

PORT OF DETROIT
FINAL 3/31/05- CONFIDENTIAL

MASTER CONCESSION AGREEMENT

by and between

THE DETROIT/WAYNE COUNTY PORT AUTHORITY

and

THE AMBASSADOR PORT COMPANY

PORT OF DETROIT
FINAL 3/31/05- CONFIDENTIAL

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THIS AGREEMENT is made this _____ day of _____, 2005 (this "Agreement") by and between The Detroit/Wayne County Port Authority (the "Authority"), a Michigan public body corporate and politic, and the Ambassador Port Company, a Michigan corporation ("Master Concessionaire"). Collectively, the Authority and Master Concessionaire are referred to as the "Parties".

WITNESSETH:

WHEREAS, the Authority is the owner of certain real property consisting of approximately 3.6425 acres of improved land commonly known as 4461 West Jefferson Avenue, Detroit, Michigan, along the Detroit River (the "Smaller Parcel") and real property consisting of approximately 31.31 acres located at, and commonly known as, 4300, 4461, and 4500 West Jefferson Avenue, Detroit, Michigan (the "Larger Parcel"). Collectively, the Smaller Parcel and Larger Parcel are referred to as the "Premises";

WHEREAS, the Authority is a statutorily established entity funded by the State of Michigan, Wayne County and the City of Detroit (the "City"), in part through the issuance of tax-exempt bonds;

WHEREAS, the Authority was established for the purpose of developing and operating a "Port Facility" (as defined in Section 120.102 of the Port the Authority Act MCL 120, et seq.) in the City and intends to develop, maintain, expand and otherwise operate a Port Facility (including the real and personal property associated therewith, the "Facility") at the Premises and in the areas around the Premises when and if acquired and incorporated in the Facility;

WHEREAS, subject to the Authority's oversight, the Authority desires to grant a concession in the Premises and the Facility (as more particularly defined in Section 1.2 hereof the "Concession") to a Master Concessionaire for the purpose of assisting the Authority with the operation of the Facility;

WHEREAS, subject to the terms and conditions of this Agreement, Master Concessionaire desires to accept the Concession;

WHEREAS, Master Concessionaire believes that in order for the Concession to be profitable to Master Concessionaire and achieve the Concession Purpose (as defined herein), future expansion of the Facility to include areas outside of the Premises will be necessary;

WHEREAS, both Parties expect that the Facility will continue to expand to include other properties proximate to the Premises ("Expansion Properties") and by the investment of private and public funds in the Facility (including possible borrowings from Master Concessionaire or from Master Concessionaire's affiliates or the issuance by the Authority of tax exempt bonds) and that concurrently with the addition of Expansion Properties to the Facility, the Concession and the definition of Premises shall expand to include any Expansion Properties;

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WHEREAS, the Authority has received an exemption from real estate taxes for the Premises from the Tax Assessor for the City;

WHEREAS, the Parties believe that the financial success of the Facility depends on the Authority continuing to maintain the exemption of the Premises from real estate taxes and obtaining additional real estate tax exemptions for any Expansion Properties;

WHEREAS, concurrently with the execution of this Agreement, the Authority has executed a Promissory Note (the "**Promissory Note**") in favor of Master Concessionaire in the original principal amount of Two Million Two Hundred Eighty Four Thousand, Six Hundred Eighty Nine Dollars and Sixty Seven Cents (\$2,284,689.67) which includes a provision for the possible advance of future amounts by Master Concessionaire for the purposes of paying certain expenses relating to the expansion, maintenance, operation and improvement of the Facility;

WHEREAS, concurrently with the Authority's acquisition of its interest in the Premises, the City received a deed for a remainder interest in the Premises that will vest if at any time this agreement is terminated for any reason other than Master Concessionaire's default on Master Concessionaire's obligations hereunder, including, without limitation, as a result of a breach by the Authority of its obligations hereunder or failure to pay amounts due under the Promissory Note; and

WHEREAS, as provided for in the Remainder Agreement (the "**Remainder Agreement**") entered into between the City and Master Concessionaire concurrently herewith, and approved by the Authority, the City has agreed to enforce its remainder interest in the Premises if the occasion so arises and following termination of the Authority's interest in the Premises, to either honor this Agreement and the Promissory Note as the City's obligation or enter into replacement agreements therefore with Master Concessionaire.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

1.1 Incorporation of Recitals. The foregoing Recitals are incorporated herein and this Agreement shall be interpreted in accordance therewith.

