.5 MPA Obligation to Relet.** Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or to relet to a person or entity that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this AGREEMENT & LEASE, upon any reasonable terms and conditions. If MPA relets the Premises, rental that MPA receives from reletting shall be applied to the payment of:

First, any indebtedness from PREMIER to MPA other than rental due from PREMIER;

Second, all costs, including for maintenance, incurred by MPA in reletting;

Third, rental due and unpaid under this AGREEMENT & LEASE. After deducting the payments referred to in this subsection, any sum remaining from the rental MPA receives from reletting shall be held by MPA and applied in payment of future rental as rental becomes due under this AGREEMENT & LEASE. In no event shall PREMIER be entitled to any excess rent received by MPA. If, on the date rental is due under this AGREEMENT & LEASE, the rental received from the reletting is less than the rental due on that date, PREMIER shall pay to MPA, in addition to the remaining rental due, all costs, including for maintenance, MPA incurred in reletting that remain after

applying the rental received from the reletting as provided in this subsection.

#### **10.0 TERMINATION:**

**10.1 Surrender.** Upon expiration or earlier termination of this AGREEMENT & LEASE, PREMIER shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises and except for improvements, appurtenances, fixtures and alterations which PREMIER has a right to remove or is obligated to remove pursuant to Section 5.1 and 5.2. PREMIER shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any improvements, appurtenances, fixtures or alterations and/or removal of PREMIER's trade fixtures and personal property.

**10.2 PREMIER Termination.** PREMIER may elect to terminate this AGREEMENT & LEASE upon ninety (90) days written notice to MPA if PREMIER is prohibited from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority in the United States of America.

**10.3 MPA Termination.** MPA may terminate this AGREEMENT & LEASE upon ninety (90) days written notice to PREMIER if MPA is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority in the United States of America.

#### **11.0 POWERS OF MPA:**

It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. MPA is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or administrative or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by PREMIER or any other legal entity in connection with, or as the result of, or growing out of any such prevention, restriction or delay. MPA represents and warrants that it is presently empowered under Maryland law to enter into this AGREEMENT & LEASE and to perform any and all of the duties and obligations imposed upon it or assumed by it

under the terms and provisions of this AGREEMENT & LEASE.

**12.0 FORCE MAJEURE:**

a) MPA and PREMIER shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, order by any agency or commission of the United States of America, public emergency, strikes, boycotts, picketing, and work stoppages.

b) PREMIER or the MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

**13.0 GENERAL PROVISIONS:**

**13.1 Assignment & Subletting.** PREMIER shall not assign this AGREEMENT & LEASE nor sublet the Premises in whole or in part, without the prior written consent of MPA and approval of the Maryland Board of Public Works. Consent by MPA to any assignment or subletting shall not operate to release PREMIER from any of its obligations under the terms of this AGREEMENT & LEASE. Without prejudice to the foregoing, and subject to Board of Public Works prior approval, PREMIER may sublet the Premises to any automobile manufacturers deemed reputable by MPA.

**13.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

**TO PREMIER:**

President  
Premier Automotive Services, Inc.  
2700 Broening Highway  
Baltimore, Maryland 21222

**TO MPA:**

Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

**13.3 Waivers.** No waiver by either party at any time of any of the terms,

conditions, covenants or agreements of this AGREEMENT & LEASE shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**13.4 Applicable Law.** It is expressly understood and agreed that this AGREEMENT & LEASE and all questions arising thereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this AGREEMENT & LEASE shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

**13.5 Binding Effect.** This AGREEMENT & LEASE shall bind the parties, their successors and assigns.

**13.6 Authority.** Each individual executing this AGREEMENT & LEASE on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this AGREEMENT & LEASE on behalf of such party.

**13.7 Severability.** The invalidity of any provision of this AGREEMENT & LEASE as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this AGREEMENT & LEASE.

**13.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this AGREEMENT & LEASE.

**13.9 Quiet Enjoyment.** MPA covenants and agrees that so long as PREMIER is not in default hereunder, it shall quietly enjoy the Premises.

**13.10 Survival.** All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of PREMIER pursuant to Sections 3.4. and 7 hereof, shall survive the termination of this AGREEMENT & LEASE, including, but not limited to termination pursuant to Sections 8.0, 9.0, and 10.0.

**13.11 AGREEMENT & LEASE for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this AGREEMENT & LEASE shall be for the sole benefit of the parties and that no other person, corporation or other entity is intended to be a beneficiary of this AGREEMENT & LEASE.

**13.12 Amendments.** This AGREEMENT & LEASE may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this AGREEMENT & LEASE and signed by both parties, subject to the approval of the Maryland Board of Public Works.

**13.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this AGREEMENT & LEASE shall be taken and construed to be cumulative.

**13.14 Remedies Cumulative.** All remedies provided in this AGREEMENT & LEASE shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided to the parties at law or in equity.

**13.15 Integration.** This AGREEMENT & LEASE constitutes the entire agreement between MPA and PREMIER with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this AGREEMENT & LEASE.

**(END)**

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT & LEASE to be duly executed as of the day and year first above written.

**PREMIER AUTOMOTIVE SERVICES, INC.**

By: \_\_\_\_\_  
James G. Robinson  
President

**MARYLAND PORT ADMINISTRATION**

BY: \_\_\_\_\_  
James J. White  
Executive Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Assistant Attorney General





Maryland Port Administration  
The World Trade Center  
Baltimore, Maryland 21202-3041

March 19, 2004

Mr. Michael J. Robinson  
Vice President and General Manager  
Premier Automotive Services, Inc.  
Dundalk Marine Terminal  
2700 Broening Highway  
Dundalk, Maryland 21222

Robert L. Ehrlich, Jr.  
Governor

Maryland Port Commission

Robert L. Flanagan  
Chairman

Wayne K. Curry  
George C. Doub, III  
Thomas T. Koch  
Milton H. Miller, Sr.  
Robert I. Sewall  
Fred L. Wineland

James J. White  
Executive Director

Dear Mr. Robinson:

It was a pleasure meeting with you today and having the opportunity to discuss and finally bring to closure your new lease at the Dundalk Marine Terminal. As agreed, the finalization of this agreement is long overdue and could jeopardize Premier's rights and interest in the property.

To summarize our discussions, the MPA will immediately prepare a long-term lease agreement by early next week. The lease, for 6.47 acres in Area 90, will be for a term of three (3) years with an effective date of May 1, 2004. Two (2) renewal options of one (1) year each will also be included. The lease rate is \$22,000 per acre per year and subject to the cumulative annual CPI increases in lease years two (2) and three (3) of the initial term. Renewal option years will also be subject to the cumulative annual CPI increase. Your throughput will be 15,504 vehicles for the three (3) year term. Calculation of the throughput rate is based on 1,700 vehicles per acre per year, times 3.04 usable storage acres. While you had requested a different throughput allocation for the various types of vehicles being handled at your facility we believe that this is more than achievable since the usable storage acres used to calculate the total guarantee is less than 50% of your total premises.

Confirming our agreement, our goal is to have the lease executed by Premier by the April 15, 2004, thus allowing the MPA to fully execute the agreement and have the May 1, 2004 effective date. As discussed, it is paramount that our negotiation conclude and this lease be signed immediately. I believe that we both recognize that the new lease must be fully executed and again, brought to closure to protect your rights and interest in the property.

Mr. Michael J. Robinson, Vice President and General Manager

March 19, 2004

Page 2

I believe that the above summarizes our meeting and I will be contacting you early next week with the lease agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Miller". The signature is written in a cursive, flowing style with large, connected letters.

Michael W. Miller,  
General Manager of Property Management

Cc: Mr. Bob Huber, MPA  
Mr. Dave Thomas, MPA



Maryland Port Administration  
The World Trade Center  
Baltimore, Maryland 21202-3041

**Robert L. Ehrlich, Jr.**  
*Governor*

**Maryland Port Commission**

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Thomas T. Koch  
Milton H. Miller, Sr.  
Robert I. Sewall  
Fred L. Wineland

**James J. White**  
*Executive Director*

April 30, 2004

Mr. Michael J. Robinson  
Vice President/General Manager  
Premier Automotive Services, Inc.  
2700 Broening Highway  
Baltimore, MD 21222

Dear Mr. Robinson:

We are in receipt of your letter dated April 21, 2004 outlining your concerns regarding the proposed lease agreement for 6.47 acres in Area 90, at the Dundalk Marine Terminal.

In Area 90, while some shoreline stabilization was being completed, you were required to vacate a portion of your leased property to safely permit construction equipment to work in the area. That work has been completed and the area has been returned to you for use. As you will recall, you requested that the contractor leave the fence that was established for the construction. You saw the fence as a benefit to your facility. We believe the acreage as returned remains at 6.47 acres for Lot 90.

The previous rate, to which you refer, was extended to Premier prior to the latest MPA Schedule increase. As you know, those negotiations were never concluded. With the demand for land in the port, and recognizing our present fiscal climate, the MPA is not in a position to provide Premier a discount off MPA Schedule at this time.

Regarding your request to reevaluate the throughput rate per acre, the MPA is not opening up this issue for discussion. MPA has committed every vehicle tenant at the Dundalk Marine Terminal and other facilities to a throughput that makes the most efficient and effective use of our limited terminal land. As you will recall, you requested copies of all of these agreements during our earlier negotiations to ensure that Premier was given equal considerations. We believe that those considerations are part of your agreement and therefore must stand.

Mr. Michael J. Robinson, Vice President/General Manager  
April 30, 2004  
Page 2

Unfortunately, our efforts to have Premier execute a lease agreement for Area 90 have failed many times over the last two (2) years. We have worked with Premier to accomplish a fair and equitable agreement, but again have not been successful in finalizing that document. We ask that you please sign the lease agreement that was forwarded to you on April 9, 2004. If we do not have the agreement signed by Premier on or before May 15, 2004, MPA will begin charging Premier in accordance with MPA Terminal Services Schedule No. 16, Rule: 34-027, Item: 3 Overflow Storage. Accordingly, MPA will charge Premier 125% of the standard rental rate of \$22,000 per acre. We trust that you can fully understand the position of the MPA in that we can no longer permit you to occupy space without the benefit of a lease agreement. We also trust that you will work with us to bring this lease agreement to fruition.

Should you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Miller". The signature is written in a cursive, flowing style with some loops and flourishes.

Michael W. Miller,  
General Manager of Property Management

Mike Miller

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From: Mike Miller [mmiller@mdot.state.md.us]  
Sent: Wednesday, March 23, 2005 9:03 AM  
To: Dave Thomas  
Subject: Re: Lot 90 - Draft

Dave,  
This is fine.  
Mike

>>> Dave Thomas 3/22/2005 11:36:51 AM >>>  
Mike,

I just talked to Mike Miller about the progress of our DMT terminal transition plan and he mentioned that you called him asking again about the status of Lot 90. Mike, as you are aware we have discussed the lease of Lot 90 many times over the past couple years and have written correspondence detailing our efforts and desire to get Lot 90 under a longterm lease with Premier. Unfortunately, we were not successful and you have been allowed to operate in Lot 90 under "Overflow" status for several months now.

Pls be advised that the MPA has entered into a long term Lease with another tenant effective May 1, 2005 for all of Lot 90 in addition to options for added contiguous expansion acreage as it comes available. We have notified you of this pending lease both in writing and in meetings on several occasions in the past 6 months. In order for me to complete my DMT transition plan you need to relocate and remove the bldg in Lot 90.

As I have stated to you many times I am more than willing to assign "Overflow" acreage similar to what you have currently on "Overflow" in Lot 90 to handle the Hino traffic. "Overflow" acreage can be made available adjacent to the CNH operation and across from your Lot 401 which should have nothing but a positive impact on your operations.

Pls let me know your plans to turn over Lot 90 to the MPA. I am available to meet so that I can assist in the redescrbing of this overflow acreage as to have minimum disruption to your operation.

**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
PASHA AUTOMOTIVE SERVICES**

THIS AGREEMENT & LEASE is made and entered into this 4<sup>th</sup> day of January, ~~2004~~ 2005, by and between the MARYLAND PORT ADMINISTRATION, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "MPA"), and PASHA AUTOMOTIVE SERVICES, a California corporation, whose address is 1309 Bay Marina Drive, National City, CA 91950 (hereinafter referred to as "PASHA").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, MPA and PASHA hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 Term.** The term of the AGREEMENT & LEASE shall be for Five (5) years beginning on March 1, 2005 ("Term"). The first "Lease Year" shall commence on the Effective Date and shall end at the close of one (1) calendar year following the Effective Date; thereafter each Lease Year shall consist of successive periods of one (1) calendar year.

**1.1.1 Renewal Option.** Provided PASHA has complied with all of the terms of this AGREEMENT & LEASE, it shall automatically renew for an additional period of five (5) consecutive Lease Years ("Renewal Period") at terms and conditions to be mutually agreed upon.

In order to void the automatic renewal, PASHA shall provide MPA with at least one hundred eighty (180) days' written notice, prior to expiration of the Term, of its intent not to renew. Failure by PASHA to so notify MPA timely shall be considered an acceptance by PASHA of the renewal. MPA and PASHA shall in good faith negotiate reasonable terms and conditions of the renewal agreement, provided that if the parties fail to come to an agreement, then this Section 1.1.1 shall not be enforceable by either party.

**1.2 Premises.** MPA leases to PASHA and PASHA rents from MPA, a parcel of land up to 6.5 acres, located in Lots 90, 91, 94, 100, 101, 102, 200, 201, to be

determined by MPA at Dundalk Marine Terminal ("DMT") in Baltimore City, Maryland. PASHA accepts the Premises in the condition "as is". MPA gives no warranties as to the condition of the Premises or its suitability for PASHA's operations at the Premises.

**1.2.1 Additional Acreage.** Additional acreage may be leased, subject to availability ("Additional Acreage"). The Rental Payments for any Additional Acreage shall be computed at the prevailing MPA Schedule rate for light paving land or the current light paving rate of Twenty-two thousand Dollars (\$22,000) per acre per year (as per MPA Prices and Rules Schedule No. 17) plus the cumulative annual CPI-U increase, whichever is greater. Provided that PASHA is not then in default of this AGREEMENT & LEASE, PASHA shall lease the Additional Acreage under the following conditions:

- a) Except as otherwise specifically provided herein, the leasing of the Additional Acreage shall be subject to all the terms and conditions of this AGREEMENT & LEASE.
- b) PASHA shall provide a minimum guarantee of 1,700 vehicles per paved acre or fraction thereof, for the Additional Acreage.
- c) This AGREEMENT & LEASE shall be amended in writing to document the lease of the Additional Acreage.

**1.3 MPA Terminal Services Schedule.** Where applicable the prevailing MPA Terminal Services Schedule filed with the Federal Maritime Commission, posted on the Internet ([www.mpa.md.state.us](http://www.mpa.md.state.us)), or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by MPA pursuant to Federal, State or other applicable laws ("Schedule"), is hereby incorporated by reference into this AGREEMENT & LEASE as if set forth at length and such shall govern and control this AGREEMENT & LEASE except where same conflicts with this AGREEMENT & LEASE. In such event this AGREEMENT & LEASE shall prevail.

**1.4 Ingress and Egress.** MPA and PASHA understand and agree that it is MPA's intention to utilize properties contiguous to the Premises. Accordingly, PASHA expressly agrees that it shall coordinate with MPA or MPA's designate so that free and unencumbered ingress and egress will be allowed to MPA or its designate in transiting across the Premises in order for MPA and its designate to utilize the aforementioned contiguous properties. The location of ingress and egress shall be mutually agreed to by MPA and PASHA and neither party will unreasonably withhold consent as to the original location of ingress and egress or subsequent changes thereto.

**1.5 Relocation.** At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to relocate the Premises or any portion thereof, to a comparable facility with similar berth access within the Dundalk Marine Terminal. MPA shall give PASHA one hundred eighty (180) days written notice of its intent to relocate the Premises, provided that MPA shall provide thirty (30) days written notice of its intention to relocate. Within thirty (30) days of the expiration of the aforesaid notice period, MPA and PASHA shall execute and deliver an amendment to the AGREEMENT & LEASE which shall substitute (or add) a description of the premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this Lease shall be applicable to PASHA's occupancy of the new Premises. The relocation of the Premises shall be at MPA's sole cost and expense.

## **2.0 USE OF PREMISES/APPURTENANTS RIGHTS/RESERVED RIGHTS:**

### **2.1 Use of Premises.**

a) **Import/Export Vehicles.** PASHA shall use the Premises for receiving, processing and distribution of motor, commercial, and industrial vehicles, parts and accessories. PASHA shall use the Premises primarily for vehicles having a prior or subsequent international waterborne movement over an MPA pier, berth or wharf ("Import/Export Vehicles") subject to Section 2.1 (b).

b) **Domestic Vehicles.** PASHA may use the Premises to receive, process and distribute vehicles not having a prior or subsequent international movement over an MPA pier, berth or wharf ("Domestic Vehicles"), provided that, without the written approval of MPA, the total number of such Domestic Vehicles shall not exceed fifteen (15%) percent of the annual Minimum Guarantee of vehicles received, processed or distributed by PASHA at the Premises during any Lease Year.

**Vehicle Guarantee.** PASHA guarantees MPA that it will receive, process and distribute a minimum of 1,700 vehicles per acre of useable vehicle storage area of the Premises, per Lease Year.

d) Domestic Vehicles shall not count toward the Minimum Guarantee. PASHA understands that the Minimum Guarantee in this AGREEMENT & LEASE applies and is distinct to this AGREEMENT & LEASE only. Vehicles being handled by PASHA which are counted towards a minimum guarantee existing in a separate agreement, whether between MPA and a third party, between MPA and PASHA, or otherwise, can not be counted towards the Minimum Guarantee in this AGREEMENT & LEASE.

**2.2 Labor Peace and Harmony.** PASHA shall conduct its operations at the Premises in a manner promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. PASHA shall not engage in any activity, which works to destroy any labor harmony in the Port of Baltimore. MPA will use its best efforts to promote other tenants of MPA to conduct their operations in a manner promoting peace and harmony in the commercial sector.

**2.3 MPA's Reserved Rights with Respect to the Premises.** MPA reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with PASHA's use of the Premises.

### **3.0 RENT AND RENTAL PAYMENTS:**

**3.1 Rental Payment Schedule.** Beginning on the Effective Date, PASHA shall pay to MPA as rental a facility use fee the current land rental charge of \$22,000 per acre per Lease Year. The facility use fee shall be paid monthly in equal installments.

**3.2** The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this AGREEMENT & LEASE), deduction or set off in advance on or before the first day of each and every month that this AGREEMENT & LEASE continues in effect ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate. PASHA and MPA further understand and agree that in Lease Years two (2) through five (5) and all renewal periods, MPA will adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). This yearly adjustment will be applied at the beginning of each Lease Year.

**3.3 Shortfall.** In the event PASHA does not meet its Minimum Guarantee, PASHA shall become liable for such shortfall and shall pay to MPA as liquidated damages and not as a penalty, a "shortfall charge" equal to \$5.48 per vehicle times the number of vehicles necessary to bring PASHA volumes up to the Minimum Guarantee. Said shortfall payments shall be made at the conclusion of the Lease Year 5 after such has been billed by MPA, subject to Section 2.1.c.

### **4.0 INTENTIONALLY LEFT BLANK.**

## **5.0 MAINTENANCE:**

### **5.1 Maintenance Obligations.**

(a) PASHA shall, at its sole cost and expense, repair, replace and maintain in good condition the Premises and every part thereof, including the buildings and equipment located therein, whether installed and/or owned by MPA or PASHA and shall perform all such items of repair, maintenance, alterations or improvements as may from time to time be required by a governmental body or agency having jurisdiction thereof. PASHA shall keep the Premises and all areas thereof clean and orderly.

(b) MPA shall have the responsibility to remedy any inherent defects in the structural members of the portions of the Premises constructed by it, or any other defects in the Premises which defects are proximately caused by inherent defects in or deterioration of said structural members and in no way caused by the operation of PASHA.

(c) MPA shall only be responsible for any of the aforementioned maintenance and repairs upon receipt of written notice from PASHA specifying the work to be performed. MPA will respond and complete work in a timely fashion upon receipt of written notice and inspection.

(d) MPA will maintain new light fixtures installed by MPA; however PASHA is responsible for light bulb replacement.

**5.2 Alterations & Improvements.** PASHA shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from MPA, which approval shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by PASHA, such alterations, improvements or fixtures shall, upon request of MPA, be removed promptly by PASHA at PASHA's expense and the Premises restored to their original condition upon the expiration or sooner termination of this AGREEMENT & LEASE. If PASHA is not so instructed to remove said alterations, improvements or fixtures, the same shall become the property of MPA without MPA paying any compensation therefor. Moveable furniture and trade fixtures which are removable without injury to the Premises shall be and remain the property of PASHA but must be promptly removed at the termination of this AGREEMENT & LEASE.

**5.3 PASHA's Obligations to MPA Property.** PASHA shall be solely responsible to MPA for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to MPA and any improvements thereon, or for which MPA is responsible, for the Premises only, unless such loss, theft or damage is caused by MPA or its employees and except for moveable items that are placed on the Premises without PASHA's knowledge.

**5.4 Inspection by MPA.** MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**5.5 Pre and Post Inspections.** MPA and PASHA shall conduct a pre-inspection of the Premises and improvements thereon at the beginning of the Term. MPA and PASHA will also conduct a post inspection of the Premises and improvements thereon which will serve as the basis of PASHA's restoration responsibilities as set forth in Section 10.0 "Termination".

**6.0 PASHA'S ADDITIONAL RESPONSIBILITIES:**

**6.1 Utilities & Maintenance.** Except as otherwise provided herein, PASHA shall contract and pay for all utility or maintenance services provided to the Premises, including water, gas, electricity, telephone, sewage, janitorial, snow removal and other maintenance services.

**6.2 Security of Premises.** PASHA shall assume complete responsibility for security of the Premises, and the facility improvements, buildings and property located thereon and therein. MPA assumes no responsibility to PASHA for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection therewith.

**6.3 Liens and Encumbrances:** PASHA shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

**6.4 Qualification to do Business in Maryland.** At all times during the Term PASHA is and shall continue to be legally qualified to do business in the State of Maryland.

**6.5 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA.

**6.6 Rules, Regulations and Laws.** PASHA agrees to comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, MPA's tenants, invitees, licensees and the general public. PASHA further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. PASHA further agrees to indemnify, defend and hold harmless MPA, its agents and employees from any liability or penalty which may be imposed upon MPA by governmental authority by reason of any violation by PASHA or its agents.

**7.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE:**

**7.1 Liability.** MPA shall not be liable to PASHA for any loss, injury or damage to PASHA or PASHA's property from any cause unless such cause is due to MPA negligence.

**7.2 Environmental Responsibilities.**

(a) **PASHA'S Responsibilities.** PASHA shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to PASHA's performance of its obligations pursuant to this AGREEMENT & LEASE and/or PASHA's use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). PASHA shall establish and maintain a program of compliance with all applicable Environmental Standards. PASHA shall monitor its compliance with Environmental Standards and immediately halt and correct any Incident of non-compliance.

(b) **Non-Compliance.** In the event of any incident of non-compliance with Environmental Standards, PASHA shall:

(1) Give MPA immediate notice of the incident, providing as much detail as possible;

(2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,

(3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

(c) **PASHA'S Liability for Non-Compliance.** PASHA shall be liable for all environmental losses, including but not limited to, costs, expenses, losses, damages,

actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards.

### **7.3 Insurance & Indemnity.**

(a) PASHA agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation by reason of negligence of PASHA or its officers, agents or employees, contractors, sub-contractors, invitees and licensees, unless caused by the negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by MPA, its agents and employees or be against or sustained by others to whom MPA, its agents or employees, may become liable.

(b) PASHA shall at all times during the Term of this AGREEMENT & LEASE, maintain such worker's compensation or employer's liability insurance as may be required by law.

(c) PASHA shall also maintain at its expense, general liability insurance with minimum limits of \$10,000,000. per occurrence and \$10,000,000 per aggregate for bodily injury and property damage and \$1,000,000 (any one fire) for Fire Legal Liability for the protection of MPA and PASHA against any claims, suits, demands, or judgements by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by PASHA. MPA shall be named as Additional Insured under said insurance and Certificates of Insurance shall be forwarded to MPA providing proof of coverage.

(d) PASHA shall also maintain throughout the Term of this AGREEMENT & LEASE, at its sole cost and expense, property insurance to insure against damage to or loss of the improvements on the Premises, including all fixtures and equipment, said property insurance to be in the amount sufficient to provide coverage for the full replacement and restoration of the improvements.

(e) PASHA shall also maintain throughout the Term of this AGREEMENT & LEASE, at its sole cost and expense, automobile liability insurance which shall include all hired and non-owned vehicles with a minimum limit of liability of \$1,000,000 bodily injury per person and property damage and an excess liability policy in the amount of \$25,000,000. This policy shall be written on a per occurrence basis.

(f) Nothing contained herein shall require MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of PASHA, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

(g) PASHA shall not use the Premises in such a manner (unless permitted under this AGREEMENT & LEASE) which would cause an increase in the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term of this AGREEMENT & LEASE, may be added to the amount of rental specified in Section 3 supra and shall be paid by PASHA to MPA upon the monthly rental day next thereafter occurring.

**7.4. Liens.** At all times prior to termination of this AGREEMENT & LEASE, PASHA shall defend, indemnify and hold harmless MPA against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of PASHA or its contractors, agents or employees.

**7.5 Defense Against Suits.** PASHA shall promptly pay any and all costs or expenses (including actual attorney's fees and consultant fees) which may be incurred by MPA as well as any judgments or decrees in favor of MPA:

(a) in enforcing the obligations of PASHA under the covenants, terms or provisions of this AGREEMENT & LEASE;

(b) in obtaining possession of the Premises as the result of any default by PASHA or otherwise;

(c) in defending any suit or proceeding brought against MPA for the violation by PASHA of any law, ordinance, rule or regulation;

(d) in defending any action or suit for damages because of any failure, neglect or default on the part of PASHA.

**7.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, PASHA shall immediately notify MPA in writing and shall promptly thereafter furnish to MPA copies of all reports given to PASHA's

insurance carrier or carriers.

## **8.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**8.1 Partial Destruction.** If, during the Term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this AGREEMENT & LEASE. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. MPA and PASHA agree that PASHA's rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed Premises are refurbished and available for use.

**8.2 Total Destruction.** If, during the Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

(a) to provide PASHA with a reasonable approximation of the time necessary to conduct necessary repairs or restoration and repair or restore the damage within the designated time period (which in no event shall be longer than two hundred forty (240) days), in which event such destruction shall not terminate this AGREEMENT & LEASE; or

(b) to give notice to PASHA within thirty (30) days of such destruction terminating this AGREEMENT & LEASE as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the giving of the notice. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. Total destruction shall be any destruction which precludes PASHA from performing any significant portion of its operations at the Premises.

## **9.0 DEFAULT AND REMEDIES:**

**9.1 Default.** The occurrence of any of the following shall constitute a default by PASHA:

(a) **Default in Rent.** Failure to pay when due any rental or other charge, if the failure continues for ten (10) business days after notice has been given to PASHA;

(b) **Default in Other Covenants.** Failure to perform any other

provision of this AGREEMENT & LEASE if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to PASHA. If the default cannot be reasonably cured within thirty (30) days, PASHA shall not be in default if PASHA commences to cure the default within the thirty (30) day notice period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably practicable;

(c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of PASHA; an assignment by PASHA for the benefit of creditors; the filing by PASHA of a voluntary petition in bankruptcy; an adjudication that PASHA is bankrupt or the appointment of a receiver for the properties of PASHA; the filing of an involuntary petition of bankruptcy and failure of PASHA to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on PASHA's lease hold interest hereunder and failure of PASHA to secure a discharge of the attachment or release of the levy of execution with sixty (60) days; and

(d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

**9.2 Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that PASHA performs the relevant provision of this AGREEMENT & LEASE or pay the rental or charges which are in arrears, as the case may be, within the applicable period time.

**9.3 MPA Remedies in Case of PASHA Default.** MPA shall have the following remedies if PASHA is in default and such default is not cured. These remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy at a later time.

(a) **Termination of Agreement & Lease and Right to Possession.** MPA may, at its option, terminate this AGREEMENT & LEASE and terminate PASHA's right to possession by giving written notice of termination to PASHA. Upon receipt of such notice, PASHA shall vacate the Premises immediately and within thirty (30) days thereafter remove any property of PASHA, including any fixtures that PASHA is required to remove at the end of the Term and perform any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the Term of this AGREEMENT & LEASE, and deliver all keys to the MPA.

(b) **Re-entry and Distraint.** MPA may, at its option, terminate this

AGREEMENT & LEASE and re-enter the Premises and distraint upon any of PASHA's property.

(c) **Liquidated Damages.** MPA shall have the right to receive from PASHA as of the date of termination the following sums as liquidated damages and not as a penalty:

(1) The amount of the unpaid rental accrued and due at the time of the termination of this AGREEMENT & LEASE;

(2) The amount, at the time of the award of a subsequent lease to a third party, by which the unpaid rental for the rest of the Term of this AGREEMENT & LEASE exceeds the rental obtained from a subsequent lease to a third party provided that the amount of the loss of rental does not exceed such amount that PASHA proves could have been reasonably avoided by MPA mitigation; and

(3) Any other amount, and court costs, necessary to compensate MPA for all detriment proximately caused by PASHA's default, including the reasonable costs of any cleanup, refurbishing, removal of PASHA's property and fixtures, or any other expense occasioned by PASHA's failure to quit the Premises upon termination and to leave them in condition specified herein.

**9.4 Use of Abandoned Property.** Provided MPA gives prior written notice to PASHA, MPA may:

(a) use all or any part of PASHA's personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this AGREEMENT & LEASE without compensation to PASHA and without liability for such use or damage; or

(b) store all or any of PASHA's personal property and trade fixtures for the account of and at the expense of PASHA.

**9.5 MPA Obligation to Relet.** Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or to relet to a person or entity that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this AGREEMENT & LEASE, upon any reasonable terms and conditions. If MPA relets the Premises, rental that MPA receives from reletting shall be applied to the

payment of:

PASHA; First, any indebtedness from PASHA to MPA other than rental due from

Second, all costs, including for maintenance, incurred by MPA in reletting;

Third, rental due and unpaid under this AGREEMENT & LEASE. After deducting the payments referred to in this subsection, any sum remaining from the rental MPA receives from reletting shall be held by MPA and applied in payment of future rental as rental becomes due under this AGREEMENT & LEASE. In no event shall PASHA be entitled to any excess rent received by MPA. If, on the date rent is due under this AGREEMENT & LEASE, the rental received from the reletting is less than the rental due on that date, PASHA shall pay to MPA, in addition to the remaining rental due, all costs, including for maintenance, MPA incurred in reletting that remain after applying the rental received from the reletting as provided in this subsection.

#### **10.0 TERMINATION:**

**10.1 Surrender.** Upon expiration or earlier termination of this AGREEMENT & LEASE, PASHA shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises, except for alterations which PASHA has a right to remove or is obligated to remove. PASHA shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any alterations or removal of PASHA's personal property.

**10.2 PASHA Termination.** PASHA may elect to terminate this AGREEMENT & LEASE upon ninety (90) days written notice to MPA if PASHA is prohibited from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority in the United States of America.

**10.3 MPA Termination.** MPA may terminate this AGREEMENT & LEASE upon ninety (90) days written notice to PASHA if MPA is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority in the United States of America.

#### **11.0 POWERS OF MPA:**

It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly

granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. MPA is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by PASHA or any other legal entity in connection with, or as the result of, or growing out of any such prevention, restriction or delay. MPA represents and warrants that it is presently empowered under Maryland law to enter into this AGREEMENT & LEASE and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE.

#### **12.0 FORCE MAJEURE:**

(a) MPA and PASHA shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, order by any agency or commission of the United States of America, public emergency, strikes, boycotts, picketing, and work stoppages.

(b) Except for a strike, riot, act of God or any act or state of war or public emergency or Government regulations, no abatement, diminution or reduction of the rent or other charges payable by PASHA shall be claimed by or allowed to PASHA for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the State, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any cause or causes beyond the control of MPA, nor shall this AGREEMENT & LEASE be affected by any such cause.

(c) PASHA or the MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

#### **13.0 GENERAL PROVISIONS:**

13.1 **Assignment & Subletting.** PASHA shall not assign this AGREEMENT & LEASE nor sublet the Premises in whole or in part, without the prior written consent

of MPA and approval of the Maryland Board of Public Works. Consent by MPA to any assignment or subletting shall not operate to release PASHA from any of its obligations under the terms of this AGREEMENT & LEASE. Without prejudice to the foregoing, and subject to Board of Public Works prior approval, PASHA may sublet the Premises to any automobile manufacturers deemed reputable by MPA.

**13.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

TO PASHA:

Amy E. Sherburne  
Senior Vice President and General Counsel  
Pasha Automotive Services  
5725 Paradise Drive, Suite 1000  
Corte Madera, CA 94925

TO MPA:

Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

**13.3 Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this AGREEMENT & LEASE shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**13.4 Applicable Law.** It is expressly understood and agreed that this AGREEMENT & LEASE and all questions arising thereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this AGREEMENT & LEASE shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

**13.5 Binding Effect.** This AGREEMENT & LEASE shall bind the parties,

their successors and assigns.

**13.6 Authority.** Each individual executing this AGREEMENT & LEASE on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this AGREEMENT & LEASE on behalf of such party:

**13.7 Severability.** The invalidity of any provision of this AGREEMENT & LEASE as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this AGREEMENT & LEASE.

**13.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this AGREEMENT & LEASE.

**13.9 Quiet Enjoyment.** MPA covenants and agrees that so long as PASHA is not in default hereunder, it shall quietly enjoy the Premises.

**13.10 Survival.** All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of PASHA pursuant to Section 7 hereof, shall survive the termination of this AGREEMENT & LEASE.

**13.11 AGREEMENT & LEASE for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this AGREEMENT & LEASE shall be for the sole benefit of the parties and that no other person, corporation or other entity is intended to be a beneficiary of this AGREEMENT & LEASE.

**13.12 Amendments.** This AGREEMENT & LEASE may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this AGREEMENT & LEASE and signed by both parties, subject to the approval of the Maryland Board of Public Works.

**13.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this AGREEMENT & LEASE shall be taken and construed to be cumulative.

**13.14 Remedies Cumulative.** All remedies provided in this AGREEMENT & LEASE shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided to the parties at law or in equity.

**13.15 Consent to Jurisdiction.** PASHA hereby consent to the jurisdiction of any court of the State of Maryland with respect to any claim that Lessor may have against Lessee arising from any matter relating to this Lease.

**13.16 Integration.** This AGREEMENT & LEASE constitutes the entire agreement between MPA and PASHA with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this AGREEMENT & LEASE.

(END)

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT & LEASE to be duly executed as of the day and year first above written.

PASHA AUTOMOTIVE SERVICES

By: George Pasha

Print Name: George W Pasha JR

Print Title: President + COO

MARYLAND PORT ADMINISTRATION

BY: James J. White  
James J. White  
Executive Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

D. L. Still  
Assistant Attorney General

STATE OF MARYLAND

SS: Baltimore County OF MARYLAND

I HEREBY CERTIFY that on this 4th day of January, 2004, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared James J. White, Executive Director, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, who acknowledged the foregoing instrument to be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal the day and year last above written.

Carol A. Vassallo  
NOTARY PUBLIC

Carol A. Vassallo  
Notary Public State Of Maryland  
My Commission Expires August 1, 2005

MY COMMISSION EXPIRES: \_\_\_\_\_

(SEAL)

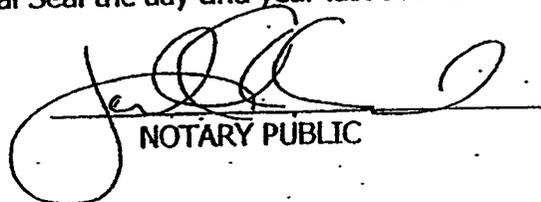
STATE OF California

SS:

County OF Marin

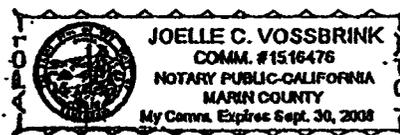
I HEREBY CERTIFY that on this 4th day of January, 2004,  
before me, the subscriber, a Notary Public of the State of California, in and for  
the County of Marin personally appeared  
George W. Pasha, IV who acknowledged himself/herself to be the  
President of PASHA AUTOMOTIVE SERVICES and that he/she, as such  
being authorized so to do, acknowledged the foregoing instrument to be the duly  
authorized act and deed of PASHA AUTOMOTIVE SERVICES.

WITNESS my hand and Notarial Seal the day and year last above written.

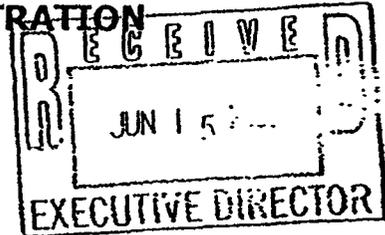
  
NOTARY PUBLIC

MY COMMISSION EXPIRES: September 30, 2008

(SEAL)



**FIRST AMENDMENT TO LEASE  
BETWEEN THE MARYLAND PORT ADMINISTRATION  
AND  
PASHA AUTOMOTIVE SERVICES**



This **FIRST AMENDMENT to LEASE** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the **MARYLAND PORT ADMINISTRATION**, an instrumentality of the Department of Transportation of the State of Maryland (hereinafter referred to as "**MPA**") and **PASHA AUTOMOTIVE SERVICES** a California corporation, (hereinafter referred to as "**PASHA**").

**WHEREAS**, on January 4, 2005, the **MPA** and **PASHA** entered into an **AGREEMENT & LEASE** effective March 1, 2005 (the "Original Pasha Lease" or "Lease") for certain designated premises at the Dundalk Marine Terminal ("Designated Parcels"), subject to the **MPA's** later specific identification, commencing with one Designated Parcel to be made available by March 1, 2005, for receiving, processing and distribution of motor, commercial, and industrial vehicles, parts and accessories in the Port of Baltimore ("**LEASE**"); and

**WHEREAS**, as of April 1, 2005, all of the Designated Parcels suitable for **PASHA's** initial occupancy under the Original Pasha Lease, except Dundalk Marine Terminal Lot 90 ("Lot 90"), were no longer available for **MPA** to lease to **PASHA**; and

**WHEREAS**, on April 29, 2005, the present occupant of Lot 90, Premier Automotive Services, Inc. ("Premier"), then a tenant holding over under a month-to-month lease that had been given notice to vacate Lot 90 by May 1, 2005, submitted

itself to Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the District of Maryland, Case No. 05-20168, thereby staying efforts to obtain Premier's surrender of Lot 90 to MPA for lease to PASHA under the Original Pasha Lease; and

**WHEREAS, PASHA** has urgent need to obtain a leasehold of premises at Dundalk Marine Terminal in order to carry out certain business opportunities; for which it obtained the Original Pasha Lease; and

**WHEREAS,** subject to certain interim conditions specified below, the **MPA** is willing to make available to **PASHA** certain alternative premises at Dundalk Marine Terminal in order that **PASHA** may carry out business contemplated under the Original Pasha Lease; and

**WHEREAS, PASHA** has obtained certain additional commercial opportunities consistent with the authorized use of the leased premises specified in the Original Pasha Lease and desires to lease acreage at Dundalk Marine Terminal in addition to the amount identified in the Original Pasha Lease,

**NOW, THEREFORE, THIS FIRST AMENDMENT to LEASE WITNESSETH** that **MPA** and **PASHA** hereby agree to amend the **LEASE** as follows:

1. Section 1.2 Premises. Is deleted in its entirety and replaced with the following:

"PASHA rents from MPA the following premises on their respective effective dates:

<u>Premise</u>	<u>Size</u>	<u>Effective Date</u>
Shed 201B	100,000 square feet	August 1, 2005
Lot 90	6.50 acres	December 1, 2005
Lot 100/101	6.01 acres	August 1, 2005

Lot 95	3.04 acres	August 1, 2005
Lot 100/101	0.96 acres	November 23, 2005
Lot 200	7.02 acres	November 23, 2005

MPA reserves the right to change any of the effective dates contained in this Section 1.2 with thirty (30) days' advance written notice preceding the respective effective date. The lease of the aforesaid premises at Lot 90 is also subject to said premises being available to MPA for lease to PASHA in light of Premier's continued occupancy of Lot 90 pursuant to the aforesaid bankruptcy proceedings.

MPA agrees to rent PASHA a total of 15 acres effective August 1, 2005. To rent such 15 acres to PASHA during the period between August 1, 2005 and the Effective Dates for Lots 90, 200 and .96 acres in Lot 100/101, MPA also rents to PASHA 6 additional acres at the Dundalk Marine Terminal which may be split between Lot 303 and Lot 1800 or such other lots as MPA and PASHA, working together cooperatively, may agree upon. If no agreement can be reached, MPA may designate acreage on Lot 303 and/or Lot 1800 to be included in the Premises pursuant to this provision. Effective December 1, 2005 the space on Lot 303 and/or Lot 1800 shall be deleted from the Premises remaining subject to this Lease"

2. Sections 3.1 and 3.2 shall be deleted in its entirety and replaced with the following:

**3.1. Rental Payment Schedule.** Beginning on the respective Effective Dates, PASHA shall pay to MPA as rental a facility use fee as follows: Effective August 1, 2005 Fifty-four Thousand Ninety-one Dollars and Sixty-seven Cents (\$54,091.67) per calendar month (6.01 acres @ \$22,000 per acre per year for Lot 100/101; 3.04 acres @ \$22,000 per acre per year for Lot 95 and 100,000 square feet @ \$4.50 per square foot per year for Shed 201B); Effective November 23, 2005 Sixty-eight Thousand Seven Hundred Twenty-one Dollars and Sixty-seven Cents (\$68,721.67) per calendar month (6.01 acres @ \$22,000 per acre per year for Lot 100/101, 100,000 sq. ft @ \$4.50 per square foot for Shed 201B, 3.04 acres @ \$22,000 per acre per year for Lot 95, .96 acres @ \$22,000 per acre per year for balances of Lots 100/101 and 7.02 acres @ \$22,000 per acre pre year for Lot 200); Effective December 1, 2005 Eighty Thousand Six Hundred Thirty-eight Dollars and Thirty-four Cents (\$80,638.34) per calendar month (Shed 201B - 100,000 sq ft @ \$4.50 per square foot; Lot

95 – 3.04 acres @ \$22,000 per acre; Lot 90 – 6.5 acres @ \$22,000 per acre; and Lots 100/101/200 – 13.99 acres @ \$22,000 = \$967,660 per year).

**3.2** The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this AGREEMENT & LEASE), deduction or set off in advance on or before the first day of each and every month that this AGREEMENT & LEASE continues in effect ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate. PASHA and MPA further understand and agree that in Lease Years two (2) through five (5) and all renewal periods, MPA will adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). Lease Year two shall begin twelve months from the Effective Date of the last received parcel of land. This yearly adjustment will be applied at the beginning of each Lease Year."

3. Section 2.1(c) Vehicle Guarantee, shall be deleted in its entirety and replaced with the following:

**"PASHA** guarantees **MPA** that it will receive, process and distribute a minimum of 1,700 vehicles per acre of useable vehicle storage area of the Premises, per Lease Year (to be prorated for partial Lease Years)."

4. Section 3.3 is hereby added to the Lease:

**"PASHA** shall make available to **MPA** at designated times for use by **MPA** in support of passenger cruise vessel activity at Dundalk Marine Terminal a portion of Lots 100 and 101, not to exceed 6.01 acres, upon thirty (30) days' advance written notice by **MPA** to **PASHA**, including in said notice designated times of use, provided that upon such use of Lot 100 and/or Lot 101 by **MPA**, **PASHA** shall receive credit against its rent payment obligation hereunder for the next following payment an amount equal to the proportionate number of days of the month during which **MPA** used a portion of said lots and the proportionate area of said lots that **MPA** used, said credit also to include an amount reflecting **PASHA's** operational expenses incurred in making available to **MPA** the designated portions of said parcels. This obligation by **PASHA** shall expire when **MPA's** passenger cruise terminal at South Locust point becomes fully operational.

5. Except as otherwise provided in this First Amendment to Lease, the terms and conditions of the ~~LEASE~~ shall apply to PASHA's lease of the Additional Premises.

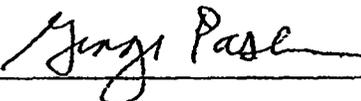
In all other respects MPA and PASHA understand and agree that this LEASE as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this **FIRST AMENDMENT to LEASE** to be duly executed as of the day and year first written above.

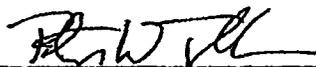
**MARYLAND PORT ADMINISTRATION**

  
~~Executive Director~~ F. Brooks Ruster, III  
~~Acting~~ Executive Director

**PASHA AUTOMOTIVE SERVICES**

  
Print Name: George Pasha  
Print Title: President

**APPROVED TO FORM AND LEGAL SUFFICIENCY:**

  
Assistant Attorney General

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA**

**Alexandria Division**

UNITED STATES OF AMERICA	)	CRIMINAL NO. 03-551-A
	)	Filed February 18, 2004
	)	
v.	)	<b>Count 1:</b> 15 U.S.C. § 1
	)	(Conspiracy To Restrain Trade)
GOSSELIN WORLD WIDE MOVING N.V.,	)	
	)	<b>Count 2:</b> 18 U.S.C § 371
and	)	(Conspiracy To Defraud
	)	the United States)
THE PASHA GROUP,	)	
	)	
	)	
Defendants.	)	

**CRIMINAL INFORMATION**

Gosselin World Wide Moving N.V. ("GOSSELIN N.V.") and The Pasha Group ("PASHA") are made defendants on the charges herein.

**Count One - Conspiracy To Restrain Trade  
(15 U.S.C. § 1)**

**THE UNITED STATES CHARGES THAT:**

1. Beginning in or about October 2001 and continuing until in or about October 2002 ("the relevant period"), the exact dates being unknown to the United States, defendants GOSSELIN N.V. and PASHA (collectively "defendants") and co-conspirators entered into and engaged in a combination and conspiracy to eliminate competition by fixing and raising through rates filed with the Department of Defense ("DOD") for the transportation of household goods owned by U.S. military and civilian DOD personnel ("military household goods") from Germany to the United States. The charged combination and conspiracy engaged in by

defendants and co-conspirators in unreasonable restraint of interstate and foreign trade and commerce violated Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among defendants and co-conspirators, the substantial term of which was to increase the rates paid by DOD for the transportation of military household goods from Germany to the United States.