1.2 Prior Defined Terms. All capitalized terms as used in this Agreement, unless otherwise defined, shall have the same meaning stated below:

"*Applicable Laws*" shall mean all existing and future applicable laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any governmental authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction; (a) pertaining to the construction of improvements on the Premises or relating to the Facility or the use, occupancy, ownership or operation of the Facility, (b) in any way limiting the use or enjoyment of the Facility, including

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without limitation, Environmental Laws, Wetlands Regulations, Wildlife Protection Acts, Archeological Protection Acts, all building, zoning and fire codes and all permits, certificates of occupancy, licenses, authorizations and regulations relating to the Premises or the Facility, (c) governing the Authority, acts of the Authority or the Authority's agents, employees, contractors, or concessionaires; and (d) otherwise relating to the Facility, the Premises and the use of the Premises as a Port Facility.

"*Archeological Protection Acts*" shall mean all Applicable Laws relating to the regulation, maintenance or preservation of archeological conditions.

"*Authority*" shall have the meaning specified in the introductory clause hereof.

"*Authority Defaults*" shall mean any breach of a representation or warranty of the Authority, any failure of the Authority to perform obligations, make payments, or satisfy covenants provided for herein, a termination or modification of this Agreement imposed by reason of a change in Applicable Law relating to the Authority's statutory powers or obligations, any default by the Authority under the Promissory Note or any additional circumstances and events specified as constituting Authority Defaults hereunder.

"*Baseline Assessment*" that certain draft Baseline Environmental Assessment dated August 20, 2003, prepared by Conestoga-Rovers & Associates, supplemented by the Draft Review of Environmental Conditions dated September 14, 2004 prepared by Freudenthal & Elkowitz Consulting Group, Inc.

"*Bona Fide Offer*" shall have the meaning specified in Section 15 of this Agreement.

"*Bonds*" shall mean those certain outstanding bonds of the Detroit Port Development Corporation. Detroit Port Development Corporation Modified First Mortgage Revenue Bonds, captioned Series A.

"*Budget*" shall mean the operating budget for the Facility as approved by the Authority for each year of the Concession Term.

"*Business Day*" shall mean any day other than Saturday, Sunday or any other day that federally chartered banks located in Michigan are closed for business.

"*Capital Receipts*" shall mean net revenues (after payment of transfer taxes, conveyance fees, brokerage commissions, sale expenses including attorneys' fees, recording costs, title insurance fees, due diligence expenses and other customary seller costs) earned by the Authority in connection with the sale, transfer, assignment, grant of licenses or easements or the letting of the Premises or the Authority's interest in the Premises, and any improvements, equipment or other personal property included as part of the Facility.

"*City*" shall have the meaning specified in the second (2nd) recital hereto.

"*Concession*" shall mean the exclusive right to operate and manage the Facility and to perform the Facility Work on the Authority's behalf pursuant to the terms and conditions hereof.

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"*Concession Payments*" shall mean the amounts payable to Master Concessionaire pursuant to Section 5.1 hereof.

"*Concession Purpose*" shall mean the purpose for which the Authority was formed which was in part, to acquire, improve, enlarge, extend, operate, maintain and finance port districts in the City.

"*Concession Term*" shall mean a period commencing on the effective date of this Agreement and ending on March 31, 2030 as such period shall be shortened or extended pursuant to the terms hereof.

"*Default Rate*" shall mean an annual rate of interest equal to six hundred (600) basis points in excess of the Floating Rate.

"*Detroit Port Development Corporation*" or "*DPDC*" shall mean the issuer of the bonds.

"*Environmental Laws*" shall mean all federal, state and local laws, statutes, ordinances, codes and regulations relating to environmental protection including those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act, a/k/a the Clean Water Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act) and the Michigan Natural Resources and Environmental Protection Act (NEPRA) 1994 PA 451.

"*Event of Default*" shall mean the continuation of a Master Concessionaire Default in the case of Master Concessionaire, or an Authority Default, in the case of the Authority, beyond applicable cure periods, if any.

"*Expansion Properties*" shall have the meaning specified in the seventh (7th) recital hereto.

"*Facility*" shall have the meaning specified in the third (3rd) recital hereto.

"*Facility Operation Agreement*" shall mean that certain Facility Operation Agreement by and between Master Concessionaire and Facility Operator dated _____, 2005 and any other agreement between Master Concessionaire and any Facility Operator pursuant to which Master Concessionaire subcontracts for the performance of all or part of the Concession.

"*Facility Operation Standard*" shall mean the standard by which each Facility Operator shall operate the Facility, which shall mean: (a) in accordance with reasonable business judgment; (b) in accordance with the Concession Purpose; (c) in a manner that will not result in the Authority being personally liable to third parties in excess of the Gross Receipts payable to the Authority pursuant to Section 5.1 and Capital Receipts payable to the Authority pursuant to Section 5.2 that the Authority can reasonably expect to receive from the operation of the Facility;

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and (d) with a general goal of paying all creditors to the Facility, keeping the Facility in operation and providing some residual return to the Authority.

"*Facility Operator*" shall mean Nicholson Terminal & Dock Company and any other party designated by Master Concessionaire and approved by the Authority to perform the obligations relating to the Concession. At any given time there may be more than one Facility Operator.

"*Facility Work*" shall have the meaning specified in Section 2.1 hereof.

"*First Offer*" shall have the meaning specified in Section 15 hereof.

"*Floating Rate*" shall mean three hundred (300) basis points over the yield to maturity on United States Treasury Notes having a remaining term to maturity as near as possible to five (5) years as such yield is published in The Wall Street Journal (or any successor thereto) on the day of determination, but in no event shall the total be less than six percent (6%) per annum. If at any time during the Concession Term the rate on five (5) year United States Treasury Notes is no longer published, the Floating Rate shall be determined by using a comparable index reasonably selected by Master Concessionaire with such index adjusted upwards or downward so that the rate on such substitute index is equivalent to the Floating Rate on the last day that the Floating Rate was established using five (5) year United States Treasury Notes (or any successor index). For example, if five (5) year United States Treasury Notes were yielding five percent (5%) and the selected substitute index is the London Interbank Offered Rate which at the time was yielding four percent (4%), then so long as the London Interbank Offered Rate was used as the substitute rate, the Floating Rate would be four hundred (400) basis points over the London Interbank Offered Rate.

"*Gross Receipts*" shall mean all revenues other than Capital Receipts derived by the Authority, Master Concessionaire, any Facility Operator, and any subtenant or licensee of the Facility (without duplication of any amounts already included in the definition of Gross Receipts) from operations relating to the Facility, including, but not limited to, use fees, any Refunding Amounts and any revenues from the sale of goods or services made on or about, or otherwise originating from, the Premises from any source whatsoever, adjusted by the deduction of the following, provided that separate records are maintained for such deductions: (a) credits and refunds to customers for merchandise or services purchased from the Facility; (b) amounts of any separately stated federal, state and local sales or use taxes imposed upon a Facility Operator's customers and collected by a Facility Operator; or (c) charges paid to a Facility Operator by its customers for the mailing of purchased items but only to the extent of the actual mailing cost thereof. Gross Receipts shall include all mail or telephone orders filled at or from the Premises, all deposits not refunded to purchasers, and all orders taken in and from the Premises, whether or not such orders are filled elsewhere.

No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit cards or by reason of any other credit arrangements. If any charge customarily made by a Facility Operator for goods and services is not assessed, charged or collected for any reason, then the amount of

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that Facility Operator's customary charge therefor shall nevertheless be included in determining Gross Receipts.

Gross Receipts shall be computed and audited in accordance with the provisions of this Agreement.

In the event of any conflict between the provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control, and the provisions of this Agreement shall not be limited by such principles or standards.

"Hazardous Cargo" shall mean Hazardous Materials and any other materials, such as waste, arms, explosives, and similar products, that present unusual safety or health risks in connection with their storage, transportation or disposal or that are subject to reporting, permitting or other governmental laws, ordinances or regulations relating to their storage, shipping, or disposal by reason of their potential negative impacts on the health or physical welfare of people, animals or plants.