#### **Defendants and Co-Conspirators**

3. Defendant GOSSELIN N.V. is a Belgian company headquartered in Antwerp, Belgium. During the relevant period, defendant GOSSELIN N.V. was in the business of providing, inter alia, services related to the transportation of military household goods. Defendant GOSSELIN N.V., through various subsidiaries and affiliated companies, including Gosselin World Wide Moving GmbH, a company majority-owned by defendant GOSSELIN N.V., provided local agent services in Germany as described in Paragraph 10.

4. Defendant PASHA is a United States company headquartered in Corte Madera, California. During the relevant period, defendant PASHA was in the business of providing, inter alia, services related to the transportation of military household goods. During the relevant period, defendant PASHA, through its subsidiary, Gateways International, Inc., provided freight forwarder services related to the transportation of military household goods.

5. Various companies, partnerships and individuals, not made defendants in this Count, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of the conspiracy.

6. Whenever this Court refers to any act, deed or transaction of any company, it means that the company engaged in the act, deed or transaction by or through its officers, directors, employees, agents or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

### **Background**

7. DOD administers and coordinates its International Through Government Bill of Lading ("ITGBL") program for the transportation of military household goods between the United States and other countries where U.S. military forces are stationed through the Military Traffic Management Command ("MTMC"). MTMC, recently renamed Surface Distribution Deployment Command, is headquartered in Alexandria, Virginia, in the Eastern District of Virginia.

8. "Freight Forwarders," also known as "forwarders" or "ITGBL carriers," are U.S. companies that submit bids, contract with MTMC and shoulder the ultimate responsibility for ITGBL shipments.

9. "Through rates" are the prices filed by U.S. freight forwarders directly with MTMC for the transportation services provided in a door-to-door move of military household goods from Germany to the United States. Through rates are expressed in dollars per hundredweight.

10. Each ITGBL move is comprised of five steps. A move from Germany to the U.S. requires the following: (1) local German agent services, (2) European port agent services, (3) ocean transport services, (4) U.S. port agent services and (5) U.S. destination agent services. "Local German agents" are firms that provide services in Germany (whether or not they are

owned by German nationals or are incorporated in Germany) including “origin” services, such as packing “liftvans” (large wooden crates used for shipping military household goods) at the German living quarters of the soldier or civilian DOD employee returning to the United States and transporting the liftvans to a warehouse in Europe. European port agents arrange for transportation from the warehouse to a port in Northern Europe (Antwerp, Belgium or Bremerhaven, Germany). European port agents also load the liftvans onto U.S.-flag ocean vessels and handle customs and clearance matters.

11. Ocean transport services involve shipping the military household goods from the European port to the most convenient U.S. port location. U.S. port agents arrange to unload the liftvans from the vessel and handle the shipments through U.S. customs. U.S. destination agents transport the liftvans from the port to the destination location and unpack the shipment.

12. A “landed rate” is a single rate which combines or bundles origin services, foreign port services and ocean freight, and includes a mark-up. Defendants GOSSELIN N.V. and PASHA participate in the ITGBL business, inter alia, as landed rate providers, by offering their U.S. freight forwarder customers, either directly or through subcontractors, the services in steps 1 to 3 of an ITGBL move, as described in Paragraphs 10 and 11.

13. Under the ITGBL program, freight forwarders file rates with MTMC twice a year in a two-step bidding process. The rates filed are expressed in U.S. dollars per hundredweight and are specific to particular “channels.” Channels are routes to or from a particular state, or portion of a state, and a specific foreign country (e.g., Germany-Virginia). Of the channels between Germany and the United States, a majority of military household goods tonnage moves

to and from approximately 20 high-volume states. Virginia, with large U.S. Army bases such as Ft. Myer and Ft. Belvoir, is a high-volume state.

14. Each rate submission covers a six-month cycle. The summer cycle runs from April 1 through September 30; the winter cycle runs from October 1 through March 31. The ITGBL cycles are referred to by the abbreviation "IS," for International Summer, or "IW," for International Winter, combined with the relevant year. Thus, "IS-02 cycle" is shorthand for the international summer cycle running from April 1, 2002 through September 30, 2002.

15. For each rate cycle, MTMC receives two sets of prices from the U.S. freight forwarders. The first step of the rate filing process, the "initial filing," occurs about four months before a cycle begins. In the initial filing, freight forwarders file rates in each channel, eastbound and westbound. Freight forwarders may either file an actual rate or an "administrative high" rate to preserve their right to submit a rate in the second phase of the rate filing process.

16. After the initial filing, MTMC publishes the lowest five ("low-5") rates offered in each channel and the names of the freight forwarders filing those low-5 rates. The lowest rate bid for a channel becomes the "prime through rate." MTMC guarantees to the U.S. freight forwarder that sets the prime through rate a certain percentage of the shipments in a channel as an incentive to set the prime through rate. The second lowest rate becomes the "second-low level." In the second phase of the rate filing process, every forwarder that filed a rate in the initial filing, as described in Paragraph 15, has the opportunity to match, or "me-too," the prime through rate or to file any rate higher than the prime through rate for each individual channel.

17. Over the course of a cycle, the vast majority of the shipments in each channel move at the prime through rate. Thus, a freight forwarder typically must “me-too” the prime through rate in a given channel in order to be offered shipments.

18. Freight forwarders were required to file their initial rates for ITGBL shipments from Germany to the United States for the IS-02 cycle with MTMC by November 8, 2001. In mid-December 2001, MTMC published the low-5, which indicated that a particular U.S. freight forwarder (“FF1”) had set the prime through rates for 26 traffic channels from Germany to the United States for the IS-02 cycle. FF1 did not use a landed rate offered by either defendant GOSSELIN N.V. or defendant PASHA in determining its initial rates. FF1 was not a landed rate customer of either defendant during the IS-02 cycle.

19. For the IS-02 cycle, U.S. freight forwarders were required to file their final or “me-too” rates with MTMC by January 16, 2002.

#### **Manner and Means of the Conspiracy**

20. For purposes of forming and carrying out the charged combination and conspiracy, defendants and co-conspirators did the following things, among others:

a. targeted for elimination the prime through rates filed by FF1 in 12 of the 26 channels referenced in Paragraph 18, with the intent to increase to the second-low level the through rates paid by DOD in those 12 channels, to wit: US24 (Washington, D.C.), US25 (Virginia), US30 (Michigan), US40 (North Carolina), US44 (South Carolina), US49 (Florida-North), US58 (Kansas), US62 (Oklahoma), US66 (Texas-North), US68 (Texas-South), US76 (Utah) and US79 (Arizona);

- b. agreed with co-conspirator FF1 that FF1 would cancel its prime through rates in the 12 specific channels if no other freight forwarder “me-tooed” those prime through rates or filed any rate lower than the second-low level in those channels;
- c. directed co-conspirator U.S. freight forwarders not to “me-too” the prime through rates in the 12 specific channels;
- d. directed co-conspirator U.S. freight forwarders to file “me-too” through rates at the second-low level or higher in the 12 specific channels;
- e. agreed that co-conspirator U.S. freight forwarders would not “me-too” the prime through rates;
- f. agreed that co-conspirator U.S. freight forwarders would file “me-too” through rates at the second-low level or higher in the 12 specific channels;
- g. directed co-conspirator U.S. freight forwarders that filed a “me-too” through rate lower than the second-low level in any of the 12 specific channels to cancel their “me-too” through rates;
- h. agreed that co-conspirator U.S. freight forwarders that filed a “me-too” through rate lower than the second-low level in any of the 12 specific channels would cancel their “me-too” through rates; and
- i. carried out the agreements and directives described in subparagraphs a – h above.

21. The activities undertaken by defendants GOSSELIN N.V. and PASHA and co-conspirators, as described in Paragraph 20, increased the rates paid by DOD to transport military household goods from Germany to the U.S. during the IS-02 cycle.

### **Interstate and Foreign Trade and Commerce**

22. During the relevant period, rates, proposals, contracts, invoices for payment, payments and other documents essential to the provision of ITGBL services were transmitted in interstate and foreign trade and commerce between and among offices of defendants GOSSELIN N.V. and PASHA and co-conspirators located in various States and foreign countries.

23. During the relevant period, defendants GOSSELIN N.V. and PASHA and co-conspirators transported, or arranged for the transportation of, substantial quantities of military household goods, in a continuous and uninterrupted flow of interstate and foreign commerce, from Germany to the United States, through various U.S. ports and States, and ultimately, to final destinations in various States.

24. During the relevant period, DOD paid for ITGBL services by check, wire transfer and other monetary instruments transmitted to the bank accounts of co-conspirator U.S. freight forwarders in a continuous and uninterrupted flow of interstate commerce.

25. Defendants GOSSELIN N.V. and PASHA received payments from co-conspirator U.S. freight forwarders in a continuous and uninterrupted flow of interstate and foreign trade and commerce for services provided as part of the ITGBL transportation of military household goods.

26. The activities of defendants GOSSELIN N.V. and PASHA and co-conspirators in connection with the transportation of military household goods were within the flow of, and substantially affected, interstate and foreign trade and commerce.

**Jurisdiction and Venue**

27. The combination and conspiracy charged in this Count was formed and carried out, in part, within the Eastern District of Virginia within the five years preceding the filing of this information.

(In violation of Title 15, United States Code, Section 1).

**Count Two - Conspiracy To Defraud the United States  
(18 U.S.C. § 371)**

**THE UNITED STATES FURTHER CHARGES THAT:**

28. Beginning in or about October 2001 and continuing until in or about October 2002 (“the relevant period”), the exact dates being unknown to the United States, defendants GOSELIN N.V. and PASHA (collectively “defendants”) and co-conspirators did unlawfully, willfully and knowingly combine, conspire and agree to defraud the United States by increasing the rates paid by the Department of Defense (“DOD”) for the transportation of household goods owned by U.S. military and civilian DOD personnel (“military household goods”) from Germany to the United States during the IS-02 cycle to levels higher than would have prevailed in the absence of the conspiracy. The charged conspiracy to defraud the United States engaged in by defendants and co-conspirators violated 18 U.S.C. § 371.

29. Each and every allegation contained in Paragraphs 3 - 19 and 27 of Count One of this information is here realleged as if fully set forth in this Count.

### **Object of the Conspiracy**

30. It was the object of the conspiracy to increase the rates paid by DOD for the transportation of military household goods from Germany to the United States during the IS-02 cycle to levels higher than would have prevailed in the absence of the conspiracy.

### **Overt Acts**

31. In furtherance of the conspiracy and to achieve the objects thereof, defendants and co-conspirators committed within the period of the conspiracy and within the Eastern District of Virginia, and elsewhere, at least one of the following overt acts, among others:

a. targeted for elimination the prime through rates filed by FF1 in 12 of the 26 channels referenced in Paragraph 18, with the intent to increase to the second-low level the through rates paid by DOD in those 12 channels, to wit: US24 (Washington, D.C.), US25 (Virginia), US30 (Michigan), US40 (North Carolina), US44 (South Carolina), US49 (Florida-North), US58 (Kansas), US62 (Oklahoma), US66 (Texas-North), US68 (Texas-South), US76 (Utah) and US79 (Arizona);

b. agreed with co-conspirator FF1 that FF1 would cancel its prime through rates in the 12 specific channels if no other freight forwarder “me-tood” those prime through rates or filed any rate lower than the second-low level in those channels;

c. directed co-conspirator U.S. freight forwarders not to “me-too” the prime through rates in the 12 specific channels;

d. directed co-conspirator U.S. freight forwarders to file “me-too” through rates at the second-low level or higher in the 12 specific channels;

e. agreed that co-conspirator U.S. freight forwarders would not “me-too” the prime through rates;

f. agreed that co-conspirator U.S. freight forwarders would file “me-too” through rates at the second-low level or higher in the 12 specific channels;

g. directed co-conspirator U.S. freight forwarders that filed a “me-too” through rate lower than the second-low level in any of the 12 specific channels to cancel their “me-too” through rates;

h. agreed that co-conspirator U.S. freight forwarders that filed a “me-too” through rate lower than the second-low level in any of the 12 specific channels would cancel their “me-too” through rates; and

i. carried out the agreements and directives described in subparagraphs a - h above.

32. Defendants GOSSELIN N.V. and PASHA and co-conspirators provided misleading information to DOD personnel in Germany to ensure that no shipments of military household goods were tendered to U.S. freight forwarders that had filed “me-too” through rates below the second-low level in any of the 12 specific channels, as described in Paragraph 31.

33. The activities undertaken by defendants GOSSELIN N.V. and PASHA and co-conspirators, as described in Paragraphs 31 and 32, defrauded DOD and increased the rates paid by DOD for the transport of military household goods during the IS-02 cycle.

(In violation of Title 18, United States Code, Section 371).

02/18/04

/s/

\_\_\_\_\_  
R. HEWITT PATE  
Assistant Attorney General

02/18/04

/s/

\_\_\_\_\_  
LISA M. PHELAN  
Chief, National Criminal  
Enforcement Section

02/18/04

/s/

\_\_\_\_\_  
JAMES M. GRIFFIN  
Deputy Assistant Attorney General

02/18/04

/s/

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02/18/04

/s/

\_\_\_\_\_  
SCOTT D. HAMMOND  
Director of Criminal Enforcement

Antitrust Division  
U.S. Department of Justice



PUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,  
*Plaintiff-Appellant,*

v.

GOSSELIN WORLD WIDE MOVING,  
N.V.; THE PASHA GROUP,  
*Defendants-Appellees.*

No. 04-4752

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

GOSSELIN WORLD WIDE MOVING,  
N.V.,  
*Defendant-Appellant,*

and

THE PASHA GROUP,  
*Defendant.*

No. 04-4876

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

THE PASHA GROUP,  
*Defendant-Appellant,*

and

GOSSELIN WORLD WIDE MOVING,  
N.V.,

*Defendant.*

No. 04-4877

Appeals from the United States District Court  
for the Eastern District of Virginia, at Alexandria.  
Gerald Bruce Lee, District Judge.  
(CR-03-551)

Argued: March 18, 2005

Decided: June 14, 2005

Before WILKINSON and GREGORY, Circuit Judges, and  
Frederick P. STAMP, Jr., United States District Judge  
for the Northern District of West Virginia, sitting by designation.

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Affirmed in part, reversed in part, and remanded for resentencing by  
published opinion. Judge Wilkinson wrote the opinion, in which  
Judge Gregory and Judge Stamp joined.

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**COUNSEL**

**ARGUED:** John J. Powers, III, UNITED STATES DEPARTMENT  
OF JUSTICE, Antitrust Division, Appellate Section, Washington,  
D.C., for the United States. Charles Frederick Rule, FRIED, FRANK,

HARRIS, SHRIVER & JACOBSON, L.L.P., Washington, D.C., for Gosselin World Wide Moving, N.V., and The Pasha Group. **ON BRIEF:** R. Hewitt Pate, Assistant Attorney General, Makan Delrahim, Deputy Assistant Attorney General, James M. Griffin, Deputy Assistant Attorney General, Andrea Limmer, Hays Gorey, Jr., Mark W. Pletcher, Craig Y. Lee, UNITED STATES DEPARTMENT OF JUSTICE, Antitrust Division, Appellate Section, Washington, D.C., for the United States. Henry W. Asbill, COZEN O'CONNOR, P.C., Washington, D.C.; C. Allen Foster, Joe R. Reeder, Shirley Z. Johnson, GREENBERG TRAURIG, L.L.P., Washington, D.C., for Gosselin World Wide Moving, N.V. Anthony V. Nanni, Tommy P. Beaudreau, Michael J. Anstett, Franklin M. Rubinstein, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, L.L.P., Washington, D.C., for The Pasha Group.

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### OPINION

WILKINSON, Circuit Judge:

In this case, we must decide whether defendants are criminally liable for a scheme that raised the prices the Department of Defense ("DOD") pays to transport its personnel's belongings overseas. Defendants have admitted to orchestrating this scheme and have agreed to accept liability under the Sherman Act, 15 U.S.C. § 1 (2000), and the federal anti-fraud statute, 18 U.S.C. § 371 (2000), if we determine that their behavior is not immune from such liability under the Shipping Act, 46 U.S.C. app. §§ 1701-1719 (2000). We hold that the Shipping Act's immunity provisions afford defendants no relief from liability for the antitrust violation and conspiracy to defraud they have admitted. We therefore affirm in part, reverse in part, and remand for resentencing.

I.

A.

When personnel of the DOD are posted to foreign countries, the International Through Government Bill of Lading program

("ITGBL") covers their moving expenses. The DOD contracts with private companies to provide this service. Under the Military Traffic Management Command ("MTMC"), bids are solicited for "through rates" from U.S. freight forwarding companies. A through rate is a payment encompassing all the costs involved in a door-to-door move of DOD personnel's household effects. Bidding for through rates occurs biannually and involves a two step process.

In the first step, or "initial filing," the freight forwarders file a bid for a through rate associated with a particular route, or channel. The low bid that emerges is referred to as the "prime through rate." MTMC publishes this bid and the next four lowest bids. The company that bids the prime is entitled to a set percentage of DOD freight business for the associated channel.

In the second step, other freight forwarders resubmit bids in light of the published prime. The remaining companies may match, or "me-too," the prime for each channel, or they may bid a higher rate. When the channel at issue operates in a competitive market, a forwarder must typically me-too the prime to receive any DOD business. Forwarders that me-too the prime are also entitled to a set portion of DOD business for the cycle and channel for which they have bid.

Because through rates are unitary, they encompass many costs, all of which the U.S. forwarders become responsible for when the DOD accepts their bids. Some of these costs relate to moving services undertaken by other firms along the channel. Costs of this sort cover five general categories of service: the carriage of goods between inland U.S. cities and U.S. ports, services performed at U.S. ports, ocean transportation between U.S. and foreign ports, foreign port services, and carriage of goods between foreign ports and foreign inland points. U.S. freight forwarders must naturally consider these costs in setting their bids.

#### B.

Defendant Gosselin World Wide Moving N.V. ("Gosselin"), a Belgian corporation, and defendant The Pasha Group ("Pasha"), a U.S. corporation, operate in the channels between the United States and Germany. Both companies provide a package covering local German

moving agent services, European port services, and ocean transport services in this market. Defendants thus deal with goods shipments between German points of origin (the households of DOD personnel abroad) and U.S. ports of destination. Gosselin and Pasha offer a "landed rate," which is a fee that covers all the moving costs involved in the portion of the channels they service.

Defendants also act as the exclusive agents of the International Shippers' Association ("ISA"), a conference of freight forwarders organized to negotiate collectively with shippers operating in the through transportation market. Many of the U.S. freight forwarders who place bids in the MTMC are also ISA members. In their capacity as ISA agents, Gosselin and Pasha negotiate service contracts with the Trans Atlantic American Flag Line Operators ("TAAFLO"), a group of U.S. ocean carriers. TAAFLO's service contract with the ISA entitles all ISA members to ocean transportation with TAAFLO member-carriers at a predetermined rate.

In late 2001, initial filings for the summer bidding cycle of 2002 occurred. A U.S. freight forwarder ("FF1") filed prime through rates with the MTMC for twenty-six of the channels between Germany and the U.S. FF1 did not use the landed rate offered by either defendant. Instead, by negotiating separately with each service provider at every step of the transportation chain, FF1 was able to undercut its competitors by three dollars per hundredweight in twelve of the twenty-six channels. In December 2001, DOD published FF1's prime bid along with the next four lowest. The remaining forwarders then had until January 12, 2002 to file their second round bids.

Gosselin was evidently alarmed that FF1 had been able to low-bid for the twelve channels without using Gosselin's landed rate. Later in December, Gosselin's managing director sent an email to another landed rate provider, inviting the provider to collude with Gosselin to prevent the me-too rates for the twelve routes at issue from converging to the prime. Such convergence was likely, as we have noted, because of the competitiveness of the US-Germany through transportation market. The Gosselin managing director observed that by "not taking [FF1's bid] into consideration we would increase the rate level with an average of [\$3.63]." The director opined that "[t]his is the only thing that in my mind can happen." In a reply email sent the

same day, an executive at the competitor concurred, noting that "if we do not react and give [the] industry a clear message which rate to base the [me-too bids] on, then everyone will use the low rate and later expect us to reduce our rates so those carriers can work under their [me-too] rates."

Shortly after this exchange, Gosselin's managing director forwarded the emails to the president of Pasha. The Gosselin executive identified the twelve channels, which had "quite some money on the table," and inquired "what rate levels would you be able to support if those [channels] would go to second level?" The director stressed that "it is important we [ ] move rather quickly now." Pasha later indicated its willingness to cooperate.

Defendants faced a difficult task in preventing the imminent me-too bids from converging to the prime. FF1 had already demonstrated that defendants' landed rates could be undercut by contracting separately for each transportation segment along the twelve channels. Defendants therefore had to take preemptive action to prevent the remaining U.S. forwarders from following FF1's lead. In early January 2002, the managing director of Gosselin agreed in writing to pay twelve of the largest German moving agents a specified fee. The German agents, for their part, agreed not to handle business from freight forwarders in those channels unless the forwarders submitted me-too bids at the second lowest level (the "second low") or above. Gosselin thereafter arranged a telefax to U.S. freight forwarders who were finalizing their second-step bids advising them of the German agents' undertaking.

Not content with securing their share of the DOD business designated for the second-round bids, defendants set about eliminating FF1's prime rate in the twelve channels at issue. First, they persuaded FF1 to cancel its bid with the MTMC if the remaining freight forwarders would file second-step bids at or above the second-low level. Defendants then secured such an agreement from the remaining forwarders. The forwarders overwhelmingly honored this agreement, and those who strayed below the second-low level were persuaded to withdraw their competitive bids.

As a result of defendants' scheme, a good deal of household goods shipments during the 2002 summer cycle in the twelve channels

occurred at or above the second-low rate. The net financial effect of the conspiracy was to cause the DOD to pay substantially more than if FFI's original prime rate had prevailed.

C.

The Department of Justice ("DOJ") charged defendants by information with two counts. The first count alleged a conspiracy to restrain trade in violation of the Sherman Act, 15 U.S.C. § 1 (2000). The second count alleged a conspiracy to defraud the United States under 18 U.S.C. § 371 (2000).

Defendants agreed to conditional pleas. They stipulated to a statement of facts on the basis of which they would move the district court to dismiss both counts. Gosselin and Pasha agreed in their pleas to make only one argument in support of their motion to dismiss: that the conduct set forth in the statement of facts "is immune from prosecution under the [Shipping Act.]" If the district court found such immunity with respect to "both counts," and this finding was affirmed on appeal, defendants would not enter a guilty plea. If the district court denied the motion "as to either or both counts," however, the defendant would plead guilty on the "remaining counts" subject to withdrawal if a higher court overturned the district court's finding. The plea agreements also indicated that the parties would recommend to the district court specified sentences in the form of financial penalties depending on which count or counts survived the motion to dismiss.

Pursuant to the plea agreement, defendants filed a motion to dismiss on the basis of immunity under the Shipping Act, 46 U.S.C. app. §§ 1701-1719 (2000). The district court granted the motion with respect to the antitrust count, but denied it with respect to the conspiracy to defraud count. Following the arrangement set out in the plea agreements, Gosselin and Pasha pled guilty to the conspiracy to defraud count. Again pursuant to the pleas, the district court imposed on each defendant a criminal fine of \$4.6 million. After the final sentencing order, the DOJ appealed the dismissal on immunity grounds of the antitrust count and defendants cross-appealed their convictions on the conspiracy to defraud count. We now address these appeals, beginning with the issue of immunity under the Shipping Act.

## II.

Defendants' collusion with each other and with other firms operating in the twelve transportation channels clearly violated the Sherman Act's injunction on combinations "in restraint of trade." 15 U.S.C. § 1 (2000). "It has been held too often to require elaboration [ ] that price fixing is contrary to the policy of competition underlying the Sherman Act . . . ." *United States v. McKesson & Robbins, Inc.*, 351 U.S. 305, 309 (1956). Defendants' scheme, which prevented second round bids from converging to the prime and even erased FF1's first round prime bid, amounted to naked bid rigging. And "bid rigging agreement is price-fixing agreement of the simplest kind." *United States v. Portsmouth Paving Co.*, 694 F.2d 312, 318 (4th Cir. 1982) (quoting *United States v. Bensinger Co.*, 430 F.2d 584, 589 (8th Cir. 1970)); see also *United States v. W.F. Brinkley & Son Constr. Co., Inc.*, 783 F.2d 1157, 1160 (4th Cir. 1986). Criminal antitrust liability is therefore appropriate unless defendants enjoy immunity under another federal law.

The Supreme Court has consistently construed the reach of exemptions from antitrust laws narrowly, even when Congress confers these exemptions in terms. See, e.g., *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 (1982). This narrow construction of antitrust immunity is appropriate because the robust marketplace competition that antitrust laws protect is a "fundamental national economic policy." *Carnation Co. v. Pac. Westbound Conference*, 383 U.S. 213, 218 (1966); see also *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973). This canon of construction has been employed by the Supreme Court to defeat antitrust exemptions claimed under provisions of the McCarran-Ferguson Act, see *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 231-32 (1979), the Miller-Tydings and McGuire Acts, see *McKesson*, 351 U.S. at 316, and the Agricultural Marketing Agreement Act, see *United States v. Borden Co.*, 308 U.S. 188, 198-200 (1939).

Defendants here claim exemption from antitrust law under a federal maritime statute, the Shipping Act of 1984. 46 U.S.C. app. §§ 1701-1719 (2000). The Act modified an earlier law enacted in 1916. See 46 U.S.C. §§ 801-842 (1982). The earlier enactment grew out of the difficulties faced by the U.S. shipping industry in the early

part of the last century. *See generally Puerto Rico Ports Auth. v FMC*, 919 F.2d 799, 806-807 (1st Cir. 1990); *Plaquemines Port, Harbor and Terminal Dist. v. FMC*, 838 F.2d 536, 542-43 (D.C. Cir. 1988). To set U.S. shippers on an equal footing with foreign competitors, who operated outside of U.S. antitrust strictures, Congress granted them limited antitrust immunity. *See* 46 U.S.C. § 814 (1982).

This immunity, however, came with regulatory strings attached. *See id.* § 804. The regulatory requirements of the 1916 Act were designed to prevent the maritime transportation industry from monopolistically abusing its newly conferred grant of immunity. *See Puerto Rico Ports*, 919 F.2d at 807. Regulation under the 1916 Act thus preserved some anti-competitive prohibitions. *See id.*; *A & E Pacific Constr. Co. v. Saipan Stevedore Co., Inc.*, 888 F.2d 68, 71 (9th Cir. 1989); *Plaquemines*, 838 F.2d at 542-43. Nonetheless, regulated firms did enjoy the real benefit of operating outside the full strictures of federal antitrust laws. Mindful of this benefit, the Supreme Court concluded that the traditional canon of narrow construction, applicable to antitrust exemptions generally, applied with full force to the coverage provisions of the 1916 Act. *See FMC v. Seatrain Lines, Inc.*, 411 U.S. 726, 732-33 (1973); *Carnation*, 383 U.S. at 217-218.

The 1916 Act was supplemented by the Shipping Act of 1984, 46 U.S.C. app. §§ 1701-1719 (2000). Although the 1984 Act contained several new grants of antitrust immunity, *see id.* § 1706(a), nowhere in the 1984 Act did Congress indicate an intention to override the principle of narrow construction for antitrust exemptions that the Supreme Court had long applied to the 1916 Act. Moreover, this interpretive maxim has informed the construction of every other grant of antitrust immunity in federal legislation. We therefore see no reason to depart from ordinary practice in construing the 1984 Act.

### III.

With the foregoing interpretive framework in mind, we turn to defendants' particular contentions. The district court found antitrust immunity for Gosselin and Pasha in three distinct statutory provisions

of the Shipping Act. We address immunity under each statutory provision separately.<sup>1</sup>

A.

Defendants first claim immunity under 46 U.S.C. app. § 1706(a)(4) (2000), which exempts from antitrust liability "any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade."

Defendants argue that this provision covers all aspects of their scheme to rig bids. The first step in this scheme, defendants emphasize, was the agreement with twelve large German local agents to handle no business from forwarders who filed bids below the second low level. This agreement, defendants claim, is covered by § 1706(a)(4) because the German agents provide only services between German ports and destinations in the interior — a "foreign inland segment." Gosselin and Pasha had market leverage only in this segment; in the other segment they service, ocean transportation, they were constrained by their status as ISA agents and the strict terms of the TAAFLO service contract. Thus the success of the remainder of their scheme depended entirely on the continued viability of the arrangement defendants had reached with the local German firms. For this reason, defendants conclude, the scheme in its entirety should be covered by the immunity provision of § 1706(a)(4).

We do not believe that the statutory exemption extends as far as Gosselin and Pasha would have it. To begin with, the statutory language does not support defendants' position. For an agreement or

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<sup>1</sup>Defendants note that when parties enter into a conditional plea agreement designed to permit defendants to challenge the prosecution theory on a particular basis, any ambiguities in the stipulated facts must be resolved in defendants' favor and the government may not rely in its prosecution on facts beyond those stipulated. *See United States v. Harvey*, 791 F.2d 294, 300 (4th Cir. 1986). Accordingly, in resolving the contentions that defendants press on appeal, we take care not to rely on allegations that were not admitted in the plea agreements and the incorporated statement of facts.

activity to "[concern] the foreign inland segment," § 1706(a)(4) (emphasis added), as the statute requires, the parties undertaking the agreement or participating in the activity must have in mind some consequence for the foreign inland segment that they intend their behavior to have. *Accord Hileman v. Pittsburgh & Lake Erie Props., Inc.*, 290 F.3d 516, 519 (3d Cir. 2002) ("'[C]oncerning' . . . is essentially a connecting term, the scope and meaning of which is defined in part by the terms it modifies."); *Commerford v. Thompson*, 1 F. 417, 420 (C.C. Ky. 1880) (observing that the "broadest sense" of the term "concerning" is "pertaining to or relative to"). Because defendants' collusive effort was aimed at the entire through transportation market, rather than just the foreign inland segment, we do not think that they can claim exemption from antitrust liability under § 1706(a)(4). Indeed, defendants fixed bids for through transportation rates, i.e. door-to-door rates, not just rates for the "foreign inland segment" of the routes. § 1706(a)(4).

It is true that defendants' original agreement with the German local agents may have had the relationship to a "foreign inland segment" that the statute requires. *Id.* Indeed, *United States v. Tucor Int'l, Inc.*, 35 F. Supp. 2d 1172 (N.D. Cal. 1998), *aff'd*, 189 F.3d 834 (9th Cir. 1999), the case upon which Gosselin and Pasha chiefly rely, awarded immunity under the Shipping Act. In *Tucor*, several Philippine firms, operating in a through transportation market "packed, picked up, and trucked household shipments [of U.S. military personnel] from Subic Naval Base and Clark Air Force Base . . . to a Philippine seaport." 189 F.3d at 836. The firms were indicted under the Sherman Act for conspiring amongst each other "to suppress competition by fixing prices." *Tucor*, 35 F. Supp. 2d at 1175. Defendants pled guilty, but the district court later dismissed the indictments on the basis of immunity under § 1706(a)(4). The Ninth Circuit affirmed, finding that § 1706(a)(4)'s reference to a "foreign inland segment," "unambiguously exempts the activities of [defendants]," *Tucor*, 189 F.3d at 836, occurring as they did between points "entirely within a foreign country." *Id.* at 835.

There is an argument to be made that the agreement defendants made with the local German firms fits under the immunity announced in *Tucor*. And if defendants' scheme had ended there, we would have to decide whether the agreement did so qualify and whether *Tucor*

should be adopted in this circuit. But the scheme did not stop there. Rather, Gosselin and Pasha took additional steps to perfect their bid-rigging plan. And we are not persuaded that these additional steps "[concerned] the foreign inland segment," in the manner the statute requires. § 1706(a)(4).

Gosselin and Pasha's contacts with FF1, for instance, related not to foreign inland services, but to defendants' desire that FF1 withdraw the prime through rate bid it had filed with MTMC. Similarly, the agreement defendants secured from other U.S. freight forwarders to file bids at or above the second low level had little to do with the German inland segment of the through services these forwarders offered. Rather, the agreement was a precommitment mechanism to ensure that none of the freight forwarders defected from the anticompetitive cartel that defendants were assembling. When some of these forwarders later broke ranks, defendants instituted measures to reign them in. But these measures were designed only to secure withdrawal of the competitive through rate bids the forwarders had filed in the second round, not to have consequences for the foreign inland segment.

In short, none of the additional steps Gosselin and Pasha took beyond their agreement with the German local agents had intended effects for any aspect of the German inland part of the through transportation market. It is unclear, therefore, how these steps "[concerned]" this foreign inland segment, as they must for immunity to attach under § 1706(a)(4).

Moreover, a broad immunity of the sort that Gosselin and Pasha seek would threaten to excise antitrust liability from the through transportation market completely. If § 1706(a)(4) exempted from antitrust all stages of a conspiracy that involves in some manner a foreign inland segment, then any firm operating in any segment of any through transportation channel need only execute an agreement with a local moving agent to shield itself from the antitrust laws entirely. It does not take much to imagine how sophisticated transportation firms, intent on reaping larger gains, might abuse the immunity of such a rule. The incentives for opportunistic associations with companies operating in foreign inland segments would simply be too great. And without the constraint of anticipated antitrust liability, the prices charged by companies in the through transportation market would

escalate. Further, the agreements and activity for which defendants seek immunity here were not regulated by the FMC. Lack of regulatory oversight might only exacerbate the upward pressure on prices for through transportation engendered by the absence of antitrust liability.

The upshot of defendants' interpretation of § 1706(a)(4) would therefore be a through transportation market beset with collusive and artificially inflated bids, detrimental to consumers and non-cooperating competitors alike. The government, as a repeat purchaser, would stand to lose much, and the extra money it would have to pay would come from the fisc and thus taxpayers.

It is unlikely that Congress intended such dismaying effects, but if there is any doubt over whether § 1706(a)(4) affords defendants relief, it is settled by the maxim that exceptions to the antitrust laws should be construed narrowly. *See Seatrain*, 411 U.S. at 732-33. The Supreme Court has relied on this principle to render agreements subject to the antitrust laws rather than the lesser anticompetitive protections of FMC regulation. *See id.* Here defendants seek exemption from legal enforcement by the DOJ for agreements that have not been regulated by the FMC. We hold for reasons earlier expressed that § 1706(a)(4) does not immunize defendants' scheme to raise through rate bids in the twelve channels at issue.

B.

Defendants next claim immunity under § 1706(a)(2). That section exempts from antitrust laws

any activity or agreement within the scope of this chapter . . . undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the [FMC] and in effect when the activity took place, or (B) it is exempt[ed by the FMC under § 1715] from any filing or publication requirement of this chapter.

Defendants do not claim that their "activity or agreement[s]" were undertaken "pursuant to an agreement on file with the" FMC. Rather,

they point to a tariff filing exemption that the FMC granted to non-vessel operating common carriers, like defendants, for the "[t]ransportation of used military household goods and personal effects by ocean transportation intermediaries." 46 C.F.R. § 520.13(c) (2004). Gosselin and Pasha argue that they reasonably believed their collusive "activit[ies] and agreement[s]" to be exempt from the filing requirements of the Shipping Act under this regulation, and thus beyond the antitrust laws under § 1706(a)(2)(B).

The touchstone of § 1706(a)(2)(B) is reasonableness. Yet the terms of the exemption on which defendants rely, and other features of the regulatory framework in which defendants operate, demonstrate that their reliance was, if anything, unreasonable.

To begin with, the exemption facially covers only "tariffs," *see* 46 C.F.R. § 520.1(a) (2004), not the kind of agreements and activities involved in defendants' bid rigging scheme. Yet a distinction between tariffs on the one hand and operating agreements on the other pervades the Shipping Act. *Compare* § 1703(a) (cataloguing the "agreements by or among ocean common carriers" to which the "chapter applies," including agreements to "discuss, fix, or regulate transportation rates"), *with* § 1707 (describing "tariffs" that "each common carrier and conference shall keep open to public inspection"). This statutory distinction makes implausible defendants' claim that they understood the reference to tariffs in the exemption to cover the collusive agreements they secured during the course of their scheme.<sup>2</sup>

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<sup>2</sup>Indeed, it would appear that the reach of the immunity in § 1706(a)(2)(B) is not as broad as defendants assume. Gosselin and Pasha focus on the tariff disclosure dispensation they received, but the statutory provision clearly requires a reasonable belief in an exemption from "any filing or publication requirement of" the Shipping Act. § 1706(a)(2)(B) (emphasis added). Section 1706(a)(2)(B) thus refers not only to § 1707 — the tariff disclosure provision — but also § 1704, which governs disclosure of "agreement[s]." And § 1704(a), by its terms, extends to agreements that "control, regulate, or prevent competition in international ocean transportation." § 1703(a)(6). The agreements secured during the course of defendants' scheme would qualify under this definition, making them subject to a "filing or publication requirement of" the Act under § 1706(a)(2)(B). But if this is so, defendants' would hardly have a "reasonable basis to conclude that" their "activity or agreement[s]" were exempt from "any" disclosure provision of the statute, as they must to be immunized under § 1706(a)(2)(B).

The terms of § 1715, the Shipping Act provision mentioned in § 1706(a)(2)(B) which governs the FMC's exemption procedures, further erodes Gosselin and Pasha's claim of immunity under § 1706(a)(2)(B). Section 1715 conditions exemption from the disclosure requirements of the Act on a finding by the FMC "that the exemption will not result in substantial reduction in competition or be detrimental to commerce." The FMC was thus required to make such a finding before passing the tariff filing dispensation on which defendants claim to have relied.

Section 1715 is quite clear in laying out the criteria for the granting of filing exemptions: no "substantial reduction in competition" nor a "[detriment] to commerce" may result from the exemption. The agreements that defendants secured during their bid rigging scheme, however, accomplished just those ends: indeed, it was precisely by a "reduction in competition" that Gosselin and Pasha succeeded in inflating bids above the prime level, and this result was clearly "[detrimental] to commerce." The incongruence between the conditions that § 1715 sets forth and the effects of defendants' bid-rigging scheme erodes defendants' claim that they reasonably understood the tariff filing exemption to permit such activity.

Pasha and Gosselin complain that the ex ante judgment of the FMC under § 1715 should not apply ex post to our interpretation of the reasonableness standard under § 1706(a)(2)(B). But the statutory phrase "with a reasonable basis to conclude," § 1706 (a)(2), clearly contemplates an inquiry into the propriety of a party's belief in light of the circumstances. And one of those circumstances is surely the terms of the statute governing the exemption. As sophisticated businesses operating in a regulatory regime, defendants are properly charged with knowledge of the statute that applies to their behavior. *Accord Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1548 (9th Cir. 1989) (citing *Kansas Power & Light v. Burlington N. R.R. Co.*, 544 F. Supp. 1336, 1347 (D. Kan. 1982)) (indicating that "specialized knowledge" including of "statutory . . . law" may properly be presumed of parties according to their "experience"). Thus aware of the criteria set forth in § 1715, Gosselin and Pasha can hardly claim a "reasonable basis to conclude that" their behavior was covered by the tariff filing exemption. § 1706(a)(2). An exemption conditioned upon no "substantial reduction in competition" simply

should not be read to sanction, in any manner, behavior intended to accomplish just such a reduction. § 1715.

Moreover, defendants' position flies once again in the face of the maxim that exceptions to antitrust liability should be narrowly construed. Gosselin and Pasha's claim that the scope of the tariff filing exemption somehow applies to the stark anticompetitive agreements here is simply not persuasive. Section 1706(a)(2)(B) may well extend to behavior taken pursuant to an FMC filing or exemption whose anticompetitive effects are inadvertent, tangential, or debatable. But when, as here, the anticompetitive effects are intentional, direct, and palpable, reading § 1706(a)(2)(B) to insulate these effects from liability would encourage gross violations of the antitrust laws and vitiate the canon of construction that aims to protect the operation of these laws.

For the foregoing reasons, we do not believe that Congress intended § 1706(a)(2)(B) to confer immunity on the kind of conduct for which defendants are being prosecuted. We therefore find that defendants' scheme to rig bids is not exempt from antitrust under § 1706(a)(2)(B).

### C.

The final part of the Shipping Act under which defendants claim immunity is § 1706(c)(1). This provision states that "[a]ny determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws set forth in [§ 1706(a)] shall not remove or alter the antitrust immunity for the period before the determination." Defendants contend that an adverse decision on one of the two other statutory immunities they seek — § 1706(a)(4) and § 1706(a)(2)(B) — constitutes a "denial or removal," and that § 1706(c)(1) thus requires that any penalty be imposed only prospectively.

Section 1706(c)(1) was designed for those instances in which a firm has been operating under a clearly established statutory immunity, whose validity or scope is subsequently called into doubt — for instance because of a changed circumstance or because of some discrete action on the part of the firm that the statute prohibits. *See, e.g.,*

§ 1709 (listing a variety of prohibited actions for firms operating under filed tariffs or agreements). When such an event occurs and immunity is abrogated, § 1706(c)(1) ensures that subsequent legal or administrative proceedings will not impose liability for the period between the event and the proceedings. The provision thus affords the regulated firm some time to re-engage the administrative process or otherwise render itself compliant. Under this interpretation, § 1706(c)(1) promotes beneficial reliance by the regulated industry on the regulatory process, particularly when the event that abrogates immunity is the invalidation of a filed tariff or operating agreement. Congress was evidently mindful of this end in passing this provision. *See, e.g., H.R. Rep. No. 98-53*, pt. 1, at 33 (1983) ("[Section 1706(c)] is needed to provide a degree of stability and certainty to an agreement filed in good faith and valid on its face.")

To qualify for relief under § 1706(c)(1), defendants must therefore identify a discrete event that triggers the provision's grace period. Obviously, that event cannot be our present denial of immunity under another statutory provision of the Shipping Act, as defendants would have it. Were we to countenance such an argument, a maritime firm wishing to avoid full antitrust liability would simply invent a series of spurious immunity arguments and remain perpetually one step ahead of the judicial or administrative proceedings invalidating them. Such a state of affairs would be the antithesis of the antitrust protections that the maxim requiring narrow construction of exemptions therefrom contemplates. *See Seatrain*, 411 U.S. at 732-33. We therefore reject defendants' interpretation of § 1706(c)(1).

D.

In short, we hold that defendants' scheme to rig bids does not qualify for immunity under any of the three provisions Gosselin and Pasha rely on — § 1706(a)(4), § 1706(a)(2), and § 1706(c)(1).<sup>3</sup> We therefore

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<sup>3</sup>Because we reach this conclusion on the substance of defendants' immunity arguments, we need not address the government's alternative contention that the agreements for which Gosselin and Pasha seek immunity are beyond the coverage provisions of the Shipping Act and likewise beyond the FMC's jurisdiction. *See* § 1703; *see also Tucor*, 189 F.3d 837 (discussing a similar argument made in that case).

conclude that defendants enjoy no immunity from antitrust prosecution under the Shipping Act.<sup>4</sup>

#### IV.

The charging information also contained a conspiracy to defraud count. *See* 18 U.S.C. § 371 (2000). Defendants argued in their motion to dismiss that the immunity provisions of the Shipping Act were broad enough to insulate them from liability under a conspiracy to defraud theory. Despite the district court's conclusion that defendants were indeed immunized from antitrust liability by the Shipping Act, the court found that this immunity did not extend to conspiracy to defraud. Employing the test set forth in *Blockburger v. United States*, 284 U.S. 299 (1932), the district court further determined that the elements of the antitrust claim did not subsume those of the conspiracy to defraud claim. The district court thus concluded that defendants could properly be prosecuted for the same behavior under both counts. *See United States v. Ashley Transfer & Storage Co., Inc.*, 858 F.2d 221, 224-25 (4th Cir. 1988) (finding that conduct may form basis for prosecution under § 371 following acquittal on Sherman Act count). As a result, the court rejected defendants' motion to dismiss the fraud count on Shipping Act immunity grounds, and, following the terms of the plea agreements, Gosselin and Pasha pled guilty under § 371.

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<sup>4</sup>One of the factors on which the district court rested its contrary determination was the "rule of lenity." Under this principle of interpretation, the application of ambiguous criminal statutes should be resolved in favor of a defendant. *See, e.g., Rewis v. United States*, 401 U.S. 808, 812 (1971). The Supreme Court has counseled, however, that there must be a "genuine ambiguity" before lenity will apply, *Perrin v. United States*, 444 U.S. 37, 49 n.13 (1979), and has warned that no such ambiguity exists when "the ambiguous reading relied on is an implausible reading of the congressional purpose." *Caron v. United States*, 524 U.S. 308, 316 (1998). The Court has also directed that "traditional tools of statutory construction" should be consulted before ambiguity is found. *Id.* (citing *United States v. Shabani*, 513 U.S. 10, 17 (1994)). Finding, as we do, that such "traditional tools," including "congressional purpose" and ordinary canons of statutory construction, suffice to resolve the interpretive issues before us, we see no occasion for resort to the rule of lenity.

We have concluded that defendants enjoy no antitrust immunity under the Shipping Act. We therefore need not determine, as the district court did, whether immunity under the Shipping Act extends to anticompetitive behavior that is also actionable under a conspiracy to defraud theory. Furthermore, defendants concede on appeal that the district court's *Blockburger* analysis is "certainly correct" and that "simultaneous Sherman Act and Section 371 prosecutions are not multiplicitous." Prosecution of defendants' particular course of action under both statutes is therefore permissible.

In reviewing the district court's disposition of the conspiracy to defraud counts, it remains only to address the contention, raised on appeal, that there is insufficient factual support in the plea agreements and incorporated statement of facts for an adjudication of guilt under § 371.

Challenges to the factual basis for an adjudication of guilt following a guilty plea are severely circumscribed. "A voluntary and intelligent plea of guilty is an admission of all the elements of a formal criminal charge." *United States v. Willis*, 992 F.2d 489, 490 (4th Cir. 1993) (quoting *McCarthy v. United States*, 394 U.S. 459, 466 (1969)). A defendant who pleads guilty therefore "admits all of the factual allegations made in the indictment," *O'Leary v. United States*, 856 F.2d 1142, 1143 (8th Cir. 1988) (per curiam), and waives "all non-jurisdictional defects, including the right to contest the factual merits of the charges." *Willis*, 992 F.2d at 490 (internal citations omitted); see also *United States v. Wiggins*, 905 F.2d 51, 52 (4th Cir. 1990). In these circumstances, courts have permitted a defendant to challenge an adjudication of guilt only with the argument that "the facts underlying the charge" are insufficient "to constitute a crime." *Stanback v. United States*, 113 F.3d 651, 654 (7th Cir. 1997).