"Hazardous Materials" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

"Larger Parcel" shall have the meaning specified in the first (1st) recital hereto.

"Master Concessionaire Default" shall mean any breach of a representation or warranty of Master Concessionaire, any failure of Master Concessionaire to perform obligations and covenants provided for herein, and any additional circumstances and events specified as constituting Master Concessionaire Defaults hereunder.

"Master Plan" shall mean the plan for the physical future of the Facility as described in Section 2.1 hereof.

"Operating Procedures" shall mean the procedures for operation of the Facility as approved by the Authority from time to time.

"Oversight Expenses" shall have the meaning specified in Section 5.1 of this Agreement.

"Plan Submittal Date" shall mean January 15 of each year of the Concession Term or the next Business Day thereafter.

"Port Facility" shall have the meaning specified in the third (3rd) recital hereto.

"Premises" shall have the meaning specified in the first (1st) recital hereto and is legally described in Exhibit A.

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"*Pricing Schedule*" shall mean the pricing list and Use Fees for products, services and other activities at the Facility as approved by the Authority for each year of the Concession Term as specified in Section 2.1 hereof.

"*Promissory Note*" shall have the meaning specified in the tenth (10th) recital hereto.

"*Remainder Agreement*" shall have the meaning specified in the twelfth (12th) recital hereto.

"*Refunding Amounts*" shall mean all amounts payable by any Facility Operator to Master Concessionaire as consideration for Master Concessionaire's entry into the Facility Operation Agreement, including without limitation, Nicholson Dock and Port Company's agreement to pay to Master Concessionaire a percentage of amounts generated by Nicholson Dock and Port Company from the stevedoring operation at the port facility (the "**Ecorse Port**") located south of the Premises legally described in Exhibit B.

"*Smaller Parcel*" shall have the meaning specified in the first (1st) recital hereto.

"*Use Fees*" shall mean the fees, tariffs or charges imposed by Master Concessionaire or Facility Operator on users of the Facility and other activities relating to the Facility that generate Gross Receipts.

"*Wetlands Regulations*" shall mean all Applicable Laws relating to the regulation, preservation, maintenance and creation of wetlands areas.

"*Wildlife Protection Acts*" shall mean the Endangered Species Act of 1973, as provided for in 16 USCS §§ 1531 et seq., as amended from time to time, together with any other federal, state or local wildlife, vegetation or habitat protection acts.

2. Administration and Operation.

2.1 Grant of Concession and Facility Work. Subject to the oversight rights of the Authority provided for herein, for the Concession Term the Authority hereby grants the Concession to Master Concessionaire for the Concession Purpose. Master Concessionaire shall have the exclusive right to exercise the Concession. In exchange for the grant of the Concession and the right to receive the Concession Payment, Master Concessionaire agrees to perform the following "**Facility Work**":

a. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, present and recommend for approval by the Authority a master plan (the "**Master Plan**") including all supplements and amendments detailing directions to Master Concessionaire for the development, construction, expansion, contraction, operation, maintenance and improvements to the Facility, including maps, profiles and other data and descriptions necessary to set forth the location and character of the work to be approved by the Authority and undertaken by Master Concessionaire on the Authority's behalf, including supplemental budgets, construction schedules, architectural

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drawings and plans and specifications for improvements when eventually completed and as filed with and approved by the Authority after the Plan Submittal Date;

b. to negotiate contracts for provision of materials, services, property sale or acquisition, borrowings, utilities and other matters relating to the performance of the Facility Work including, without limitation, execution of any activities that are part of the approved Master Plan;

c. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, present a proposed operating budget for the Facility for the upcoming calendar year in substantially the form and containing the information detailed in the budget approved concurrently herewith (the "**Budget**") to the Authority for the Authority's review and approval;

d. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before Plan Submittal Date of each year of the Concession Term recommend pricing of products, services and other activities occurring at the Facility in substantially the form and containing the information detailed in the pricing schedule approved concurrently herewith (the "**Pricing Schedule**") to the Authority for the Authority's review and approval;

e. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, recommend to the Authority for the Authority's review and approval, operational policies for the Facility for the upcoming year including hours of operation, scope of services to be provided, rules for users of the Facility and such other general operational matters as to which Master Concessionaire would like to have the Authority's guidance in substantially the form and containing the information detailed in the operating procedures approved concurrently herewith ("**Operating Procedures**");

f. present to the Authority, as and when Master Concessionaire reasonably determines necessary amendments to the Master Plan, the Pricing Schedule, the Budget, the Operating Procedures or other items relating to the Facility and approved by the Authority, but requiring modification by reason of subsequent events, new information or operational experience;

g. manage all processes associated with modifying, developing, expanding, constructing, rehabilitating, improving, subleasing, maintaining, repairing or otherwise managing the physical condition of the Facility in accordance with the Master Plan and the Facility Operation Standard, including without limitation, dredging ship channels, turning basins and filling and grading land therefor;

h. operate and manage all aspects of the Facility in accordance with the provisions of this Agreement, the Master Plan, the Pricing Schedule, the Budget, the Operating Procedures, and the Concession Purpose and otherwise in accordance with Applicable Laws and the Facility Operation Standard;

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i. in conjunction with the Facility Operator, executing contracts as an independent contractor for the provision of services at the Facility, the purchase and sale of goods and services relating to the Facility, and otherwise relating to the operation and maintenance of the Facility and the performance of the other aspects of the Facility Work;

j. in conjunction with the Facility Operator, procuring and maintaining permits, licenses, and approvals for operation of and modification to the Facility.

2.2 Scope of Discretion in the Performance of Facility Work. In connection with the performance of the Facility Work, Master Concessionaire shall exercise reasonable business judgment consistent with the objectives of maximizing Concession Payments. From time to time Master Concessionaire may authorize a Facility Operator to perform Facility Work in a manner divergent from the Budget, the Master Plan, the Price Schedule or the Operating Procedures but only in those specific instances where Master Concessionaire determines, in Master Concessionaire's reasonable business judgment, that such actions conform to the Facility Operation Standard and are either special one time events or will be included in the next Budget, Master Plan, Price Schedule or the Operating Procedures, to be presented to the Authority for approval on the next Plan Submittal Date.

2.3 The Authority's Oversight and Cooperation. The Authority shall cooperate with Master Concessionaire in connection with Master Concessionaire's performance of the Facility Work and agrees to the following for purposes of facilitating the Facility Work:

a. The Authority shall not unreasonably withhold the Authority's consent to any Budget, Master Plan, Price Schedule, Operating Procedures or other proposals or requests of Master Concessionaire relating to the exercise of the Concession, with reasonableness determined by the following criteria and in the following order: (1) consistency with Applicable Law and the Concession Purpose; (2) not imposing financial obligations on the Authority of a recourse which will unreasonably reduce the Authority's net income (after all expenses and taxes, if any) from the operation of the Facility; (3) not imposing financial obligations on the Authority that cannot reasonably be satisfied out of Gross Receipts and Capital Receipts that the Authority can reasonably expect to receive pursuant to Section 5.1 and 5.2 during the Concession Term; and (4) reasonably consistent with the Facility Operation Standard.

b. The Authority shall respond to all requests for approval of the Master Plan, Budget, Pricing Schedule, Operating Procedures and any requested modifications thereto within thirty (30) days of Master Concessionaire's request, subject to the understanding that the Authority's failure to deny any request for approval in writing within such thirty (30) day period shall be deemed consent to the extent permitted by Applicable Laws.

c. The Authority shall execute such documents and grant such approvals as Master Concessionaire shall reasonably request to allow Master Concessionaire and each Facility Operator to exercise the Concession to the extent that

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such powers can be designated to a third party performing acts on behalf of the Authority pursuant to Applicable Laws and Section 2.3(a) above. To the extent that such powers cannot be designated to a third party, the Authority shall undertake such acts as shall be reasonably requested by Master Concessionaire to allow Master Concessionaire to exercise the Concession in a manner consistent with this Agreement.