The most that Gosselin and Pasha may argue, therefore, is that the allegations in the plea agreements and the incorporated statement of facts are so insubstantial that they could not constitute an offense under § 371. It is clear that the factual recitations in the plea documents easily surmount this low hurdle. Conspiracy to defraud under § 371 requires three elements: "(1) the existence of an agreement, (2) an overt act by one of the conspirators in furtherance of the objectives, and (3) an intent on the part of the conspirators to agree as well

as to defraud the United States." *United States v. Tedder*, 801 F.2d 1437, 1446 (4th Cir. 1986). The statute covers "not only conspiracies intended to involve the loss of government funds but also any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government." *Id.* The statement of facts laid out in some detail the course of defendants' conspiracy, including the discrete agreements Gosselin and Pasha secured with various firms engaged in the bidding cycle. The statement of facts also unequivocally recites that the foregoing actions "[increased] the rates paid by DOD for the transportation of military goods during the [cycle] to levels higher than would have prevailed in the absence of their conspiracy." The stipulation therefore contains an abundance of information to establish a conspiracy to "[impair] . . . the lawful function of [a] department of government," *id.* — namely the MTMC program.

#### V.

The final contention that Gosselin and Pasha raise on appeal concerns their sentence. Following the adjudication of guilt on the conspiracy to defraud count, the district court considered the sentences that the parties had agreed to recommend in the event of this outcome. The district court settled on the figure recommended in the plea agreements — a fine of \$4.6 million for each defendant for its part in the conspiracy to defraud. Gosselin and Pasha now argue that this fine exceeded the maximum permissible under the relevant sentencing statute, 18 U.S.C. § 3571 (2000). They assert that the "gross loss" to the government as a result of the conspiracy to defraud was only \$1 million, *id.* § 3571 (d), less than the \$2.3 million amount on which the plea agreements' sentencing recommendations for the § 371 count were predicated.

The sentencing arrangement that the parties agreed to is carefully set out in each plea document. In the event of an adjudication of guilt, "the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly, that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine . . ." The agreements further provide that "Count 1 and Count 2 are [to be] grouped together" for sentencing purposes, "and thus, the total fine paid will be the greater of" two figures that

each sentencing agreement recites. The first figure is derived by applying various listed Sentencing Guidelines factors to the penalty provisions governing Sherman Act violations. The second figure is derived by applying various listed Sentencing Guidelines factors to the penalty provisions governing § 371 violations.

Operating under the assumption that defendants were guilty only of conspiracy to defraud, the district court limited its attention during sentencing to the conspiracy to defraud part of each plea agreement's sentencing recommendation. We have found additionally that the Shipping Act affords defendants no immunity from the antitrust count. We therefore vacate the sentence and remand for resentencing in light of our immunity holding and the entirety of each plea agreement's sentencing provisions.

#### VI.

We have found that the three immunity provisions of the Shipping Act under which Gosselin and Pasha claim antitrust immunity afford them no relief. We have also determined that there was no error in the district court's adjudication of guilt on the conspiracy to defraud count. Because the district court applied the sentencing provisions of the plea agreement under the assumption that defendants were only guilty of conspiracy to defraud, a remand for resentencing in light of our disposition of the antitrust issue is in order. The judgment of the district court is therefore

*AFFIRMED IN PART, REVERSED IN PART,  
AND REMANDED FOR RESENTENCING.*

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION

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In re:

PREMIER AUTOMOTIVE SERVICES, INC. Chapter 11

Debtor

Case No. 05-20168-JS

\_\_\_\_\_ /

PREMIER AUTOMOTIVE SERVICES, INC.

Plaintiff

vs

Adversary No.

05-1378-JS

ROBERT L. FLANAGAN, et al.

Defendants

\_\_\_\_\_ /

The deposition of JOSEPH ROBERT HUBER was held on Friday, September 16, 2005, commencing at 10:02 A.M. at the Law Offices of Shapiro Sher Guinot & Sandler, 36 South Charles Street, Suite 2000, Baltimore, Maryland 21201-3147, before Sandra A. Slater, Notary Public.

REPORTED BY: Sandra A. Slater, RPR, CCR

1 lease?

2 A Not specifically, no.

3 Q As you sit here today do you have any  
4 awareness of Pasha's criminal conviction for antitrust  
5 violations?

6 A No.

7 Q This is the first you've heard of that?

8 A Yes.

9 Q All right. Have you ever dealt with Pasha  
10 in your career directly?

11 A I may have had some conversations with them  
12 when they were located off the terminal but that had to  
13 do with the possibility of using some of their space.

14 Q That was MPA's space that they were  
15 leasing?

16 A No, no, no, they were leasing that from, I  
17 guess it would have been Trammell Crow.

18 Q Do you have any understanding of the nature  
19 of Pasha's business?

20 A Other than they're an auto processor.

21 Q Do you have any knowledge of what, if any,

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION

In re:

PREMIER AUTOMOTIVE SERVICES, INC. Chapter 11

Debtor

Case No. 05-20168-JS

PREMIER AUTOMOTIVE SERVICES, INC.

Plaintiff

v.

Adversary No.

05-1378-JS

ROBERT L. FLANAGAN, et al.

Defendants

The deposition of DAVID MICHAEL THOMAS was held on Monday, October 3, 2005, commencing at 2:25 P.M. at the Law Offices of Shapiro Sher Guinot & Sandler, 36 South Charles Street, Suite 2000, Baltimore, Maryland 21201-3147, before Sandra A. Slater, a Notary Public.

REPORTED BY: Sandra A. Slater, RPR, CCR

1 other customer that was going to be transferred --

2 A Yes.

3 Q -- to Pasha? And the business that Pasha  
4 was doing at its other facility outside the Port?

5 A No impact to our Port.

6 Q One way or the other?

7 A They're not coming, that business isn't  
8 coming onto our Port.

9 Q Do you know the nature of that business?

10 A Military, military POV's. They handle  
11 privately owned vehicles, military privately owned  
12 vehicles.

13 Q Have you read any of the suit papers in  
14 this case, the complaint, the motions?

15 A I don't believe so, no.

16 Q Are you aware that one of the issues that  
17 we've raised in this case is the criminal history of  
18 Pasha?

19 A Yes.

20 Q At any point in '05, up until the lawsuit  
21 was filed by Premier, did you have any knowledge that

1 Pasha was involved in criminal litigation in Alexandria,  
2 Virginia?

3 A No.

4 Q When did you first learn that Pasha was  
5 involved in criminal litigation in Alexandria, when?

6 MR. SMITH: Other than in our privileged --

7 MR. FAX: Well, I'm not asking for how,  
8 just the date. I don't care what the source was at this  
9 point.

10 Q It was after the lawsuit was filed?

11 A Yes.

12 Q So I take it that the criminal involvement  
13 of Pasha had nothing to do with the work that you did on  
14 behalf of MPA in creating a lease, negotiating a lease?

15 A I had no knowledge of it.

16 Q Right. Do you know whether anyone at MPA  
17 had any knowledge of it?

18 A I don't know.

19 Q You never talked about it with anybody  
20 certainly?

21 A No.

1 Q Have you talked about -- other than with  
2 your lawyers, have you talked to any of the executives  
3 at MPA about that issue since the lawsuit was filed?  
4 That's since April.

5 A No.

6 Q Are there any policies at MPA regarding the  
7 types of tenants you will deal with and you won't deal  
8 with in terms of their business record or?

9 A I'm not aware of any written policies.

10 Q Are there any unwritten policies, I mean  
11 standards that you generally apply that you're aware of?  
12 If you're not, then that's the answer.

13 A I'm sure common sense would prevail that we  
14 wouldn't do business with companies if we were aware of  
15 certain criminal activity.

16 Q Well, I'm not asking you to speculate, I  
17 just want to know whether there are any policies that  
18 you're aware of or directives.

19 A No.

20 MR. FAX: Can we go off the record for a  
21 second?

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND

BALTIMORE DIVISION

In re: \*  
PREMIER AUTOMOTIVE SERVICES, INC., \* Chapter 11  
Debtor. \* Case No.:

\* 05-20168-JS

\* \* \* \* \*

PREMIER AUTOMOTIVE SERVICES, INC., \* VOLUME III

Plaintiff, \*

v. \* Adversary No.

ROBERT L. FLANAGAN, et al. \* 05-1378-JS

Defendants. \*

\* \* \* \* \*

The continuation of the deposition of  
MICHAEL W. MILLER was held on Thursday, October 6,  
2005, commencing at 8:05 a.m., at the Law Offices of  
Shapiro, Sher, Guinot & Sandler, 36 South Charles  
Street, Baltimore, Maryland, before Tanya M. Congo,  
Notary Public and Certified Shorthand Reporter.

REPORTED BY: Tanya M. Congo

1 A. Did not.

2 Q. As you sit here today, are you aware that  
3 Pasha has had some criminal experience in the Eastern  
4 District of Virginia in Federal Court in Alexandria?

5 MR. SMITH: Objection. Relevance.

6 BY MR. FAX:

7 Q. Go ahead.

8 A. As I sit here today?

9 Q. Yeah, are you aware of that?

10 A. I'm aware that there was an issue with  
11 them.

12 Q. Do you have any understanding of what the  
13 issue was today?

14 MR. SMITH: Objection. Relevance. Go  
15 ahead.

16 THE WITNESS: Some sort of a  
17 debarment.

18 BY MR. FAX:

19 Q. That's the extent of your knowledge?

20 A. That's the extent of my real knowledge.

21 Q. All right. When was the first time that

1 you heard or were told?

2 When? I'm not asking by whom, I'm  
3 just saying, when?

4 MR. TALIAFERRO: We're going to  
5 maintain a standing objection as to relevance.

6 MR. FAX: Yeah. Sure. Not a problem.

7 BY MR. FAX:

8 Q. When was the first time that you heard  
9 that Pasha had a criminal issue?

10 A. After these proceedings started taking  
11 place. It was brought to my attention by Peter  
12 Taliaferro.

13 Q. All right. So throughout the negotiations  
14 with Pasha, up through and including the execution of  
15 the original lease, you were not aware that Pasha had  
16 any criminal issues?

17 A. I was not.

18 Q. Do you know today whether anyone else at  
19 MPA was aware of any criminal issues on the part of  
20 Pasha prior to this litigation?

21 A. No, I don't know that anybody was aware.

1 Q. Do you know whether the MPA has any  
2 written standards or guidelines concerning -- or  
3 policy, standards, guidelines or policy written  
4 concerning the issue of contracting with a convicted  
5 felon?

6 MR. TALIAFERRO: Objection to the  
7 extent that there's a distinction here that may not  
8 be pertinent to this case. There may be some that  
9 relate to the kind of contracting that's different  
10 from this, but not within the scope of this  
11 particular --

12 BY MR. FAX:

13 Q. All right. Let's break it down. There  
14 are several different subcategories here that I'm  
15 interested in. The first is whether there is any  
16 written policy or set of standards or guidelines  
17 concerning any kind of contracting whatsoever?

18 A. No, there are none.

19 Q. And there are none, then, with respect to  
20 contracting or leasing property at the Dundalk Marine  
21 Terminal; is that right?

1 A. Correct.

2 Q. All right. Are there any unwritten  
3 standards or guidelines with which you are familiar  
4 at the MPA concerning contracting with convicted  
5 felons?

6 MR. TALIAFERRO: Again, this calls for

7 --

8 BY MR. FAX:

9 Q. Anything?

10 MR. TALIAFERRO: -- legal knowledge.

11 MR. FAX: Oh, no, no, no.

12 MR. TALIAFERRO: We're excluding  
13 knowledge of the State procurement process?

14 BY MR. FAX:

15 Q. Yeah. Yeah. Yeah. I'm talking about --  
16 I'm not talking about a COMAR or anything like that.

17 A. Okay.

18 Q. I'm talking about a written policy  
19 generated by MPA, or to which MPA has subscribed,  
20 that's circulated within the office?

21 A. No, there's no written policy.

1 Q. All right. And there's no non-written  
2 policy either; is that right?

3 A. No.

4 Q. With respect to leasehold interests at the  
5 Dundalk Marine Terminal, do you know whether MPA has  
6 ever contracted with or leased property to a  
7 convicted felon, with the exception of Pasha?

8 MR. TALIAFERRO: Objection. Standing  
9 objection.

10 THE WITNESS: I'm not aware.

11 BY MR. FAX:

12 Q. Now, I take it that as far as you know,  
13 and I recognize the limits of your knowledge and that  
14 you're not a lawyer, but as far as you know, there is  
15 no restriction on the MPA's ability to lease property  
16 at the Dundalk Marine Terminal to a convicted felon;  
17 is that right?

18 MR. TALIAFERRO: This is as far as he  
19 knows?

20 MR. FAX: Yeah.

21 THE WITNESS: Yes, so far as I know.

1 BY MR. FAX:

2 Q. During this time frame,  
3 February/March/April of '04, did you, and when I say,  
4 you, I mean you, I don't mean MPA. I always mean  
5 just you unless I distinguish it.

6 A. Okay.

7 Q. During this time frame, did you ever say  
8 to Mike Robinson, we're in discussions with Pasha  
9 concerning the possible leasing of Lot 90?

10 A. No.

11 Q. At any point in time did you ever  
12 communicate that information to Mike Robinson?

13 A. I believe at the end of '04 it may have  
14 been communicated during a lunch we had with him.

15 Q. Indicating the name of the potential  
16 tenant, Pasha?

17 A. I think so.

18 Q. And you were at that lunch?

19 A. Yes.

20 Q. Who else was there?

21 A. Dave Thomas.



March 29, 2005

**VIA OVERNIGHT MAIL & FACSIMILE**

Mr. Michael J. Robinson  
Vice President/General Manager  
Premier Automotive Services, Inc.  
2700 Broening Highway  
Baltimore, MD 21222

Re: Lease of 6.47 Acres in Area 90, Dundalk Marine Terminal

Dear Mr. Robinson:

Premier Automotive Services, Inc. ("Premier") is presently occupying the above-referenced improved premises (the "Premises") at Dundalk Marine Terminal on an "Overflow Storage" basis, consistent with MPA Terminal Services Schedule No. 16 and my letter to you dated April 30, 2004. Any offer by the Maryland Port Administration ("MPA") to lease the Premises to Premier on the basis of the lease that was forwarded to you on April 9, 2004 has been, or is hereby, rescinded.

The Lease regarding the Premises between the MPA and Premier dated July 1, 1992, as extended by amendments through June 30, 2002 (the "Lease") has been terminated.

The MPA now directs Premier to vacate the Premises not later than May 1, 2005. Pursuant to Sections 4.2 and 8.2 of the Lease, the MPA hereby directs Premier to remove at Premier's expense, not later than May 1, 2005, the building that Premier constructed on the Premises. The building is no longer of reasonable economic utility to the MPA's expected use of the land component of the Premises.

Should you have any questions, please call me.

Sincerely

Michael W. Miller

Director, Maritime Commercial Management

Governor Robert L. Ehrlich, Jr. ★ Lt. Governor Michael S. Steele ★ Transportation Secretary Robert L. Flanagan  
MPA Acting Executive Director M. Kathleen Broadwater ★ Maryland Port Commission: Wayne K. Curry,  
George C. Doub III, John G. Gary, Michael G. Martino, Robert I. Sewall, Fred L. Wineland



April 7, 2005

**VIA OVERNIGHT MAIL & FACSIMILE**

Mr. James G. Robinson  
Premier Automotive Services, Inc.  
2700 Broening Highway  
Baltimore, MD 21222

**Re: 6.47 Acres in Area 90, Dundalk Marine Terminal**

Dear Mr. Robinson:

This is to confirm the conversation that you and Helen Bentley had yesterday regarding the continued presence of Premier Automotive Services, Inc. ("Premier") in Lot 90.

Notwithstanding the MPA's March 29, 2005 notice to Premier directing it to vacate the premises not later than May 1, 2005, and to remove, at Premier's expense, the building that Premier has constructed on the premises not later than that date, MPA and Premier agree that Premier may have an extension of time, until June 30, 2005, within which time Premier will vacate the premises and remove the building at Premier's expense.

Please confirm Premier's agreement to these terms by countersigning below a copy of the faxed edition of this letter, in your capacity as authorized agent for Premier, and returning the copy with your original signature to me by close of business here in Baltimore on April 13, 2005. If we do not receive Premier's signed agreement by that date, MPA's notice of March 29, 2005 will stand.

Sincerely,

Michael W. Miller  
Director, Maritime Commercial Management

**AGREED**

Premier Automotive Services, Inc.

By: \_\_\_\_\_  
James G. Robinson

cc: Michael Robinson - Vice President and General Manager, Premier Automotive Services, Inc.  
Helen Bentley  
David M. Thomas - Director of Operations, Maryland Port Administration

Governor Robert L. Ehrlich, Jr. ★ Lt. Governor Michael S. Steele ★ Transportation Secretary Robert L. Flanagan  
MPA Acting Executive Director M. Kathleen Broadwater ★ Maryland Port Commission: Wayne K. Curry,  
George C. Doub III, John G. Gary, Michael G. Martin, Robert I. Sewall, Fred L. Wineland

<b>FORM B1</b>	<b>United States Bankruptcy Court District of Maryland Baltimore Division</b>	<b>Voluntary Petition 05-2-0168-JS</b>
Name of Debtor (if individual, enter Last, First, Middle): <b>Premier Automotive Services, Inc.</b>		Name of Joint Debtor (Spouse)(Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): <b>52-1530937</b>		Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): <b>2700 Broening Highway Fifth and B Streets Baltimore, MD 21222</b>		Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business: <b>Baltimore City</b>		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):		
<b>Information Regarding the Debtor (Check the Applicable Boxes)</b>		
Venue (Check any applicable box) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.		
<b>Type of Debtor (Check all boxes that apply)</b> <input type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____ <input type="checkbox"/> Clearing Bank		<b>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)</b> <input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding
<b>Nature of Debts (Check one box)</b> <input type="checkbox"/> Consumer/Non-Business <input checked="" type="checkbox"/> Business		<b>Filing Fee (Check one box)</b> <input checked="" type="checkbox"/> Full Filing Fee Attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b) See Official Form No. 3.
<b>Chapter 11 Small Business (Check all boxes that apply)</b> <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)		
<b>Statistical/Administrative Information (Estimates only)</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors		<b>THIS SPACE IS FOR COURT USE ONLY</b>
Estimated Number of Creditors                      1-15                      16-49                      50-99                      100-199                      200-999                      1000-over <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Estimated Assets \$0 to \$50,000    \$50,001 to \$100,000    \$100,001 to \$500,000    \$500,001 to \$1 million    \$1,000,001 to \$10 million    \$10,000,001 to \$50 million    \$50,000,001 to \$100 million    More than \$100 million <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Estimated Debts \$0 to \$50,000    \$50,001 to \$100,000    \$100,001 to \$500,000    \$500,001 to \$1 million    \$1,000,001 to \$10 million    \$10,000,001 to \$50 million    \$50,000,001 to \$100 million    More than \$100 million <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>	Name of Debtor(s): <b>Premier Automotive Services, Inc.</b>
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**Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)**

Location Where Filed: <b>NONE</b>	Case Number:	Date Filed:
--------------------------------------	--------------	-------------

**Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)**

Name of Debtor: <b>NONE</b>	Case Number:	Date Filed:
District:	Relationship:	Judge:

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.  
 [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**Not Applicable**

Signature of Debtor \_\_\_\_\_

**Not Applicable**

Signature of Joint Debtor \_\_\_\_\_

Telephone Number (If not represented by attorney) \_\_\_\_\_

Date \_\_\_\_\_

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition

**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

**Not Applicable**

Signature of Attorney for Debtor(s) \_\_\_\_\_ Date \_\_\_\_\_

**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.

No

**Signature of Attorney**

/s/ Joel I. Sher

Signature of Attorney for Debtor(s)

**Joel I. Sher, 00719**

Printed Name of Attorney for Debtor(s) / Bar No.

**Shapiro Sher Guinot & Sandler**

Firm Name

**36 S. Charles Street 20th Floor**

Address

**Baltimore, Maryland 21201**

**410-385-0202** **410-539-7611**

Telephone Number

Date \_\_\_\_\_

**Signature of Non-Attorney Petition Preparer**

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

**Not Applicable**

Printed Name of Bankruptcy Petition Preparer \_\_\_\_\_

Social Security Number (Required by 11 U.S.C. § 110(c).) \_\_\_\_\_

Address \_\_\_\_\_

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.  
 The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

/s/ Janet M. West

Signature of Authorized Individual

**Janet M. West**

Printed Name of Authorized Individual

**Secretary**

Title of Authorized Individual

Date \_\_\_\_\_

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

**Not Applicable**

Signature of Bankruptcy Petition Preparer \_\_\_\_\_

Date \_\_\_\_\_

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

**MINUTES OF SPECIAL MEETING OF  
THE BOARD OF DIRECTORS**

**Premier Automotive Services, Inc.**

After duly notifying all directors of Premier Automotive Services, Inc. of a Special Meeting to be called, all directors being present, said meeting was held by the Corporation on April 26, 2005;

RESOLVED, that, in the judgment of the Board, it is desirable and in the best interests of Premier Automotive Services, Inc. (the "Corporation"), its creditors, stockholders, and other interested parties that a voluntary petition be filed by the Corporation for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code");

RESOLVED FURTHER, that Janet M. West (the "Authorized Officer") hereby is authorized and empowered on behalf of the Corporation to execute and verify a petition in the name of the Corporation under chapter 11 of the Bankruptcy Code and to cause the same to be filed in the United States Bankruptcy Court for the District of Maryland (Baltimore Division) in such form and at such time as the Authorized Officer shall determine;

RESOLVED FURTHER, that the Authorized Officer be, and hereby is, authorized to execute and file or cause to be executed and filed all necessary documents, including, but not limited to, all petitions, affidavits, schedules, motions, lists, applications, pleadings and other papers, and in that connection to employ and retain all assistance by legal counsel, accountants or professionals and to take any and all action which they deem necessary and proper in connection with the Corporation's chapter 11 case;

RESOLVED FURTHER, that the law firm of Shapiro Sher Guinot & Sandler, 36 South Charles Street, Suite 2000, Baltimore, Maryland 21201 be, and hereby is, employed and retained as counsel for the Corporation in the chapter 11 case;

RESOLVED FURTHER, that in addition to the specific authorizations heretofore conferred upon the Authorized Officer, the Authorized Officer be, and each hereby is, authorized and directed to take or cause to be taken all such further actions, to execute and deliver or cause to be executed and delivered all such further certifications, agreements, instruments and documents in the name of and on behalf of the Corporation and to incur all such fees and expenses as in their judgment shall be necessary, appropriate or advisable in order to effectuate the intent and purpose of any and all of the foregoing resolutions; and

RESOLVED FURTHER, that all acts lawfully done or actions lawfully taken by the Authorized Officer or any officer of the Corporation to seek relief under chapter 11 of the Bankruptcy Code or in connection with the Chapter 11 case, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation;

Dated: April 26, 2005

By: /s/ James G. Robinson  
James G. Robinson, Director

ZP REC'D NOV 5 1998

**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
ATC LOGISTICS, INC.**

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**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
ATC LOGISTICS, INC.**

**THIS AGREEMENT & LEASE** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by and between the **MARYLAND PORT ADMINISTRATION**, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "MPA"), and **ATC LOGISTICS, INC.**, an automobile processor, and a \_\_\_\_\_ corporation (hereinafter referred to as "ATC"), and is entered into with reference to the following facts:

ATC has solicited the MPA to secure and then dedicate the following land and improvements for ATC's use as an importer, exporter and processor of automobiles in the Port of Baltimore:

- 1) Development of fifty (50) acres of land with all utilities, paving and fencing.
- 2) Development of approximately 105,000 square feet of Building Improvements conforming to ATC's specifications to include but not exclusively so, a port installed Options Building, a Quality Assurance and Quality Control Building, a Truck Away Building, a Security House and a Fuel Island.
- 3) The aforescribed land and improvements are required to be located in an area to be mutually agreed upon near to a dock rail siding and near to easy access to a major highway to be used for the movement of automobiles and other equipment.
- 4) In entering into this **AGREEMENT & LEASE**, the MPA and ATC

understand and agree that the cargo being handled under this **AGREEMENT & LEASE** shall be "New Cargo Volume" that is cargo that is not currently being handled in the Port of Baltimore.

The MPA, on the receipt of ATC's solicitation, has embarked on the development of land and the building of improvements requested by ATC and it is estimated that all may be completed in June of 1999 and available for ATC's occupancy and use. It is preliminarily estimated that MPA's total project costs for the 50 acre property and improvements will not exceed \$18,600,000. If the project costs exceed 120% of the preliminary estimate, ATC understands the MPA may terminate this lease as described in Section 1, below.

In the interim between the effective date of this **AGREEMENT & LEASE**, the MPA has agreed with ATC that the MPA will use its best efforts to assist ATC in securing a temporary location in the Port of Baltimore for ATC's use for its automobile auto processing needs while ATC awaits the completion of MPA's fifty (50) acre property and improvements as heretofore described.

In contemplation and reliance on MPA's development of the fifty (50) acre property and improvements as heretofore described, ATC will lease this MPA facility under the terms and conditions of this **AGREEMENT & LEASE** for a term of twenty (20) years with two (2) additional ten (10) year options to renew at rates, terms and conditions to be negotiated by the parties.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, MPA and ATC hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 Effective Date.** The Effective Date of the **AGREEMENT & LEASE** shall be the first day immediately following the occurrence of all of the following events:

- a) Approval of this **AGREEMENT & LEASE** by the Maryland Port Commission;

- b) Approval of this AGREEMENT & LEASE by the Board of Public Works of Maryland; and
- c) Execution of this AGREEMENT & LEASE by the parties hereto;

**1.1-1 Project Costs.** If, at any time, the project costs exceed, or are projected to exceed, \$22,320,000, then MPA may terminate this AGREEMENT & LEASE as follows. MPA shall submit the project costs to the Board of Public Works, which shall determine whether to continue this project. If the Board of Public Works determines not to continue this project, MPA shall terminate this AGREEMENT & LEASE, which termination shall be immediately effective. In such event, neither MPA nor the State of Maryland shall be liable for any costs associated with such termination or with this AGREEMENT & LEASE.

**1.2 Premises.** The Premises shall consist of a parcel of land consisting of approximately 50 acres of real property, with certain improvements thereon, located at Childs Street and known as Masonville Marine Terminal in the Fairfield Section of Baltimore City, Maryland, as more fully identified and described as "ATC Premises" on Exhibit "A", attached hereto and incorporated herein together with Exhibit "B", Facility Improvements and Building to be constructed thereon. Both parties shall mutually agree that the Premises and Improvements as shown on Exhibits "A" and "B" are acceptable.

**1.3 Occupancy.** Upon substantial completion of the improvements (to include parking, buildings, and rail siding) and MPA's tender to ATC of a "Certificate of Occupancy", ATC will, within ninety (90) days, occupy the ATC Premises and commence operations thereon and pay rent to MPA as hereinafter described.

**1.4 Term of Occupancy.** The Term of the occupancy under this lease shall be twenty (20) years from the date of occupancy as described in Section 1.3 above.

**1.5 MPA Tariff.** ATC understands and agrees that where applicable, the

prevailing MPA tariff on file with the Federal Maritime Commission (FMC) is hereby incorporated by reference into this AGREEMENT & LEASE as if set forth at length and such shall govern and control this AGREEMENT & LEASE except where same conflicts with the terms and conditions of this AGREEMENT & LEASE and in such event the terms and conditions of this AGREEMENT & LEASE shall prevail.

**1.6 Ingress and Egress.** MPA and ATC understand and agree that it is MPA's intention to further develop and utilize properties contiguous to ATC's leased Premises. Accordingly, ATC expressly agrees that it shall coordinate with the MPA or MPA's designate so that free and unencumbered ingress and egress will be allowed to the MPA or its designate in transiting across ATC leased Premises in order for MPA and its designate to utilize the aforementioned contiguous properties. The location of ingress and egress shall be mutually agreed to by MPA and ATC and neither party will unreasonably withhold consent as to the original location and subsequent changes thereto.

**1.7 Right of First Refusal.** ATC and MPA understand and agree that when and if the MPA develops the contiguous land, ATC shall have the "right of first refusal" to rent said newly developed premises under the following conditions:

- a) ATC must use said newly developed premises for new vehicle business in the Port of Baltimore.
- b) ATC must exercise "right of first refusal" within ninety (90) days of MPA's notice.
- c) That said "right of first refusal" will be exercised under the terms and conditions negotiated and agreed to between MPA and ATC, subject to approval of the Maryland Board of Public Works.
- d) That ATC must guarantee to MPA that said newly developed premises will be utilized by ATC for the handling of two thousand five hundred (2,500) vehicles per acre per lease year.

## **2.0 CONSTRUCTION OF IMPROVEMENTS:**

**2.1 Improvements.** MPA shall, at its sole cost and expense, improve the Premises as identified in this AGREEMENT & LEASE in accordance with Exhibit "B", attached hereto.

**2.2 Construction of Improvements.** MPA will construct the improvements in accordance with MPA standards and in compliance with all applicable governmental laws, rules, regulations and ordinances.

**2.3 Substantial Completion.** For purposes of this AGREEMENT & LEASE, Substantial Completion shall mean the date upon which the MPA Engineering Department certifies that:

- a) MPA has secured all necessary state and local occupancy permits, if any, sufficient to allow use of the Premises for the purposes set forth herein; and
- b) ATC may safely and reasonably commence use and occupancy of the Premises notwithstanding the fact that all construction work on the improvements have not been completed; and
- c) MPA has tendered to ATC a state or MPA Certificate of Occupancy.

## **3.0 USE OF PREMISES/APPURTENANT RIGHTS/RESERVED RIGHTS:**

### **3.1 Use of Premises.**

a) **Import/Export Vehicles.** ATC shall use the Premises for receiving, processing and distribution of motor and industrial vehicles, parts and accessories. ATC shall use the Premises primarily for vehicles having a prior or subsequent waterborne movement over an MPA pier, berth or wharf ("Import/Export Vehicles").

b) **Import/Export Vehicle Guarantee.** ATC guarantees the MPA

that it will receive, process and distribute the following minimum number of vehicles per lease year:

<u>LEASE YEAR</u>	<u>MINIMUM # OF VEHICLES</u>
1	60,000
2	90,000
3	120,000
4 thru 20	125,000 each lease year

Total minimum number of vehicles for the twenty (20) year lease term shall equal two million/three hundred and ninety-five thousand (2,395,000). In the event that ATC does not meet its Import/Export Vehicle Guarantee in any lease year then it will pay to the MPA at the conclusion of the lease year and after billing by the MPA, a sum as calculated under Section 4.0 as liquidated damages and not as a penalty.

c) Domestic Vehicles. ATC may use the Premises to receive and process vehicles not having a prior or subsequent movement over an MPA pier, berth or wharf ("Domestic Vehicles"), provided that without the written approval of MPA the total number of such Domestic Vehicles shall not exceed twenty-five (25%) percent of the total annual volume of vehicles received and processed by ATC at the Premises during any Lease Year. MPA and ATC agree that domestic vehicles do count toward ATC's annual minimum vehicle guarantee.

**3.2 Use of Berth and Pier.** As an appurtenant right to the AGREEMENT & LEASE and subject to the conditions and reservations set forth herein; and as operationally feasible ATC shall have a right and privilege to use a pier or berth for the purpose of berthing vessels engaged in delivery of motor and industrial vehicles, parts and accessories ("ATC Cargo") to the Premises. The aforementioned pier or berth shall be at a location designated by the MPA.

**3.3 Exercise of Berthing Rights.** ATC shall instruct its shipping agent to provide MPA notice of the estimated date and time of arrival of any vessel

carrying ATC Cargo as early as possible but no less than twenty-four (24) hours notice of ship arrival.

**3.4 Stevedoring Operations.** ATC shall have the right to act as its own stevedoring company or designate and appoint a stevedoring company for its operations.

**3.5 Labor Peace and Harmony.** ATC shall conduct its operations at the leased premises in a manner promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. ATC shall not engage in any activity which works to destroy any labor harmony in the Port of Baltimore. MPA will use its best efforts to promote other tenants of the MPA to conduct their operations in a manner promoting peace and harmony in the commercial sector.

**3.6 MPA's Reserved Rights with Respect to the Premises.** MPA reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with ATC's use of the Premises.

**4.0 RENT AND RENTAL PAYMENTS:**

**4.1 Rental Payment Schedule.** Beginning on the day after MPA has tendered to ATC a certificate of occupancy, ATC shall pay to MPA as rental for the leased premises as follows:

- a) months 1 thru 3                      \$            0.00 per month
- b) months 4 thru 24                    \$ 167,464.57 per month
- c) months 25 thru 240                \$ 146,531.50 per month

The rent for each month shall be paid to the MPA in advance on or before the first day of each and every month that this AGREEMENT & LEASE continues in effect and shall be payable at such place as MPA may hereinafter designate. The rental of the leased Premises is subject to the approval of the Maryland's Board of Public Works. ATC and MPA further understand and agree that lease years two (2) through twenty (20) of this AGREEMENT & LEASE, MPA will invoice ATC an amount adjusted

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annually for the cumulative change in the Consumer Price Index, Urban Consumers. This yearly increase will be applied at the beginning of each lease year.

**4.2 Domestic Vehicles.** For each Domestic Vehicle delivered to the Premises, ATC shall pay MPA a surcharge equal to the amount specified in Section IV (A) (2) (e) of MPA's Terminal Services Tariff No. 15, or such similar provision in any tariffs as subsequently may be issued by the MPA.

**4.3 Shortfall.** In the event ATC does not meet its minimum vehicle guarantee in Section 3.1 in any lease year of this AGREEMENT & LEASE, ATC shall become liable for such shortfall and shall pay to MPA as liquidated damages and not as a penalty, a "shortfall charge" equal to \$ 7.00 per vehicle times the number of vehicles necessary to bring ATC volumes up to the guarantee. Said shortfall payments shall be made at the conclusion of the lease year after such has been billed by MPA.

#### **5.0 DOCKAGE & WHARFAGE:**

MPA shall collect and retain fees for dockage, wharfage or accessorial services for vessels in accordance with MPA's Terminal Services Tariff No. 15, as amended from time to time, and such tariffs as subsequently may be issued by MPA. ATC will assist MPA in the collection of these charges.

#### **6.0 MAINTENANCE:**

**6.1 Maintenance Obligations.** ATC shall, at its sole cost and expense, repair, replace and maintain in good condition the Premises and every part thereof, including the buildings and equipment located therein, whether installed and/or owned by MPA or ATC and all such items of repair, maintenance, alterations or improvements as may from time to time be required by a governmental body or agency having jurisdiction thereof. ATC shall keep the Premises and all areas thereof clean and orderly.

**6.2 Alterations & Improvements.** ATC shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first

obtaining written approval from MPA, which shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by ATC, they shall upon request of MPA, be removed promptly by ATC at ATC's expense and the Premises restored to their original condition upon the expiration or sooner termination of this **AGREEMENT & LEASE**. If ATC is not so instructed to remove said alterations and improvements, the same shall become the property of MPA without MPA paying any compensation therefore. Moveable furniture and trade fixtures which are removable without injury to the premises shall be and remain the property of ATC but must be promptly removed at the termination of this **AGREEMENT & LEASE**.

**6.3 ATC's Obligations to MPA Property.** ATC shall be solely responsible to MPA for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to MPA and any improvements thereon, or for which MPA is responsible, for the leased Premises only, unless such loss, theft or damage is caused by MPA or its employees.

**6.4 Inspection by MPA.** MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**6.5 Pre and Post Inspections.** MPA and ATC shall conduct a pre-inspection of the leased Premises and Improvements thereon at the time the MPA tenders a Certificate of Occupancy to ATC for said Premises. MPA and ATC will also conduct a post inspection of the leased Premises and Improvements thereon which will serve as the basis of ATC's restoration responsibilities as set forth in Section 11.0 "Termination".

**7.0 ATC's ADDITIONAL RESPONSIBILITIES:**

**7.1 Reports.** Promptly, after vessel loading or discharge of ATC Cargo, ATC or its shipping agent shall deliver to MPA, a copy of each ship's manifest or other documentation evidencing cargo loaded, discharged, and/or transhipped as well as delivered to or from the Premises. ATC shall also deliver to MPA monthly and annually, reports setting forth the number of

Domestic Vehicles delivered to the Premises. MPA shall have the right to inspect and perform an audit of records maintained by ATC relating to delivery of vehicles to the Premises.

**7.2 Utilities & Maintenance.** Except as otherwise provided herein, ATC shall contract and pay for all utility or maintenance services provided to the Premises, including water, gas, electricity, telephone, sewage, janitorial, snow removal and other maintenance services.

**7.3 Taxes / Payment in Lieu of Taxes (P.I.L.O.T.)**

a.) ATC shall pay to MPA annually, except to the extent that the improvements are taxed to ATC, a sum of money computed on the basis of the full cash value of the leased land and improvements on it multiplied by the assessment percentage under §8-103 (d) (1) of the Tax-Property Article, multiplied by the current State and local real estate tax rates. (This provision is satisfied by payment of the rental charges contained in Section 4.) In addition, ATC shall pay, over the entire term of this AGREEMENT & LEASE, \$82,213.04, which represents the amount that the Maryland Department of Transportation has negotiated as an annual Payment in Lieu of Taxes (PILOT) with the City of Baltimore for the premises which ATC will occupy and use under this AGREEMENT & LEASE.

b.) In the event that ATC makes further improvements to the facility, ATC expressly understands that any such further improvements paid for by ATC will be subject to ATC's payment of State and local taxes and are not satisfied by ATC by payment of the charges contained in the AGREEMENT & LEASE.

**7.4 Security of Premises.** - ATC shall assume complete responsibility for security of the Premises, and the facility improvements, buildings and property located thereon and therein, including ATC Cargo moving on or across the pier and berth. ATC shall ensure that any gates to the pier and berth will be locked when the pier is not being used by ATC for discharging operations. MPA assumes no responsibility to ATC for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection

therewith.

**7.5 Liens and Encumbrances.** ATC shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

**7.6 Qualification to do Business in Maryland.** At all times during the term of this AGREEMENT & LEASE, ATC is and shall continue to be legally qualified to do business in the State of Maryland.

**7.7 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA.

**7.8 Rules, Regulations and Laws.** ATC agrees to comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, its tenants, invitees, licensees and the general public. ATC further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. ATC further agrees to indemnify, defend and hold harmless MPA, its agents and employees from any liability or penalty which may be imposed upon MPA by governmental authority by reason of any violation by ATC or its agents.

## **8.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE:**

**8.1 Liability.** MPA shall not be liable to ATC for any loss, injury or damage to ATC or ATC's property from any cause unless such cause is due to MPA negligence.

### **8.2 Environmental Responsibilities.**

a) MPA shall provide ATC with MPA's most recent environmental assessment report relating to the Premises being leased.

b) **ATC's Responsibilities.** ATC shall ascertain and abide by all applicable environmental standards set by federal, state or local laws,

rules or regulations related to ATC's performance of its obligations pursuant to this AGREEMENT & LEASE and/or ATC's use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). ATC shall establish and maintain a program of compliance with all applicable environmental standards. ATC shall monitor its compliance with environmental standards and immediately halt and correct any incident of non-compliance.

c) Non-Compliance. In the event of any incident of non-compliance with environmental standards, ATC shall:

- 1) Give MPA immediate notice of the incident, providing as much detail as possible;
- 2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,
- 3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

d) ATC's Liability for Non-Compliance. ATC shall be liable for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with environmental standards.

### 8.3 Insurance & Indemnity.

a) ATC agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason or injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation by reason of negligence of ATC or its officers, agents or

employees, contractors, sub-contractors, invitees and licensees, unless caused by the negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by the MPA, its agents and employees or be against or sustained by others to whom the MPA, its agents or employees, may become liable.

b) ATC shall at all times during the term of this **AGREEMENT & LEASE**, maintain such worker's compensation or employer's liability insurance as may be required by law.

c) ATC shall also maintain at its expense, liability insurance with minimum limits of \$ 5,000,000. per occurrence and \$ 5,000,000. per aggregate for bodily injury and property damage and \$ 100,000. (any one fire) for Fire Legal Liability for the protection of the MPA and ATC against any claims, suits, demands, or judgements by reason of personal injury including death and for any claims of damage to property occurring on or about the leased Premises in any manner arising out of or as a result of the occupancy thereof by ATC. MPA shall be named as Additional Insured under said insurance and a Certificates of Insurance shall be forwarded to MPA Property Management Department providing proof of coverage.

d) ATC shall also maintain throughout the term of this **AGREEMENT & LEASE**, at its sole cost and expense, property insurance to insure against damage to or loss of the Improvements on the Premises, including all fixtures and equipment, said property insurance to be in the amount sufficient to provide coverage for the full replacement and restoration of the Improvements.

e) Nothing contained herein shall require the MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of ATC, its' agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the leased Premises.

f) ATC shall not use the leased Premises in such a manner (unless

permitted under this AGREEMENT & LEASE) which would cause an increase in the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the leased Premises are a part, and to the extent allocable to the term of this AGREEMENT & LEASE, may be added to the amount of rental hereinabove specified and shall be paid by ATC to MPA upon the monthly rental day next thereafter occurring.

**8.4 Liens.** At all times prior to termination of this AGREEMENT & LEASE, ATC shall defend, indemnify and hold harmless against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of ATC or its contractors, agents or employees.

**8.5 Defense Against Suits.** ATC shall promptly pay any and all costs or expenses (including actual attorney's fees and consultant fees) which may be incurred by MPA as well as any judgments or decrees in favor of MPA:

- a) in enforcing the obligations of ATC under the covenants, terms or provisions of this AGREEMENT & LEASE;
- b) in obtaining possession of the Premises as the result of any default by ATC or otherwise;
- c) in defending any suit or proceeding brought against MPA for the violation by ATC of any law, ordinance, rule or regulation;
- d) in defending any action or suit for damages because of any failure, neglect or default on the part of ATC.

**8.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, ATC shall immediately notify MPA in writing and shall promptly thereafter furnish to MPA copies of all reports given to ATC's insurance carrier or carriers.

## **9.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**9.1 Partial Destruction.** If, during the term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this **AGREEMENT & LEASE**. If the existing laws do not permit the restoration, either party can terminate this **AGREEMENT & LEASE** immediately by giving notice to the other party. MPA and ATC agree that ATC's rent shall be abated for that portion of the premises being restored with such abatement to continue until such destroyed premises are refurbished and available for use.

**9.2 Total Destruction.** If, during term, the Premises are totally destroyed from any cause, MPA shall have the option either:

a) to provide ATC with a reasonable approximation of the time necessary to conduct necessary repairs or restoration and repair or restore the damage within the designated time period (which in no event shall be longer than two hundred forty (240) days), in which event such destruction shall not terminate this **AGREEMENT & LEASE**; or

b) to give notice to ATC within thirty (30) days of such destruction terminating this **AGREEMENT & LEASE** as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the giving of the notice. If the existing laws do not permit the restoration, either party can terminate this **AGREEMENT & LEASE** immediately by giving notice to the other party. Total destruction shall be any destruction which precludes ATC from performing any significant portion of its operations at the Premises.

## **10.0 DEFAULT AND REMEDIES:**

**10.1 Default.** The occurrence of any of the following shall constitute a default by ATC:

a) **Default in Rent.** Failure to pay when due any rent or other charge, when due, if the failure continues for ten (10) business days after notice has been given to ATC;

b) **Default in Other Covenants.** Failure to perform any other provision of this AGREEMENT & LEASE if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to ATC. If the default cannot be reasonably cured within thirty (30) days, ATC shall not be in default if ATC commences to cure the default within thirty (30) day period and proceeds with reasonable diligence

in good faith to cure the default as soon as reasonably practicable;

c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of ATC; an assignment by ATC for the benefit of creditors; the filing by ATC of a voluntary petition in bankruptcy; an adjudication that ATC is bankrupt or the appointment of a receiver for the properties of ATC; the filing of an involuntary petition of bankruptcy and failure of ATC to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on ATC's lease hold interest hereunder and failure of ATC to secure and discharge of the attachment or release of the levy of execution with sixty (60) days; and

d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

**10.2 Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that ATC perform the provision of this AGREEMENT & LEASE or pay the rent or charges which are in arrears, as the case may be, within the applicable period time.

**10.3 MPA Remedies in Case of ATC Default.** MPA shall have the following remedies if ATC is in default and such default is not cured. These remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy at a later time.

a) **Termination of AGREEMENT & LEASE and Right to Possession.** MPA may, at its option, terminate this AGREEMENT & LEASE and terminate ATC's right to possession by giving written notice of termination to ATC. Upon receipt of such notice, ATC shall vacate the Premises immediately and within thirty (30) days thereafter remove any property of ATC, including any fixtures that ATC is required to remove at the end of the term and perform any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the term of this AGREEMENT & LEASE, and deliver all keys to the MPA.

b) **Re-entry and Distraint.** MPA may, at its option, terminate this AGREEMENT & LEASE and re-enter the Premises and distraint upon any of ATC's property.

c) **Liquidated Damages.** MPA shall have the right to receive from ATC as of the date of termination the following sums as liquidated damages and not as a penalty:

- 1) The amount of the unpaid rent that had been earned at the time of the termination of this AGREEMENT & LEASE;
- 2) The amount, at the time of the award of a subsequent Agreement & Lease, by which the unpaid rent for the balance of this AGREEMENT & LEASE exceeds the rent under the subsequent Agreement & Lease provided that the amount of the loss of rent does not exceed such amount that ATC proves could have been reasonably avoided by MPA mitigation; and
- 3) Any other amount, and court costs, necessary to compensate MPA for all detriment proximately caused

by ATC's default, including the reasonable costs of any cleanup, refurbishing, removal of ATC's property and fixtures, or any other expense occasioned by ATC's failure to quit the Premises upon termination and to leave them in condition specified herein.

**10.4 Use of Abandoned Property.** Provided MPA gives prior written notice to ATC, MPA may:

- a) use all or any part of ATC's personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this AGREEMENT & LEASE without compensation to ATC and without liability for such use or damage; or
- b) store all or any of ATC's personal property and trade fixtures for the account of and at the expense of ATC.

**10.5 MPA Obligation to Relet.** Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or to relet to a tenant that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this AGREEMENT & LEASE, upon any reasonable terms and conditions. If MPA relets the Premises, rent that MPA receives from reletting shall be applied to the payment of:

First, any indebtedness from ATC to MPA other than rent due from ATC;

Second, all costs, including for maintenance, incurred by MPA in reletting;

Third, rent due and unpaid under this AGREEMENT & LEASE. After deducting the payments referred to in this subsection, any sum remaining from the rent MPA receives from reletting shall be held by MPA and applied in payment of future rent as rent becomes due

under this AGREEMENT & LEASE. In no event shall ATC be entitled to any excess rent received by MPA. If, on the date rent is due under this AGREEMENT & LEASE, the rent received from the reletting is less than the rent due on that date, ATC shall pay to MPA, in addition to the remaining rent due, all costs, including for maintenance, MPA incurred in reletting that remain after applying the rent received from the reletting as provided in this subsection.