d. The Authority shall keep the Master Concessionaire informed of all potential defaults or breaches, or threats or notifications of default or breaches of agreements or contracts impacting the Facility or Premises or any current or future leases, permits, licenses or easements relating to the Facility or Premises; and to allow the Master Concessionaire to take any action necessary on behalf of, and at the expense of, the Authority in order to sustain any current or future leases, permits, licenses or easements relating to the Facility or to carry out the purpose of this Agreement.

e. The Authority shall not pledge, sell, assign, let, lien, option, mortgage, hypothecate, encumber, or otherwise convey interests in the Premises, the Facility, revenues generated from the Facility or the Authority's interest in the Premises at any time during the Concession Term without Master Concessionaire's prior consent, such consent to be granted or denied in Master Concessionaire's sole discretion.

f. If, for any reason, the Authority refuses to approve modifications to the Master Plan, Budget, the Pricing Schedule or the Operating Procedures, the foregoing shall continue in effect unmodified (and renewed for the next year) until such matter is resolved pursuant to Section 18.10 herein.

g. If any state, federal, or local governmental agency issues any written or unwritten notices of violation or non-compliance, orders of withdrawal or cessation, or any other citations relating to the Facility, the Authority shall immediately notify Master Concessionaire of the governmental action, and follow any non-written notification with written notification within two (2) Business Days.

h. The parties acknowledge that the Premises provided by the Authority is exempt from real estate taxes, and that they have entered into this Agreement based on the assumption that neither the Authority nor Master Concessionaire shall be responsible for the payment of any real estate, personal property, user or operations taxes relating to the Premises or the Facility.

i. In order to exercise its oversight obligations, the Authority is required to maintain an office on the Premises or the Expansion Properties. The location and operation of the Authority's office shall not interfere with the Facility Work and the Concession. All expenses related to the operation of the Authority's office shall be borne by the Authority.

2.4 Employment of Facility Operator. The Authority confirms that it has reviewed the Facility Operation Agreement with Nicholson Terminal and Dock Company and hereby approves of Master Concessionaire's entry into that Facility Operation Agreement pursuant to which Nicholson Terminal and Dock Company, as a Facility Operator will agree to

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perform certain aspects of the Facility Work. From time to time, Master Concessionaire shall be entitled to replace Nicholson Terminal and Dock Company, as a Facility Operator in accordance with the terms and conditions of the Facility Operation Agreement with Nicholson Terminal and Dock Company. The Authority shall be entitled to approve or disapprove of any substitute or new Facility Operator proposed by Master Concessionaire, such approval not to be unreasonably withheld. If the Authority fails to deny approval in writing of any Facility Operator proposed by Master Concessionaire within thirty (30) days of Master Concessionaire's request, such consent shall be deemed granted to the extent that such an assumption is permissible under Applicable Law.

2.5 Waiver of Conflict. The Authority understands and acknowledges that Master Concessionaire or its affiliates owns real property in and around the Premises that Master Concessionaire is interested in incorporating into the operations of the Facility and has agreed to perform the Facilities Work in part for the purpose of maximizing the value of such other properties and the profits to current and future businesses operating thereon. Preference shown to such other properties owned by Master Concessionaire or its affiliates over the Facility shall not constitute a breach of any duty of Master Concessionaire hereunder or a breach of the Facility Operation Standard. The Authority, hereby waives any claim for breach of fiduciary duty or other cause of action in connection with any actions taken by Master Concessionaire or any Facility Operator whereby other property owned or controlled by them receives disproportionate benefit to the Facility.

3. The Authority Requirements in Connection With Operation of Port.

3.1 Facility Open to the Public. Master Concessionaire shall at all times operate the Facility as a public Port Facility with open access to all users, as approved by the Port Authority.

3.2 Hours of Operation. Master Concessionaire shall provide services at such times as are convenient for the public, are customary to the operations of a Port Facility and have been approved by the Port Authority as part of the Operating Procedures.

3.3 Standards of Service. Master Concessionaire shall maintain and operate, or cause a Facility Operator to maintain and operate, the Facility and otherwise perform the Facility Work in a reasonably safe manner and with a reasonable standard of care necessary to make the Facility generally available for public use, consistent with the plans approved by the Port Authority.

3.4 Safety and Security Rules. Master Concessionaire and each Facility Operator shall advise and instruct their employees and agents to abide by and observe the safety and security rules for their operations, work and services specified in the approved Operating Procedures. Master Concessionaire or a Facility Operator will file all necessary reports and other documents relating to the ownership, occupation, maintenance, expansion, sale or operation of the Facility, with all applicable governmental authorities when required to do so by Applicable Laws with copies provided to the Authority as appropriate.

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3.5 Port Security. Master Concessionaire shall file or cause to be filed such reports and undertake such actions as shall be required under applicable law for purposes of causing the Premises and the operations of the Facility to comply with Applicable Laws relating to securing the Facility from terrorist activities, vandals and criminal acts. Notwithstanding the foregoing, the parties understand and agree that such acts are the result of the actions of third parties and outside the control of either the Authority or Master Concessionaire. Master Concessionaire shall have no liability to the Authority by reason of the occurrence of such third party actions.

3.6 Government Reports. The Authority shall assist in procuring all federal, state, county and City permits, licenses, authorizations and other governmental consents necessary for the Authority, Master Concessionaire and each Facility Operator to maintain and operate the Facility as a Port Facility.

3.7 Prior Non-Compliance with Laws. Master Concessionaire, the Facility Operator(s) and their agents, employees, vendors and concessionaires shall not be responsible for any noncompliance with Applicable Laws, rules, regulations, specifications, approved operational plans, and ordinances of the host municipality, the State of Michigan and any other applicable federal laws prior to the date of this Agreement.

3.8 Procurement of Licenses and Permits. Except as the Parties otherwise agree, Master Concessionaire and any Facility Operator shall procure, pay for and maintain, in its own name or in the name of a Facility Operator, all federal, state, and/or local governmental identification numbers, license(s), plans(s), and permit(s) necessary, convenient, and/or incidental to do the Facility Work and to keep the Facility operating. Master Concessionaire and each Facility Operator or contractors shall comply and abide with all of the terms and conditions of said licenses, plans, and permits.

3.9 Environmental Compliance. Each Facility Operator shall be responsible for compliance with Environmental Laws for the Facility (or the portion of the Facility that they are operating) after the effective date of this Agreement except to the extent that responsibility for compliance has been retained by the Authority. Except to the extent that Master Concessionaire acts as a Facility Operator, Master Concessionaire shall not, by reason of this Agreement, assume any liability for Hazardous Materials at the Facility or any breach of Environmental Laws relating to the Facility or operations thereon.

3.10 Hazardous Cargo. Each Facility Operator shall be responsible for all federal and state authority reporting and compliance related to the handling of Hazardous Cargo at the Facility pursuant to that Facility Operator's Facility Operation Agreement.

3.11 Conduct of Operations/Independent Contractor Status. Each Facility Operator shall perform, render and carry out at all times the Facility Work as independent contractors. Each Facility Operator shall, at all times, have and exercise exclusive direction and control of the Facility Work allocated to them pursuant to each Facility Operation Agreement and exercise exclusive control over its individual work force and labor relations. While Master Concessionaire and/or the Facility Operator may, from time to time, receive advisory communications pertaining to the operation of the Facility from the Authority, compliance by a

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Facility Operator with such communications shall not effect their status as an independent contractor.

3.12 Right of Entry. The Authority shall, upon reasonable notice to Master Concessionaire and the Facility Operator operating on the applicable portion of the Facility, retain entry and inspection privileges to the Facility. The Authority shall coordinate with Master Concessionaire and the applicable Facility Operator to arrange a mutually agreeable time so as to minimize any interference to Master Concessionaire's operations or the operations of the Facility Operator.

3.13 Protection of Authority's Title in Premises. Master Concessionaire shall not suffer or permit the Premises, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might impair the Authority's title to the Premises or any portion thereof, or in such manner as may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

3.14 Uses Prohibited. Master Concessionaire shall comply with all legal requirements with respect to the Premises and the Facility. Master Concessionaire shall use the Premises and Facility in a manner that will not cause a cancellation of any insurance policy covering the Premises and Facility, or any part thereof.

3.15 Waste and Nuisance Prohibited. During the Concession Term, Master Concessionaire shall comply with all Applicable Laws affecting the Premises, the breach of which might result in any penalty to the Authority, or forfeiture of the Authority's interest in the Premises, or restriction against the Authority's interest in the Premises or the Authority's or City's adjoining land.