**11.0 TERMINATION:**

**11.1 Surrender.** Upon expiration or earlier termination of this AGREEMENT & LEASE, ATC shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises covered, except for alterations which ATC has a right to remove or is obligated to remove. ATC shall pay for or perform all restoration made necessary by its use of said leased Premises, except for normal wear and tear, and/or the removal of any alterations or removal of ATC's personal property.

**11.2 ATC Termination.** ATC may elect to terminate this AGREEMENT & LEASE upon one hundred eighty (180) days written notice to MPA upon any of the following occurrences;

- a) ATC is prohibited from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority; or
- b) MPA fails to provide ATC with a reasonably adequate berth facility for the loading and discharge of motor and industrial vehicles to or from vessels when such failure continues for a period in excess of sixty (60) days.

**11.3 MPA Termination.**

- a) MPA may terminate this AGREEMENT & LEASE as set forth in Section 1.1-1.
- b) In addition, MPA may terminate this AGREEMENT & LEASE

upon one hundred eighty (180) days written notice to ATC if MPA is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority.

### **12.0 POWERS OF MPA:**

It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted, and that in the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by ATC or any other legal entity in connection with, or as the result or, or growing out of any such prevention, restriction or delay. MPA represents and warrants that it is presently empowered to enter into this AGREEMENT & LEASE and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE.

### **13.0 FORCE MAJEURE:**

- a) MPA and ATC shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, public emergency, strikes, boycotts, picketing, and work stoppages.
- b) Except for a strike, riot, act of God or any act or state of war or public emergency or Government regulations, no abatement, diminution or reduction of the rent or other charges payable by ATC shall be claimed by or allowed to ATC for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present law, rule, requirement, order direction, ordinance or regulation of the United States of America, or of the State,

county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any cause or causes beyond the control of MPA, nor shall this AGREEMENT & LEASE be affected by any such cause.

c) ATC or the MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

#### **14.0 GENERAL PROVISIONS:**

**14.1 Assignment & Subletting.** ATC shall not assign this AGREEMENT & LEASE nor sublet the leased Premises in whole or in part, without the prior written consent of MPA. Consent by MPA to any assignment or subletting shall not operate to release ATC from any of its obligations under the terms of this AGREEMENT & LEASE.

Notwithstanding the foregoing, ATC may sublet the leased Premises to any automobile manufacturers deemed reputable by MPA.

**14.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

**TO ATC:** Mr. Howard L. Gable  
Vice President & General Manager  
ATC Logistics, Inc.  
P.O. Box 60878  
Jacksonville, Florida 32236

**TO MPA:** Executive Director  
Maryland Port Administration  
The World Trade Center Baltimore, 20th Floor  
Baltimore, Maryland 21202

**14.3 Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this AGREEMENT & LEASE shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**14.4 Applicable Law.** It is expressly understood and agreed that this AGREEMENT & LEASE and all questions arising thereunder shall be construed according to the Laws of the State of Maryland and the United States of America. Any suits arising under this AGREEMENT & LEASE shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission.

**14.5 Binding Effect.** This AGREEMENT & LEASE shall bind the parties, their successors and assigns.

**14.6 Authority.** Each individual executing this AGREEMENT & LEASE on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this AGREEMENT & LEASE on behalf of such party.

**14.7 Severability.** The invalidity of any provision of this AGREEMENT & LEASE as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this AGREEMENT & LEASE.

**14.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this AGREEMENT & LEASE.

**14.9 Quiet Enjoyment.** MPA covenants and agrees that so long as ATC is not in default hereunder, they shall quietly enjoy the leased Premises.

**14.10 Integration.** This AGREEMENT & LEASE constitutes the entire agreement between the MPA and ATC with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or

amend the terms and conditions hereof shall be binding unless evidence by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this AGREEMENT & LEASE.

**14.11 AGREEMENT & LEASE for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this AGREEMENT & LEASE shall be for their sole benefit and that no other person, corporation or other entity is intended to be a beneficiary of this AGREEMENT & LEASE, with the exception of affiliated companies.

**14.12 Amendments.** This AGREEMENT & LEASE may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this AGREEMENT & LEASE and signed by both parties.

**14.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this AGREEMENT & LEASE shall be taken and construed to be cumulative.

**14.14 Remedies Cumulative.** All remedies provided in this AGREEMENT & LEASE shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided herein.

## **15.0 CONCERNING THE MARYLAND TRANSPORTATION AUTHORITY**

**15.1 Ownership.** The Parties recognize and acknowledge that the MPA intends to transfer an ownership interest in the Premises to the Maryland Transportation Authority, an agency of the State of Maryland (hereinafter referred to as "MdTA"), for the purposes of financing the construction of the Improvements described in this AGREEMENT & LEASE.

**15.2 Financing.** The Parties further recognize and acknowledge that the MPA intends to finance construction of the Improvements described in this AGREEMENT & LEASE through the MdTA, that the MPA shall be acting as the agent of the MdTA for the construction of the Improvements,



and that the MdTA shall be the owner of the Improvements.

**15.3 Covenants Extend to MdTA.** ATC hereby agrees that all covenants and agreements made in this AGREEMENT & LEASE by ATC for the benefit of MPA shall extend and apply equally to the MdTA, as its interests may appear, and that all references herein to the MPA shall also include the MdTA, as its interests may appear.

**16.0 RENTAL GUARANTY:**

MPA and ATC understand and agree that this AGREEMENT & LEASE shall be executed simultaneously with a Rental Guaranty executed by MPA, ATC and CENTURION LEASING COMPANY, a copy of which is attached hereto.

(END)



IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT & LEASE to be duly executed as of the day and year first above written.

ATC LOGISTICS, INC.

BY: *Howard L. Seale*  
GROUP VICE-PRESIDENT & GEN MGR.

Date: OCTOBER 14, 1992

MARYLAND PORT ADMINISTRATION

BY: \_\_\_\_\_

James J. White  
Acting Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Assistant Attorney General Date: \_\_\_\_\_

(Continuation of signature page of Agreement & Lease Between the Maryland Port Administration and ATC Logistics, Inc.)

**BOARD OF PUBLIC WORKS**

---

**Parris N. Glendening**  
Governor

---

**Robert L. Swann**  
Acting Comptroller of the Treasury

---

**Richard N. Dixon**  
State Treasurer

STATE OF MARYLAND

SS:

\_\_\_\_\_ OF MARYLAND

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me, the subscriber, a Notary Public of the State of Maryland, in and for the \_\_\_\_\_ of Baltimore, personally appeared James J. White, Acting Executive Director, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, who acknowledged the foregoing instrument to be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

(SEAL)

STATE OF Florida

SS:

County OF Duval

I HEREBY CERTIFY that on this 14th day of October, 1998, before me, the subscriber, a Notary Public of the State of Florida, in and for the County of Duval personally appeared Howard Gable who acknowledged himself to be the V.P. + G.M. of ATC LOGISTICS, INC. and that he, as such being authorized so to do, acknowledged the foregoing instrument to be the duly authorized act and deed of ATC LOGISTICS, INC.

WITNESS my hand and Notarial Seal the day and year last above written.

Scyles Bush

NOTARY PUBLIC

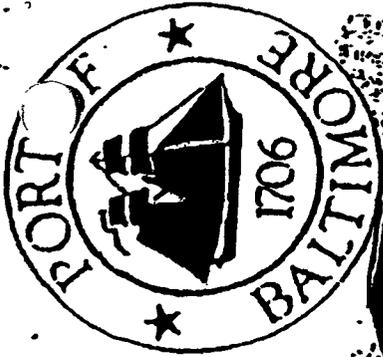
SCYLES BUSH

MY COMMISSION EXPIRES:



Scyles Bush  
MY COMMISSION # 00635172 EXPIRES  
July 30, 2001  
BONDED THRU TINY PAW INSURANCE, INC.

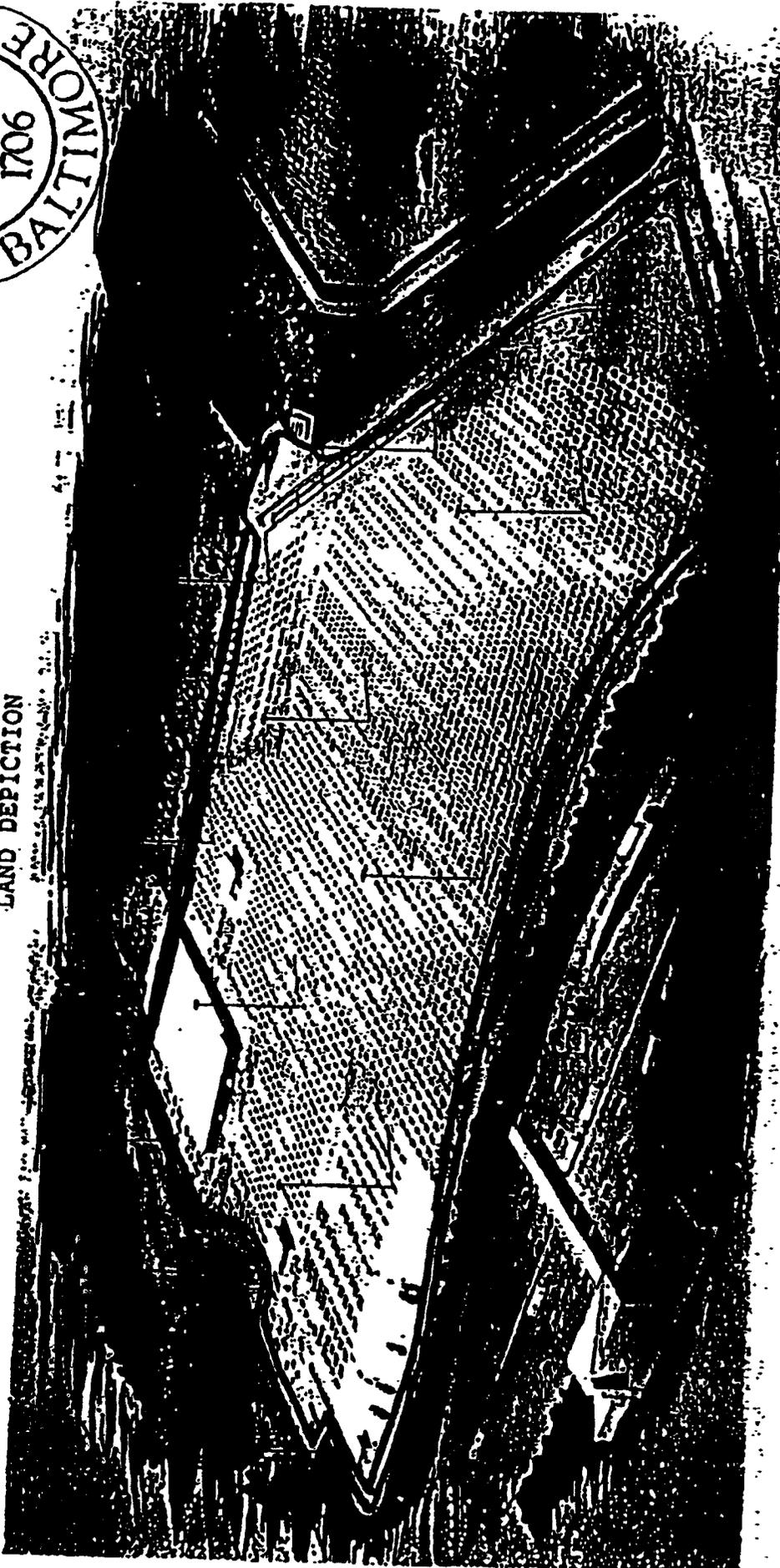
(SEAL)



*ATC Logistics, Inc.*

**MARYLAND PORT ADMINISTRATION**

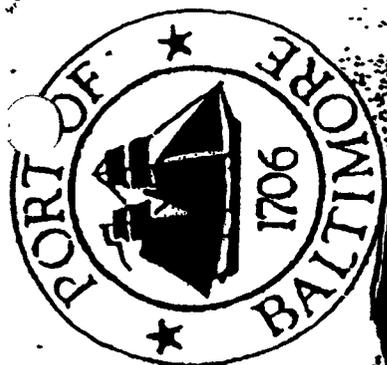
LAND DEPICTION



Exact acreage dimensions and locations subject to change as development of same evolves

# *Masonville Agreement/Lease*

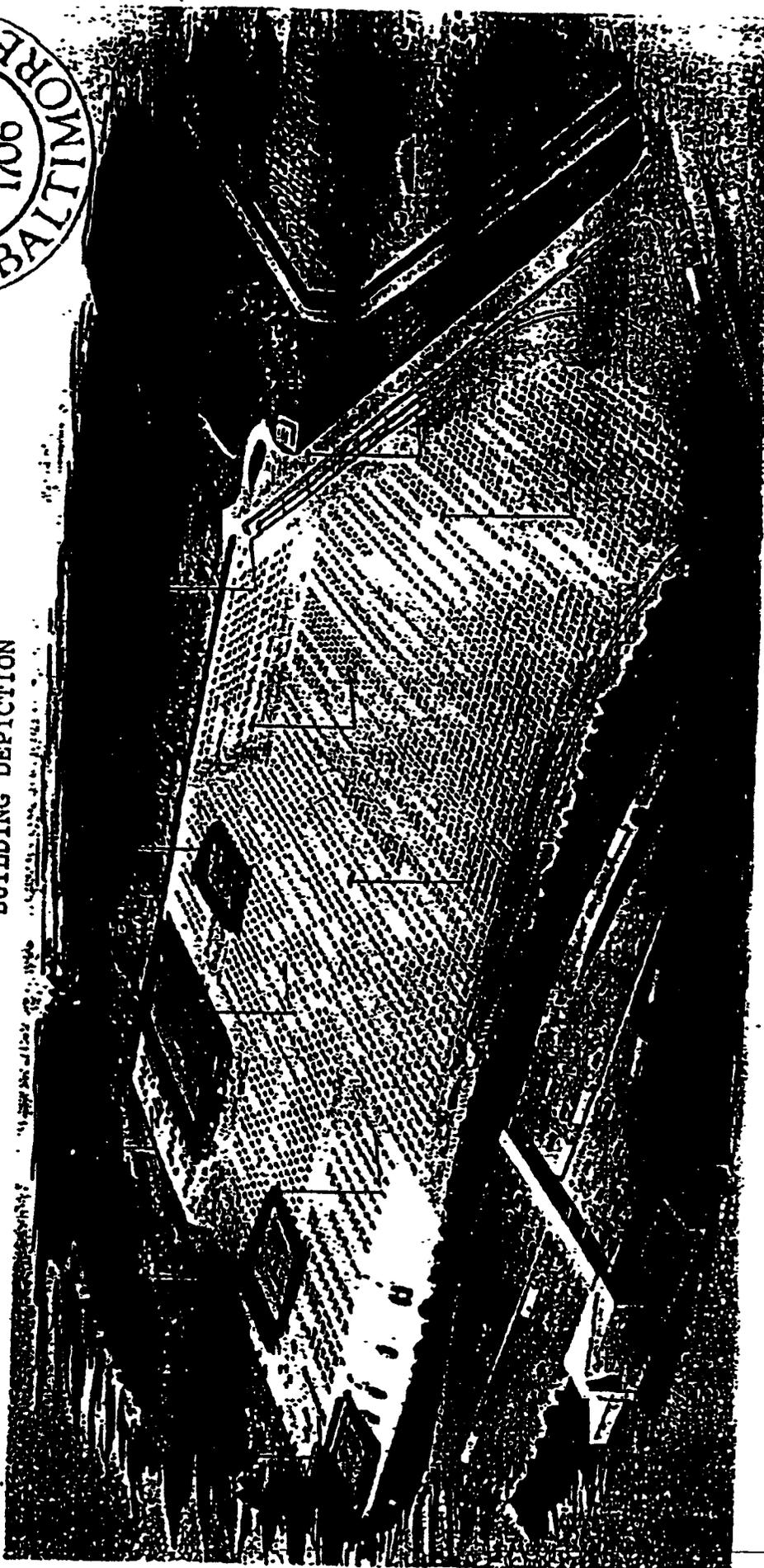
Exhibit A  
Land



**ATC Logistics, Inc.**

**MARYLAND PORT ADMINISTRATION**

BUILDING DEPICTION



Exact Building dimensions  
and Locations subject to  
change as construction  
same evolves

**Masonville  
Agreement/Lease**

Exhibit B  
Buildings

**LEASE BETWEEN**  
**THE MARYLAND PORT ADMINISTRATION**  
**AND**  
**WALLENIUS WILHELMSËN ATLANTIC LLC**

THIS LEASE is made and entered into as of January 25, 2001, by and between the MARYLAND PORT ADMINISTRATION, an instrumentality of the Maryland Department of Transportation (hereinafter referred to as "MPA"), and WALLENIUS WILHELMSËN ATLANTIC LLC (hereinafter referred to as "WWL").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, MPA and WWL hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 Premises.** MPA leases to WWL and WWL rents from MPA up to a total of one hundred and fifty (150) contiguous acres of land with certain improvements thereon, including one hundred thirty thousand (130,000) square feet of covered shed space located at Dundalk Marine Terminal ("DMT") in Baltimore City, Maryland, as more fully identified and described on Exhibit "A" attached hereto (the "Premises"). The initial parcel of the Premises to be leased and rented under this Lease shall be approximately a fifty (50) acre parcel including one hundred twenty thousand (120,000) square feet of sheds 8 & 11 (the "Phase 1 Shed") and the related contiguous area adjacent to berths 7 to 11 as specifically detailed on Exhibit A ("Phase 1"). MPA shall improve and renovate Phase 1 at its expense, to the standard provided in Exhibit "B". The funding for these improvements is included in the MPA capital appropriation for FY 2001 as approved by the Maryland General Assembly. MPA may grant WWL possession of portions of Phase 1 while construction is going on at rates described in Section 3.1. The Expansion Acreage (hereinafter defined) shall be made available as described in Section 4.1 of this Lease.

**1.2 Term.** The term of this Lease shall be twenty (20) years ("Term") beginning on the Effective Date and shall be calculated in consecutive twelve (12) month intervals ("Lease Year") during the Term. The "Effective Date" shall be the first day of the first month after the completion of all of the following:

- a) The Maryland Port Commission ("Port Commission") approval;
- b) The Maryland Board of Public Works ("Board") approval;

- c) Execution of this Lease by the parties hereto and
- d) Completion of the Phase 1 Improvements outlined in Exhibit B

The aforesaid notwithstanding, if the Effective Date has not occurred by December 1, 2001, and if it is due to either (a) or (b) above not being completed, then this Lease shall be null and void and of no further force or effect. If the Effective Date has not occurred by December 1, 2001 and if it is solely due to (d) above not being completed, then December 1, 2001 shall be deemed the Effective Date, the Lease shall commence, WWL shall be provided use of all areas completed and the parties shall meet and reach a good faith adjustment to the charges shown in Section 3.0 to be applied until the work is complete.

**1.3 Renewal.** Provided WWL has complied with all of the terms of this Lease throughout the Term and is not in default hereunder, WWL shall have the option to renew this Lease for three (3) successive terms of five (5) years (the "Renewal Terms") under terms, conditions and at the rates then in effect under the Lease, plus an annual CPI adjustment in each year of the renewal term as described in Section 3.2.

In order to exercise each option, WWL shall provide MPA with at least one hundred eighty (180) days' written notice, prior to expiration of the Term or the prior Renewal Term, as applicable, of its intent to renew. Failure by WWL to so notify MPA timely shall be considered a forfeiture by WWL of this option to renew.

**1.4 MPA Terminal Services Schedule.** Where applicable, the prevailing MPA Terminal Service Schedule filed with the Federal Maritime Commission, posted on the Internet (<http://www.state.md.mpa.us>) or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by MPA pursuant to Federal, State or other applicable law ("Schedule"), is hereby incorporated by reference into this Lease as if set forth at length and such shall govern and control this Lease except where same conflicts with this Lease. In such event this Lease shall prevail.

## **2.0 USE OF PREMISES AND RESERVED RIGHTS:**

**2.1 Use of Premises.** WWL shall use the Premises only for the purpose of receiving, loading, discharging, sorting, storing, delivering, handling and processing of waterborne cargoes in the Port of Baltimore and shall not use the Premises for any unlawful purpose.

### **2.2 Use of Berth, Pier and Crane.**

a) As an appurtenant right to the Lease and subject to the conditions and reservations set forth herein, WWL shall have the right, privilege and guarantee to immediate and unrestricted use of berths 7 through 11 at DMT adjacent to the Premises (the "Berths") for the purpose of berthing vessels engaged in loading or discharging

### 3.0 CHARGES (RENTAL):

**3.1 Rental Payment Schedule.** Beginning on the Effective Date, WWL shall pay to MPA as rental a facility use fee calculated at the rate of \$16,945 per acre per Lease Year for all areas without sheds and at the rate of \$3.44 per square foot for all of the Shed Areas (the "Facility Use Fee"). In consideration of the start-up and other disruptions related to the prompt execution of this Lease, MPA grants WWL \$100,000 credit off of the initial monthly Facility Use Fee made under this Lease. At the time WWL takes possession of any Expansion Acreage (hereinafter defined) or Optional Shed Area (hereinafter defined), the Facility Use Fee then in effect shall apply to those areas. The Facility Use Fee for each month shall be paid to the MPA without abatement, deduction or set off (except as otherwise specifically provided in this Lease) in advance, on or before the first business day of each and every month that this Lease continues in effect and shall be payable at such place as MPA may hereinafter designate.

**3.2 CPI Adjustment.** Commencing at the end of the fifth Lease Year and each Lease Year thereafter, including any and all Renewal Terms, MPA will adjust the Facility Use Fee to reflect the change from the prior Lease Year in the annual Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U); provided however, the adjustment of the Facility Use Fee shall not exceed a 2% increase in any Lease Year ("CPI Adjustment"). The aforesaid notwithstanding, for any portion of Expansion Acreage (hereinafter defined) or Optional Shed Area (hereinafter defined) taken under lease by WWL after the end of the fourth Lease Year, the CPI Adjustment shall not be applied to that portion of the Facility Use Fee until that portion of Expansion Acreage or Optional Shed Area has been under lease for two full Lease Years. This yearly CPI adjustment will be applied at the beginning of each applicable Lease Year.

**3.3 Other Charges.** WWL shall also pay MPA crane rental charges according to the Schedule at the Schedule rate less 15%.

### 3.4 Tonnage Guarantee.

a) During the Term, WWL guarantees to load or discharge not less than 2,400,000 tons of Cargo (hereinafter defined), at DMT, for each of the five (5) periods of four (4) Lease Years ("Initial Tonnage Guarantee"). A Total of twelve (12) million tons of Cargo shall be guaranteed during the first twenty (20) years of this Agreement Lease. This Initial Tonnage Guarantee shall be measured at the end of the 4<sup>th</sup>, 8<sup>th</sup>, 12<sup>th</sup>, 16<sup>th</sup> and 20<sup>th</sup> Lease Year for the Cargo loaded or discharged during the immediately prior four (4) Lease Year period. In the event WWL does not meet its Initial Tonnage Guarantee in any four (4) year period specified above, WWL shall become liable for such shortfall and shall pay to MPA a "Shortfall Charge" equal to \$1.50 times the number of tons necessary to bring WWL volumes up to the tonnage guarantee for the

four year Initial Tonnage Guarantee period in question. The said Shortfall Charge shall be paid as additional rental at the conclusion of each four year Tonnage Guarantee period after such has been billed by MPA.

b) During each five (5) year period for which WWL exercises the renewal option pursuant to Section 1.3 above, WWL guarantees to load or discharge not less than 3,000,000 tons of Cargo at DMT ("Renewal Tonnage Guarantee" and together with the Initial Tonnage Guarantee the "Tonnage Guarantee"). In the event WWL does not meet its Renewal Tonnage Guarantee in any Renewal Term for which the option is exercised, WWL, shall become liable for such shortfall and shall pay to MPA a Shortfall Charge equal to \$1.50 times the number of tons necessary to bring WWL volumes up to the Renewal Tonnage Guarantee for the relevant Renewal Term. The said Renewal Shortfall Charge shall be paid as additional rental at the conclusion of each Renewal Term after such has been billed by MPA.

c) For all purposes under this Lease, the term "Cargo" shall mean all tonnage paid by WWL, including:

- i.) all cargo under bills of lading of WWL, its parent(s), subsidiary(s) or companies owned by WWL, its parent(s) or subsidiary(s);
- ii.) all cargoes discharged or loaded at DMT from vessels in services operated, chartered or controlled by WWL, its parent(s) or subsidiary(s); or
- iii.) such other cargoes as WWL and MPA may from time to time agree in writing.
- iv.) In the event of preexisting leases and agreements where cargo is currently paid for by another line/account, this cargo will not be considered cargo or applied against the Tonnage Guarantee during the term or renewal of said leases and agreements.

### 3.5 Ship Call Guarantee.

a) During the Term, WWL guarantees a minimum of 1500 vessel calls at DMT for the purpose of loading or discharging cargo in each of the first and second 10 year periods of the Term ("Initial Ship Call Guarantee"). Should WWL fail to achieve either of these two Initial Ship Call Guarantees, WWL agrees to pay to MPA the sum of \$5,000 multiplied by the difference between the Initial Ship Call Guarantee and the actual number of ship calls as liquidated damages and not as a penalty ("Ship Call Charge"). The said Ship Call Charge shall be paid as additional rental at the conclusion of the applicable portion of the Term after such has been billed by MPA.

b) During each five (5) year period for which WWL exercises the renewal option pursuant to Section 1.3 above, WWL guarantees a minimum of 750 vessel calls at DMT for the purpose of loading or discharging Cargo ("Renewal Ship Call Guarantee" and together with the Initial Ship Call Guarantee the "Ship Call Guarantee"). Should WWL fail to achieve the Renewal Ship Call Guarantee in any Renewal Term for which

the option is exercised, WWL agrees to pay to MPA the sum of \$5,000 multiplied by the difference between the Renewal Ship Call Guarantee and the actual number of ship calls as liquidated damages and not as a penalty ("Renewal Ship Call Charge"). The said Renewal Ship Call Charge shall be paid as additional rental at the conclusion of the applicable portion of the Renewal Term after such has been billed by MPA.

c) MPA understands that WWL must have competitive pilotage rates to effectively compete in the Mid-Atlantic region. In the event that WWL's pilotage costs in the Port of Baltimore are not competitive with other costs in the Mid-Atlantic region, WWL and MPA may re-negotiate the provisions in Section 3.5, Ship Call Guarantee.

### 3.6 Capital Improvement Assessment.

a) In recognition of WWL's long term commitment to the Port of Baltimore, and Tonnage and Ship Call Guarantees, the MPA shall make the improvements and renovation of the Premises as provided in Exhibit B. In addition, at WWL's request, MPA shall make up to \$4,000,000 in improvements and renovation to the Expansion Acreage (hereinafter defined) which shall include such permanent buildings/warehouses as WWL may designate to enhance its hub facility at DMT. All of the above expenditures made by the MPA shall not be subject to recovery by the MPA as provided hereunder and are subject to appropriations by the Maryland General Assembly.

b) If WWL shall request additional improvements, renovations, building or warehouses beyond those made by MPA in paragraph (a) above, MPA shall make reasonable efforts to provide such additional facilities and improvements to WWL subject to appropriations by the Maryland General Assembly. The details and costs of all of the above to be as mutually agreed between the parties. WWL shall repay MPA for the amount actually spent on the additional facilities or improvements ("Improvement Costs") on a fixed monthly payment amortization basis payable monthly in arrears, based on a twenty (20) year recovery at an annual interest rate of six and one-half percent (6.5%) with a balloon payment at the end of the final Lease Year of this Lease.

### 4.0 PREMISES; RELATED ISSUES:

4.1 Expansion Acreage. WWL shall have an option to lease the remaining Premises at DMT as shown on Exhibit A ("Expansion Acreage"). Upon the exercise of an option, the parties will execute and deliver an amendment to this Lease describing the Expansion Acreage taken by WWL. The Expansion Acreage will be available as follows:

a) During the first five (5) Lease Years, WWL may exercise this option for Expansion Acreage in increments of not less than ten (10) acres, upon sixty (60) days prior written notice. For those portions of the Expansion Acreage where MPA will need to relocate a current tenant, it shall have up to an additional sixty (60) days, if necessary, after the notice period to make that area available to WWL. It is also

recognized that the MPA must comply with certain Leases that are in existence for areas within the Expansion Acreage, which have expiration dates in 2002.

b) If at any time after the end of the first five (5) Lease Years of this Lease the MPA is approached by a third party seeking a long term lease (over one (1) year) on all or part of the Expansion Acreage, then WWL shall immediately be notified of this opportunity and shall have thirty (30) days in which to decide whether or not to exercise the option for Expansion Acreage. If WWL does not decide in a timely fashion that it desires to exercise the option for Expansion Acreage, MPA shall be free to enter into a lease with such third party on such terms as MPA in its sole discretion thinks fits.

It is recognized that MPA may be approached by a third party for all or part of the Expansion Acreage. In that event, WWL shall be notified and shall make its best effort to make its best effort to acquire such land that is not available to MPA. WWL shall make its best effort to acquire such land that is not available to MPA. WWL shall make its best effort to acquire such land that is not available to MPA.

C. The monthly rent for the Expansion Acreage taken by WWL shall be \$16,945 per month. Rent shall be subject to annual adjustments for cumulative changes in the CPI-U subject to the provisions of Section 3.2.

d) In addition to the Phase 1 Shed, MPA and WWL will work together to allow WWL to relocate additional business and services to the Port of Baltimore. The parties will attempt to identify at least one hundred thousand (100,000) up to two hundred thousand (200,000) square feet of warehouse space and related access acres at DMT as close as possible to the Premises, as the parties can agree ("Optional Shed Area" and together with the Phase 1 Shed, the "Shed Area").

**4.2 Relocation.** At any time during the Term or any Renewal Term, including, but not limited to, at the end of the Term, MPA shall have the right and option, at MPA's sole discretion and sole expense to ask WWL to relocate to another location within the DMT comparable in size and improvements, with similar access to public roads, railroad, berth and crane facilities, with similar lay-out and operating features as the Premises; which in WWL's sole judgment shall not have an adverse impact on its cost of operation or its business relations. The MPA shall give WWL one hundred eighty (180) days written notice of its intent to relocate WWL. Within ninety (90) days after any such notice has been given, MPA and WWL shall negotiate, execute and deliver an amendment to the Lease which shall substitute (or add) a description of the Premises to which WWL is to be relocated for (or to) the description of the Premises; otherwise all of the terms and conditions of this Lease shall be applicable to WWL's occupancy of the new premises. This amendment shall be subject to approval by the Maryland Board of Public Works, if required.

## **5.0 MAINTENANCE, REPAIR, ALTERATIONS AND INSPECTIONS:**

### **5.1 Maintenance and Repair.**

a) WWL shall keep the Premises in a clean condition and shall not permit or suffer any waste or injury thereto. WWL shall be responsible for all general daily maintenance to the Premises.

b) MPA shall be responsible for any major structural repairs to the facilities, such as but not limited to, roof replacement, pavement overlays, HVAC, electrical or other system replacements.

c) MPA will maintain new light fixtures installed by MPA; however, WWL is responsible for light bulb replacement and cost of the utilities as provided in Section 6.1.

d) MPA shall be exclusively responsible for maintenance of the Cranes. MPA shall maintain the Cranes in full compliance with all applicable Federal, State and local laws and regulations and will insure the Cranes presented for WWL's use shall not be a danger to the operators or longshoremen involved in the cargo operation with the Cranes. MPA reserves the right to seek from WWL all losses and damages for repairs to the Cranes resulting from acts and/or omissions of WWL and/or its agents, servants and employees.

**5.2 Alterations and Improvements.** WWL shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from MPA. Title to all alterations and improvements installed in the Premises at any time, whether by or on behalf of WWL or by or on behalf of MPA, shall immediately vest in MPA without payment of any nature to WWL, shall not be removed from the Premises at any time, unless such removal is consented to in advance or requested by MPA; and at the expiration or sooner termination of this Lease, all such alterations and improvements shall remain upon and be surrendered to MPA with the Premises, unless removal thereof is consented to in advance or requested by MPA. In either case, the cost of removal shall be borne solely by WWL. Moveable furniture and trade fixtures, including without limitation, computer and telephone switches, servers and the like, which are removable without injury to the Premises shall be and remain the property of WWL but must be promptly removed at WWL's sole cost and expense, at the termination of this Lease. WWL shall repair, at its sole cost and expense, any damage to the Premises caused by the removal of its furniture and trade fixtures or any alterations or improvements MPA has requested WWL to remove, and shall restore the Premises to substantially the same condition as existed prior to the installation thereof.

**5.3 WWL's Obligations to MPA Property.** WWL shall be solely responsible to MPA for loss, theft of or damage to any, and all real and personal property, equipment and fixtures belonging to MPA, or for which MPA is responsible, and situate on the Premises, and any improvements thereon, unless such loss, theft or damage is

caused by MPA or its employees.

**5.4 Inspection by MPA.** MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**5.5 Pre and Post Inspections.** MPA and WWL shall conduct a pre-inspection of the Premises and Improvements thereon at the beginning of the Term, after completion of the construction in Exhibit "B", and on the grant by MPA of any Expansion Acreage as provided in Section 4.1. MPA and WWL will also conduct a post inspection of the Premises and Improvements thereon at the end of the Term or any Renewal Term, which will serve as the basis of WWL's restoration responsibilities as set forth in Section 10.3. MPA and WWL agree to each pay 50% of the costs of an independent surveyor, who has been mutually agreed upon, to conduct the pre and post inspections. This inspection shall include a Phase 1 Environmental Audit as part of the pre and post inspections.

## **6.0 ADDITIONAL RESPONSIBILITIES:**

**6.1 Utilities.** WWL shall be liable for, and shall pay all charges for electricity and gas furnished to the Premises for WWL's exclusive use. It will be the MPA's responsibility to install meters on the Premises to measure electricity and gas exclusively utilized by WWL and to maintain or have maintained all supply lines.

### **6.2 Taxes.**

a) WWL shall pay to MPA an annual sum of money computed on the basis of the full cash value of the Premises and Improvements thereon, multiplied by the assessment percentage under Section 8-103(c)(1) of the Tax Property Article of the Annotated Code of Maryland, and multiplied by the current State and local real estate tax rates. WWL's obligation shall be satisfied by WWL's payment of all the charges or rental under Section 3.0, provided the Tonnage Guarantee is met.

b) In the event WWL (as opposed to MPA) makes further Improvements to the Premises, WWL shall pay to the appropriate tax authority any real estate taxes attributable to such further Improvements. WWL's obligation under this paragraph (b) shall not be satisfied by WWL's payment of the charges or rental under Section 3.0.

**6.3 Security of Premises.** WWL shall assume complete responsibility for security of the Premises, and the facility, Improvements, buildings and property located thereon and therein, including cargo moving on or across the pier and berth. WWL shall ensure that any gates to the pier and berth will be locked when the pier is not being used by WWL for vessel and/or terminal operations. MPA assumes no responsibility to WWL for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in

connection therewith. MPA is responsible for the general perimeter security of the DMT.

**6.4 Qualification to do Business in Maryland.** At all times during the term of this Lease, WWL shall be legally qualified to do business in the State of Maryland.

**6.5 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA without prior written consent of MPA which will not be unreasonably withheld.

**6.6 Rules, Regulations and Laws.** WWL shall comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, its tenants, invitees, licensees and the general public. WWL and MPA shall also comply with all applicable federal, state and municipal laws, ordinances and regulations. WWL and MPA, to the extent permitted by law, agree to indemnify, defend and hold harmless the other party, its agents and employees from any liability or penalty which may be imposed upon the other party by governmental authority by reason of any violation by that party or its agents and employees.

## **7.0 LIABILITY, INDEMNITY & INSURANCE:**

**7.1 Liability.** MPA shall not be liable to WWL for any loss, injury or damage to WWL or WWL's property from any cause unless

(a) such cause is due to MPA's negligence or deliberate fault and then to the extent permitted by law, or

(b) the loss is caused by the negligence or deliberate fault of MPA's agents, invitees, licensees or other tenants if and to the extent allowed by law and that MPA is compensated by the agent, invitee, licensee or other tenant for the loss, injury or damage to WWL or WWL's property.

## **7.2 Environmental Responsibilities.**

a) WWL shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to WWL's performance of its obligations pursuant to this Lease and/or WWL's use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). WWL shall establish and maintain a program of compliance with all applicable Federal, State and local Environmental Standards. WWL shall monitor its compliance with Environmental Standards and immediately halt and correct any incident of non-compliance.

b) In the event of any incident of non-compliance with Environmental Standards during the Term or Renewal Term of this Lease, WWL shall:

- 1) Give MPA immediate notice of the incident, providing as much detail as possible;
- 2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and
- 3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

c) WWL shall only be liable for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards during the Term and any Renewal Term.

d) To the extent permitted by law and except with respect to releases or other actions caused by WWL, its employees or agents, MPA shall undertake and be liable for (as between MPA and WWL only) any and all preventive, investigatory or remedial actions (including emergency response, removal, containment and other remedial actions) that are either: required by an applicable Environmental Standards or governmental authorities; or necessary to prevent or minimize property damage to the Premises, personal injury or damage to the environment, by releases of or exposure to materials deemed hazardous under the Environmental Standards (either pre-existing prior to WWL's use of the Premises or occurring during the term of this Lease) in connection with the Premises or affecting the Premises or WWL's operation, whether such materials are on the Premises or from other tenants of the MPA..

### 7.3 Insurance and Indemnification.

a) WWL agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation by reason of any act or of omission of WWL or its officers, agents, employees, contractors, sub-contractors, invitees or licensees, including but not limited to WWL's obligations to MPA under this Lease, unless caused by the fault or negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by the MPA, its agents and employees or be against or sustained by others to whom the MPA, its agents or employees, may become liable.

b) To the extent permitted by law, and to the extent that MPA is indemnified, protected, defended and saved harmless by its agents, invitees, licensees or other

tenants, MPA agrees to indemnify, protect, defend and save harmless WWL, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which WWL its agents or employees, may be subjected by reason of injury to or death of persons or by reason of injury of damage to, or destruction of property of any person, firm or corporation by reason of an act or omission of MPA, including but not limited to MPA's obligations to WWL under this Lease, unless caused by the fault or negligence of WWL, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by WWL, its agents and employees or be against or sustained by others to whom WWL, its agents or employees, may become liable.

c) To the extent the MPA is unable to satisfy its obligations to WWL under Sections 6.6, 7.1, 7.2 and 7.3 above (the "Liability Provisions") because of the limitations imposed by the qualification of "extent permitted by law", the MPA shall waive a portion of the payment of the Facility Use Fee, as provided below, as well as any Shortfall Charge or Ship Call Charge coming due during the period any obligations to WWL under the Liability Provisions remains outstanding. The amount of the Facility Use Fee to be waived on a monthly basis shall be calculated by dividing the amount of the obligation to WWL under the Liability Provisions by the remaining months of the Term or Renewal Term, as the case maybe. Once the aforesaid obligation is fully satisfied the referenced waiver shall cease. Any such reduction in Facility Use Fee, Shortfall Charge or Ship Call Charge shall be subject to approval by the Board of Public Works, if required.

d) Unless expressly set forth in this section 7.3, this indemnification shall not be deemed to be a waiver of any immunity MPA, or its employees may possess under State or federal law.

e) MPA agrees that it shall maintain in full force and effect during the Term and any Renewal Term of this Lease GENERAL LIABILITY INSURANCE for protection against claims, suits, demands or judgments by reason of personal injury, including death and for any claims of damage to property or claims of other damages, or losses occurring or arising out of or relating to MPA's obligations under this Lease. The limit of liability shall not be less than \$10,000,000 per occurrence for bodily injury and property damage. MPA shall furnish a Certificate of Insurance to WWL issued by an accredited insurance company to satisfy this insurance requirement. Such certificate shall provide that WWL is additionally named as insured under the policy. WWL is to be given thirty (30) days written notice prior to change in or cancellation of such insurance coverage.

f) WWL shall at all times during the Term and any Renewal Term thereof maintain at its sole cost and expense, the following insurance policies:

- i) such worker's compensation or employer's liability insurance as may be required by law;

- ii) liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 per aggregate for bodily injury and property damage and \$100,000 (any one fire) for Fire Legal Liability for the protection of the MPA and WWL against any claims, suits, demands, or judgments by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by WWL;
  - iii) property insurance to insure against damage to or loss of the improvements on the Premises, including all fixtures and equipment, said property insurance to be an amount sufficient to provide coverage for the full replacement and restoration of the improvements, and said insurance is to be written to show the WWL and MPA as named insureds as their interests may appear;
  - iv) stevedores legal liability and Terminal operations liability insurance of not less than \$10,000,000 per occurrence, as applicable;
  - v) comprehensive Automobile Liability Insurance covering all owned, non-owned and hired motor vehicles of not less than \$5,000,000 for bodily injury and \$5,000,000 for property damage, and also including such other coverage required by the Motor Vehicle Laws of Maryland.
- g) Nothing contained herein shall require the MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of WWL, its agents, or employees, assignees, subtenants, ballors or invitees or of any other person, firm or corporation upon any part of the Premises.
- h) WWL shall not use the Premises in such a manner which would invalidate or cause an increase in the existing rates of, insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term of this Lease including any renewal, shall constitute additional rental and shall be paid by WWL to MPA upon the monthly rental day next thereafter occurring.
- i) In the event that WWL at any time refuses, neglects or fails to secure and maintain in full force and effect any and all of the insurance required hereunder, MPA at its option may procure or renew such insurance and all amounts of money expended by MPA in connection therewith shall be paid by WWL to MPA.
- j) All insurance policies required hereunder shall provide that they shall not be canceled, materially changed or not renewed without at least thirty (30) days prior written notice to MPA.

k) WWL shall cause its insurance contractor to name MPA as an additional insured party under all insurance requirements of this Lease.

l) The company writing any insurance shall be a Best A rated company. The form of such policy shall be subject to approval of MPA, and such approval shall not be unreasonably withheld. Copies of each such policy, or a certificate thereof, shall be delivered to MPA promptly after the Effective Date. No acceptance or approval of any policy by MPA shall relieve or release WWL from any liability, duty or obligation assumed by or imposed upon it by the terms of this Lease.

m) WWL shall be liable for and promptly pay any and all costs, expenses (including, without limitation, reasonable attorneys' fees), judgments and decrees which may be incurred by or obtained against MPA from time to time (i) in enforcing the obligations of WWL contained in this Lease; (ii) in obtaining possession, as the result of any default by WWL or otherwise, of the Premises, (iii) in defending any suit or proceeding brought against MPA for the violation by WWL of any law, ordinance, rule or regulation, (iv) in defending any action or suit for damages because of any failure, neglect or default on the part of WWL in respect to WWL's obligations contained in this Lease, or (v) in defending any action brought by WWL with respect to this Lease, if MPA is successful in such action.

n) In the event of any injury or damage to persons or property, WWL shall immediately notify MPA verbally and in writing, providing pertinent information to enable MPA to adopt whatever measures may be necessary to prevent further losses.

**7.4 Liens and Encumbrances.** WWL shall keep the Premises free and clear of all liens, encumbrances and charges arising from its use and occupancy of the Premises. At all times prior to termination of this Lease, WWL shall defend, indemnify and hold MPA harmless against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of WWL or its contractors, agents or employees.

## **8.0 DAMAGE AND DESTRUCTION:**

**8.1 Partial Destruction.** If, during the Term or Renewal Term, the Premises are partially destroyed from fire, storm or any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this Lease. If existing laws do not permit the full restoration, WWL may agree to have the facility restored to the degree permitted and the parties will in good faith negotiate the appropriate reduction in the Facility Use Fee, Tonnage Guarantee and Ship Call Guarantee for the Premises as restored. MPA and WWL agree that the Facility Use Fee, the Ship Call Guarantee and the Tonnage Guarantee shall be abated in proportion to that portion of the Premises being restored with such abatement to continue until such destroyed portion is refurbished and available for use. If the Premises cannot be restored adequately for

WWL to continue its operation in an efficient and economic manner, WWL may terminate the Lease, without any penalty or payment under this Lease, by giving MPA written notice.

**8.2 Total Destruction.** If during the Term or Renewal Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

a) to provide WWL with a reasonable approximation of the time necessary to conduct necessary repairs or restoration and effect the repairs or restoration within the designated time period (which in no event shall be longer than two hundred forty (240) days). If existing laws do not permit the full restoration, WWL may agree to have the facility restored to the degree permitted and the parties will in good faith negotiate the appropriate reduction in the Facility Use Fee, Tonnage Guarantee, and Ship Call Guarantee for the Premises as restored. WWL may terminate if the Premises are not restored within three hundred sixty five (365) days. During the period of repairs or restoration, MPA shall provide WWL with replacement acreage and facilities suitable for them to continue to operate in the Port of Baltimore. The parties will in good faith negotiate an abatement or reduction in Facility Use Fee, Ship Call Guarantee and Tonnage Guarantee for areas of the Premises not usable by WWL and not replaced by MPA.

b) to give notice to WWL within sixty (60) days of such destruction terminating this Lease. If such notice is given WWL's obligation under the Lease shall terminate as of the date of the total destruction. Total destruction shall be any destruction that precludes WWL from performing a significant portion of its operations at the Premises.

## **9.0 DEFAULT AND REMEDIES:**

**9.1 Default.** The occurrence of any of the following shall constitute a default by WWL under this Lease:

- a) Failure to pay when due any Facility Use Fee under this Lease;
- b) Failure to perform any other provision of this Lease or failure to pay any other fees, charges or guarantees under the Lease, if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to WWL. If the default cannot be reasonably cured within thirty (30) days, WWL shall not be in default if WWL commences to cure the default within said thirty (30) day period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably practicable;
- c) To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of WWL; an assignment by WWL for the benefit of creditors; the filing by WWL of a voluntary petition in bankruptcy; an adjudication that WWL is bankrupt or the

appointment of a receiver for the properties of WWL; the filing of an involuntary petition of bankruptcy and failure of WWL to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on WWL's leasehold interest hereunder and failure of WWL to secure a discharge of the attachment or release of the levy of execution with sixty (60) days; and

d) Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

**9.2 Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this Lease and shall demand that WWL perform the relevant provision of this Lease within the applicable time period, provided that no notice shall be given, in MPA's sole discretion, where the default is failure to pay the Facility Use Fee.

**9.3 MPA Remedies in Case of WWL Default.** MPA shall have the following remedies if WWL is in default and such default is not cured. These remedies in this Section 9.3 are not exclusive, and the election of one remedy shall not preclude an election of any other remedy at a later time.

a) MPA may, at its option, cure the default at WWL's expense, and the cost of curing the default shall be deemed additional rental and payable by WWL to MPA on demand. MPA may exercise the remedy described in this Subsection (a) without any notice to WWL if MPA, in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of WWL constitutes an emergency;

b) MPA may, at its option, terminate this Lease and/or terminate WWL's right to possession by giving seven (7) days' written notice of termination to WWL, without prejudice, however, to MPA's right to recover all rental and other charges due at the time of such termination. WWL shall vacate the Premises within the notice period, remove any property of WWL, including any fixtures that WWL is required to remove at the end of the Term, perform any cleanup, alterations or other work required to leave the Premises in the condition required in Section 10.3 at the end of the Term and deliver all keys to the MPA;

c) MPA may, at its option, terminate this Lease and re-enter the Premises and distraint upon any of WWL's property;

d) In the event WWL defaults, it shall be responsible for all guarantees, and charges throughout the entire Term (and any Renewal Term if exercised at the time of the default) plus the full amount of all unamortized principal and interest on all improvements in Section 3.6 and on any other capital improvements made by MPA based on a full Term straight line amortization schedule, calculated from the date any improvement is made. MPA shall take reasonable steps to mitigate its losses under this Lease. MPA may exercise any other legal, equitable or contractual remedy it may have,

Including but not limited to, the right of lock out.

**9.4 Use of Abandoned Property.** Provided MPA gives prior written notice to WWL, MPA may:

- a) use all or any part of WWL's personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this Lease without compensation to WWL and without liability for such use or damage; or
- b) store all or any of WWL's personal property and trade fixtures for the account of and at the expense of WWL.

**10.0 TERMINATION:**

**10.1 WWL Termination.** WWL may elect to terminate this Lease upon one hundred eighty (180) days written notice to MPA only if:

- a) WWL is prohibited, in whole or in substantial part, from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority; or
- b) MPA fails to substantially accomplish the improvements and renovations provided in Exhibit B within 180 days of the Effective Date; or
- c) MPA fails to obtain appropriations by the Maryland General Assembly to accomplish its obligations under Section 3.6(a) of this Lease

and such failure to perform is not cured or the MPA is not taking adequate measure to cure such failure within 30 days after written notice has been given by WWL.

**10.2 MPA Termination.** MPA may terminate this Lease upon one hundred eighty (180) days written notice to WWL if MPA is prohibited, in whole or substantial part, from performing its obligations herein as a result of the lawful act of any governmental authority;

**10.3 Surrender.** Upon expiration or earlier termination of this Lease, WWL shall surrender the Premises in the same condition as received except for ordinary wear and tear to the Premises and except for alterations, which WWL has a right to remove, or is obligated to remove. WWL shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any alterations or removal of WWL's personal property for which it is obligated under this Lease.

**11.0 POWERS OF MPA:** It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted, and that in the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or administrative or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this Lease, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by WWL or any other legal entity in connection with, or as the result of, or growing out of any such prevention, restriction or delay. MPA represents and warrants that it is presently empowered to enter into this Lease and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this Lease.

**12.0 FORCE MAJEURE:**

a) MPA and WWL shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, public emergency, strikes, boycotts, picketing, and work stoppages.

b) Except for a strike, riot, act of God or any act or state of war or public emergency or Government regulations, a declaration of a Force Majeure by MPA, breach by MPA of its duties under this Lease or as otherwise specifically provided for in this Lease, no abatement, diminution or reduction of the Facility Use Fee payable by WWL shall be claimed by or allowed to WWL for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the State, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any cause or causes beyond the control of MPA, nor shall this Lease be affected by any such cause.

c) WWL or MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

**13.0 GENERAL PROVISIONS**

**13.1 Assignment & Subletting.** Except as provided in this Section, WWL shall not assign this Lease nor sublet the Premises in whole or in part to any third party without the prior written approval of MPA and approval of the Board. WWL may assign or sublet this Lease, in whole or part, to its parent(s), subsidiary(ies) or companies owned

by WWL, its parent(s) or subsidiary(s) and shall promptly give MPA written notice with true copies of all such assignment or subletting documents.

**13.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

To WWL: Wallenius Wilhelmsen Atlantic LLC  
c/o Wallenius Wilhelmsen Lines Americas, LLC  
188 Broadway  
P.O. Box 1232  
Woodcliff Lake, NJ 07677  
Attention: President

To MPA: Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

**13.3 Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Lease shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**13.4 Applicable Law.** It is expressly understood and agreed that this Lease and all questions arising hereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this Lease shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

**13.5 Binding Effect.** This Lease shall bind the parties, their successors and assigns.

**13.6 Authority.** Each individual executing this Lease on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such party.

**13.7 Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this Lease.

**13.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Lease.

**13.9 Quiet Enjoyment.** MPA covenants and agrees that so long as WWL is not in default hereunder, WWL shall quietly enjoy the Premises and shall have free ingress and egress to the Premises by both land and water.

**13.10 Holdover.** If WWL retains possession of the Premises or any part thereof after the expiration or sooner termination of this Lease, WWL shall pay MPA in accordance with the Schedule for the time WWL thus remains in possession and, in addition thereto, shall pay the MPA for all damages, consequential as well as direct, sustained by reason of WWL's retention of possession. The provisions of this Section 13.10 do not exclude MPA's rights of re-entry and the taking of full possession pursuant to the terms of Section 9.3 or any other owner or Landlord's right hereunder.

**13.11 Lease for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this Lease shall be for their sole benefit and that no other person, corporation or other entity is intended to be a beneficiary of this Lease.

**13.12 Amendments.** This Lease may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this Lease and signed by both parties and approved by the Board and Port Commission as applicable.

**13.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this Lease shall be taken and construed to be cumulative.

**13.14 Remedies Cumulative.** All remedies provided in this Lease shall be taken and construed to be cumulative; that is, in addition to any and all other remedies to which either party may otherwise be entitled at law or in equity.

**13.15 Survival.** All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Lease, including (without limitation) the obligations of WWL pursuant to Sections 3.5, 7.3(a) and 9.3(d), and both parties' obligations pursuant to Section 7 shall survive the termination or expiration of this Lease.

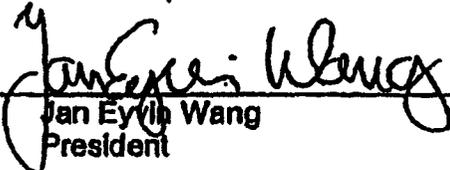
**13.16 Federal Tax Identification.** WWL's Federal Tax Identification Number is 52-2289830.

**13.17 Integration.** This Lease constitutes the entire agreement between MPA and WWL with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this Lease and approved by the Board and Port Commission as applicable.

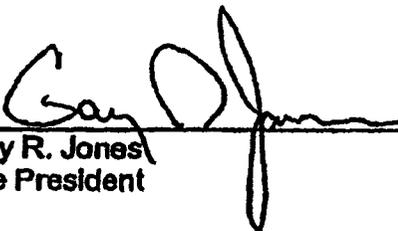
(END)

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

**WALLENIUS WILHELMSSEN ATLANTIC LLC**

By:   
Jan Evelyn Wang  
President

By:   
James P. Clement  
Treasurer

By:   
Gary R. Jones  
Vice President

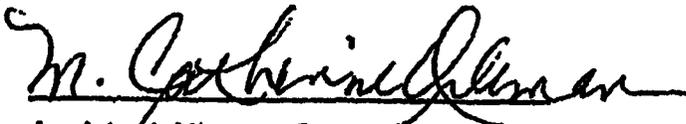
**MARYLAND PORT ADMINISTRATION**

By:   
Paris N. Glendering  
Governor

By:   
John D. Porcari  
Secretary, Maryland Department of Transportation

By:   
James J. White  
Executive Director

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

  
Assistant Attorney General

STATE OF MARYLAND

SS:

Baltimore OF MARYLAND

I HEREBY CERTIFY that on this 25th day of January, 2001, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared James J. White, Executive Director, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, who acknowledged the foregoing instrument to be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal the day and year last above written.

Carol A. Vassallo  
NOTARY PUBLIC *Commissioned as*  
*Carol Ann Hatter*

MY COMMISSION EXPIRES: August 7, 2001

(SEAL)

STATE OF MARYLAND

SS:

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 25th day of January, 2001, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City/County of Baltimore personally appeared Jan Eyvin Wang, who acknowledged himself to be the President of Wallenius Wilhelmsen Atlantic, LLC and that he, as such being authorized so to do, acknowledged the foregoing instrument to be the duly authorized act and deed of WALLENIUS WILHELMSEN LINES ATLANTIC, LLC

WITNESS my hand and Notarial Seal the day and year last above written.

Carol A. Mosello  
NOTARY PUBLIC *Commissioned as*  
*Carol Ann Walker*

MY COMMISSION EXPIRES: August 7, 2001

(SEAL)



**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
CASENEWHOLLAND, INC.**

THIS AGREEMENT & LEASE is made and entered into this 7<sup>th</sup> day of January, 2001, by and between the MARYLAND PORT ADMINISTRATION, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "MPA"), and CaseNewHolland, Inc. (hereinafter referred to as "CNH").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, MPA and CNH hereby agree as follows:

**1.0 BASIC PROVISIONS:**

1.1 **TERM.** The term of the AGREEMENT & LEASE shall be for three (3) years beginning on December 1, 2001 ("Effective Date") and ending on November 30, 2004 ("Term") subject to

- (1) approval of the AGREEMENT & LEASE by:
  - a) The Maryland Port Commission, and
  - b) The Maryland Board of Public Works ("Board"); and
- (2) Execution of this AGREEMENT & LEASE by the parties hereto.

The first "Lease Year" shall commence on the Effective Date and shall end at the close of one (1) calendar year following the Effective Date; thereafter each Lease Year shall consist of successive periods of one (1) calendar year.

1.1.1 **Renewal Option.** Provided CNH has complied with all of the

terms of this **AGREEMENT & LEASE**, is not in default hereunder and subject to the Board's approval, CNH shall have the option to renew this **AGREEMENT & LEASE** for one (1) additional three (3) year period ending on November 30, 2007 ("Renewal Period") on the same terms and conditions contained herein for the initial Term hereof, except as pertains to (a) the location of the Premises; and (b) the amount of (i) the facility use fee (as provided in Section 3.1. infra) (ii) the shortfall charge (as defined in Section 3.3. infra); and (iii) the Minimum Guarantee (as defined in Section 2.1.(b) infra); provided, however, that CNH shall have no further option to renew.

In order to exercise the option, CNH shall provide MPA with at least one hundred twenty (120) days' written notice, prior to expiration of the Term, of its intent to renew. Failure by CNH to so notify MPA timely shall be considered a forfeiture by CNH of this option to renew. MPA and CNH shall in good faith negotiate (a) the location of the Premises, provided that the new premises shall be comparable to the Premises leased hereunder; and (b) the amount of (i) the facility use fee (ii) the shortfall charge; and (iii) the Minimum Guarantee), provided that if the parties fail to come to an agreement, then this Section 1.1.1 shall not be enforceable by either party.

**1.2 Premises.** MPA leases to CNH and CNH rents from MPA, parcels of land consisting of 18 acres in Areas 100, 101, 200 and 102 (partial), Dundalk Marine Terminal, Dundalk, Maryland 21222, all as more fully identified on Exhibit "A" attached hereto ("Premises").

**1.2.1** MPA may, in its sole discretion, allow CNH to reduce the Premises, by decrements of 4.0 acres at any one time, and provided that CNH shall give MPA at least 30 days' written notice of its intention to reduce the Premises. If MPA grants its consent to the reduction, MPA and CNH shall execute and deliver an amendment to this **AGREEMENT & LEASE**, which shall a) substitute a description of the reduced premises for the description of the Premises; b) reduce the facility use fee by the same percentage by which the Premises is to be reduced; and c) reduce the Minimum Guarantee in accordance with the formula contained in the first sentence of Section 2.1.b) infra; otherwise all of the terms and conditions of this **AGREEMENT & LEASE** shall be applicable to CNH's occupancy of the reduced premises. Any such reduction of acreage shall be for an agreed fixed period

of time ("Reduction Period"), provided that the Reduction Period shall be at least three (3) calendar months, unless otherwise agreed in writing.

Throughout the Term, CNH shall have the first right to lease those acres reduced from the Premises pursuant to this Section 1.2.1 ("Removed Acres"). In the event that MPA receives any bona fide offer from a third party to lease the Removed Acres, MPA shall notify CNH in writing and CNH shall, for a period not exceeding forty-five (45) days from and after receipt of MPA's notice ("Option Period") have the right and option to lease the Removed Acres upon the terms and conditions of this AGREEMENT & LEASE, provided that CNH shall pay the facility use fee of \$19,935 per acre per Lease Year for the Removed Acres for such pro-rata portion of the Option Period that exceeds the expiration of the Reduction Period until CNH notifies MPA in writing that CNH does not intend to exercise its first right to lease the Removed Acres whereupon the obligation to pay the facility use fee for the Removed Acres shall cease. If CNH notifies MPA in writing of its intention not to exercise its first right to lease the Removed Acres, or if the Option Period has expired, whichever is sooner, time being of the essence, MPA may lease the Removed Acres to such third party on such terms as MPA in its sole discretion may think fit.

If CNH notifies MPA in writing of its intention to exercise its first right to lease the Removed Acres within the Option Period, MPA and CNH shall execute and deliver an amendment to this AGREEMENT & LEASE, which shall a) substitute a description of the increased premises for the description of the Premises; b) increase the facility use fee by the same percentage by which the Premises is to be increased; and c) increase the Minimum Guarantee in accordance with the formula contained in the first sentence of Section 2.1.b) infra; otherwise all of the terms and conditions of this AGREEMENT & LEASE shall be applicable to CNH's occupancy of the increased premises.

**1.3 : MPA Terminal Services Schedule.** Where applicable the prevailing MPA Terminal Services Schedule filed with the Federal Maritime Commission, posted on the Internet ([www.mpa.md.state.us](http://www.mpa.md.state.us)), or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by MPA pursuant to Federal, State or other applicable laws ("Schedule"), is hereby incorporated by reference into this

**AGREEMENT & LEASE** as if set forth at length and such shall govern and control this **AGREEMENT & LEASE** except where same conflicts with this **AGREEMENT & LEASE**. In such event this **AGREEMENT & LEASE** shall prevail.

**1.4 Ingress and Egress.** MPA and CNH understand and agree that it is MPA's intention to utilize properties contiguous to the Premises. Accordingly, CNH and MPA mutually covenant and agree that they shall coordinate with each other so that free and unencumbered ingress and egress will be allowed to MPA and its designees, in transiting across the Premises in order to utilize the aforementioned contiguous properties and to CNH and its designees in accessing and utilizing the Premises. The location of ingress and egress shall be mutually agreed to by MPA and CNH and neither party will unreasonably withhold consent as to the original location of ingress and egress or subsequent changes thereto. MPA or its designees shall remove all things either MPA or its designees placed on the Premises whilst exercising the aforesaid right of ingress and egress.

**1.5 Relocation.** At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to relocate the Premises or any portion thereof, to a comparable facility within Dundalk Marine Terminal. MPA shall give CNH sixty (60) days written notice of its intention to relocate the Premises ("Relocation Notice"). Within thirty (30) days of the expiration of the aforesaid notice period ("Relocation Notice Period"), MPA and CNH shall execute and deliver an amendment to the **AGREEMENT & LEASE** which shall substitute (or add) a description of the premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this Lease shall be applicable to CNH's occupancy of the new Premises.

MPA shall pay for all moving expenses reasonably incurred by CNH as a result of the relocation of the Premises, including the relocation of any structures that have been placed on the Premises by CNH or their service providers, provided, however, that the parties shall agree, in advance of the relocation and before the expiration of the Relocation Notice Period, on CNH's estimated moving expenses and, after the relocation, CNH shall provide MPA with a statement setting out in detail the actual moving expenses. If in advance of the relocation CNH anticipates that it will incur additional costs associated with CNH's daily operations as a result

of the relocation ("anticipated additional operational costs") and the MPA does not agree to reimburse CNH for such anticipated additional operational costs, CNH has the option prior to any relocation to terminate this **AGREEMENT AND LEASE** by giving MPA fifteen (15) days' written notice prior to the expiration of the Relocation Notice Period, provided that if CNH shall terminate this **AGREEMENT & LEASE** pursuant to this Section 1.5., CNH shall reimburse MPA the Renovation Allowance granted pursuant to Section 4.1.(c), infra .

If any notice of termination is given pursuant to this Section, this **AGREEMENT AND LEASE** and the rights and obligations of the parties hereunder shall cease as of the expiration of the notice period and the facility use fee shall be adjusted as of the date of such termination.

Notwithstanding the foregoing, all representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this **AGREEMENT & LEASE** or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this **AGREEMENT & LEASE**, including (without limitation) the obligations of CNH pursuant to Sections 6.3 and 9.1. hereof, shall survive the termination of this **AGREEMENT & LEASE**.

## **2.0 USE OF PREMISES/APURTENANTS RIGHTS/RESERVED RIGHTS:**

### **2.1 Use of Premises.**

(a) **Import/Export Vehicles.** CNH shall use the Premises for receiving, processing and distribution of farm and industrial vehicles, parts and accessories, having a prior or subsequent waterborne movement over an MPA pier, berth or wharf ("Import/Export Vehicles"), provided that during any Lease Year at least eighty percent (80%) of such cargo shall be CNH Cargo and that, without MPA's written approval, no more than twenty percent (20%) of such cargo shall be Non CNH Cargo. "Vehicle" means all self-propelled units, together with the following non self-propelled units: balers, mowers, wagons, combine headers, planters and seeders. "CNH Cargo" means cargo owned or manufactured by CNH or its

affiliates (as defined in Section 12.1.(c), infra. "Non CNH Cargo" means cargo that is not owned or manufactured by CNH or its affiliates.

**(b) Vehicle Guarantee.** CNH guarantees MPA that it will receive, process and distribute a minimum number of Import/Export Vehicles per acre of useable vehicle storage area, being currently 17.2 acres in total, per Lease Year for the Premises as follows (and provided that at least eighty percent (80%) of the following numbers shall be CNH Cargo):

Lease Year One: 900 Import/Export Vehicles per acre  
Lease Year Two: 1,000 Import/Export Vehicles per acre  
Lease Year Three: 1,000 Import/Export Vehicles per acre.

CNH understands and agrees that the vehicle guarantee for the whole of the Premises each Lease Year ("Minimum Guarantee") will, therefore, be as follows (and provided that at least eighty percent (80%) of the following numbers shall be CNH Cargo):

Lease Year One: 15,480 Import/Export Vehicles  
Lease Year Two: 17,200 Import/Export Vehicles  
Lease Year Three: 17,200 Import/Export Vehicles.

Provided, however, that if the Premises shall be reduced pursuant to Section 1.2.1. supra, the Minimum Guarantee shall be adjusted in accordance with the formula contained in the first sentence of this Section 2.1.b).

CNH further agrees that if MPA provides additional land to CNH pursuant to an amendment to this AGREEMENT & LEASE, CNH guarantees MPA in addition that CNH will receive, process and distribute a minimum of 1,000 Import/Export Vehicles per acre of useable vehicle storage area per Lease Year for such additional premises, provided that at least eighty percent (80%) of the above number shall be CNH Cargo.

## **2.2 Labor Peace and Harmony.**

a) CNH shall conduct its operations at the Premises in a manner

promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. CNH shall not engage in any activity, which violates applicable labor law. MPA will use its best efforts to promote other tenants of MPA to conduct their operations in a manner promoting peace and harmony in the commercial sector.

b) MPA shall offer CNH a comparable facility in Dundalk Marine Terminal pursuant to Section 1.5., infra, and subject to CNH's reasonable approval, within thirty (30) business days of receipt from CNH of written notice ("Notice Period") if CNH is prohibited from or substantially interfered with conducting its business on the Premises or within Dundalk Marine Terminal for a period of thirty (30) consecutive business days as a result of labor strikes, boycotts, slow downs, picketing, and/or work stoppages directed at CNH, its agents and contractors due to the location of the Premises ("Labor Unrest"); provided that CNH may provide MPA with advance written notice of a situation which CNH reasonably believes may result in Labor Unrest and the Notice Period shall start to run from receipt by MPA of such advance written notice. CNH's business includes, but is not limited to, truck loading, truck unloading, receiving, delivering, washing, equipment exercising, equipment manipulation and repairs. CNH would have the burden of proving the existence of any Labor Unrest to MPA's reasonable satisfaction.

c) Within ten (10) days of the expiration of the Notice Period, MPA and CNH shall execute and deliver an amendment to the AGREEMENT & LEASE which shall substitute (or add) a description of the premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this AGREEMENT & LEASE shall be applicable to CNH's occupancy of the new Premises.

d) MPA shall pay for all moving expenses reasonably incurred by CNH as a result of the relocation of the Premises, including the relocation of any structures that have been placed on the Premises by CNH or their service providers, provided, however, that the parties shall agree, in advance of the relocation and before the expiration of the Notice Period, on CNH's estimated moving expenses and, after the relocation, CNH shall provide MPA with a statement setting out in detail the actual moving expenses. If in advance of the relocation CNH anticipates that it will

incur additional costs associated with CNH's daily operations as a result of the relocation ("anticipated additional operational costs") and the MPA does not agree to reimburse CNH for such anticipated additional operational costs, CNH has the option prior to any relocation to terminate this AGREEMENT AND LEASE by giving MPA ten (10) days' written notice prior to the expiration of the Notice Period. If the premises offered to CNH shall not be to CNH's reasonable satisfaction, CNH shall also have the option to terminate this AGREEMENT & LEASE by giving MPA ten (10) business days notice of its intention to terminate.

e) If any notice of termination is given pursuant to this Section, this AGREEMENT AND LEASE and the rights and obligations of the parties hereunder shall cease as of the expiration of the notice period and the facility use fee shall be adjusted as of the date of such termination.

f) Notwithstanding the foregoing, all representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of CNH pursuant to Sections 6.3 and 9.1. hereof, shall survive the termination of this AGREEMENT & LEASE, provided that if CNH shall terminate this AGREEMENT & LEASE pursuant to this Section 2.2., CNH shall reimburse MPA the Renovation Allowance granted pursuant to Section 4.1.(c), infra.

g) CNH shall continue to be responsible for rental during the period of Labor Unrest provided, however, CNH shall not be responsible for any vehicle shortfall pursuant to Section 3.3 infra for the period of Labor Unrest prior to the date of any relocation or termination pursuant to this Section 2.2. With effect from the date of relocation, all CNH's obligations pursuant to Section 3.3. shall be reinstated.

**2.3 MPA's Reserved Rights with Respect to the Premises.** MPA reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with CNH's use of the Premises.

**3.0 RENT AND RENTAL PAYMENTS:**

**3.1 Rental Payment Schedule.** Beginning on the Effective Date, CNH shall pay to MPA as rental a facility use fee of \$29,902.50 per calendar month for the Premises and improvements for the first lease year. (The facility use fee is based on the land rental charge which is \$19,935 per acre per Lease Year.) In Lease Years two (2) and three (3), MPA shall adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U), or the applicable land rental charge in the Schedule, whichever is less. This yearly adjustment will be applied at the beginning of each such Lease Year.

**3.2** The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this **AGREEMENT & LEASE**), deduction or set off in advance on or before the first day of each and every month that this **AGREEMENT & LEASE** continues in effect ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate.

**3.3 Shortfall.** In the event CNH does not meet its Minimum Guarantee in any Lease Year, CNH shall become liable for such shortfall and shall pay to MPA, a "shortfall charge" equal to:

- \$ 5.00 per Import/Export Vehicle for Lease Year One,
- \$ 10.00 per Import/Export Vehicle for Lease Year Two, and
- \$ 10.00 per Import/Export Vehicle for Lease Year Three.

The shortfall charge shall be equal to the above charges times the number of Import/Export Vehicles necessary to bring CNH numbers up to the Minimum Guarantee. The shortfall charge shall be paid as additional rental at the conclusion of each Lease Year after such has been billed by MPA.

#### **4.0 MAINTENANCE AND REPAIR:**

##### **4.1 Maintenance Obligations.**

a) CNH shall, at its sole cost and expense, promptly, with or without notice from MPA, repair, replace and maintain in good condition the Premises and every part thereof, including all tenant fixtures, trade fixtures and equipment located therein, whether installed and/or owned by MPA or CNH, and excluding structural items or improvements, capital replacements, sewers or roads, and shall perform all such items of repair, maintenance, alterations or improvements as may from time to time be required by a governmental body or agency having jurisdiction thereof. CNH shall keep the Premises and all areas thereof clean and orderly, normal wear and tear excepted.

b) MPA shall have the responsibility to make structural repairs, capital replacements, sewer maintenance and repair, remedy any inherent defects in the structural members of the portions of the Premises constructed by MPA, or any other defects in the Premises which defects are proximately caused by inherent defects in or deterioration of said structural members and in no way caused by the operation of CNH.

c) MPA shall only be responsible for any of the aforementioned maintenance and repairs upon receipt of written notice from CNH specifying the work to be performed. MPA will respond and complete work in a timely fashion upon receipt of written notice and inspection by MPA to verify the repairs that need to be done. MPA hereby agrees to make, at MPA's sole cost and expense in an amount not to exceed sixty thousand dollars (\$60,000) ("Renovation Allowance"), the repairs and improvements reasonably required by CNH to be made to the Premises, including, but not limited to, fencing.

d) MPA will maintain new light fixtures installed by MPA; however CNH is responsible for light bulb replacement.

**4.2 Alterations & Improvements.** CNH shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first

obtaining written approval from MPA, which approval shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by CNH, such alterations, improvements or fixtures shall, upon request of MPA, be removed promptly by CNH at CNH's expense, and the Premises restored to their original condition upon the expiration or sooner termination of this AGREEMENT & LEASE, provided that CNH shall not be obligated to remove any alterations, improvements or fixtures pre-authorized in writing by MPA until the expiration or sooner termination of this AGREEMENT & LEASE. If CNH is not so instructed to remove said alterations, improvements or fixtures, the same shall become the property of MPA without MPA paying any compensation therefor. Moveable furniture and trade fixtures which are removable without injury to the Premises shall be and remain the property of CNH, but must be promptly removed at the termination of this AGREEMENT & LEASE.

**4.3 CNH's Obligations to MPA Property.** CNH shall be solely responsible to MPA for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to MPA or for which MPA is responsible, in or on the Premises, unless such loss, theft or damage is caused by acts or omissions of MPA or its employees.

**4.4 Inspection by MPA.** MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**4.5 Pre and Post Inspections.** MPA and CNH, shall conduct a pre-inspection of the Premises and improvements thereon at the beginning of the Term. MPA and CNH will also conduct a post inspection of the Premises and improvements thereon which will serve as the basis of CNH's restoration responsibilities as set forth in Section 9.0 "Termination".

## **5.0 CNH'S ADDITIONAL RESPONSIBILITIES:**

**5.1 Reports.** CNH shall submit to MPA a monthly statement of the number of Import/Export Vehicles received on the Premises by make, model, manufacturer, VIN number and origination/destination. The report shall be due on

the 15<sup>th</sup> day of each month for the month preceding. CNH agrees to allow MPA access to its Import/Export Vehicle volume records for audit purposes provided MPA gives fifteen (15) business days written notice of its intention to audit.

**5.2 Utilities & Maintenance.** Except as otherwise provided herein, CNH shall contract and pay for all utility or maintenance services provided to the Premises, including but not limited to water, gas, electricity, telephone, sewage, janitorial and snow removal.

**5.3 Security of Premises.** CNH, shall assume complete responsibility for security of the Premises, and the facility improvements, buildings and property located thereon and therein. MPA assumes no responsibility to CNH for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection therewith.

**5.4 Liens and Encumbrances.** CNH, shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

**5.5 Qualification to do Business in Maryland.** At all times during the Term CNH is and shall continue to be legally qualified and registered to do business in the State of Maryland.

**5.6 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA, which consent shall not be unreasonably withheld.

**5.7 Rules, Regulations and Laws.** To MPA's actual knowledge, MPA represents and warrants that the Premises are in compliance with applicable federal, state, municipal and MPA laws, regulations, and ordinances. CNH acknowledges that MPA, in making the foregoing representation and warranty, has not conducted any environmental site assessments, or records searches external to MPA's Property Management and Engineering Departments, nor has it interviewed any former employees, or current MPA employees outside of MPA's Property

Management and Engineering Departments. Whenever a representation is qualified herein by the phrase "to MPA's actual knowledge," the accuracy of such representation shall be based solely on the actual (as opposed to constructive or imputed) knowledge of MPA's Property Management and Engineering Departments.

CNH, agrees to comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, MPA's tenants, invitees, licensees and the general public. CNH agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations, provided, however, that CNH shall not be liable for conditions or violations existing at the Premises on the Effective Date ("Pre-existing Conditions"), provided further that CNH shall be liable for any exacerbation of Pre-existing Conditions caused by the acts of CNH, its officers, agents, contractors, employees or invitees. CNH, agrees to indemnify, defend and hold harmless MPA, its agents and employees from any liability or penalty which may be imposed upon MPA by reason of any violation by CNH or its agents.

## **6.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE**

**6.1 Liability.** MPA shall not be liable to CNH for any loss, injury or damage to CNH or CNH's property from any cause unless such cause is due to MPA negligence.

### **6.2 Environmental Responsibilities.**

a) **CNH's Responsibilities.** To MPA's actual knowledge, MPA represents and warrants that the Premises are in compliance with all applicable environmental standards set by federal, state or local laws, rules or regulations and that the Premises are free from underground storage tanks or contamination. CNH acknowledges that MPA, in making the foregoing representation and warranty, has not conducted any environmental site assessments, or records searches external to MPA's Property Management and Engineering Departments, nor has it interviewed any former employees, or current MPA employees outside of MPA's Property

**Management and Engineering Departments.**

CNH shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to CNH's performance of its obligations pursuant to this AGREEMENT & LEASE and/or CNH's use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). CNH shall monitor its compliance with Environmental Standards and immediately halt and correct any incident of non-compliance, provided, however, that CNH shall not be liable for Pre-existing Conditions, provided further that CNH shall be liable for any exacerbation of Pre-existing Conditions caused by the acts of CNH, its officers, agents, contractors, employees or invitees.

b) **Non-Compliance.** In the event of any incident of non-compliance with Environmental Standards (other than Pre-existing Conditions) CNH shall:

- 1) Give MPA immediate notice of the incident, providing as much detail as possible;
- 2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,
- 3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

c) **Liability for Non-Compliance.** CNH, shall be liable and shall indemnify, defend and hold harmless MPA, its agents and employees for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards, provided that CNH shall not be liable for Pre-existing Conditions, provided further that CNH shall be liable for any exacerbation of Pre-existing Conditions caused by the acts of CNH, its officers, agents, contractors, employees or invitees.

**6.3 Insurance & Indemnity.**

a) CNH agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands,

damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation by reason of negligence of CNH or its officers, agents or employees, contractors, sub-contractors, invitees or licensees, unless caused by the negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by MPA, its agents and employees or be against or sustained by others to whom MPA, its agents or employees, may become liable.

b) CNH shall at all times during the Term of this **AGREEMENT & LEASE**, maintain such worker's compensation or employer's liability insurance as may be required by law.

c) CNH shall also maintain at its expense, liability insurance with minimum limits of \$ 5,000,000 per occurrence and \$ 5,000,000 per aggregate for bodily injury and property damage for the protection of MPA and CNH against any claims, suits, demands, or judgments by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by CNH. MPA shall be named as additional insured under said insurance and certificates of insurance shall be forwarded to MPA providing proof of coverage.

d) CNH shall also maintain throughout the Term of this **AGREEMENT & LEASE**, at its sole cost and expense, property insurance to insure against damage to or loss of the improvements on the Premises, including all fixtures and equipment, said property insurance to be in the amount sufficient to provide coverage for the full replacement and restoration of the improvements.

e) Nothing contained herein shall require MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of CNH, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

f) CNH shall not use the Premises in such a manner (unless permitted under this **AGREEMENT & LEASE**) which would cause an increase in the existing

rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term of this AGREEMENT & LEASE, may be added to the amount of rental specified in Section 3 supra and shall be paid by CNH to MPA as additional rental upon the monthly rental day next thereafter occurring.

**6.4 Liens.** At all times prior to termination of this AGREEMENT & LEASE, CNH shall defend, indemnify and hold harmless MPA against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of CNH or its contractors, agents or employees.

**6.5 Defense Against Suits.** CNH shall promptly pay any and all costs or expenses (including actual attorney's fees and consultant fees) which may be incurred by MPA as well as any judgments or decrees in favor of MPA:

- a) in enforcing the obligations of CNH under the covenants, terms or provisions of this AGREEMENT & LEASE;
- b) in obtaining possession of the Premises as the result of any default by CNH or otherwise;
- c) in defending any suit or proceeding brought against MPA for the violation by CNH of any law, ordinance, rule or regulation;
- d) in defending any action or suit for damages because of any failure, neglect or default on the part of CNH.

**6.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, CNH shall immediately notify MPA in writing and shall promptly thereafter furnish to MPA copies of all reports given to CNH's insurance carrier or carriers.

## **7.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**7.1 Partial Destruction.** If, during the Term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this AGREEMENT & LEASE. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. MPA and CNH agree that CNH's rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed portion of the Premises is refurbished and available for use.

If it is unreasonable to expect CNH to continue operation in the partially destroyed Premises, the MPA agrees to offer, for the period of the restoration, a comparable premises in Dundalk Marine Terminal or in another terminal, subject to CNH's reasonable approval, within fifteen (15) business days of a written request by CNH for relocation. MPA and CNH shall execute and deliver an amendment to the AGREEMENT & LEASE which shall substitute (or add) a description of the new premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this AGREEMENT & LEASE shall be applicable to CNH's occupancy of the new Premises. MPA shall not pay for any of CNH's moving expenses incurred as a result of the relocation of the Premises.

If the premises offered to CNH shall not be to CNH's reasonable satisfaction, CNH shall have the option to terminate this AGREEMENT & LEASE by giving MPA ten (10) business days notice of its intention to terminate. If any notice of termination is given pursuant to this Section 7.1., this AGREEMENT AND LEASE and the rights and obligations of the parties hereunder shall cease as of the expiration of the notice period and the facility use fee shall be adjusted as of the date of such termination.

Notwithstanding the foregoing, all representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this **AGREEMENT & LEASE** or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this **AGREEMENT & LEASE**, including (without limitation) the obligations of CNH pursuant to Sections 6.3 and 9.1. hereof, shall survive the termination of this **AGREEMENT & LEASE**.

**7.2 Total Destruction.** If, during the Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

a) to provide CNH, within fifteen (15) business days of notice from CNH requesting same, a reasonable approximation of the time necessary to conduct necessary repairs or restoration and repair or restore the damage within the designated time period (which in no event shall be longer than two hundred forty (240) days, in which event such destruction shall not terminate this **AGREEMENT & LEASE**; MPA and CNH agree that CNH's rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed portion of the Premises is refurbished and available for use. The MPA agrees to offer a comparable premises in Dundalk Marine Terminal or in another terminal, subject to CNH's reasonable approval, within fifteen (15) business days of the destruction. MPA and CNH shall execute and deliver an amendment to the **AGREEMENT & LEASE** which shall substitute (or add) a description of the new premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this **AGREEMENT & LEASE** shall be applicable to CNH's occupancy of the new Premises. MPA shall not pay for any of CNH's moving expenses incurred as a result of the relocation of the Premises.

If the premises offered to CNH shall not be to CNH's reasonable satisfaction, CNH shall have the option to terminate this **AGREEMENT & LEASE** by giving MPA ten (10) business days notice of its intention to terminate; or

b) to give notice to CNH within fifteen (15) business days of such destruction terminating this **AGREEMENT & LEASE** as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty

(60) days after the giving of the notice. If the existing laws do not permit the restoration, either party can terminate this **AGREEMENT & LEASE** immediately by giving notice to the other party.

c) "Total destruction" shall be any destruction which precludes CNH from performing any essential portion of its operations at the Premises.

d)

If any notice of termination is given pursuant to this Section 7.2., this **AGREEMENT AND LEASE** and the rights and obligations of the parties hereunder shall cease as of the expiration of the notice period and the facility use fee shall be adjusted as of the date of such termination.

Notwithstanding the foregoing, all representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this **AGREEMENT & LEASE** or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this **AGREEMENT & LEASE**, including (without limitation) the obligations of CNH pursuant to Sections 6.3 and 9.1. hereof, shall survive the termination of this **AGREEMENT & LEASE**.

## **8.0 DEFAULT AND REMEDIES:**

**8.1 Default.** The occurrence of any of the following shall constitute a default by CNH:

a) **Default in Rent.** Failure to pay when due any rental, additional rental or other charge, if the failure continues for ten (10) business days after written notice has been given to CNH;

b) **Default in Other Covenants.** Failure to perform any other provision of this **AGREEMENT & LEASE** if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to CNH. If the default cannot be reasonably cured within thirty (30) days, CNH shall not be in default if CNH commences to cure the default within the thirty (30) day notice period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably

practicable;

c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of CNH; an assignment by CNH for the benefit of creditors; the filing by CNH of a voluntary petition in bankruptcy; an adjudication that CNH is bankrupt or the appointment of a receiver for the properties of CNH; the filing of an involuntary petition of bankruptcy and failure of CNH to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on CNH's lease hold interest hereunder and failure of CNH to secure a discharge of the attachment or release of the levy of execution with sixty (60) days; and

d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

8.2 **Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that CNH performs the relevant provision of this AGREEMENT & LEASE or pay the rental or charges which are in arrears, as the case may be, within the applicable period time.

### 8.3 **MPA Remedies in Case of CNH's Default.**

8.3.1 **Remedies.** Subject to applicable law, MPA shall have the right, in addition to such remedies and rights as are provided by applicable law and equity, if CNH is in default and such default is not cured, to terminate this AGREEMENT & LEASE and terminate CNH'S right to possession by giving seven (7) days' written notice of termination to CNH. CNH shall vacate the Premises within the notice period, removing any property of CNH, including any fixtures that CNH is required to remove at the end of the Term, performing any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the Term of this AGREEMENT & LEASE, and delivering all keys to the MPA.

**8.3.2 Damages.** MPA shall have the right to receive from CNH as of the date of termination the following sums, provided that MPA shall provide CNH with reasonably satisfactory evidence of the amounts claimed pursuant to Section 8.3.2.(b) and (c):

a) The amount of the unpaid rental accrued and due at the time of the termination of this AGREEMENT & LEASE;

b) Subject to Section 8.5. infra, the amount at the time of the award of a subsequent lease to a third party, by which the unpaid rental for the rest of the Term of this AGREEMENT & LEASE exceeds the rental obtained from a subsequent lease to a third party provided that the amount of the loss of rental does not exceed such amount that CNH proves could have been reasonably avoided by MPA mitigation;

c) Any other reasonable amount, and court costs, necessary to compensate MPA for all detriment proximately caused by CNH'S default, including the reasonable costs of any cleanup, refurbishing, removal of CNH'S property and fixtures, or any other reasonable expense occasioned by CNH'S failure to quit the Premises upon termination and to leave them in condition specified herein; and

d) The shortfall charge for each and every Lease Year remaining in the Term, including the Lease Year of termination, and without prejudice to recovery by MPA of any shortfall charge due at the time of termination of the AGREEMENT & LEASE.

e) Notwithstanding the foregoing, CNH reserves all claims or defenses it may have against the MPA. For the avoidance of doubt, however, CNH's obligations to pay the facility use fee and the shortfall charge are independent of MPA's obligations under this AGREEMENT & LEASE and CNH shall have no rights of set-off or deductions with respect to said facility use fee and shortfall charge.

**8.4 Use of Abandoned Property. MPA may:**

- a) use all or any part of CNH's personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this **AGREEMENT & LEASE** without compensation to CNH and without liability for such use or damage; or
- b) store all or any of CNH's personal property and trade fixtures for the account of and at the expense of CNH.

**8.5 MPA Obligation to Relet.** Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or to relet to a person or entity that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the Term of this **AGREEMENT & LEASE**, upon any reasonable terms and conditions. If MPA relets the Premises, rental that MPA receives from reletting shall be applied to the payment of:

First, any indebtedness from CNH to MPA other than rental due from CNH;

Second, all reasonable costs, including for maintenance, incurred by MPA in reletting;

Third, rental due and unpaid under this **AGREEMENT & LEASE**. After deducting the payments referred to in this subsection, any sum remaining from the rental MPA receives from reletting shall be held by MPA and applied in payment of future rental as rental becomes due under this **AGREEMENT & LEASE**. In no event shall CNH be entitled to any excess rent received by MPA. If, on the date rental is due under this **AGREEMENT & LEASE**, the rental received from the reletting is less than the rental due on that date, CNH shall pay to MPA, in addition to the remaining rental due, all costs, including for maintenance, MPA incurred in reletting that remain after applying the rental received from the reletting as provided in this subsection.

## **9.0 TERMINATION:**

**9.1 Surrender.** Upon expiration or earlier termination of this **AGREEMENT & LEASE**, CNH shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises and except for alterations which CNH has a right to remove or is obligated to remove. CNH shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any alterations or removal of CNH's personal property.

**9.2. CNH Termination.** CNH may elect to terminate this **AGREEMENT & LEASE** upon ninety (90) days written notice to MPA if CNH is prohibited from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority in the United States of America.

**9.3. MPA Termination.** MPA may terminate this **AGREEMENT & LEASE** upon ninety (90) days written notice to CNH if MPA is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority in the United States of America.

## **10.0 POWERS OF MPA:**

It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. MPA is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or administrative or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this **AGREEMENT & LEASE**, MPA and its officers, agents and employees shall not

be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by CNH or any other legal entity in connection with, or as the result of, or growing out of any such prevention, restriction or delay.

MPA represents and warrants that it is presently empowered under Maryland law to enter into this AGREEMENT & LEASE and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE.

### **11.0 FORCE MAJEURE:**

a) MPA and CNH shall not be liable for damages for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, order by any agency or commission of the United States of America, public emergency, strikes, boycotts, picketing, and work stoppages.

b) CNH, or the MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

### **12.0 GENERAL PROVISIONS:**

#### **12.1 Assignment & Subletting.**

a) Except as provided hereinunder, CNH shall not assign this AGREEMENT & LEASE nor sublet the Premises in whole or in part, without the prior written consent of MPA and approval of the Maryland Board of Public Works, provided MPA's consent shall not be unreasonably withheld. Consent by MPA to any assignment or subletting shall not operate to release CNH from any of its obligations under the terms of this AGREEMENT & LEASE.

b) Notwithstanding anything to the contrary in Section 12.1.(a), provided CNH is not in default under any of the terms and conditions of this AGREEMENT & LEASE and has fully and faithfully performed all of the terms and conditions of this AGREEMENT & LEASE, CNH shall have the right, with

written notice to MPA within thirty (30) days notice of such assignment, to assign this **AGREEMENT & LEASE** to a subsidiary or affiliate corporation (as defined in Section 12.1.(c), infra) of CNH, provided: (1) such assignee corporation shall assume in writing in form acceptable to MPA all of CNH's obligations under this **AGREEMENT & LEASE** and CNH shall provide MPA with a copy of such assignment; (2) CNH continues to remain liable on this **AGREEMENT & LEASE** for the performance of all terms and conditions under this **AGREEMENT & LEASE**; and (3) such assignee continues to operate the business conducted in the Premises in the same manner as CNH and pursuant to all of the provisions, including but not limited to Section 2.1. supra, of this **AGREEMENT & LEASE**.

c) "Affiliate corporation" shall mean a corporation that is related to CNH by shareholding.

**12.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

**TO CNH:**

Senior Director of Real Estate and Risk Management  
CaseNewHolland  
700 State Street  
Racine, WI 53404

**CC To:**

Schneider Logistics, Inc  
Port Services  
2700 Broening Highway  
Baltimore, MD 21222

**TO MPA:**

Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

**12.3 Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this **AGREEMENT & LEASE** shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**12.4 Applicable Law.** It is expressly understood and agreed that this **AGREEMENT & LEASE** and all questions arising thereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this **AGREEMENT & LEASE** shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

**12.5 Binding Effect.** This **AGREEMENT & LEASE** shall bind the parties, their successors and assigns.

**12.6 Authority.** Each individual executing this **AGREEMENT & LEASE** on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this **AGREEMENT & LEASE** on behalf of such party.

**12.7 Severability.** The invalidity of any provision of this **AGREEMENT & LEASE** as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this **AGREEMENT & LEASE**.

**12.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this **AGREEMENT & LEASE**.

**12.9 Quiet Enjoyment.** MPA covenants and agrees that so long as CNH is not in default hereunder, it shall quietly enjoy the Premises.

**12.10 Survival.** All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of CNH pursuant to Sections 6.3. and 9.1. hereof, shall survive the termination of this AGREEMENT & LEASE, including, but not limited, to termination pursuant to Sections 1.5., 2.2, 7.0, 8.3., 9.2. and 9.3.

**12.11 AGREEMENT & LEASE for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this AGREEMENT & LEASE shall be for the sole benefit of the parties and that no other person, corporation or other entity is intended to be a beneficiary of this AGREEMENT & LEASE.

**12.12 Amendments.** This AGREEMENT & LEASE may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this AGREEMENT & LEASE and signed by both parties, subject to the approval of the Maryland Board of Public Works.

**12.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this AGREEMENT & LEASE shall be taken and construed to be cumulative.

**12.14 Remedies Cumulative.** All remedies provided in this AGREEMENT & LEASE shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided to the parties at law or in equity.

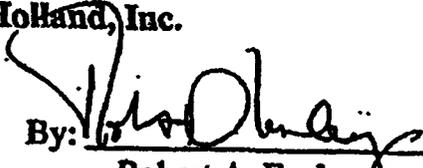
**12.15 Integration.** This AGREEMENT & LEASE constitutes the entire agreement between MPA and CNH with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or

writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this AGREEMENT & LEASE.

(END)

**IN WITNESS WHEREOF**, the parties hereto have caused this **AGREEMENT & LEASE** to be duly executed as of the day and year first above written.

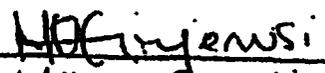
CaseNewHolland, Inc.

By:   
Robert A. Fenley  
Senior Director of Real Estate and Risk Management

**MARYLAND PORT ADMINISTRATION**

BY:   
James J. White  
Executive Director

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

  
Assistant Attorney General

STATE OF MARYLAND

SS:

Baltimore County, State OF MARYLAND

I HEREBY CERTIFY that on this 15th day of January,  
<sup>2002</sup> 2001, before me, the subscriber, a Notary Public of the State of Maryland, in and  
for the County of Baltimore; personally appeared James J. White,  
Executive Director, known to me (or satisfactorily proven) to be the person whose  
name is subscribed to the foregoing instrument, who acknowledged the foregoing  
instrument to be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal the day and year last above written.

Carol A. Vessallo  
NOTARY PUBLIC  
Carol A. Vessallo  
Notary Public State Of Maryland  
My Commission Expires August 1, 2005

MY COMMISSION EXPIRES: \_\_\_\_\_

(SEAL)



Mercedes-Benz

Mercedes-Benz USA, LLC  
A DaimlerChrysler Company

VIA FEDERAL EXPRESS

October 22, 2002

Mr. Michael W. Miller  
Maryland Port Administration  
401 E. Pratt St., 20<sup>th</sup> Floor  
Baltimore, MD 21202-3041



Dear Mr. Miller:

Re: Lease Agreement between The Maryland Port Administration  
and Mercedes-Benz USA, LLC

In the absence of Mr. Robert Barnard who is traveling, I am writing in response to Mr. J. Robert Huber's letter to him dated October 9<sup>th</sup>. As per instructions, the two originals of the Lease Agreement have been signed by David Schembri, Vice President of Marketing on behalf of Mercedes-Benz USA, LLC, and are enclosed herewith.

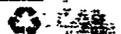
Please send one copy to Mr. Barnard when the Agreement has been executed by The Maryland Port Administration.

Sincerely,

Alice J. Dobrovolsky, Admin. Assistant.  
on behalf of Robert W. Barnard, Jr.  
Manager, National Import & Domestic Logistics

/ajd  
Enclosures

cc: Mr. J. Robert Huber, RPA - Real Estate Administrator  
Maryland Port Administration  
The World Trade Center  
Baltimore, MD 21202-3041



**LEASE**  
**BETWEEN**  
**MARYLAND PORT ADMINISTRATION**  
**AND**  
**MERCEDES-BENZ USA, LLC.**

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**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
MERCEDES-BENZ USA, LLC.**

THIS AGREEMENT & LEASE is made and entered into this 25<sup>th</sup> day of November, 2002, by and between the **MARYLAND PORT ADMINISTRATION**, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "MPA"), and **MERCEDES-BENZ USA, LLC.** (hereinafter referred to as "MERCEDES").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, **MPA** and **MERCEDES** hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 TERM.** The term of the **AGREEMENT & LEASE** shall be for ten (10) years beginning on December 1, 2002 ("Term") subject to

- (1) approval of the **AGREEMENT & LEASE** by:
  - a) The Maryland Port Commission, and
  - b) The Maryland Board of Public Works; and
- (2) execution of this **AGREEMENT & LEASE** by the parties hereto.

The first "Lease Year" shall commence on the Effective Date and shall end at the close of one (1) calendar year following the Effective Date; thereafter each Lease Year shall consist of successive periods of one (1) calendar year.

**1.1.1 Renewal Option.** Provided **MERCEDES** has complied with all of the terms of this **AGREEMENT & LEASE**, is not in default hereunder and subject to the Board's approval, **MERCEDES** shall have the option to renew this **AGREEMENT & LEASE** for two (2) additional terms of ten (10) consecutive Lease Years ("Renewal Period") at terms and conditions to be mutually agreed upon.

In order to exercise the options, **MERCEDES** shall provide **MPA** with at least one hundred eighty (180) days' written notice, prior to expiration of the Term, of its intent to renew. Failure by **MERCEDES** to so notify **MPA** timely shall be considered a forfeiture by **MERCEDES** of this option to renew. **MPA** and **MERCEDES** shall in good faith negotiate reasonable terms and conditions of the renewal agreement, provided

that if the parties fail to come to an agreement, then this Section 1.1.1 shall not be enforceable by either party.

**1.1.2 Use of Terminal as Port of Call.** Should MERCEDES fail to use the Dundalk Marine Terminal, Baltimore City, Maryland ("Terminal") as a port of call, MPA reserves the right to terminate this AGREEMENT & LEASE with written notice to MERCEDES, effective the day of termination of MERCEDES' use of the Terminal.

If any notice of termination is given pursuant to this Section 1.1.2 or Section 1.2.1 infra, this AGREEMENT AND LEASE and the rights and obligations of the parties hereunder shall cease as of the expiration of the notice period and the facility use fee shall be adjusted as of the date of such termination.

Notwithstanding the foregoing, all representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of MERCEDES pursuant to Sections 3.4, 6.3 and 9.1 hereof, shall survive the termination of this AGREEMENT & LEASE.

**1.2 PREMISES.** MPA leases to MERCEDES and MERCEDES rents from MPA, parcels of land in Areas 91 and 94, consisting of 16.5 acres in total located at the Terminal in Baltimore City, Maryland, as more fully identified and described as "Premises" on Exhibit "A" attached hereto.

**1.2.1 Relocation.** At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to relocate the Premises or any portion thereof. The relocation of the Premises shall be at MPA's sole cost and expense. MPA shall give MERCEDES sixty (60) days written notice of its intention to relocate the Premises ("Notice"). Within thirty (30) days of the expiration of the aforesaid Notice period, MPA and MERCEDES shall execute and deliver an amendment to the AGREEMENT & LEASE which shall substitute (or add) a description of the premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this Lease shall be applicable to MERCEDES' occupancy of the new Premises.

If MPA and MERCEDES cannot agree on a new location within the Notice period, MPA shall have the right and option, at MPA's sole discretion, to terminate the AGREEMENT & LEASE on the one hundred twentieth (120<sup>th</sup>) day after the giving of the Notice.

**1.2.2 Additional Acreage.** MERCEDES and MPA understand and agree that MERCEDES may lease additional acreage from MPA at the Terminal ("Additional Acreage") provided MPA has acreage available. MPA, however, is in no

way obligated to provide **MERCEDES** Additional Acreage. **MPA** and **MERCEDES** further understand and agree that if **MPA** so chooses to lease Additional Acreage to **MERCEDES** it shall be under the following conditions:

a) The leasing of the Additional Acreage shall be subject to all the terms and conditions of this **AGREEMENT & LEASE** and subject to approval by the Maryland Port Commission and the Maryland Board of Public Works.

b) **MERCEDES** shall provide a minimum guarantee of 1,700 vehicles per acre or fraction thereof, per Lease Year, for the Additional Acreage.

c) The facility use fee for any Additional Acreage taken by **MERCEDES** shall be the prevailing cost per acre paid by **MERCEDES** on the Premises on the effective date of the grant of the Additional Acreage. The Additional Acreage is subject to adjustments for cumulative changes in the CPI-U in accordance with the provisions of Section 3.2 of this **AGREEMENT & LEASE**.

**1.3 MPA Terminal Services Schedule.** Where applicable the prevailing **MPA Terminal Services Schedule** filed with the Federal Maritime Commission, posted on the Internet ([www.mpa.md.state.us](http://www.mpa.md.state.us)), or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by **MPA** pursuant to Federal, State or other applicable laws ("Schedule"), is hereby incorporated by reference into this **AGREEMENT & LEASE** as if set forth at length and such shall govern and control this **AGREEMENT & LEASE** except where same conflicts with this **AGREEMENT & LEASE**. In such event this **AGREEMENT & LEASE** shall prevail.

**1.4 Ingress and Egress.** **MPA** and **MERCEDES** understand and agree that it is **MPA's** intention to utilize properties contiguous to the Premises. **MERCEDES** shall have the right of ingress and egress over the roadway or roadways leading from and to the Premises. Such right of ingress and egress shall be in common with **MPA** and others authorized by **MPA**.

## **2.0 USE OF PREMISES/APPURTENANT RIGHTS/RESERVED RIGHTS:**

### **2.1 Use of Premises.**

a) **Import/Export Vehicles.** **MERCEDES** shall use the Premises for receiving, processing and distribution of motor and industrial vehicles, parts and accessories. **MERCEDES** shall use the Premises solely for vehicles having a prior or subsequent international waterborne movement over an **MPA** pier, berth or wharf ("Import/Export Vehicles").

- b) **Vehicle Guarantee.** MPA requires and MERCEDES guarantees MPA that it will receive, process and distribute a minimum ("Minimum Guarantee") of;
- (i) 1,700 vehicles per acre of the Premises per Lease Year.
  - (ii) 280,500 vehicles during the ten (10) Lease Years of the Term.

MERCEDES shall be required to pay the shortfall charge, if any, in accordance with Section 3.3.

**2.2 Labor Peace and Harmony.** MERCEDES shall conduct its operations at the Premises in a manner consistent with Mercedes' current labor relations practice in the Port of Baltimore promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. MERCEDES shall not engage in any activity, which works to destroy any labor harmony in the Port of Baltimore. MPA will use its best efforts to promote other tenants of MPA to conduct their operations in a manner promoting peace and harmony in the commercial sector.

**2.3 MPA's Reserved Rights with Respect to the Premises.** MPA reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with MERCEDES' use of the Premises.

### **3.0 RENT AND RENTAL PAYMENTS:**

**3.1 Rental Payment Schedule.** Beginning on the Effective Date, MERCEDES shall pay to MPA as rental a facility use fee of \$27,410.63 per calendar month for the Premises.

**3.2** The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this **AGREEMENT & LEASE**), deduction or set off in advance on or before the first day of each and every month that this **AGREEMENT & LEASE** continues in effect ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate. MERCEDES and MPA further understand and agree that in Lease Years two (2) through ten (10), MPA will adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). This yearly adjustment will be applied at the beginning of each Lease Year.

**3.3** MERCEDES and MPA recognize that MERCEDES or the MPA may desire to improve the Premises during the Term of this **AGREEMENT & LEASE**. Both MERCEDES and MPA further recognize the need to amortize the cost of those

improvements and further agree that at the time of those improvements, both **MERCEDES** and **MPA** shall amend this **AGREEMENT & LEASE** accordingly.

**3.4 Shortfall.** In the event **MERCEDES** does not meet its Minimum Guarantee as set forth in Section 2.1,b, **MERCEDES** shall become liable for such shortfall and shall pay to **MPA** as liquidated damages and not as a penalty, a "**shortfall charge**" equal to \$11.73 per vehicle times the number of vehicles necessary to bring **MERCEDES** volumes up to the Minimum Guarantee. Said shortfall payments shall be made as additional rental at the conclusion of the Lease Year in question after such has been billed by **MPA**

#### **4.0 MAINTENANCE:**

**4.1 Maintenance Obligations.** **MERCEDES** shall at all times at its own expense, with or without notice from **MPA**, keep and maintain the Premises in good order and repair, and in a neat, safe, clean and orderly condition.

**4.2 Alterations & Improvements.** **MERCEDES** shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from **MPA**, which approval shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by **MERCEDES**, such alterations, improvements or fixtures shall, upon request of **MPA**, be removed promptly by **MERCEDES** at **MERCEDES**' expense, and the Premises restored to their original condition upon the expiration or sooner termination of this **AGREEMENT & LEASE**, provided that **MERCEDES** shall not be obligated to remove any alterations, improvements or fixtures pre-authorized in writing by **MPA** until the expiration or sooner termination of this **AGREEMENT & LEASE**. If **MERCEDES** is not so instructed to remove said alterations, improvements or fixtures, the same shall become the property of **MPA** without **MPA** paying any compensation therefor. Moveable furniture and trade fixtures which are removable without injury to the Premises shall be and remain the property of **MERCEDES** but must be promptly removed at the termination of this **AGREEMENT & LEASE**.

**4.3 Mercedes' Obligations to MPA Property.** **MERCEDES** shall be solely responsible to **MPA** for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to **MPA** and any improvements thereon, or for which **MPA** is responsible, in or on the Premises, unless such loss, theft or damage is caused by **MPA** or its employees and except for moveable items that are placed on the Premises without **MERCEDES**' knowledge.

**4.4 Inspection by MPA.** **MPA** shall have the right, at reasonable

times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**4.5 Pre and Post Inspections.** MPA and MERCEDES shall conduct a pre-inspection of the Premises and improvements thereon at the beginning of the Term. MPA and MERCEDES will also conduct a post inspection of the Premises and improvements thereon which will serve as the basis of MERCEDES' restoration responsibilities as set forth in Section 9.0 "Termination".

**5.0 MERCEDES' ADDITIONAL RESPONSIBILITIES:**

**5.1 Reports.** MERCEDES shall submit to MPA a monthly statement of the number of vehicles handled by model and VIN number and origination/destination. The report shall be due on the 15<sup>th</sup> day of each month for the month preceding. MERCEDES agrees to allow MPA access to its vehicle volume records for audit purposes provided MPA gives fifteen (15) business days written notice of its intention to audit.

**5.2 Utilities & Maintenance.** Except as otherwise provided herein, MERCEDES shall contract and pay for all utility and maintenance services provided to the Premises, including, but not limited to water, gas, electricity, telephone, sewage, janitorial, snow removal and other maintenance services.

**5.3 Security of Premises.** MERCEDES shall assume complete responsibility for security of the Premises, and the facility improvements and property located thereon and therein. MPA assumes no responsibility to MERCEDES for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection therewith.

**5.4 Liens and Encumbrances.** MERCEDES shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

**5.5 Qualification to do Business in Maryland.** At all times during the Term MERCEDES is and shall continue to be legally qualified to do business in the State of Maryland.

**5.6 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA.

**5.7 Rules, Regulations and Laws.** MERCEDES agrees to comply with all

applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, MPA's tenants, invitees, licensees and the general public. MERCEDES further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. MERCEDES further agrees to indemnify, defend and hold harmless MPA, State of Maryland, their agents and employees from any liability or penalty which may be imposed upon MPA by governmental authority by reason of any violation by MERCEDES or its agents.

## **6.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE:**

**6.1 Liability.** MPA shall not be liable to MERCEDES for any loss, injury or damage to MERCEDES or MERCEDES' property from any cause unless such cause is due to MPA's sole negligence. To the extent permitted by law, subject to the Maryland Tort Claims Act (State Government Article 12-101 et seq., Annotated Code of Maryland), and subject to appropriations by the Maryland State General Assembly, MPA shall indemnify, hold harmless and defend MERCEDES for any claims for loss, injury or damage to MERCEDES or MERCEDES' property arising from MPA's intentional misconduct or sole negligence.

### **6.2 Environmental Responsibilities.**

a) **MERCEDES' Responsibilities.** MERCEDES shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to MERCEDES' performance of its obligations pursuant to this AGREEMENT & LEASE and/or MERCEDES' use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). MERCEDES shall establish and maintain a program of compliance with all applicable Environmental Standards. MERCEDES shall monitor its compliance with Environmental Standards and shall use its best efforts to immediately halt and correct any incident of non-compliance.

b) **Non-Compliance.** In the event of any incident of any alleged non-compliance with Environmental Standards, MERCEDES shall:

1) Give MPA immediate notice of the incident, providing as much detail as possible;

2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,

3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

c) **Mercedes' Liability for Non-Compliance.** MERCEDES shall be liable and shall indemnify, defend and hold harmless MPA, State of Maryland, their agents and employees against and for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards, provided, however, that MERCEDES shall not be liable for conditions or violations existing at the Premises on the Effective Date ("Pre-existing Conditions"), provided further that MERCEDES shall be liable for any exacerbation of Pre-existing Conditions caused by the acts of MERCEDES, its officers, agents, contractors, employees or invitees.

### **6.3 Insurance & Indemnity.**

a) MERCEDES agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation occasioned wholly or in part by any act or omission of MERCEDES or its officers, agents or employees, contractors, sub-contractors, invitees and licensees, in any manner due to growing out of or connected with the occupation or use of the Premises, unless caused by the negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by MPA, its agents and employees or be against or sustained by others to whom MPA, its agents or employees, may become liable.

b) MERCEDES shall at all times during the Term of this AGREEMENT & LEASE, maintain such worker's compensation or employer's liability insurance as may be required by law.

c) MERCEDES shall also maintain at its expense, liability insurance with minimum limits of \$5,000,000 per occurrence and \$5,000,000 per aggregate for bodily injury and property damage for the protection of MPA and MERCEDES against any claims, suits, demands, or judgements by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by MERCEDES. MPA shall be named as additional insured under said insurance and certificates of insurance shall be forwarded to MPA providing proof of coverage.

d) MERCEDES shall also maintain throughout the Term of this AGREEMENT & LEASE, at its sole cost and expense, property insurance to insure against damage to or loss of the improvements on the Premises, including all fixtures

and equipment, said property insurance to be in the amount sufficient to provide coverage for the full replacement and restoration of the improvements.

e) Nothing contained herein shall require MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of MERCEDES, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

f) MERCEDES shall not use the Premises in such a manner (unless permitted under this AGREEMENT & LEASE) which would cause an increase in the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term of this AGREEMENT & LEASE, may be added to the amount of rental specified in Section 3 supra and shall be paid by MERCEDES to MPA upon the monthly rental day next thereafter occurring.

**6.4 Liens.** At all times prior to termination of this AGREEMENT & LEASE, MERCEDES shall defend, indemnify and hold harmless MPA against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act or omission of MERCEDES or its contractors, agents or employees.

**6.5 Defense Against Suits.** MERCEDES shall promptly pay any and all costs or expenses (including actual attorney's fees and consultant fees) which may be incurred by MPA as well as any judgments or decrees in favor of MPA:

- a) in enforcing the obligations of MERCEDES under the covenants, terms or provisions of this AGREEMENT & LEASE;
- b) in obtaining possession of the Premises as the result of any default by MERCEDES or otherwise;
- c) in defending any suit or proceeding brought against MPA for the violation by MERCEDES of any law, ordinance, rule or regulation;
- d) in defending any action or suit for damages because of any failure, negligence, omission or default on the part of MERCEDES.

**6.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, MERCEDES shall immediately notify MPA in writing and shall promptly thereafter furnish to MPA copies of all reports given to

MERCEDES' insurance carrier or carriers.

**7.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**7.1 Partial Destruction.** If, during the Term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not provide a basis to terminate this **AGREEMENT & LEASE**. If the existing laws do not permit the restoration, either party can terminate this **AGREEMENT & LEASE** immediately by giving notice to the other party. MPA and MERCEDES agree that MERCEDES' rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed Premises are refurbished and available for use.

**7.2 Total Destruction.** If, during the Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

a) to provide MERCEDES with a reasonable approximation of the time necessary to conduct necessary repairs or restoration and repair or restore the damage within the designated time period (which in no event shall be longer than two hundred forty (240) days), in which event such destruction shall not provide a basis to terminate this **AGREEMENT & LEASE**; or

b) to give notice to MERCEDES within thirty (30) days of such destruction terminating this **AGREEMENT & LEASE** as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the giving of the notice. If the existing laws do not permit the restoration, either party can terminate this **AGREEMENT & LEASE** immediately by giving notice to the other party. Total destruction shall be any destruction which precludes MERCEDES from storing vehicles for a period of fifteen (15) days.

**7.3 Results of Termination** If any notice of termination is given pursuant to this Section 7.0, this **AGREEMENT AND LEASE** and the rights and obligations of the parties hereunder shall cease as of the expiration of the notice period and the facility use fee shall be adjusted as of the date of such termination.

Notwithstanding the foregoing, all representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this **AGREEMENT & LEASE** or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this **AGREEMENT & LEASE**, including (without limitation) the obligations of MERCEDES pursuant to Sections 3.4., 6.3 and 9.1. hereof, shall survive the termination of this **AGREEMENT & LEASE**.

## **8.0 DEFAULT AND REMEDIES:**

**8.1 Default.** The occurrence of any of the following shall constitute a default by MERCEDES:

a) **Default in Rent.** Failure to pay when due any rental or other charge, if the failure continues for ten (10) business days after notice has been given to MERCEDES;

b) **Default in Other Covenants.** Failure to perform any other provision of this AGREEMENT & LEASE if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to MERCEDES. If the default cannot be reasonably cured within thirty (30) days, MERCEDES shall not be in default if MERCEDES commences to cure the default within the thirty (30) day notice period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably practicable;

c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of MERCEDES; an assignment by MERCEDES for the benefit of creditors; the filing by MERCEDES of a voluntary petition in bankruptcy; an adjudication that MERCEDES is bankrupt or the appointment of a receiver for the properties of MERCEDES; the filing of an involuntary petition of bankruptcy and failure of MERCEDES to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on MERCEDES' lease hold interest hereunder and failure of MERCEDES to secure a discharge of the attachment or release of the levy of execution with sixty (60) days; and

d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

**8.2 Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that MERCEDES performs the relevant provision of this AGREEMENT & LEASE or pay the rental or charges which are in arrears, as the case may be, within the applicable time period.

### **8.3 MPA Remedies in Case of Mercedes Default.**

**8.3.1 Remedies.** Time is of the essence of this AGREEMENT & LEASE, and in the event that MERCEDES is in default and such default is not cured as provided in Section 8.1 supra, MPA may elect to terminate this AGREEMENT & LEASE

at any time; and/or reenter and take possession of the Premises and any property thereon with or without process of law and by any peaceable means whatsoever including locking out **MERCEDES**; and/or exercise any other legal, equitable or contractual remedy it may have, including but not limited to the right of distress. Upon receipt of any such notice of termination, **MERCEDES** shall vacate the Premises immediately and remove any property of **MERCEDES**, including any fixtures that **MERCEDES** is required to remove at the end of the Term and perform any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the Term of this **AGREEMENT & LEASE**, and deliver all keys to the **MPA**.

**8.3.2 Damages.** **MPA** shall have the right to receive from **MERCEDES** as of the date of termination the following sums as damages:

a) The amount of the unpaid rental accrued and due at the time of the termination of this **AGREEMENT & LEASE**;

b) The amount, at the time of the award of a subsequent lease to a third party, by which the unpaid rental for the rest of the Term of this **AGREEMENT & LEASE** exceeds the rental obtained from a subsequent lease to a third party provided that the amount of the loss of rental does not exceed such amount that **MERCEDES** proves could have been reasonably avoided by **MPA** mitigation;

c) Any other amount, and court costs, necessary to compensate **MPA** for all detriment proximately caused by **MERCEDES**' default, including the reasonable costs of any cleanup, refurbishing, removal of **MERCEDES**' property and fixtures, or any other expense occasioned by **MERCEDES**' failure to quit the Premises upon termination and to leave them in condition specified herein; and

d) The shortfall charge for each and every Lease Year remaining in the Term, including the Lease Year of termination, and without prejudice to recovery by **MPA** of any shortfall charge due at the time of termination of the **AGREEMENT & LEASE**.

**8.3.3** The remedies in this Section 8.3. are not exclusive, and the election by **MPA** of one remedy shall not preclude an election of any other remedy at a later time.

**8.4 Use of Abandoned Property.** **MPA** may:

a) use all or any part of **MERCEDES**' personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this **AGREEMENT & LEASE** without compensation to **MERCEDES** and without liability for such use or damage; or

b) store all or any of **MERCEDES'** personal property and trade fixtures for the account of and at the expense of **MERCEDES**.

**8.5 MPA Obligation to Relet.** Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or statutory mandate to promote waterborne commerce or to relet to a person or entity that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this **AGREEMENT & LEASE**, upon any reasonable terms and conditions. If MPA relets the Premises, rental that MPA receives from reletting shall be applied to the payment of:

First, any indebtedness from **MERCEDES** to MPA other than rental due from **MERCEDES**;

Second, all costs, including for maintenance, incurred by MPA in reletting;

Third, rental due and unpaid under this **AGREEMENT & LEASE**. After deducting the payments referred to in this subsection, any sum remaining from the rental MPA receives from reletting shall be held by MPA and applied in payment of future rental as rental becomes due under this **AGREEMENT & LEASE**. In no event shall **MERCEDES** be entitled to any excess rental received by MPA. If, on the date rental is due under this **AGREEMENT & LEASE**, the rental received from the reletting is less than the rental due on that date, **MERCEDES** shall pay to MPA, in addition to the remaining rental due, all costs, including for maintenance, MPA incurred in reletting that remain after applying the rental received from the reletting as provided in this subsection.

## **9.0 TERMINATION:**

**9.1 Surrender.** Upon expiration or earlier termination of this **AGREEMENT & LEASE**, **MERCEDES** shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises. **MERCEDES** shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any alterations or removal of **MERCEDES'** personal property.

**9.2 Mercedes Termination.** **MERCEDES** may elect to terminate this **AGREEMENT & LEASE** upon ninety (90) days written notice to MPA if **MERCEDES** is prohibited from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority in the United

States of America.

**9.3 MPA Termination.** MPA may terminate this **AGREEMENT & LEASE** upon ninety (90) days written notice to **MERCEDES** if **MPA** is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority in the United States of America.

#### **10.0 POWERS OF MPA:**

It is understood and agreed that **MPA** is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. **MPA** is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event **MPA** is temporarily or permanently prevented, restricted or delayed by statute, regulation or administrative or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this **AGREEMENT & LEASE**, **MPA** and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by **MERCEDES** or any other legal entity in connection with, or as the result or, or growing out of any such prevention, restriction or delay. **MPA** represents and warrants that it is presently empowered under Maryland law to enter into this **AGREEMENT & LEASE** and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this **AGREEMENT & LEASE**.

#### **11.0 FORCE MAJEURE:**

a) **MPA** and **MERCEDES** shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, order by any agency or commission of the United States of America, public emergency, strikes, boycotts, picketing, and work stoppages.

b) **MERCEDES** or the **MPA** (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

#### **12.0 GENERAL PROVISIONS:**

**12.1 Assignment & Subletting.** **MERCEDES** shall not assign this **AGREEMENT & LEASE** nor sublet the Premises in whole or in part, without the prior written consent of **MPA**, which shall not be unreasonably withheld, and approval of the

Maryland Board of Public Works. Any assignment or subletting must be consistent with the existing use and can not be for a sum greater than the specified rental payments. Consent by MPA to any assignment or subletting shall not operate to release **MERCEDES** from any of its obligations under the terms of this **AGREEMENT & LEASE**.

**12.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

**TO MERCEDES:**

Department Manager, National & Import Logistics  
Mercedes-Benz USA, LLC.  
P.O. Box 350  
One Mercedes Drive  
Montvale, NJ 07645-0350

cc: General Counsel  
Mercedes-Benz USA, LLC.  
P.O. Box 350  
One Mercedes Drive  
Montvale, NJ 07645-0350

**TO MPA:**

Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

**12.3 Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this **AGREEMENT & LEASE** shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**12.4 Applicable Law.** It is expressly understood and agreed that this **AGREEMENT & LEASE** and all questions arising thereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this **AGREEMENT & LEASE** shall be brought and prosecuted in the

Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

**12.5 Binding Effect.** This AGREEMENT & LEASE shall bind the parties, their successors and assigns.

**12.6 Authority.** Each individual executing this AGREEMENT & LEASE on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this AGREEMENT & LEASE on behalf of such party.

**12.7 Severability.** The invalidity of any provision of this AGREEMENT & LEASE as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this AGREEMENT & LEASE.

**12.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this AGREEMENT & LEASE.

**12.9 Quiet Enjoyment.** MPA covenants and agrees that so long as MERCEDES is not in default hereunder, it shall quietly enjoy the Premises.

**12.10 Survival.** All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of MERCEDES pursuant to Sections 3.4, 6.3 and 9.1 hereof, shall survive the termination or expiration of this AGREEMENT & LEASE, including (without limitation) termination pursuant to Sections 1.1.2, 1.2.1, 7.0, 9.2, and 9.3.

**12.11 AGREEMENT & LEASE for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this AGREEMENT & LEASE shall be for the sole benefit of the parties and that no other person, corporation or other entity is intended to be a beneficiary of this AGREEMENT & LEASE.

**12.12 Amendments.** This AGREEMENT & LEASE may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this AGREEMENT & LEASE and signed by both parties, subject to the approval of the Maryland Board of Public Works.

**12.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the

terms and provisions of this **AGREEMENT & LEASE** shall be taken and construed to be cumulative.

**12.14 Remedies Cumulative.** All remedies provided in this **AGREEMENT & LEASE** shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided to the parties at law or in equity.

**12.15 Integration.** This **AGREEMENT & LEASE** constitutes the entire agreement between **MPA** and **MERCEDES** with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this **AGREEMENT & LEASE**.

(END)

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT & LEASE to be duly executed as of the day and year first above written.

MERCEDES-BENZ USA, LLC.

Attest:

*Michael G. S...*  
Assistant Secretary

By:

*David C. Schembri*  
David Schembri  
Vice President Marketing

*10/14/02*  
*10/14/02*  
*10-22-02*

MARYLAND PORT ADMINISTRATION

BY:

*James J. White* *11/25/2002*  
James J. White  
Executive Director

Approved as to form and legal sufficiency:

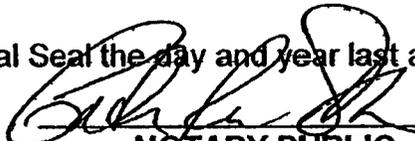
*M. G. S...*  
Assistant Attorney General

STATE OF MARYLAND

SS:  
County of Baltimore OF MARYLAND

I HEREBY CERTIFY that on this 25th day of November, 2002, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared James J. White, Executive Director, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, who acknowledged the foregoing instrument to be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal the day and year last above written.

  
\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-1-03

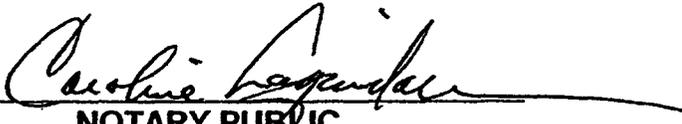
(SEAL)

STATE OF New Jersey

SS: County OF Bergen

I HEREBY CERTIFY that on this 22 day of October, 2002, before me, the subscriber, a Notary Public of the State of New Jersey in and for the County of Bergen personally appeared David Schembri who acknowledged himself to be the Vice President of Marketing of MERCEDES-BENZ USA, LLC, that he, as such being authorized so to do, acknowledged the foregoing instrument to be the duly authorized act and deed of MERCEDES-BENZ USA, LLC.

WITNESS my hand and Notarial Seal the day and year last above written.

  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_  
CAROLINE LAQUIDARA  
Commission Expires July 9, 2003

(SEAL)

**FIRST AMENDMENT TO LEASE  
BETWEEN THE MARYLAND PORT ADMINISTRATION  
AND  
MERCEDES-BENZ USA, LLC.**

This **FIRST AMENDMENT to LEASE** is made this 20<sup>th</sup> day of February, 2004, by and between the **MARYLAND PORT ADMINISTRATION**, an instrumentality of the Department of Transportation of the State of Maryland (hereinafter referred to as "**MPA**") and **MERCEDES-BENZ USA, LLC.**, a corporation, (hereinafter referred to as "**MERCEDES**").

**WHEREAS**, on November 25, 2002, the **MPA** and **MERCEDES** entered into an **AGREEMENT & LEASE** effective December 1, 2002 for premises at the Dundalk Marine Terminal for receiving, processing and distribution of motor and industrial vehicles, parts and accessories in the Port of Baltimore ("**LEASE**"); and

**WHEREAS**, **MERCEDES** now desires to lease additional acreage from the **MPA**; and

**NOW, THEREFORE, THIS FIRST AMENDMENT to LEASE WITNESSETH** that **MPA** and **MERCEDES** hereby agree to amend the **LEASE** as follows:

1. Effective as of April 1, 2003 ("**Amendment Effective Date**") and throughout the remainder of the Term, **MPA** shall lease additional acreage to **MERCEDES** amounting in total to 6.22 acres in Area 94B as outlined in Exhibit "**B**" attached hereto ("**Additional Premises**") on the following terms and conditions:

(i) In addition to the Minimum Guarantee already established in Section 2.1.b) of the LEASE, MERCEDES guarantees to MPA that the Additional Premises will be utilized by MERCEDES for the receiving, processing and distribution of a minimum of one thousand seven hundred (1,700) vehicles per acre <sup>or fraction thereof.</sup> of the Additional Premises per Lease Year. With effect from the Amendment Effective Date until the end of the First Lease Year on November 30, 2003, the minimum guarantee for the Additional Premises shall amount to Eight Hundred Eighty-one (882) vehicles in total per month and, thereafter, with effect from the commencement of the second Lease Year on December 1, 2002 until the end of the Term, the minimum guarantee for the Additional Premises shall amount to Ten Thousand Five Hundred Forty-seven (10,547) vehicles in total per Lease Year. In the event that MERCEDES does not meet the minimum guarantee as aforesaid, MERCEDES shall be liable for the shortfall and shall pay a shortfall charge as stated in Section 3.4 of the LEASE.

(ii) For the avoidance of doubt, the Effective Date referred to in Section 1.1 of the LEASE is December 1, 2002.

(iii) MERCEDES shall pay MPA as rental for the Additional Premises a facility use fee of the sum of Ten Thousand Three Hundred Thirty-two Dollars and Ninety-eight Cents (\$10,332.98) per <sup>calendar</sup> month for the first Lease Year, and thereafter, a sum adjusted annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor ("CPI-U"). This yearly adjustment will be applied at the beginning of each Lease Year.

2. This First Amendment to Lease is subject to the approval of the Maryland Port Commission and the Maryland Board of Public Works.

3. Except as otherwise provided in this First Amendment to Lease, the terms

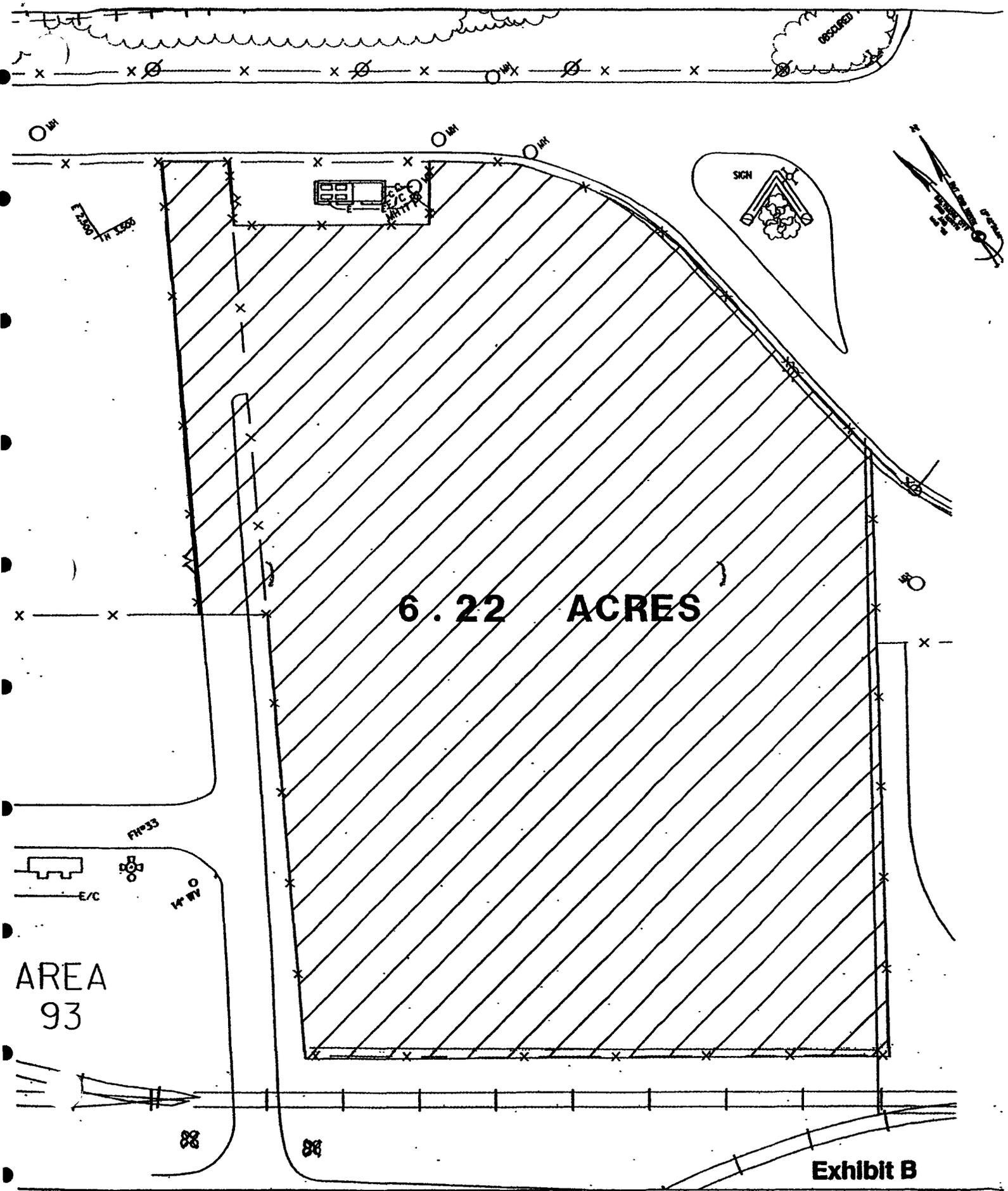


Exhibit B

**MARYLAND PORT ADMINISTRATION  
LIMITED RIGHT OF ENTRY AND LICENSE AGREEMENT**

This Agreement, made this 5 day of April 2004, by and between the Maryland Port Administration, ("Grantor"), and Mercedes-Benz USA, LLC., ("Grantee").

WHEREAS, Grantee desires, at its own risk and expense, to enter upon the property or premises of Grantor located on Childs Street known as the Fairfield Marine Terminal ("Property") to inspect the property, perform environmental assessments, and develop relocation plans for a proposed move to the Property ("Purpose"); and

WHEREAS, Grantee promises and warrants that its entry for the Purpose will not adversely affect the interests or operations of the Grantor.

NOW THEREFORE, Grantor hereby grants to Grantee a limited Right of Entry to enter upon the Property for the Purpose and for a period of ninety (90) days beginning April 6, 2004, unless terminated or extended by Grantor as provided in paragraph 3 of this Agreement. Both Grantor and Grantee agree that this Right of Entry has been granted subject to the following terms and conditions:

1. Grantee will not interfere with Grantor or any other person on the Property who is authorized to be there by Grantor. Grantee will strictly confine itself, its employees, agents, and all others connected in any way with the Grantee and/or Purpose to the implementation of the Purpose and will conduct no other activity at the Property.

2. Grantee, for itself, its employees, agents, servants, contractors and all others connected in any way with the Purpose assumes full responsibility and liability for entering on and working on the Property, accepting the Property in an "as is - where is" condition understanding that

Grantor does not warrant or promise anything about the safety and/or suitability of the Property for Grantee's entry or Purpose.

3. Grantor reserves the right to terminate this Agreement at anytime and, in its sole discretion, to extend it where it is reasonably deemed to be in the best interest of the Grantor.

4. Grantee agrees to comply with all local, state, and federal laws, and regulations while on the Property and during the performance of the Purpose. Grantee also agrees to secure and maintain any and all Federal, State and local permits, licenses or warrants needed for the occupancy and use of the Property.

5. On termination of this agreement, Grantee shall quietly and peaceably surrender the Property in the same condition the Property was prior to entry by Grantee under this Agreement. Grantee shall remove all things placed by Grantee on the Property, and if Grantee shall fail to do so, Grantor shall have the right to make such removal at Grantee's expense, the amount of which expense Grantee shall pay to Grantor on demand.

6. The Grantor and Grantee agree this Agreement will be governed by Maryland Law.

7. Grantee agrees for itself, and for those in its employ, that all activities at MPA property shall be conducted in a safe and secure manner using all precautions to protect and secure persons and property at and near the Property during Grantee's occupancy and use of the Property.

8. Grantee shall indemnify, protect, defend and save harmless the Grantor and the State of Maryland from and against any and all losses, expenses and claims ("Losses") arising out of or related in any way to the Purpose, including, but not limited to, losses resulting from injury or harm to persons or property, but not including any damages or injuries caused by Grantor's negligence. Grantee shall defend at its own expense any and all suits at law or equity arising therefrom. This

provision shall survive the termination of this Agreement.

## 9. INSURANCE

A) Grantee and/or Contractors employed by Grantee shall at all times during the term of this Agreement maintain such worker's compensation or employer's liability insurance as may be required by law.

B) Grantee shall also maintain at its expense, fire, accident and liability insurance that is acceptable to Grantor with minimum limits of \$5,000,000.00 (per occurrence) and \$5,000,000.00 in the aggregate for the protection of the Grantor and Grantee against any claims, suits, demands, or judgments by reason of personal injury including death and for any claims of damage to property occurring on or as a result of the occupancy of the Property by Grantee. Such insurance shall name Grantor as an "additional insured".

C) Grantee shall also maintain at its expense automobile liability insurance with minimum limits of \$1,000,000.00 (per occurrence) and \$1,000,000.00 in the aggregate covering use of any motor vehicle by the Grantee on the Property.

D) Nothing contained herein shall require Grantor to insure against or be liable for any loss occasioned by fire or other casualty to persons and/or to tangible personal property or fixtures of Grantee, its agents or employees, contractors, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Property.

E) Grantee shall provide Grantor with evidence of insurance required hereunder prior to entry by Grantee on the Property.

10. If Grantee is a corporation, partnership or other entity, the person executing this

) Limited Right of Entry and License Agreement on behalf of Grantee represents and warrants that Grantee is duly organized and validly existing; that this Limited Right of Entry has been authorized by all necessary parties, is validly executed by an authorized officer or agent of Grantee and is binding upon and enforceable against Grantee in accordance with its terms, particularly including, but not limited to Paragraph 8 above.

Approved for form and  
Legal sufficiency

Grantor: Maryland Port Administration

M. Catherine Kline  
Assistant Attorney General

By: Kathy Broadwater  
Kathy Broadwater, Deputy Executive Director

WITNESS

Grantee: Mercedes-Benz USA, LLC.

\_\_\_\_\_

By: Ulrich Schubert  
Print Name Ulrich Schubert  
Print Title: Belcamp VPC Manager  
MBUSA

**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
BENNETT DISTRIBUTION SERVICES**

THIS AGREEMENT & LEASE is made and entered into this 4<sup>th</sup> day of April, 2005, by and between the MARYLAND PORT ADMINISTRATION, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "MPA"), and BDS DISTRIBUTION SERVICES, a subsidiary of BDS International Group, Inc., a Georgia corporation, whose address is 1001 Industrial Parkway, McDonough, Georgia 30253 (hereinafter referred to collectively as "BDS").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, MPA and BDS hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 Term.** The term of the AGREEMENT & LEASE shall be for three (3) years beginning on April 1, 2005 ("Term"). A "Lease Year" shall run from April 1 through March 31.

**1.1.1 Renewal Option.** Provided BDS has complied with all of the terms of this AGREEMENT & LEASE, is not in default hereunder, BDS shall have the option to renew this AGREEMENT & LEASE for two (2) additional periods of three (3) years ("Renewal Period").

In order to exercise the option, BDS shall provide MPA with at least one hundred eighty (180) days' written notice, prior to expiration of the Term, of its intent to renew. Failure by BDS to so notify MPA timely shall be considered a forfeiture by BDS of this option to renew. BDS and MPA further understand and agree that in all Renewal Periods, MPA will adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). This adjustment will be applied at the beginning of each Renewal Period.

**1.2 Premises.** MPA leases to BDS and BDS rents from MPA, a parcel of land in Lot 91 comprising of approximately 5.53 acres, and seventy-five hundred (7,500) square feet of shed space in Building 94A located at Dundalk Marine Terminal ("DMT")

in Baltimore City, Maryland, as more fully identified and described as "Premises" on Exhibit "A" attached hereto. BDS accepts the Premises in the condition "as is". MPA gives no warranties as to the condition of the Premises or its suitability for BDS's operations at the Premises.

**1.3 MPA Terminal Services Schedule.** Where applicable the prevailing MPA Terminal Services Schedule filed with the Federal Maritime Commission, posted on the Internet ([www.mpa.md.state.us](http://www.mpa.md.state.us)), or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by MPA pursuant to Federal, State or other applicable laws ("Schedule"), is hereby incorporated by reference into this AGREEMENT & LEASE as if set forth at length and such shall govern and control this AGREEMENT & LEASE except where same conflicts with this AGREEMENT & LEASE. In such event this AGREEMENT & LEASE shall prevail.

**1.4 Ingress and Egress.** MPA and BDS understand and agree that it is MPA's intention to utilize properties contiguous to the Premises. Accordingly, BDS expressly agrees that it shall coordinate with MPA or MPA's designate so that free and unencumbered ingress and egress will be allowed to MPA or its designate in transiting across the Premises in order for MPA and its designate to utilize the aforementioned contiguous properties. The location of ingress and egress shall be mutually agreed to by MPA and BDS and neither party will unreasonably withhold consent as to the original location of ingress and egress or subsequent changes thereto.

**1.5 Relocation.** At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to relocate the Premises or any portion thereof, to a comparable facility with similar berth access within the Dundalk Marine Terminal. The relocation of the Premises shall be at MPA's sole cost and expense.

## **2.0 USE OF PREMISES/APPURTENANTS RIGHTS/RESERVED RIGHTS:**

### **2.1 Use of Premises.**

a) **Import/Export Vehicles.** BDS shall use the Premises for receiving, processing and distribution of farm and industrial vehicles, parts and accessories, having a prior or subsequent waterborne movement over an MPA pier, berth or wharf ("Import/Export Vehicles") subject to Section 2.1 (b).

b) **Vehicle Guarantee.** BDS guarantees MPA that it will receive, process and distribute a minimum of 1,000 Import/Export Vehicles per acre of useable vehicle storage area, being currently 5.53 acres in total, per Lease Year through the Premises. ("Minimum Guarantee").

**2.2 Labor Peace and Harmony.** BDS shall conduct its operations at the Premises in a manner promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. BDS shall not engage in any activity, which works to destroy any labor harmony in the Port of Baltimore. MPA will use its best efforts to promote other tenants of MPA to conduct their operations in a manner promoting peace and harmony in the commercial sector.

**2.3 MPA's Reserved Rights with Respect to the Premises.** MPA reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with BDS's use of the Premises.

### **3.0 RENT AND RENTAL PAYMENTS:**

**3.1 Rental Payment Schedule.** Beginning on the Effective Date, BDS shall pay to MPA as rental a facility use fee of Twelve Thousand Nine Hundred Fifty Dollars and Eighty-three Cents (\$12,950.83) per calendar month for the Premises and improvements. (7,500 square feet of shed space at \$4.50 per square foot per Lease year (\$33,750.00), and 5 acres of paved land at \$22,000 per acre per Lease Year (\$121,660.00)).

**3.2** The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this AGREEMENT & LEASE), deduction or set off in advance on or before the first day of each and every month that this AGREEMENT & LEASE continues in effect ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate. BDS and MPA further understand and agree that in Lease Years two (2) through three (3) and all renewal periods, MPA will adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). This yearly adjustment will be applied at the beginning of each Lease Year.

**3.3 Shortfall.** In the event BDS does not meet its Minimum Guarantee, BDS shall become liable for such shortfall and shall pay to MPA as liquidated damages and not as a penalty, a "shortfall charge" equal to \$10.00 per vehicle times the number of vehicles necessary to bring BDS volumes up to the Minimum Guarantee. Said shortfall payments shall be made at the conclusion of the Lease Year after such has been billed by MPA, subject to Section 2.1.c.

**4.0 INTENTIONALLY LEFT BLANK.**

**5.0 MAINTENANCE:**

## **5.1 Maintenance Obligations.**

(a) BDS shall, at its sole cost and expense, repair, replace and maintain in good condition the Premises and every part thereof, including the buildings and equipment located therein, whether installed and/or owned by MPA or BDS and shall perform all such items of repair, maintenance, alterations or improvements as may from time to time be required by a governmental body or agency having jurisdiction thereof. BDS shall keep the Premises and all areas thereof clean and orderly.

(b) MPA shall have the responsibility to remedy any inherent defects in the structural members of the portions of the Premises constructed by it, or any other defects in the Premises which defects are proximately caused by inherent defects in or deterioration of said structural members and in no way caused by the operation of BDS.

(c) MPA shall only be responsible for any of the aforementioned maintenance and repairs upon receipt of written notice from BDS specifying the work to be performed. MPA will respond and complete work in a timely fashion upon receipt of written notice and inspection.

(d) MPA will maintain new light fixtures installed by MPA; however BDS is responsible for light bulb replacement.

**5.2 Alterations & Improvements.** BDS shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from MPA, which approval shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by BDS, such alterations, improvements or fixtures shall, upon request of MPA, be removed promptly by BDS at BDS's expense and the Premises restored to their original condition upon the expiration or sooner termination of this AGREEMENT & LEASE. If BDS is not so instructed to remove said alterations, improvements or fixtures, the same shall become the property of MPA without MPA paying any compensation therefor. Moveable furniture and trade fixtures which are removable without injury to the Premises shall be and remain the property of BDS but must be promptly removed at the termination of this AGREEMENT & LEASE.

**5.3 BDS's Obligations to MPA Property.** BDS shall be solely responsible to MPA for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to MPA and any improvements thereon, or for which MPA is responsible, for the Premises only, unless such loss, theft or damage is caused by MPA or its employees and except for moveable items that are placed on the

Premises without BDS's knowledge.

**5.4 Inspection by MPA.** MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

**5.5 Pre and Post Inspections.** MPA and BDS shall conduct a pre-inspection of the Premises and improvements thereon at the beginning of the Term. MPA and BDS will also conduct a post inspection of the Premises and improvements thereon which will serve as the basis of BDS's restoration responsibilities as set forth in Section 10.0 "Termination".

## **6.0 BDS'S ADDITIONAL RESPONSIBILITIES:**

**6.1 Utilities & Maintenance.** Except as otherwise provided herein, BDS shall contract and pay for all utility or maintenance services provided to the Premises, including water, gas, electricity, telephone, sewage, janitorial, snow removal and other maintenance services.

**6.2 Security of Premises.** BDS shall assume complete responsibility for security of the Premises, and the facility improvements, buildings and property located thereon and therein. MPA assumes no responsibility to BDS for the security of the Premises, but reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection therewith.

**6.3 Liens and Encumbrances.** BDS shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

**6.4 Qualification to do Business in Maryland.** At all times during the Term BDS is and shall continue to be legally qualified to do business in the State of Maryland.

**6.5 Signs.** Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA.

**6.6 Rules, Regulations and Laws.** BDS agrees to comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, MPA's tenants, invitees, licensees and the general public. BDS further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. BDS further agrees to indemnify, defend and hold harmless MPA, its agents and employees from any liability or penalty which may be imposed upon MPA by

governmental authority by reason of any violation by BDS or its agents.

## **7.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE:**

**7.1 Liability.** MPA shall not be liable to BDS for any loss, injury or damage to BDS or BDS's property from any cause unless such cause is due to MPA negligence.

### **7.2 Environmental Responsibilities.**

(a) **BDS'S Responsibilities.** BDS shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to BDS' performance of its obligations pursuant to this AGREEMENT & LEASE and/or BDS' use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). BDS shall establish and maintain a program of compliance with all applicable Environmental Standards. BDS shall monitor its compliance with Environmental Standards and immediately halt and correct any incident of non-compliance.

(b) **Non-Compliance.** In the event of any incident of non-compliance with Environmental Standards, BDS shall:

(1) Give MPA immediate notice of the incident, providing as much detail as possible;

(2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,

(3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

(c) **BDS'S Liability for Non-Compliance.** BDS shall be liable for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards.

### **7.3 Insurance & Indemnity.**

(a) BDS agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation by

reason of negligence of BDS or its officers, agents or employees, contractors, sub-contractors, invitees and licensees, unless caused by the negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by MPA, its agents and employees or be against or sustained by others to whom MPA, its agents or employees, may become liable.

(b) BDS shall at all times during the Term of this AGREEMENT & LEASE, maintain such worker's compensation or employer's liability insurance as may be required by law.

(c) BDS shall also maintain at its expense, general liability insurance with minimum limits of \$3,000,000. per occurrence and \$3,000,000 per aggregate for bodily injury and property damage and \$1,000,000 (any one fire) for Fire Legal Liability for the protection of MPA and BDS against any claims, suits, demands, or judgements by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by BDS. MPA shall be named as Additional Insured under said insurance and Certificates of Insurance shall be forwarded to MPA providing proof of coverage.

(d) BDS shall also maintain throughout the Term of this AGREEMENT & LEASE, at its sole cost and expense, property insurance to insure against damage to or loss of the improvements on the Premises, including all fixtures and equipment, said property insurance to be in the amount sufficient to provide coverage for the full replacement and restoration of the improvements.

(e) BDS shall also maintain throughout the Term of this AGREEMENT & LEASE, at its sole cost and expense, automobile liability insurance which shall include all hired and non-owned vehicles with a minimum limit of liability of \$2,000,000 bodily injury per person and \$2,000,000 for property damage. This policy shall be written on a per occurrence basis.

(f) Nothing contained herein shall require MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of BDS, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

(g) BDS shall not use the Premises in such a manner (unless permitted under this AGREEMENT & LEASE) which would cause an increase in the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term of this AGREEMENT &

LEASE, may be added to the amount of rental specified in Section 3 supra and shall be paid by BDS to MPA upon the monthly rental day next thereafter occurring.

**7.4 Liens.** At all times prior to termination of this AGREEMENT & LEASE, BDS shall defend, indemnify and hold harmless MPA against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of BDS or its contractors, agents or employees.

**7.5 Defense Against Suits.** BDS shall promptly pay any and all costs or expenses (including actual attorney's fees and consultant fees) which may be incurred by MPA as well as any judgments or decrees in favor of MPA:

(a) in enforcing the obligations of BDS under the covenants, terms or provisions of this AGREEMENT & LEASE;

(b) in obtaining possession of the Premises as the result of any default by BDS or otherwise;

(c) in defending any suit or proceeding brought against MPA for the violation by BDS of any law, ordinance, rule or regulation;

(d) in defending any action or suit for damages because of any failure, neglect or default on the part of BDS.

**7.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, BDS shall immediately notify MPA in writing and shall promptly thereafter furnish to MPA copies of all reports given to BDS's insurance carrier or carriers.

## **8.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**8.1 Partial Destruction.** If, during the Term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this AGREEMENT & LEASE. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. MPA and BDS agree that BDS' rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed Premises are refurbished and available for use.

**8.2 Total Destruction.** If, during the Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

(a) to provide BDS with a reasonable approximation of the time necessary to conduct necessary repairs or restoration and repair or restore the damage within the designated time period (which in no event shall be longer than two hundred forty (240) days), in which event such destruction shall not terminate this AGREEMENT & LEASE. MPA and BDA agree that BDS' rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed Premises are refurbished and available for use; or

(b) to give notice to BDS within thirty (30) days of such destruction terminating this AGREEMENT & LEASE as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the giving of the notice. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. Total destruction shall be any destruction which precludes BDS from performing any significant portion of its operations at the Premises.

## **9.0 DEFAULT AND REMEDIES:**

**9.1 Default.** The occurrence of any of the following shall constitute a default by BDS:

(a) **Default in Rent.** Failure to pay when due any rental or other charge, if the failure continues for ten (10) business days after notice has been given to BDS;

(b) **Default in Other Covenants.** Failure to perform any other provision of this AGREEMENT & LEASE if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to BDS. If the default cannot be reasonably cured within thirty (30) days, BDS shall not be in default if BDS commences to cure the default within the thirty (30) day notice period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably practicable;

(c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of BDS; an assignment by BDS for the benefit of creditors; the filing by BDS of a voluntary petition in bankruptcy; an adjudication that BDS is bankrupt or the appointment of a receiver for the properties of BDS; the filing of an involuntary petition of bankruptcy and failure of BDS to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on BDS's lease hold interest hereunder and failure of BDS to secure a discharge of the attachment or release of the levy of execution with sixty (60) days; and

(d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

**9.2 Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that BDS performs the relevant provision of this AGREEMENT & LEASE or pay the rental or charges which are in arrears, as the case may be, within the applicable period time.

**9.3 MPA Remedies in Case of BDS Default.** MPA shall have the following remedies if BDS is in default and such default is not cured. These remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy at a later time.

(a) **Termination of Agreement & Lease and Right to Possession.** MPA may, at its option, terminate this AGREEMENT & LEASE and terminate BDS' right to possession by giving written notice of termination to BDS. Upon receipt of such notice, BDS shall vacate the Premises immediately and within thirty (30) days thereafter remove any property of BDS, including any fixtures that BDS is required to remove at the end of the Term and perform any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the Term of this AGREEMENT & LEASE, and deliver all keys to the MPA.

(b) **Re-entry and Distraint.** MPA may, at its option, terminate this AGREEMENT & LEASE and re-enter the Premises and distraint upon any of BDS's property.

(c) **Liquidated Damages.** MPA shall have the right to receive from BDS as of the date of termination the following sums as liquidated damages and not as a penalty:

(1) The amount of the unpaid rental accrued and due at the time of the termination of this AGREEMENT & LEASE;

(2) The amount, at the time of the award of a subsequent lease to a third party, by which the unpaid rental for the rest of the Term of this AGREEMENT & LEASE exceeds the rental obtained from a subsequent lease to a third party provided that the amount of the loss of rental does not exceed such amount that BDS proves could have been reasonably avoided by MPA mitigation; and

(3) Any other amount, and court costs, necessary to compensate MPA for all detriment proximately caused by BDS's default, including the reasonable costs of any cleanup, refurbishing, removal of BDS's property and fixtures, or any other

expense occasioned by BDS's failure to quit the Premises upon termination and to leave them in condition specified herein.

**9.4 Use of Abandoned Property.** Provided MPA gives prior written notice to BDS, MPA may:

(a) use all or any part of BDS' personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this AGREEMENT & LEASE without compensation to BDS and without liability for such use or damage; or

(b) store all or any of BDS' personal property and trade fixtures for the account of and at the expense of BDS.

**9.5 MPA Obligation to Relet.** Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or to relet to a person or entity that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this AGREEMENT & LEASE, upon any reasonable terms and conditions. If MPA relets the Premises, rental that MPA receives from reletting shall be applied to the payment of:

First, any indebtedness from BDS to MPA other than rental due from BDS;

Second, all costs, including for maintenance, incurred by MPA in reletting;

Third, rental due and unpaid under this AGREEMENT & LEASE. After deducting the payments referred to in this subsection, any sum remaining from the rental MPA receives from reletting shall be held by MPA and applied in payment of future rental as rental becomes due under this AGREEMENT & LEASE. In no event shall BDS be entitled to any excess rent received by MPA. If, on the date rent is due under this AGREEMENT & LEASE, the rental received from the reletting is less than the rental due on that date, BDS shall pay to MPA, in addition to the remaining rental due, all costs, including for maintenance, MPA incurred in reletting that remain after applying the rental received from the reletting as provided in this subsection.

## **10.0 TERMINATION:**

**10.1 Surrender.** Upon expiration or earlier termination of this AGREEMENT & LEASE, BDS shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises, except for alterations which

BDS has a right to remove or is obligated to remove. BDS shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any alterations or removal of BDS's personal property.

**10.2 BDS Termination.** BDS may elect to terminate this AGREEMENT & LEASE upon ninety (90) days written notice to MPA if BDS is prohibited from use of the Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority in the United States of America.

**10.3 MPA Termination.** MPA may terminate this AGREEMENT & LEASE upon ninety (90) days written notice to BDS if MPA is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority in the United States of America.

### **11.0 POWERS OF MPA:**

It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. MPA is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by BDS or any other legal entity in connection with, or as the result or, or growing out of any such prevention, restriction or delay. MPA represents and warrants that it is presently empowered under Maryland law to enter into this AGREEMENT & LEASE and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE.

### **12.0 FORCE MAJEURE:**

(a) MPA and BDS shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control, including without limitation thereto, acts of God, act or state of war, order by any agency or commission of the United States of America, public emergency, strikes, boycotts, picketing, and work stoppages.

(b) Except for a strike, riot, act of God or any act or state of war or public emergency or Government regulations, no abatement, diminution or reduction of

the rent or other charges payable by BDS shall be claimed by or allowed to BDS for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present law, rule, requirement, order direction, ordinance or regulation of the United States of America, or of the State, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any cause or causes beyond the control of MPA, nor shall this AGREEMENT & LEASE be affected by any such cause.

(c) BDS or the MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

**13.0 GENERAL PROVISIONS:**

**13.1 Assignment & Subletting.** BDS shall not assign this AGREEMENT & LEASE nor sublet the Premises in whole or in part, without the prior written consent of MPA and approval of the Maryland Board of Public Works. Consent by MPA to any assignment or subletting shall not operate to release BDS from any of its obligations under the terms of this AGREEMENT & LEASE. Without prejudice to the foregoing, and subject to Board of Public Works prior approval, BDS may sublet the Premises to any automobile manufacturers or receivers/shippers of farm and industrial vehicles deemed reputable by MPA.

**13.2 Notices.** Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

**TO BDS:**

Bennett Distribution Services  
P.O. Box 569  
McDonough, GA 30253

**TO MPA:**

Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

**13.3 Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this AGREEMENT & LEASE shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition,

covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

**13.4 Applicable Law.** It is expressly understood and agreed that this AGREEMENT & LEASE and all questions arising thereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this AGREEMENT & LEASE shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

**13.5 Binding Effect.** This AGREEMENT & LEASE shall bind the parties, their successors and assigns.

**13.6 Authority.** Each individual executing this AGREEMENT & LEASE on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this AGREEMENT & LEASE on behalf of such party.

**13.7 Severability.** The invalidity of any provision of this AGREEMENT & LEASE as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this AGREEMENT & LEASE.

**13.8 Headings.** The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this AGREEMENT & LEASE.

**13.9 Quiet Enjoyment.** MPA covenants and agrees that so long as BDS is not in default hereunder, it shall quietly enjoy the Premises.

**13.10 Survival.** All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of BDS pursuant to Section 7 hereof, shall survive the termination of this AGREEMENT & LEASE.

**13.11 AGREEMENT & LEASE for Sole Benefit of Parties.** The parties intend that the mutual covenants contained in this AGREEMENT & LEASE shall be for the sole benefit of the parties and that no other person, corporation or other entity is intended to be a beneficiary of this AGREEMENT & LEASE.

**13.12 Amendments.** This AGREEMENT & LEASE may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this AGREEMENT & LEASE

and signed by both parties, subject to the approval of the Maryland Board of Public Works.

**13.13 Duties, Liabilities, Obligations Cumulative.** Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this AGREEMENT & LEASE shall be taken and construed to be cumulative.

**13.14 Remedies Cumulative.** All remedies provided in this AGREEMENT & LEASE shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided to the parties at law or in equity.

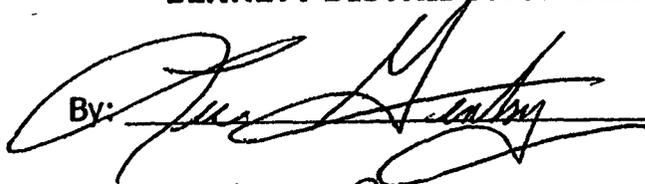
**13.15 Consent to Jurisdiction.** BDS hereby consent to the jurisdiction of any court of the State of Maryland with respect to any claim that Lessor may have against Lessee arising from any matter relating to this Lease.

**13.16 Integration.** This AGREEMENT & LEASE constitutes the entire agreement between MPA and BDS with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this AGREEMENT & LEASE.

(END)

**IN WITNESS WHEREOF**, the parties hereto have caused this **AGREEMENT & LEASE** to be duly executed as of the day and year first above written.

**BENNETT DISTRIBUTION SERVICES**

By: 

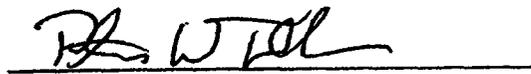
Print Name: LEE GENTRY

Print Title: PRESIDENT

**MARYLAND PORT ADMINISTRATION**

BY:   
M. Kathleen Broadwater,  
Acting Executive Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
Assistant Attorney General





# MPA ROUTING MEMO

FROM: Trisha VanDaniker

PHONE: 410-385-4747

DATE: APRIL 11, 2005

**PLEASE ROUTE THIS DOCUMENT IN THE ORDER LISTED BELOW AS SOON AS POSSIBLE**

Delays in approvals will delay finalization of this transaction. If the person indicated below is not available to sign this document, an authorized alternate (if any) should sign instead.

**SUBJECT:** Agreement & Lease between MPA and Bennett Distribution Services

**DESCRIPTION:** Term: three (3) years beginning April 1, 2005.  
Premises: 5.53 acres and 7,500 square feet of shed of shed space in Building 94A, DMT.  
Rental: \$12,950.83 per month for lease year 1, CPI increases for years 2 and 3.  
Minimum Guarantee: 1,000- import/export vehicles per

**SPECIAL INSTRUCTIONS:** Please sign below and in the appropriate space on the lease to indicate your approval.

Name/Department:

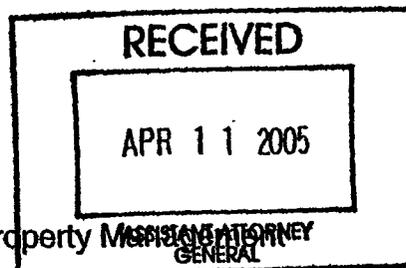
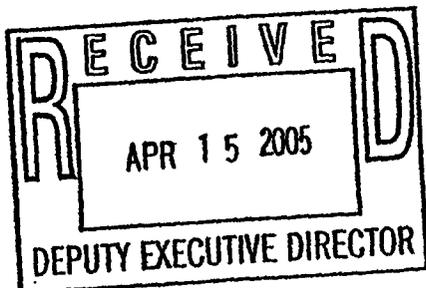
Signature/Date:

1. Peter Taliaferro/Assistant Attorney General

*P. Taliaferro* 11 APR 2005

2. Kathy Broadwater/Acting Executive Director

*Kathy Broadwater*  
4/22/05



**PLEASE RETURN TO:** Trisha VanDaniker, Property Management Attorney General

**ORIGINAL**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION

In re:

PREMIER AUTOMOTIVE SERVICES, INC. Chapter 11  
Debtor Case No. 05-20168-JS

\_\_\_\_\_ /

PREMIER AUTOMOTIVE SERVICES, INC.

Plaintiff

vs Adversary No.  
05-1378-JS

ROBERT L. FLANAGAN, et al.

Defendants

\_\_\_\_\_ /

The deposition of JOSEPH ROBERT HUBER was held on Friday, September 16, 2005, commencing at 10:02 A.M. at the Law Offices of Shapiro Sher Guinot & Sandler, 36 South Charles Street, Suite 2000, Baltimore, Maryland 21201-3147, before Sandra A. Slater, Notary Public.

REPORTED BY: Sandra A. Slater, RPR, CCR

1 were dealing in the kind of industrial or agriculture,  
2 really agriculture equipment, that Case and Premier were  
3 dealing in?

4 A I can't think of anything specific right  
5 now, no.

6 Q Are you aware of any written standards at  
7 MPA regarding through-put requirements to be applied to  
8 leases at the Dundalk Marine Terminal?

9 A Written standards, no.

10 Q If there were written standards would you  
11 know about them?

12 A In my present position probably not.

13 Q Would you have known about them in some  
14 prior position?

15 A Prior position doing leases, yes.

16 Q All right. So certainly when you were  
17 engaged with Premier had there been a written standard  
18 you would have known about it?

19 A Yes.

20 Q Okay. Fair enough. At the time that you  
21 were involved in leases how did MPA determine what

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION

In re:

PREMIER AUTOMOTIVE SERVICES, INC. Chapter 11

Debtor

Case No. 05-20168-JS

PREMIER AUTOMOTIVE SERVICES, INC.

Plaintiff

v.

Adversary No.

05-1378-JS

ROBERT L. FLANAGAN, et al.

Defendants

The deposition of DAVID MICHAEL THOMAS was held on Monday, October 3, 2005, commencing at 2:25 P.M. at the Law Offices of Shapiro Sher Guinot & Sandler, 36 South Charles Street, Suite 2000, Baltimore, Maryland 21201-3147, before Sandra A. Slater, a Notary Public.

REPORTED BY: Sandra A. Slater, RPR, CCR

1 Q Property?

2 A Mike Miller's shop.

3 Q So he makes that determination; is that  
4 what you're saying?

5 A Yes, yes.

6 Q Are there any written policies or  
7 procedures that you're aware of that address the issue  
8 of determination of through put requirement?

9 A Not that I'm aware of.

10 Q Are there any other policy or procedures in  
11 writing that you're aware of that discuss the standards  
12 to be applied in determining particular lease terms from  
13 tenant to tenant?

14 A I would say that we try to model contracts  
15 so that they're based on a volume of cargo, a bunch of  
16 different parameters that we try to base those contracts  
17 to be similar to contracts with a customer that has the  
18 same volume, same type cargo. Those contracts, we try  
19 to build those contracts so they treat each other the  
20 same.

21 Q So your goal, at least to some extent, is

1 to maintain consistency within classes of tenants; is  
2 that what you're saying?

3 A Yeah.

4 Q Or categories of tenants?

5 A And there's variables, it's how much volume  
6 overall, the length of the contract that they're willing  
7 to sign, the amount of volume that they're willing to  
8 commit to that contract over that period of time.  
9 There's variables involved.

10 Q So I take it -- strike that. But there's  
11 nothing in writing, is there, or is there that describes  
12 for you the various criteria and the criteria to be  
13 applied in deciding what terms and conditions should go  
14 with what tenant?

15 A I don't recall seeing something in writing,  
16 it's institutional knowledge and it's a negotiation.

17 Q So if a new prospective tenant comes along  
18 and hypothetically there is available space if you  
19 wanted to lease that space, how do you determine at MPA  
20 the terms and conditions that you are going to negotiate  
21 for with respect to that prospective tenant, what

1 process do you go through internally?

2 A We would look at the contracts that we have  
3 already executed for similar type of cargo, similar  
4 volumes, similar functions that the contract is going to  
5 execute for that customer. That's the way we would  
6 start.

7 Q And?

8 A That's it.

9 Q And then you would put together a proposed  
10 lease?

11 A Correct.

12 Q Based on those criteria?

13 A Correct.

14 Q And then negotiate from there?

15 A Correct.

16 Q How do you decide when to stop the  
17 negotiation, I mean when to say we're not going to cross  
18 that line, we're not going to give you this, we're not  
19 going to give you that? What mechanisms?

20 A It's a business decision, market force.

21 Q Who makes that decision?

1 A Ultimately, the executive director.

2 Q But in fact, do you do it in consultation  
3 as a group, you and Mike and Mr. Royster --

4 A Correct.

5 Q -- or do you make a recommendation to Mr.  
6 Royster; how does that work?

7 A It would be in consultation. If he asked  
8 for a recommendation we'll make a recommendation, but  
9 usually in consultation. All of our contracts are  
10 reviewed as a group.

11 Q And you're saying that at least one of your  
12 goals is to maintain consistency within specific classes  
13 of customers?

14 A Yes.

15 Q How many categories of customers do you  
16 have; is that a question you can answer easily or not?

17 A I can tell you the type of commodities that  
18 we handle in the Port.

19 Q Okay.

20 A We handle containers, we handle forest  
21 products, we handle cruise passengers, we handle new

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION

In re:

PREMIER AUTOMOTIVE SERVICES, INC. Chapter 11

Debtor

Case No. 05-20168-JS

PREMIER AUTOMOTIVE SERVICES, INC.

Plaintiff

v.

Adversary No.

05-1378-JS

ROBERT L. FLANAGAN, et al.

Defendants

The deposition of DAVID MICHAEL THOMAS was held on Monday, October 3, 2005, commencing at 2:25 P.M. at the Law Offices of Shapiro Sher Guinot & Sandler, 36 South Charles Street, Suite 2000, Baltimore, Maryland 21201-3147, before Sandra A. Slater, a Notary Public.

REPORTED BY: Sandra A. Slater, RPR, CCR

1           Q       Have you talked about -- other than with  
2 your lawyers, have you talked to any of the executives  
3 at MPA about that issue since the lawsuit was filed?  
4 That's since April.

5           A       No.

6           Q       Are there any policies at MPA regarding the  
7 types of tenants you will deal with and you won't deal  
8 with in terms of their business record or?

9           A       I'm not aware of any written policies.

10          Q       Are there any unwritten policies, I mean  
11 standards that you generally apply that you're aware of?  
12 If you're not, then that's the answer.

13          A       I'm sure common sense would prevail that we  
14 wouldn't do business with companies if we were aware of  
15 certain criminal activity.

16          Q       Well, I'm not asking you to speculate, I  
17 just want to know whether there are any policies that  
18 you're aware of or directives.

19          A       No.

20                   MR. FAX: Can we go off the record for a  
21 second?

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND

BALTIMORE DIVISION

In re: \*  
PREMIER AUTOMOTIVE SERVICES, INC., \* Chapter 11  
Debtor. \* Case No.:

\* 05-20168-JS

\* \* \* \* \*

PREMIER AUTOMOTIVE SERVICES, INC., \* VOLUME III

Plaintiff, \*

v. \* Adversary No.

ROBERT L. FLANAGAN, et al. \* 05-1378-JS

Defendants. \*

\* \* \* \* \*

The continuation of the deposition of  
MICHAEL W. MILLER was held on Thursday, October 6,  
2005, commencing at 8:05 a.m., at the Law Offices of  
Shapiro, Sher, Guinot & Sandler, 36 South Charles  
Street, Baltimore, Maryland, before Tanya M. Congo,  
Notary Public and Certified Shorthand Reporter.

REPORTED BY: Tanya M. Congo

1 Q. Do you know whether the MPA has any  
2 written standards or guidelines concerning -- or  
3 policy, standards, guidelines or policy written  
4 concerning the issue of contracting with a convicted  
5 felon?

6 MR. TALIAFERRO: Objection to the  
7 extent that there's a distinction here that may not  
8 be pertinent to this case. There may be some that  
9 relate to the kind of contracting that's different  
10 from this, but not within the scope of this  
11 particular --

12 BY MR. FAX:

13 Q. All right. Let's break it down. There  
14 are several different subcategories here that I'm  
15 interested in. The first is whether there is any  
16 written policy or set of standards or guidelines  
17 concerning any kind of contracting whatsoever?

18 A. No, there are none.

19 Q. And there are none, then, with respect to  
20 contracting or leasing property at the Dundalk Marine  
21 Terminal; is that right?

1 A. Correct.

2 Q. All right. Are there any unwritten  
3 standards or guidelines with which you are familiar  
4 at the MPA concerning contracting with convicted  
5 felons?

6 MR. TALIAFERRO: Again, this calls for

7 --

8 BY MR. FAX:

9 Q. Anything?

10 MR. TALIAFERRO: -- legal knowledge.

11 MR. FAX: Oh, no, no, no.

12 MR. TALIAFERRO: We're excluding  
13 knowledge of the State procurement process?

14 BY MR. FAX:

15 Q. Yeah. Yeah. Yeah. I'm talking about --  
16 I'm not talking about a COMAR or anything like that.

17 A. Okay.

18 Q. I'm talking about a written policy  
19 generated by MPA, or to which MPA has subscribed,  
20 that's circulated within the office?

21 A. No, there's no written policy.

1:9/25/70

THIS SUBLEASE and AGREEMENT made as of the 1st day of October, 1970, by and among DOCKSIDE STORAGE COMPANY, INC., a Maryland corporation (hereinafter called "Landlord"), R. G. HOBELMANN & COMPANY, INC., a Maryland Corporation (hereinafter called "Sublandlord") and HARBOR ENTERPRISES, INC., a Maryland corporation (hereinafter called "Tenant").

WHEREAS, By a Lease dated as of June 17, 1965, from Maryland Port Authority ("Authority") to Landlord (hereinafter called the "Main Lease") Landlord leased certain premises constituting part of the Dundalk Marine Terminal ("Terminal"), in the City of Baltimore, State of Maryland from Authority, which premises consist of 6.617 acres, more or less, and are more particularly described in the Main Lease; and

WHEREAS, by a Sublease dated June 17, 1965 (the "Hobelmann Sublease") Landlord subleased to Sublandlord a portion of said 6.617 acres consisting of approximately 1,500 square feet of office space and approximately four (4) acres of Outside Storage Area comprising approximately the easterly two-thirds of said 6.617 acres; and

WHEREAS, Tenant desires to lease a strip of land approximately 100 feet by 340 feet in dimension which is situate at the northeast corner of the aforesaid 6.617 acres, more or less, lies within the premises leased to Sublandlord as Outside Storage Area pursuant to the Hobelmann Sublease, and is shown outlined in red on the plat attached hereto as Exhibit 1, said strip of land being hereinafter called the "Subleased Premises", and

WHEREAS, Tenant desires to lease the Subleased Premises

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WHEREAS, in order to assure Tenant of the right to occupy the Subleased Premises until September 30, 1985, Landlord must exercise its option to renew the Main Lease for at least one (1) additional term of ten (10) years commencing on November 1, 1975 and Landlord and SubLandlord must extend the term of the Hobelmann Sublease (which expires on October 31, 1980) until September 30, 1985; and

WHEREAS, Landlord is willing to exercise its option under Main Lease as aforesaid and Landlord and Sublandlord are willing to extend the term of the Hobelmann Sublease until September 30, 1985.

NOW, THEREFORE, THIS SUBLEASE AND AGREEMENT WITNESSETH, that in consideration of the payment of the sum of One Dollar (\$1.00) paid by each of the parties hereto to the other and other good and valuable considerations, the receipt of which is hereby severally acknowledged, and of the covenants and agreements herein contained to be performed by the parties hereto, Landlord, Sublandlord and Tenant, for themselves, their successors and assigns, hereby covenant and agree as follows:

ARTICLE I

Covenants of Landlord and Sublandlord

1.1 Landlord hereby covenants and agrees with Sublandlord and Tenant that it shall exercise the right and option granted to it pursuant to Section 3.2 of the Main Lease to renew the Main Lease for the first additional term thereof, which additional term will commence on November 1, 1975 and end on October 31, 1985, and shall faithfully and timely perform

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1.2 Landlord and Sublandlord hereby agree to amend and modify the Hobelmann Sublease by changing the term thereof from fifteen (15) years commencing November 1, 1965 to nineteen (19) years and eleven (11) months commencing November 1, 1965 and ending September 30, 1985.

1.3 Landlord hereby agrees that in the event of termination of the Hobelmann Sublease prior to the expiration of the term hereof, Landlord shall recognize Tenant's rights under this Lease and shall not disturb Tenant's use and occupancy of the subleased premises so long as Tenant performs and observes all of the terms, conditions and covenants of this Sublease on Tenant's part to be performed and observed.

#### ARTICLE II.

##### Description of Leased Premises and Facilities

2.1 Sublandlord hereby subleases to Tenant, and Tenant hires and takes from Sublandlord, subject to the terms and conditions of the Main Lease and the Hobelmann Sublease and upon the terms and conditions hereinafter set forth, all that parcel of land, being one hundred (100) feet by three hundred forty (340) feet in dimension, situate in the Dundalk Marine Terminal, Baltimore, Maryland, as outlined in red on the plat attached hereto as Exhibit 1, together with all improvements thereon, and together with the right to use, in common with others, the adjacent roads of the Dundalk Marine Terminal, subject to the rules and regulations of the Authority.

#### ARTICLE III

##### Term of Sublease and Rental

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3.2 As rental for the subleased premises, Tenant shall pay to Sublandlord the annual sum of Four Thousand Eight Hundred Dollars (\$ 4,800.00 ) payable in equal monthly installments in advance, commencing on October 1, 1970. All other sums which Tenant is required to pay hereunder shall be payable to Sublandlord as additional rent.

3.3 Tenant shall pay or reimburse Sublandlord for the payment of (i) all utility charges for utility services rendered to the subleased premises and (ii) all taxes or benefit assessments levied by any governmental authority with respect to the Subleased Premises and the improvements thereon.

#### ARTICLE IV

##### Use of Premises

4.1 The demised premises and all rights of use or access by Tenant as provided in this Lease shall be used by Tenant exclusively for the handling, storage and servicing of motor vehicles imported through the Port of Baltimore and for the handling and storing of parts for such motor vehicles.

4.2 Tenant shall have the right to construct at its own cost and expense on the leased premises, one (1) or more buildings or to alter or reconstruct existing buildings, the plans and specifications of which shall be subject to approval by Sublandlord and the Director of Engineering of the Authority.

4.3 Tenant shall use the leased premises and facilities for the purposes herein described and in no case shall

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4.4 Tenant shall comply at all times in every respect with any and all Federal, State, Authority and municipal laws, ordinances, rules, regulations, orders and notices now or hereafter in force or effect which may be applicable to the use of the leased premises and the buildings and improvements thereon in the same manner and to the same extent as if Tenant were the owner of the subleased premises and improvements thereon. Tenant shall not commit any waste on the leased premises.

ARTICLE V

Ownership and Maintenance

5.1 Any and all improvements, structures or facilities constructed or erected by Landlord, Sublandlord or Authority on the subleased premises shall be and continue to be owned by Landlord, Sublandlord or Authority, as the case may be.

5.2 Any and all buildings, fixtures, machinery or equipment installed or erected by Tenant upon the subleased premises at Tenant's expense shall be owned by Tenant and may be removed by it at its expense upon the termination of this Sublease provided that Tenant is not then in default under the terms and provisions of this Sublease. In the event that Tenant elects to remove the same, it shall notify Sublandlord of such election prior to such termination and shall have seventy-five (75) days after such termination within which to remove the same provided it agrees in writing to pay monthly in advance a sum of money equal to the monthly payments of rent payable hereunder during the term which was terminated. In the event that Tenant does not elect to remove the said buildings, fixtures, machinery and equipment, then

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consideration therefor. In the event of removal, Tenant shall restore the leased premises except plings, to the condition they were in prior to the installation or erection thereof and shall surrender possession of the subleased premises in a neat and orderly condition, ordinary wear and tear excepted.

5.3 Nothing contained herein shall authorize or be construed to authorize Tenant to perform or fail to perform any act which may in any wise encumber or change any of the rights, title or interest of the Landlord, Sublandlord or the Authority in and to any and all such property, and Tenant shall not at any time or in any way do or fail to do any act or thing which shall in any way encumber any of the rights, title or interest of such parties in the subleased premises or subject the estate of such parties therein to any claim by way of lien or encumbrance, whether granted by operation of law or by virtue of expressed or implied contract of Tenant, and any claim to a lien thereupon arising from any act or omission of Tenant shall accrue only against the interest and estate which Tenant may have under the terms and provisions of this Lease.

5.4 Tenant shall at its sole cost and expense during the entire term of this Sublease keep the demised premises and improvements thereon and all parts thereof in good condition and repair, both inside and outside, to the end that the demised premises are at all times maintained in a condition comparable to that existing upon the date of the commencement of this Lease. Upon termination of this Lease or any renewal thereof, the

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without accumulation of debris or trash. All paved areas shall be maintained in good order and repair and in a swept condition.

5.6 In the event Tenant at any time refuses, neglects or fails to perform any of its obligations contained in this Article V Sublandlord may, at its option, perform such obligations or cause them to be performed, and all amounts of money expended by the Sublandlord in connection therewith shall be paid by Tenant to Sublandlord as additional rent on demand.

#### ARTICLE VI

#### Indemnity and Insurance

6.1 As used herein the term "Indemnitees" includes Landlord, Sublandlord, the Authority and any mortgagee of the subleased premises. Tenant shall pay, indemnify and save harmless Indemnitees, their agents and employees, from all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which the Indemnitees, their agents and employees, may be subject by reason of injury to or death of persons or damage to property of any person, firm, or corporation whatsoever resulting from, in connection with or growing out of any act of commission or omission of Tenant, its agents or employees, assignees, sublessees, contractors or sub-contractors on or about the leased premises or any improvements thereon, or any part thereof, during the entire term of this Sublease, unless solely caused by the negligence of Indemnitees (or any of them) regardless of whether such suits, actions, claims, damages, losses, expenses or costs be against or sustained by Indemnitees, their agents or employees may become liable. If requested by Indemnitees Tenant will undertake to defend, at its sole cost and expense.

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6.2 Tenant shall at all times during the term of this Sublease maintain such workmen's compensation or employer's liability insurance as may be required by law and shall indemnify and hold harmless the Indemnitees against any loss, claim or demand of employees, agents, contractors and sub-contractors of Tenant.

6.3 Tenant shall also maintain at its expense, and furnish the Indemnitees with, at all times during the term of this Sublease, a liability insurance policy or policies issued by a responsible company or companies and in such form as are satisfactory to the Indemnitees for the protection of the Indemnitees and Tenant against any claims, suits, demands, or judgments by reason or personal injury including death, and for any claims of damage to property, occurring on or in proximity to the subleased premises or arising out of or as a result of the occupancy thereof by Tenant. Such liability insurance shall provide limits of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage, Two Hundred Thousand Dollars (\$200,000.00) in the event of injury or death of one (1) person, and Five Hundred Thousand Dollars (\$500,000.00) in the event of injury or death of more than one (1) person, in any one (1) occurrence.

The limits of insurance established herein shall be subject to increase upon request of the Sublandlord in the event that future circumstances indicate their inadequacy, to the end that the limits of the same shall remain reasonable and prudent in view of the risks.

6.4 Tenant shall at all times during the term of this

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The proceeds of such insurance shall be payable to Indemnitees and Tenant, as their interests may appear.

In the event of fire or other casualty covered by insurance, the proceeds of all such insurance shall be used by Tenant to repair or replace the buildings; provided, however, that if the proceeds of insurance are insufficient for such purpose, then at the option of Tenant, this sublease may be terminated or may be continued in full force and effect, and, if so continued Tenant shall promptly repair or replace the buildings to the condition in which they were before such fire or other casualty. In the event of any such termination, Tenant agrees to remove all debris and to restore the subleased premises to its condition prior to the erection and construction of such building or buildings, except pilings. The unexpended insurance proceeds shall be paid over to Tenant.

6.5 Tenant covenants that it will not do or permit to be done by its officers, employees, agents or invitees, on or about or in proximity of the subleased premises, improvements and facilities any act or thing which will invalidate Tenant's fire, casualty, liability or other insurance policies or violate the terms thereof.

6.6 All insurance policies required by this Sublease shall provide that they cannot be cancelled or terminated until after at least thirty (30) days prior written notice has been given to the Indemnitees. All insurance policies or appropriate endorsements required to be procured by Tenant hereunder shall be subject to approval by the Indemnitees and certificates thereof

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and maintain in full force and effect any and all of the insurance required under the terms and provisions of this Sublease, the Sublandlord at its option may procure or renew such insurance and all amounts of money expended by the Sublandlord in connection therewith shall be paid by Tenant to the Sublandlord as additional rent on the next rent payment date.

6.7 Tenant shall promptly pay any and all costs and expenses and all judgments and decrees which may be incurred by or obtained against the Sublandlord from time to time, (a) in enforcing the covenants, terms or provisions of this Sublease, (b) in obtaining possession, as the result of any default by Tenant or otherwise, of the subleased premises, (c) in defending any suit or suits or proceeding brought against the Sublandlord for the violation by Tenant of any present or future law, ordinance, rule or regulation or (d) in defending any action or suit for damages because of any failure, neglect or default on the part of Tenant in respect to any obligation herein contained on its part to be kept and performed. If the Indemnites, or any of them, shall, without fault on their part, be made party to any litigation in respect to any matter directly or indirectly growing out of this Sublease or any renewal thereof, or relating to the demised premises, and Tenant is at fault, Tenant shall pay all judgments, decrees and costs incurred by or imposed upon the Indemnites in connection therewith. All such judgments, decrees and reasonable costs when paid by the Indemnites shall become due and payable immediately by Tenant as additional rent.

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for any cause or reason, at any time to perform, observe or comply with any of the terms, covenants, provisions and conditions of this Sublease; (iii) abandonment by Tenant of all or a portion of the Subleased Premises provided that non-use of a portion of the same which may not be needed for the operation of Tenant's business shall not be construed as an "abandonment"; (iv) the appointment of a receiver or liquidator of the Subleased Premises or any part thereof or of Tenant, its assets or any part thereof, or if Tenant shall be adjudicated a bankrupt or shall be insolvent, or if Tenant shall file a voluntary petition under the Federal Bankruptcy Act or any Chapter thereof, or make an assignment for the benefit of creditors or admit in writing its inability to pay its debts generally as they become due; (v) the assignment of this Sublease, the Subleased Premises or any portion thereof, or the sublease of the Subleased Premises or any portion thereof without the written consent of Sublandlord.

7.2 In the event Tenant defaults by failure to pay any installment of rent within seven (7) days from the due date thereof, or by abandonment of all or any part of the demised premises, Sublandlord, without demand or notice, shall have the rights hereinafter set forth. In the event of any other default, and such default be not corrected or cured within twenty (20) days after written notice thereof from Sublandlord to Tenant, Sublandlord shall have the rights hereinafter set forth.

7.3 In the event of any default continuing in excess of the stated, applicable period, Sublandlord shall have the

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terms approved by it, and in the event of such reletting Tenant shall remain liable to Sublandlord for the rentals payable hereunder for the balance of the term less such amounts as may actually be received by Sublandlord as a result of such reletting.

7.4 Upon the termination of this Sublease by the expiration of the term hereof or by the exercise by Sublandlord of any of its rights hereunder, the right, title and interest of Tenant any any person, firm, corporation, receiver or trustee claiming by, through or under it shall be terminated, and the Sublandlord shall have the right and authority to enter and take full possession of the subleased premises by force or otherwise without notice and with or without legal process to effect the removal of any parties who may occupy any part of said subleased premises. Further, in the event of any such termination, each and all of Tenant's alterations, structures, improvements and equipment installed, constructed or placed on the subleased premises shall be and become the absolute property of the Sublandlord without the payment of any consideration therefor; provided, however, that if such termination occurs upon the termination of this Sublease and Tenant is not then in default, Tenant may remove its tangible personal property on or about the subleased premises and any and all fixtures or equipment installed by it at its expense as specified hereinbefore. Such items of tangible personal property, fixtures and equipment shall be removed by Tenant at its expense upon request of Sublandlord.

ARTICLE VIII

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conditions of this sublease whether before or after any suit or judgment has been filed or obtained in connection with any of the provisions of this sublease, shall not be construed to be a waiver of any other terms, covenants, provisions and conditions of this sublease or a waiver of any breach or default other than that specifically waived. The acceptance at any time and under any conditions or circumstances of any sum or sums of money paid by Tenant to Sublandlord after any breach or default by Tenant of any one or more of the terms, covenants, provisions, and conditions of this sublease shall not constitute a waiver of any such breach or default; provided, however, that where such default consists of the non-payment of any sum or sums of money due by Tenant to Sublandlord under the terms and provisions of this sublease and Tenant pays such amount in default in full and Sublandlord accepts such payment without reservation, such acceptance shall constitute a waiver of such breach or default.

8.2 It is understood and agreed that nothing contained in this sublease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of a joint venture, between the parties hereto or as constituting either party as the agent or representative of the other, for any purpose or in any manner whatsoever.

8.3 Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto by or under the terms and provisions of this sublease shall be taken and construed to be cumulative and the mention of any specific duty, liability or obligation, imposed upon or assumed by either party

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8.4 All remedies provided in this sublease shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided herein.

8.5 This sublease shall be taken and deemed to have been fully made and executed by the parties hereto in the State of Maryland for all purposes and intents, and shall be deemed to be the entire agreement of the parties hereto, superseding all prior agreements.

8.6 Notices provided for herein to the Sublandlord shall be sent by registered or certified mail, postage prepaid, to 225 E. Redwood Street, Baltimore, Maryland 21202 and notices to Tenant shall be sent by registered or certified mail, postage prepaid to 2700 Broening Highway, Baltimore, Maryland 21222 or to such other respective addresses as the parties may designate in writing from time to time.

IN WITNESS WHEREOF, the parties have caused this Sublease to be executed in their names and on their behalf by their duly authorized officers and their corporate seals to be hereunto affixed and duly attested by their Secretaries, all as of the day and year first hereinabove written.

Attest:

*Ruth N. Jorg*

DOCKSIDE STORAGE COMPANY, INC.

By: *H. G. Hobelmann*

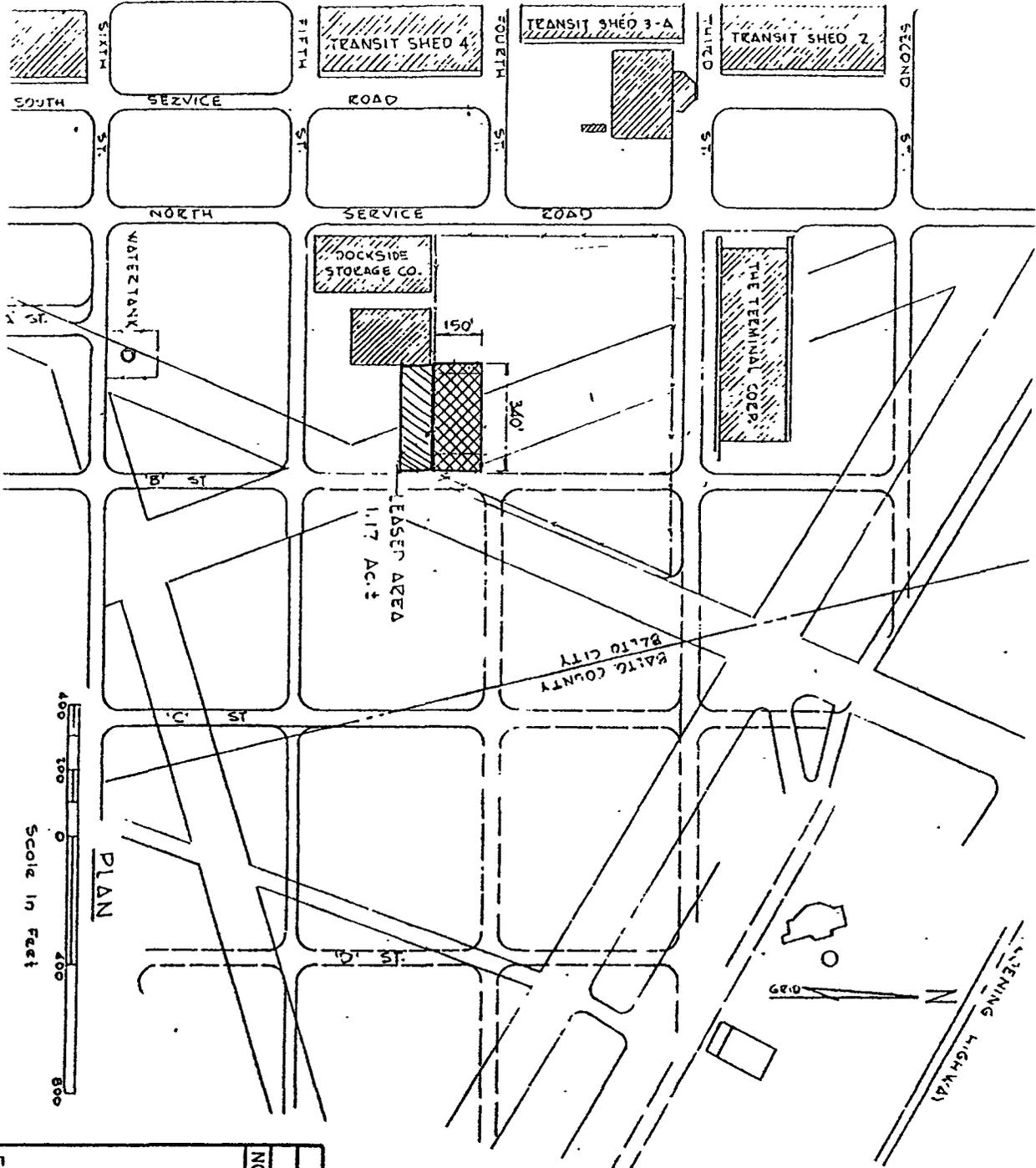
*Mrs. Betty Smith*

H. G. HOBELMANN & COMPANY, INC.

By: *H. G. Hobelmann*



7-17-47

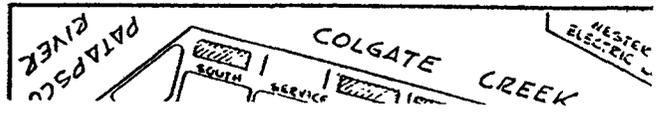


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R.  
EXHIBIT



8/8/79

SUBLEASE AMENDMENT

THIS SUBLEASE AMENDMENT, made this 23<sup>rd</sup> day of August, 1979, by and between VWI MANAGEMENT COMPANY, a Missouri corporation (hereinafter called "Landlord"), successor by merger to Dockside Storage Company, Inc., and Hobelmann Port Services, Inc., a Maryland corporation (hereinafter called "Sublandlord") and HARBOR ENTERPRISES, INC., a Maryland corporation (hereinafter called "Tenant").

WHEREAS, by Sublease and Agreement made as of October 1, 1970 (the "Sublease") Tenant is Sublessee of a strip of land 100 feet by 332 feet in dimension (erroneously described as 100 feet by 340 feet in the Sublease) which is situate at the northeast corner of a 6.617 acre parcel of land Landlord leases from Maryland Port Administration (hereinafter called MPA); and

WHEREAS, the parties desire to amend the Sublease and Agreement as hereinafter set forth, such Amendment is to be effective as of the date hereof.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Sublease is hereby amended as follows, all amendments to be effective as of the date hereof.

(a) The following new Section 2.1.1 is added to the Sublease:

"There is reserved unto Landlord and Sublandlord the right to use, in common with Tenant, for ingress and egress to the remaining part of the 6.617 acres, (but not for the storage or parking of vehicles) that portion of the Subleased Premises shaded in green on Exhibit 1 attached hereto."

(b) The following new Section 3.1.1 is added to the Sublease:

"3.1.1 Tenant shall have the right and option to extend the term hereof for an

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additional term of eleven years, nine months or through June 30, 1995, and Tenant shall have the further additional right and option, if it exercises the first option herein mentioned, to renew the term for an additional term of ten years or through June 30, 2005. Each renewal option shall be on the same terms, covenants and conditions as the original term and each option is to be exercised by Tenant giving written notice thereof to Landlord and Sublandlord at least one hundred fifty (150) days prior to the end of the initial term, or the first renewal term, as the case may be. Sublandlord hereby agrees that, promptly upon exercise by Tenant of any of the renewal options, it shall exercise its option and extend the terms of the Hobelmann Sublease."

(c) Section 3.2 of the Sublease is amended to read as follows:

"As rental for the Subleased premises, Tenant shall pay to Sublandlord an annual rent computed at the same rate per square foot that is used to compute the rent Landlord pays MPA under the Main Lease. Rent, computed as aforesaid, shall be paid during the term and any renewals or extension thereof in equal monthly installments, in advance, on the first day of each calendar month, without demand and without abatement, deduction or set off, except as herein provided."

(d) Section 4.2 of the Sublease is amended by removing the words "Sublandlord and" from the last line thereof.

(e) Section 5.2 of the Sublease is amended by adding the following at the end thereof:

"Notwithstanding anything contained in this Section 5.2, if Tenant exercises its renewal options and the term hereof ends June 30, 2005 said buildings, fixtures, machinery and equipment shall become the property of MPA if Tenant elects not to remove same."

(f) The following new Section 5.7 is added to the Sublease:

"5.7 This Sublease and Tenant's rights hereunder shall, at the option of the holder of any mortgage or deed of trust now existing or hereafter placed upon the Subleased Premises, be subject and subordinate to the lien, legal operation and effect of any such mortgage or deed of trust, ~~and upon request of any such holder, Tenant shall execute and deliver~~ an appropriate subordination agreement, so-

\* provided that said holder and tenant

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which  
~~long as that agreement~~ (i) provides that Tenant's possession of the Subleased Premises, pursuant to this Sublease Agreement, shall not be disturbed so long as Tenant is not in default hereunder and (ii) requires Tenant to attorn to any such holder or to any purchaser at a foreclosure sale under any such mortgage or deed of trust."

(g) Section 7.1 of the Sublease is amended by removing the word "Sublandlord" from the last line thereof and replacing it with "MPA".

(h) Section 8.6 of the Sublease is amended to read as follows:

"8.6 Notices provided for herein to Landlord and Sublandlord be sent by registered or certified mail, postage prepaid, c/o Hobelmann Port Services, Inc., 1344 The World Trade Center, Baltimore, Maryland 21202, and notices to Tenant shall be sent by registered or certified mail, postage prepaid, to Harbor Enterprises, Inc., c/o Mr. James Robinson, 2700 Broening Highway, Baltimore, Maryland 21222; copy to John A. Scaldara, Esquire, 6th Floor, Sun Life Building, Baltimore, Maryland 21201, or to such other respective addresses as the parties may designate in writing from time to time."

(i) The following new Section 8.7 is added to the Sublease:

"8.7 If the Subleased Premises is condemned in whole or in part, this Sublease shall terminate as to the part condemned and Tenant shall be entitled to that portion of the condemnation award attributable to the buildings, fixtures, machinery and equipment installed or erected at Tenant's expense, and Tenant shall also be entitled to that portion of the condemnation award attributable to the term of its sublease and the renewals."

2. Except as modified by this Sublease Amendment the Sublease and Agreement and all the terms, covenants and conditions contained therein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease Amendment to be executed as of the day and year first above written.

8/8/79

ATTEST:

[Signature]  
ASST Sec.

VWI MANAGEMENT COMPANY

BY: [Signature] (SEAL)  
President

HOBELMANN PORT SERVICES, INC.

[Signature]  
ASST Sec.

BY: [Signature] (SEAL)  
President

HARBOR ENTERPRISES, INC.

[Signature]  
Sec

BY: [Signature] (SEAL)  
President

**APS NORTH TERMINAL, INC.**  
9240 Blount Island Boulevard  
Jacksonville, Florida 32226

March 31, 2005

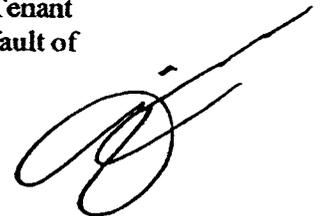
Premier Automotive Services, Inc.  
2700 Broening Highway  
Baltimore, Maryland 21222

RE: Sublease of property at Dundalk Marine Terminal

Gentlemen:

APS North Terminal, Inc. ("Sublandlord") is the tenant respecting certain property in the Dundalk Marine Terminal, pursuant to a lease from the Maryland Port Administration (the "Main Lease"). Premier Automotive Services, Inc. ("Tenant") occupies and owns buildings located on approximately 2.6 acres of the property leased by Sublandlord under the Main Lease, and a portion of one of Tenant's buildings encroaches on other property leased by Sublandlord under the Main Lease. Tenant desires to sublease from Sublandlord such 2.6 acres of property and such encroachment area (collectively, the "Subleased Premises"). The purpose of this letter is to set forth the basic terms of such a sublease arrangement (the "Sublease"). Such terms are as follows:

1. **Subleased Property.** The property subject to the Sublease will be the 2.6 acres and the encroachment area mentioned above (the "Subleased Premises").
2. **Term of Sublease.** The term of the sublease will be three years, commencing April 1, 2005.
3. **Rent under Sublease.** The rent to be paid under the Sublease shall be a prorata portion of the amount of rent payable by Sublandlord under the Main Lease based upon the area of the Subleased Premises, as adjusted from time to time in accordance with the terms of the Main Lease.
4. **Tenant Responsibilities.** Tenant shall be responsible for maintenance of the Subleased Premises and the improvements and for insuring the same respecting casualty and liability.
5. **Additional Payments.** In addition to the rent under the Sublease, Tenant shall pay to Sublandlord \$35,000 on the commencement date of the Sublease, and \$25,000 on each of the first, second and third anniversaries of such commencement date (collectively, the "Additional Payments"). Tenant's failure to make any of the Additional Payments shall be a default under the Sublease. Provided that Tenant shall make all of the Additional Payments when due and shall not be in default of



its obligations under the Sublease upon the expiration of the term thereof, then Sublandlord shall notify MPA, promptly following the receipt of the last of the Additional Payments, that Tenant has satisfied its obligations (the "Sublandlord Notice").

6. Related Agreement with MPA. Tenant and Sublandlord shall use commercially reasonable efforts to cause MPA to enter into an agreement whereby MPA shall agree that, upon MPA's receipt of the Sublandlord Notice, MPA shall enter into a lease directly with Tenant for the Subleased Premises under terms substantially the same as the terms of the Main Lease, whereupon the Subleased Premises shall no longer be a part of the property leased by Sublandlord under the Main Lease, and the rent under the Main Lease shall be reduced proportionally.
  
7. Release. The Sublease shall contain the following releases: (i) a release by Tenant of Sublandlord, its Affiliates (hereinafter defined) and their respective officers, directors, members and other principals of any claims of Tenant related to the Subleased Premises, except for any claims arising under the Sublease; and (ii) a release by Sublandlord of Tenant, its Affiliates and their respective officers, directors, members and other principals of any claims of Sublandlord related to the Subleased Premises, except for claims arising under the Sublease. The term "Affiliate" means any person or entity controlling, controlled by, or under common control with, Tenant or Sublandlord, as the case may be.
  
8. Preparation of Agreements. The agreements of the parties set forth herein are subject to and contingent upon the preparation and execution of the Sublease and all related documents.

If the foregoing represents your understanding of our agreements, please countersign one copy of this letter and return it to the undersigned.

Very truly yours,

APS North Terminal, Inc.

By: Stephen W. Taylor  
Name: Stephen W. Taylor  
Title: CFO

AGREED TO AND ACKNOWLEDGED  
THIS 31<sup>st</sup> DAY OF March, 2005

Premier Automotive Services, Inc.

By: James G. Robinson  
Name: James G. Robinson  
Title: C.E.O.

**AGREEMENT & LEASE  
BETWEEN  
THE MARYLAND PORT ADMINISTRATION  
AND  
APS NORTH TERMINAL, INC.**

THIS AGREEMENT & LEASE is made and entered into this 15<sup>th</sup> day of February, 2005, by and between the MARYLAND PORT ADMINISTRATION, an instrumentality of the Maryland Department of Transportation ("MDOT") (hereinafter referred to as "MPA"), and APS NORTH TERMINAL, INC., a Maryland corporation, whose address is 3001 Childs Street, Baltimore, Maryland 21226 (hereinafter referred to as "APS").

WHEREAS, APS NORTH TERMINALS, INC. has a current lease at the Dundalk Marine Terminal, being identified as LR #21710 effective February 1, 2001 for 74 acres of land covering Areas 202 (partial), 301, 302, 303, 304 (partial), 401, 402, 403 and 404 (partial), as amended by First Amendment to Lease for additional acreage of 9.7 acres in Areas 304 and 404 and 9.5 acres in Areas 102, 201 and 202; and

WHEREAS, MPA desires to have APS relocate part of their premises in order to accommodate additional business.

WHEREAS, the parties agree that upon the execution of this AGREEMENT & LEASE the above referenced lease shall terminate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth to be kept and performed by the parties, MPA and APS hereby agree as follows:

**1.0 BASIC PROVISIONS:**

**1.1 Term.** The term of the AGREEMENT & LEASE shall be for ten (10) years beginning on April 1, 2005 ("Term"). The first "Lease Year" shall commence on the Effective Date and shall end at the close of one (1) calendar year following the Effective Date; thereafter each Lease Year shall consist of successive periods of one (1) calendar year.

**1.1.1 Renewal Option.** Provided APS has complied with all of the terms of this AGREEMENT & LEASE, is not in default hereunder, APS shall have the option to renew this AGREEMENT & LEASE for two (2) additional periods of five (5) consecutive Lease Years ("Renewal Period") at the same terms and conditions.

In order to exercise the option, APS shall provide MPA with at least one hundred eighty (180) days' written notice, prior to expiration of the Term, of its intent to renew. Failure by APS to so notify MPA timely shall be considered a forfeiture by APS of this option to renew.

**1.2 Premises.** MPA leases to APS and APS rents from MPA, parcels of land in Areas 91 (partial), 93, 94, 95, 95B, 102, 201, 202, 301 302, 401 and 402 comprising of approximately seventy-five and one tenth (75.10) acres in total with certain improvements thereon, including approximately twenty-six thousand four hundred (26,400) square feet of building space in Shed 301A ("buildings"), located at Dundalk Marine Terminal ("DMT") in Baltimore City, Maryland, as more fully identified and described as "Premises" on Exhibit "A" attached hereto. APS accepts the Premises in the condition "as is". MPA gives no warranties as to the condition of the Premises or its suitability for APS's operations at the Premises.

**1.2.1 Buildings & Improvements.** MPA recognizes that APS owns two (2) buildings and improvements within the Premises described as a large metal framed building consisting of approximately 64,800 sq. ft. and a smaller metal framed building consisting of approximately 43,200 sq. ft. located in area 401. APS agrees that at the expiration of this AGREEMENT & LEASE it will convey these two (2) buildings and all improvements and fixtures to MPA free and clear of all liens and encumbrances without the payment by MPA of any consideration therefore.

**1.2.2 Additional Acreage.** When and if the 1.2 acres currently leased by Premier Auto Services in Lot 401 becomes available ("Additional Acreage") MPA shall provide APS with written notice that the Additional Acreage has become available. The rental rate for the Additional Acreage shall be according to the prevailing MPA Rate Schedule. Within fifteen (15) business days of receipt by APS of the written notice ("Additional Acreage Effective Date") and provided that APS is not then in default of this AGREEMENT & LEASE, APS shall lease the Additional Acreage under the following conditions:

- a) Except as otherwise specifically provided herein, the leasing of the Additional Acreage shall be subject to all the terms and conditions of this AGREEMENT & LEASE.
- b) APS shall provide a minimum guarantee of 1,700 vehicles per paved acre or fraction thereof through the remainder of this AGREEMENT & LEASE.
- c) This AGREEMENT & LEASE shall be amended in writing to document the lease of the Additional Acreage.

**1.3 MPA Terminal Services Schedule.** Where applicable the prevailing MPA Terminal Services Schedule filed with the Federal Maritime Commission, posted on the Internet ([www.mpa.state.md.us](http://www.mpa.state.md.us)), or otherwise published in any other required form, or any successor or replacement tariff, schedule or other similar document, published or promulgated by MPA pursuant to Federal, State or other applicable laws ("Schedule"), is hereby incorporated by reference into this AGREEMENT & LEASE as if set forth at length and such shall govern and control this AGREEMENT & LEASE except where same conflicts with this AGREEMENT & LEASE. In such event this AGREEMENT & LEASE shall prevail.

**1.4 Ingress and Egress.** MPA and APS understand and agree that it is MPA's intention to utilize properties contiguous to the Premises. Accordingly, APS expressly agrees that it shall coordinate with MPA or MPA's designate so that free and unencumbered ingress and egress will be allowed to MPA or its designate in transiting across the Premises in order for MPA and its designate to utilize the aforementioned contiguous properties. The location of ingress and egress shall be mutually agreed to by MPA and APS and neither party will unreasonably withhold consent as to the original location of ingress and egress or subsequent changes thereto.

**1.5 Relocation.** At any time during the Term, MPA shall have the right and option, at MPA's sole discretion, to relocate the Premises or any portion thereof, to a comparable facility with similar berth access within the Dundalk Marine Terminal. MPA shall give APS one hundred eighty (180) days written notice of its intent to relocate the Premises. Within thirty (30) days of the expiration of the aforesaid notice period, MPA and APS shall execute and deliver an amendment to the AGREEMENT & LEASE which shall substitute (or add) a description of the premises for (or to) the description of the Premises; otherwise all of the terms and conditions of this Lease shall be applicable to APS' occupancy of the new Premises. The relocation of the Premises shall be at MPA's

sole cost and expense.

## **2.0 USE OF PREMISES/APPURTENANTS RIGHTS/RESERVED RIGHTS:**

### **2.1 Use of Premises:**

a) **Import/Export Vehicles.** APS shall use the Premises for receiving, processing and distribution of motor, commercial, and industrial vehicles, parts and accessories. APS shall use the Premises primarily for vehicles having a prior or subsequent international waterborne movement over an MPA pier, berth or wharf ("Import/Export Vehicles") subject to Section 2.1 (b).

b) **Domestic Vehicles.** APS may use the Premises to receive, process and distribute vehicles not having a prior or subsequent international movement over an MPA pier, berth or wharf ("Domestic Vehicles"), provided that, without the written approval of MPA, the total number of such Domestic Vehicles shall not exceed fifteen (15%) percent of the annual Minimum Guarantee of vehicles received, processed or distributed by APS at the Premises during any Lease Year.

c) **Vehicle Guarantee.** APS guarantees MPA that it will receive, process and distribute a minimum of 1,700 vehicles per acre of useable vehicle storage area of the Premises (not including the area under and around the Pre-Existing Buildings), per Lease Year. The useable vehicle storage area of the Premises is sixty (60) acres out of the total seventy-five and one tenth (75.10) acre Premises. The vehicle guarantee shall, therefore, amount to a minimum of One Hundred Two Thousand (102,000) vehicles per Lease Year and One Million Twenty Thousand vehicles for the ten (10) year Term ("Minimum Guarantee"). Vehicles being handled by APS which are counted towards a minimum guarantee existing in a separate agreement, whether between MPA and a third party, between MPA and APS, or otherwise, can not be counted towards the Minimum Guarantee in this AGREEMENT & LEASE. APS understands that the Minimum Guarantee in this AGREEMENT & LEASE applies and is distinct to this AGREEMENT & LEASE only.

d) Domestic Vehicles shall not count toward the Minimum Guarantee and are subject to the vehicle surcharge in MPA Schedule of Rates.

**2.2 Labor Peace and Harmony.** APS shall conduct its operations at the Premises in a manner promoting peace and harmony in the commercial community in which it operates with due respect to the rights and privileges of others who work in and about that community. APS shall not engage in any activity, which works to

destroy any labor harmony in the Port of Baltimore. MPA will use its best efforts to promote other tenants of MPA to conduct their operations in a manner promoting peace and harmony in the commercial sector.

2.3 MPA's Reserved Rights with Respect to the Premises. MPA reserves the right to locate, construct, install and maintain sewers and any other utilities upon and across the Premises provided the locations and construction do not unreasonably interfere with APS' use of the Premises.

### 3.0 RENT AND RENTAL PAYMENTS:

3.1 Rental Payment Schedule. Beginning on the Effective Date, APS shall pay to MPA as rental a facility use fee of One Hundred Forty-seven Thousand Eight Hundred three Dollars and Thirty-three Cents (\$147,803.33) per calendar month for the Premises and improvements. (The current land rental charge is \$22,000 per acre per Lease Year and the current improvement rental charge is \$4.60 per square foot per Lease Year). The facility use fee includes the use of MPA's shed.

3.2 The facility use fee for each calendar month shall be paid to the MPA without abatement (except as otherwise specifically provided in this AGREEMENT & LEASE), deduction or set off in advance on or before the first day of each and every month that this AGREEMENT & LEASE continues in effect ("monthly rental days") and shall be payable at such place as MPA may hereinafter designate. APS and MPA further understand and agree that in Lease Years two (2) through ten (10) and all renewal periods, MPA will adjust the facility use fee annually for the cumulative change in the Consumer Price Index, All Urban Consumers for the Baltimore area, as published by the U.S. Department of Labor (CPI-U). This yearly adjustment will be applied at the beginning of each Lease Year.

3.3 In consideration of APS' long term commitment to provide auto processing at Maryland's Port of Baltimore and APS' relocation of Premises, MPA agrees to provide APS a monthly waiver in the first two (2) Contract Years of this AGREEMENT & LEASE for Rental Payments pursuant to this Agreement in the amount of Ten Thousand Four Hundred Sixteen Dollars and Sixty-seven cents (\$10,416.67).

3.4 Additional Rental. APS agrees to repay MPA for the balance of costs incurred by MPA for the fencing of areas 102, 201 and 202 in the amount of Three Hundred Twelve Dollars and Sixty-seven cents (\$312.67) per month for seventy (70) months. Should APS default in any way, in any of the terms and conditions of this AGREEMENT & LEASE APS shall be liable to pay and shall immediately pay to MPA in a

lump sum, an amount equal to the unamortized improvements Costs.

3.5 Shortfall. In the event APS does not meet its Minimum Guarantee, APS shall become liable for such shortfall and shall pay to MPA as liquidated damages and not as a penalty, a "shortfall charge" equal to \$5.48 per vehicle times the number of vehicles necessary to bring APS volumes up to the Minimum Guarantee. Said shortfall payments shall be made at the conclusion of the Lease Year after such has been billed by MPA, subject to Section 2.1.c.

4.0 INTENTIONALLY LEFT BLANK.

5.0 MAINTENANCE:

5.1 Maintenance Obligations.

(a) APS shall, at its sole cost and expense, repair, replace and maintain in good condition the Premises and every part thereof, including the buildings and equipment located therein, whether installed and/or owned by MPA or APS and shall perform all such items of repair, maintenance, alterations or improvements as may from time to time be required by a governmental body or agency having jurisdiction thereof. APS shall keep the Premises and all areas thereof clean and orderly.

(b) MPA shall have the responsibility to remedy any inherent defects in the structural members of the portions of the Premises constructed by it, or any other defects in the Premises which defects are proximately caused by inherent defects in or deterioration of said structural members and in no way caused by the operation of APS.

(c) MPA shall only be responsible for any of the aforementioned maintenance and repairs upon receipt of written notice from APS specifying the work to be performed. MPA will respond and complete work in a timely fashion upon receipt of written notice and inspection.

(d) MPA will maintain new light fixtures installed by MPA; however APS is responsible for light bulb replacement.

(e) MPA shall be responsible for any fencing or traffic control needed in connection with the temporary truck entrance or cruise entrance.

5.2 Alterations & Improvements. APS shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures

that can be removed without injury to the Premises) without first obtaining written approval from MPA, which approval shall not be unreasonably withheld. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures that can be removed without injury to the Premises) installed by APS, such alterations, improvements or fixtures shall, upon request of MPA, be removed promptly by APS at APS' expense and the Premises restored to their original condition upon the expiration or sooner termination of this AGREEMENT & LEASE. If APS is not so instructed to remove said alterations, improvements or fixtures, the same shall become the property of MPA without MPA paying any compensation therefor. Moveable furniture and trade fixtures that are removable without injury to the Premises shall be and remain the property of APS but must be promptly removed at the termination of this AGREEMENT & LEASE.

5.3 APS' Obligations to MPA Property. APS shall be solely responsible to MPA for loss or theft of or damage to any and all real and personal property, equipment and fixtures belonging to MPA and any improvements thereon, or for which MPA is responsible, for the Premises only, unless such loss, theft or damage is caused by MPA or its employees and except for moveable items that are placed on the Premises without APS' knowledge.

5.4 Inspection by MPA. MPA shall have the right, at reasonable times and upon reasonable prior notice, to inspect the Premises in order to determine what maintenance or repairs, if any, are necessary.

5.5 Pre and Post Inspections. MPA and APS shall conduct a pre-inspection of the Premises and improvements thereon at the beginning of the Term. MPA and APS will also conduct a post inspection of the Premises and improvements thereon which will serve as the basis of APS' restoration responsibilities as set forth in Section 10.0 "Termination".

## 6.0 APS' ADDITIONAL RESPONSIBILITIES:

6.1 Utilities & Maintenance. Except as otherwise provided herein, APS shall contract and pay for all utility or maintenance services provided to the Premises, including water, gas, electricity, telephone, sewage, janitorial, snow removal and other maintenance services.

6.2 Security of Premises. APS shall assume complete responsibility for security of the Premises, and the facility improvements, buildings and property located thereon and therein. MPA assumes no responsibility to APS for the security of the Premises, but

reserves the right to police the use of the Premises as to fire or other hazard without assuming responsibility or obligation in connection therewith.

6.3 Liens and Encumbrances. APS shall keep the Premises free and clear of all liens and encumbrances arising from its use and occupancy of the Premises.

6.4 Qualification to do Business in Maryland. At all times during the Term APS is and shall continue to be legally qualified to do business in the State of Maryland.

6.5 Signs. Signs or placards of an advertising or promotional nature may not be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of MPA.

6.6 Rules, Regulations and Laws. APS agrees to comply with all applicable rules and regulations or ordinances of MPA pertaining to the Premises or any buildings or other structures located thereon for the general safety and convenience of MPA, MPA's tenants, invitees, licensees and the general public. APS further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. APS further agrees to indemnify, defend and hold harmless MPA, its agents and employees from any liability or penalty which may be imposed upon MPA by governmental authority by reason of any violation by APS or its agents.

## 7.0 LIABILITY, RESPONSIBILITIES, INDEMNITY & INSURANCE:

7.1 Liability. MPA shall not be liable to APS for any loss, injury or damage to APS or APS' property from any cause unless such cause is due to MPA negligence.

### 7.2 Environmental Responsibilities.

(a) APS' Responsibilities. APS shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to APS' performance of its obligations pursuant to this AGREEMENT & LEASE and/or APS' use and occupancy of the Premises (hereinafter referred to as "Environmental Standards"). APS shall establish and maintain a program of compliance with all applicable Environmental Standards. APS shall monitor its compliance with Environmental Standards and immediately halt and correct any incident of non-compliance.

(b) Non-Compliance. In the event of any incident of non-compliance with Environmental Standards, APS shall:

(1) Give MPA immediate notice of the incident, providing as much detail as possible;

(2) As soon as possible submit a written report to MPA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and,

(3) Cooperate with MPA or its designated agents or contractors with respect to the investigation of such problem.

(c) APS' Liability for Non-Compliance. APS shall be liable for all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards.

### 7.3 Insurance & Indemnity.

(a) APS agrees to indemnify, protect, defend and save harmless MPA, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which MPA, its agents or employees may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation by reason of negligence of APS or its officers, agents or employees, contractors, sub-contractors, invitees and licensees, unless caused by the negligence of MPA, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by MPA, its agents and employees or be against or sustained by others to whom MPA, its agents or employees, may become liable.

(b) APS shall at all times during the Term of this AGREEMENT & LEASE, maintain such worker's compensation or employer's liability insurance as may be required by law.

(c) APS shall also maintain at its expense, general liability insurance with minimum limits of \$5,000,000. per occurrence and \$5,000,000 per aggregate for bodily injury and property damage and \$500,000 (any one fire) for Fire Legal Liability for the protection of MPA and APS against any claims, suits, demands, or judgments by reason of personal injury including death and for any claims of damage to property occurring on or about the Premises in any manner arising out of or as a result of the occupancy thereof by APS. MPA shall be named as Additional Insured under said

insurance and Certificates of Insurance shall be forwarded to MPA providing proof of coverage.

(d) APS shall also maintain throughout the Term of this AGREEMENT & LEASE, at its sole cost and expense, property insurance to insure against damage to or loss of the improvements on the Premises, including all fixtures and equipment, said property insurance to be in the amount sufficient to provide coverage for the full replacement and restoration of the improvements.

(e) APS shall also maintain throughout the Term of this AGREEMENT & LEASE, at its sole cost and expense, automobile liability insurance which shall include all hired and non-owned vehicles with a minimum limit of liability of \$1,000,000 bodily injury per person and \$1,000,000 for property damage. This policy shall be written on a per occurrence basis.

(f) Nothing contained herein shall require MPA to insure against any loss occasioned by fire or other casualty to persons or tangible personal property or fixtures of APS, its agents or employees, assignees, sublessees, bailors or invitees or of any other person, firm or corporation upon any part of the Premises.

(g) APS shall not use the Premises in such a manner (unless permitted under this AGREEMENT & LEASE) which would cause an increase in the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of MPA, the full amount of any resulting increase in premiums paid by MPA with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term of this AGREEMENT & LEASE, may be added to the amount of rental specified in Section 3 supra and shall be paid by APS to MPA upon the monthly rental day next thereafter occurring.

7.4 Liens. At all times prior to termination of this AGREEMENT & LEASE, APS shall defend, indemnify and hold harmless MPA against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof as a consequence of any act of APS or its contractors, agents or employees.

7.5 Defense Against Suits. APS shall promptly pay any and all costs or expenses (including reasonable attorney's fees and consultant fees) which may be incurred by MPA as well as any judgments or decrees in favor of MPA:

(a) in enforcing the obligations of APS under the covenants, terms or

provisions of this AGREEMENT & LEASE;

(b) In obtaining possession of the Premises as the result of any default by APS or otherwise;

(c) in defending any suit or proceeding brought against MPA for the violation by APS of any law, ordinance, rule or regulation;

(d) in defending any action or suit for damages because of any failure, neglect or default on the part of APS.

**7.6 Notice of Damage or Injury.** In the event of any injury to persons or damage to property on the Premises, APS shall immediately notify MPA in writing and shall promptly thereafter furnish to MPA copies of all reports given to APS' insurance carrier or carriers.

#### **8.0 DAMAGE, DESTRUCTION AND CONDEMNATION:**

**8.1 Partial Destruction.** If, during the Term, the Premises are partially destroyed from any force majeure cause, MPA shall promptly restore the Premises to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this AGREEMENT & LEASE. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. MPA and APS agree that APS' rental shall be abated for that portion of the Premises being restored with such abatement to continue until such destroyed Premises are refurbished and available for use.

**8.2 Total Destruction.** If, during the Term, the Premises are totally destroyed from any cause, MPA shall have the option either:

(a) to provide APS with a reasonable approximation of the time necessary to conduct necessary repairs or restoration and repair or restore the damage within the designated time period (which in no event shall be longer than two hundred forty (240) days), in which event such destruction shall not terminate this AGREEMENT & LEASE; or

(b) to give notice to APS within thirty (30) days of such destruction terminating this AGREEMENT & LEASE as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the giving of the notice. If the existing laws do not permit the restoration, either party can terminate this AGREEMENT & LEASE immediately by giving notice to the other party. Total

destruction shall be any destruction which precludes APS from performing any significant portion of its operations at the Premises.

**9.0 DEFAULT AND REMEDIES:**

9.1 **Default.** The occurrence of any of the following shall constitute a default by APS:

(a) **Default in Rent.** Failure to pay when due any rental or other charge, if the failure continues for ten (10) business days after notice has been given to APS;

(b) **Default in Other Covenants.** Failure to perform any other provision of this AGREEMENT & LEASE if such failure to perform is not cured within thirty (30) days after written notice thereof has been given to APS. If the default cannot be reasonably cured within thirty (30) days, APS shall not be in default if APS commences to cure the default within the thirty (30) day notice period and proceeds with reasonable diligence in good faith to cure the default as soon as reasonably practicable;

(c) **Insolvency.** To the extent permitted by the U.S. Bankruptcy Code, any of the following: the insolvency of APS; an assignment by APS for the benefit of creditors; the filing by APS of a voluntary petition in bankruptcy; an adjudication that APS is bankrupt or the appointment of a receiver for the properties of APS; the filing of an involuntary petition of bankruptcy and failure of APS to secure a dismissal of the petition within sixty (60) days after the filing; the attachment of or the levying of execution on APS' lease hold interest hereunder and failure of APS to secure a discharge of the attachment or release of the levy of execution with sixty (60) days; and

(d) **Abandonment.** Abandonment and vacation of the Premises without consent of MPA (failure to occupy and operate the Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).

9.2 **Notices of Default.** Notices shall specify the alleged default and the applicable provisions of this AGREEMENT & LEASE and shall demand that APS performs the relevant provision of this AGREEMENT & LEASE or pay the rental or charges that are in arrears, as the case may be, within the applicable period time.

9.3 **MPA Remedies in Case of APS Default.** MPA shall have the following remedies if APS is in default and such default is not cured. These remedies are not exclusive, and the election of one remedy shall not preclude an election of any other

remedy at a later time.

(a) Termination of Agreement & Lease and Right to Possession. MPA may, at its option, terminate this AGREEMENT & LEASE and terminate APS' right to possession by giving written notice of termination to APS. Upon receipt of such notice, APS shall vacate the Premises immediately and within thirty (30) days thereafter remove any property of APS, including any fixtures that APS is required to remove at the end of the Term and perform any cleanup, alterations or other work required to leave the Premises in the condition required at the end of the Term of this AGREEMENT & LEASE, and deliver all keys to the MPA.

(b) Re-entry and Distrain. MPA may, at its option, terminate this AGREEMENT & LEASE and re-enter the Premises and distrain upon any of APS' property.

(c) Liquidated Damages. MPA shall have the right to receive from APS as of the date of termination the following sums as liquidated damages and not as a penalty:

(1) The amount of the unpaid rental accrued and due at the time of the termination of this AGREEMENT & LEASE;

(2) The amount, at the time of the award of a subsequent lease to a third party, by which the unpaid rental for the rest of the Term of this AGREEMENT & LEASE exceeds the rental obtained from a subsequent lease to a third party provided that the amount of the loss of rental does not exceed such amount that APS proves could have been reasonably avoided by MPA mitigation; and

(3) Any other amount, and court costs, necessary to compensate MPA for all detriment proximately caused by APS' default, including the reasonable costs of any cleanup, refurbishing, removal of APS' property and fixtures, or any other expense occasioned by APS' failure to quit the Premises upon termination and to leave them in condition specified herein.

9.4 Use of Abandoned Property. Provided MPA gives prior written notice to APS, MPA may:

(a) use all or any part of APS' personal property and trade fixtures remaining on the Premises beyond thirty (30) days after termination of this AGREEMENT & LEASE without compensation to APS and without liability for such use or

damage; or

(b) store all or any of APS' personal property and trade fixtures for the account of and at the expense of APS.

9.5 MPA Obligation to Relet. Following termination, MPA shall make all reasonable efforts to relet the Premises; provided that MPA shall have no obligation to relet for any use or purposes inconsistent with MPA's interests or to relet to a person or entity that MPA may, in the reasonable exercise of its judgment, consider objectionable. In reletting the Premises, MPA may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this AGREEMENT & LEASE, upon any reasonable terms and conditions. If MPA relets the Premises, rental that MPA receives from reletting shall be applied to the payment of:

First, any indebtedness from APS to MPA other than rental due from APS;

Second, all costs, including for maintenance, incurred by MPA in reletting;

Third, rental due and unpaid under this AGREEMENT & LEASE. After deducting the payments referred to in this subsection, any sum remaining from the rental MPA receives from reletting shall be held by MPA and applied in payment of future rental as rental becomes due under this AGREEMENT & LEASE. In no event shall APS be entitled to any excess rent received by MPA. If, on the date rent is due under this AGREEMENT & LEASE, the rental received from the reletting is less than the rental due on that date, APS shall pay to MPA, in addition to the remaining rental due, all costs, including for maintenance, MPA incurred in reletting that remain after applying the rental received from the reletting as provided in this subsection.

## 10.0 TERMINATION:

10.1 Surrender. Upon expiration or earlier termination of this AGREEMENT & LEASE, APS shall surrender the Premises in the same condition as received except for ordinary wear and tear and destruction to the Premises, except for alterations which APS has a right to remove or is obligated to remove. APS shall pay for or perform all restoration made necessary by its use of the Premises (except for normal wear and tear) and/or the removal of any alterations or removal of APS' personal property.

10.2 APS Termination. APS may elect to terminate this AGREEMENT & LEASE upon ninety (90) days written notice to MPA if APS is prohibited from use of the

Premises or from conducting its business in Maryland or the United States as a result of the lawful act of any governmental authority in the United States of America.

**10.3 MPA Termination.** MPA may terminate this AGREEMENT & LEASE upon ninety (90) days written notice to APS if MPA is prohibited from performing its obligations herein as a result of the lawful act of any governmental authority in the United States of America.

**11.0 POWERS OF MPA:**

It is understood and agreed that MPA is an instrumentality of the Department of Transportation of the State of Maryland and can only exercise those powers expressly granted to it by the pertinent acts of the General Assembly of Maryland, or those powers which are necessarily implied from the powers which are expressly granted. MPA is also subject, in some of its operations, to regulation by the United States of America and agencies or commissions thereof. In the event MPA is temporarily or permanently prevented, restricted or delayed by statute, regulation or court decision in the performance of any or all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE, MPA and its officers, agents and employees shall not be liable directly or indirectly for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by APS or any other legal entity in connection with, or as the result of, or growing out of any such prevention, restriction or delay. MPA represents and warrants that it is presently empowered under Maryland law to enter into this AGREEMENT & LEASE and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this AGREEMENT & LEASE.

**12.0 FORCE MAJEURE:**

(a) MPA and APS shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond their control; including without limitation thereto, acts of God, act or state of war, order by any agency or commission of the United States of America, public emergency, strikes, boycotts, picketing, and work stoppages.

(b) Except for a strike, riot, act of God or any act or state of war or public emergency or Government regulations, no abatement, diminution or reduction of the rent or other charges payable by APS shall be claimed by or allowed to APS for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present law, rule, requirement, order direction, ordinance or

regulation of the United States of America, or of the State, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any cause or causes beyond the control of MPA, nor shall this AGREEMENT & LEASE be affected by any such cause.

(c) APS or the MPA (depending upon whoever claims Force Majeure) shall bear the burden of proof of the Force Majeure defense.

### 13.0 GENERAL PROVISIONS:

13.1 Assignment & Subletting. APS shall not assign this AGREEMENT & LEASE nor sublet the Premises in whole or in part, without the prior written consent of MPA and approval of the Maryland Board of Public Works. Consent by MPA to any assignment or subletting shall not operate to release APS from any of its obligations under the terms of this AGREEMENT & LEASE. Without prejudice to the foregoing, and subject to Board of Public Works prior approval, APS may sublet the Premises to any automobile manufacturers deemed reputable by MPA.

13.2 Notices. Any notice permitted or required to be served upon any party shall be in writing and served personally or sent by certified mail, return receipt requested, at the addresses set forth below. Notices will be effective upon receipt or first attempted delivery. Either party may change its address by notifying the other party of the change; thereafter, notice shall be given at such substituted address.

**TO APS:**

Chief Financial Officer  
APS North Terminal, Inc.  
9240 Blount Island Boulevard  
Jacksonville, FL 32226

**TO MPA:**

Executive Director  
Maryland Port Administration  
The World Trade Center, 20th Floor  
Baltimore, Maryland 21202

13.3 Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this AGREEMENT & LEASE shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition,

covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other party.

13.4 Applicable Law. It is expressly understood and agreed that this AGREEMENT & LEASE and all questions arising thereunder shall be construed according to the laws of the State of Maryland and any applicable federal law. Any suits arising under this AGREEMENT & LEASE shall be brought and prosecuted in the Federal or State courts in the State of Maryland or before the Federal Maritime Commission where applicable.

13.5 Binding Effect. This AGREEMENT & LEASE shall bind the parties, their successors and assigns.

13.6 Authority. Each individual executing this AGREEMENT & LEASE on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this AGREEMENT & LEASE on behalf of such party.

13.7 Severability. The invalidity of any provision of this AGREEMENT & LEASE as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this AGREEMENT & LEASE.

13.8 Headings. The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this AGREEMENT & LEASE.

13.9 Quiet Enjoyment. MPA covenants and agrees that so long as APS is not in default hereunder, it shall quietly enjoy the Premises.

13.10 Survival. All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration or termination of this AGREEMENT & LEASE or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this AGREEMENT & LEASE, including (without limitation) the obligations of APS pursuant to Section 7 hereof, shall survive the termination of this AGREEMENT & LEASE.

13.11 AGREEMENT & LEASE for Sole Benefit of Parties. The parties intend that the mutual covenants contained in this AGREEMENT & LEASE shall be for the sole benefit of the parties and that no other person, corporation or other entity is intended to be a beneficiary of this AGREEMENT & LEASE.

13.12 Amendments. This AGREEMENT & LEASE may be amended from time to time provided the parties mutually agree to such amendment and the amendment is stated in writing in a document making specific reference to this AGREEMENT & LEASE and signed by both parties, subject to the approval of the Maryland Board of Public Works.

13.13 Duties, Liabilities, Obligations Cumulative. Any and all of the duties, liabilities or obligations imposed upon, or assumed by, either party hereto or under the terms and provisions of this AGREEMENT & LEASE shall be taken and construed to be cumulative.

13.14 Remedies Cumulative. All remedies provided in this AGREEMENT & LEASE shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided to the parties at law or in equity.

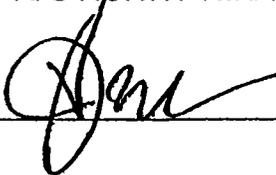
13.15 Consent to Jurisdiction. APS hereby consent to the jurisdiction of any court of the State of Maryland with respect to any claim that Lessor may have against Lessee arising from any matter relating to this Lease.

13.16 Integration. This AGREEMENT & LEASE constitutes the entire agreement between MPA and APS with respect to the Premises and supersedes all prior agreements, oral or written, between the parties. There are no terms, obligations or conditions other than those contained herein. No statement or writing subsequent to the date hereof purporting to modify or amend the terms and conditions hereof shall be binding unless evidenced by an agreement in writing signed by a duly authorized representative of both parties making specific reference to this AGREEMENT & LEASE.

(END)

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT & LEASE to be duly executed as of the day and year first above written.

APS NORTH TERMINAL, INC.

By:  \_\_\_\_\_

Print Name: JAMES V. DAVIS

Print Title: President

MARYLAND PORT ADMINISTRATION

BY:  \_\_\_\_\_  
James J. White  
Executive Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Assistant Attorney General

STATE OF MARYLAND

SS:

\_\_\_\_\_ OF MARYLAND

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_,  
2005, before me, the subscriber, a Notary Public of the State of Maryland, in and for the  
\_\_\_\_\_ of Baltimore, personally appeared James J. White, Executive  
Director, known to me (or satisfactorily proven) to be the person whose name is  
subscribed to the foregoing instrument, who acknowledged the foregoing instrument to  
be the act and deed of the Maryland Port Administration.

WITNESS my hand and Notarial Seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

(SEAL)

STATE OF Florida

SS:

County OF DUVAL

I HEREBY CERTIFY that on this 10<sup>th</sup> day of February, 2005, before me, the subscriber, a Notary Public of the State of Florida, in and for the County of Duval personally appeared James V. DAVIS who acknowledged himself/herself to be the President of APS NORTH TERMINAL, INC. and that he/she, as such being authorized so to do, acknowledged the foregoing instrument to be the duly authorized act and deed of APS NORTH TERMINAL, INC.

WITNESS my hand and Notarial Seal the day and year last above written.

Angela Pinkston  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 10/4/07

(SEAL)





OFFICES OF

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL

M. CATHERINE ORLEMAN  
PRINCIPAL COUNSEL

DONNA HILL STATON  
MAUREEN M. DOVE  
DEPUTY ATTORNEYS GENERAL

DENISE FERGUSON  
GENERAL COUNSEL  
DEPARTMENT OF TRANSPORTATION



ROBERT L. MUNROE  
T. BYRON SMITH  
PETER W. TALIAFERRO  
ASSISTANT ATTORNEYS GENERAL  
MARYLAND PORT ADMINISTRATION

## THE ATTORNEY GENERAL

MARYLAND PORT ADMINISTRATION  
THE WORLD TRADE CENTER BALTIMORE  
Baltimore, Maryland 21202-3041  
410-385-4430  
FAX 410-333-4533

October 3, 2005

Charles S. Fax, Esquire  
Shapiro Sher & Guinot  
36 S. Charles Street  
Suite 2000  
Baltimore, MD 21201-3147

Re: Dundalk Marine Terminal

Dear Mr. Fax:

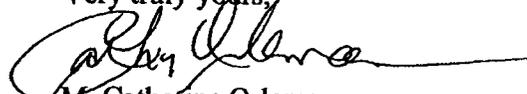
As you know, I met with Jim Robinson, Andy O'Connell, Janet West and Helen Bentley recently. During that meeting, Mr. Robinson expressed the opinion that the MPA was delaying approval of a proposed sublease from APS North Terminal, Inc. ("Amports") to Premier Automotive Services, Inc. ("Premier") for a portion of Lot 401 because of a dispute between Premier and MPA regarding Lot 90. I have investigated Mr. Robinson's concerns and can inform Premier that Mr. Robinson is mistaken. While it is true that MPA has decided not to authorize the proposed sublease, MPA's reasons stem from Premier's financial condition rather than from the current dispute between MPA and Premier over Lot 90.

Premier filed for bankruptcy protection on April 29, 2005. It has not yet filed a plan of reorganization. In the bankruptcy action, Premier has alleged that it must have a long-term lease at Lot 90 in order for its business to survive. However, Premier has no lease at Lot 90 and MPA has already made arrangements to lease Lot 90 to Pasha Automotive Services. Based on the information presented in the bankruptcy action, it is not clear to MPA that Premier will be able to reorganize and function as a viable port tenant.

Charles S. Fax, Esquire  
October 3, 2005  
Page 2

MPA had discussions with Premier for approximately three years over a long-term lease at Lot 90. Premier refused to do more than stay there on a month-to-month basis. It is MPA's understanding that Premier was not financially in a position to make a long-term commitment to MPA. The bankruptcy filing confirms MPA's concerns that Premier is not a credit worthy tenant.

Very truly yours,



M. Catharine Orleman  
Principal Counsel