4. Construction and Improvements.

4.1 Construction of Improvements. Consistent with the Master Plan approved by the Authority and as part of the Facility Work, Master Concessionaire may construct, demolish and maintain any facilities, improvements, and buildings on the Premises reasonably necessary for the operation of the Facility. Master Concessionaire or its agent shall be responsible for obtaining any required building or other permits for such work. Such items shall be approved or objected to in accordance with the standards, process and procedures for approval of the Master Plan set out in Section 2.1, with the exception of the requirement that they be submitted by the Plan Submittal Date.

4.2 Submission of Plans for Modifications. Master Concessionaire agrees to submit to the Authority, in advance, all plans respecting any material modifications of or additions to the Premises and/or Facility, as part of the Master Plan. Any and all significant modifications and/or alterations to the Premises and/or Facility shall require the written consent of the Authority. Construction budgets, construction schedules, plans and specifications and architectural drawings shall be subject to written approval of the Authority and incorporated into the Master Plan as necessary, but shall not be required as a condition to submittal of the Master Plan as of the Plan Submittal Date.

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4.3 The Authority Funding for Construction or Improvements. Upon coordination with, or at the request of, Master Concessionaire, the Authority shall reasonably cooperate to use its bonding authority to authorize the issuance of bonds to provide for the construction of improvements and to otherwise further develop, or to expand the Facility or Premises. Expansion of the Facility to include Expansion Properties shall only occur in accordance with the Master Plan and by means of a written supplement to this Agreement under which Master Concessionaire and the Authority agree on the terms and conditions on which the Expansion Properties are to be incorporated into the Facility.

4.4 Master Concessionaire Funding for Construction or Improvements. Master Concessionaire, may, using its own private funds, construct improvements and further develop or expand the Facility or Premises in accordance with the Master Plan. Should Master Concessionaire with the approval of the Port Authority use its own private funds to construct improvements, further develop, or expand the Facility or Premises on real estate it does not own, all such costs shall be deemed advances of principal under the Promissory Note and added to the outstanding principal balance of the Promissory Note. From time to time as requested by Master Concessionaire, the Authority shall confirm such advances and execute and allonge to the Promissory Note confirming the increased principal amount thereof.

4.5 Authority Title Retention. The Authority shall own the title to any real estate parcels and Facility improvements that are constructed on property acquired using proceeds obtained from the issuance of the Authority authorized bonds.

4.6 Master Concessionaire Real Estate. Pursuant to the Master Plan and as otherwise provided for in this Agreement, Master Concessionaire may, from time to time, contribute Expansion Properties to the Facility by conveying such real estate to the Authority. The Authority shall own any additional real estate added to the Facility as an Expansion Property in fee simple determinable, subject to the possibility of reversion to Master Concessionaire if at any time the Master Concession Agreement terminates.

5. Application of Revenues Derived from the Facility.

5.1 Payment for Concession Services. Although the Authority's primary purpose for entering into this Agreement is to cause a dormant Port Facility to resume operations, the parties acknowledge and agree that the Authority will need to be compensated for the out of pocket and administrative costs that the Authority will incur in connection with the ongoing oversight and administration required of the Authority under the terms of this Agreement ("Oversight Expenses"). The parties further acknowledge and agree that the actual dollar value of Oversight Expenses is difficult to determine because of the length of the Concession Term and the nature of the Oversight Expenses as administrative expenses and not necessarily out of pocket expenses. Therefore, the parties stipulate that Master Concessionaire shall reimburse the Authority for Oversight Expenses as follows and without modification during the Concession Term.

a. On the behalf of the Authority, Master Concessionaire shall require each Facility Operator to collect, and provide written confirmation of the receipt of, all Gross Receipts earned in connection with the Facility.

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b. In order to compensate the Authority for its Oversight Expenses, on or before the thirtieth (30th) day following the end of each calendar quarter, Master Concessionaire shall pay the Authority two and one-half percent (2 1/2%) of the Gross Receipts received in that expired quarter, less the following deductions to be applied in the following order:

- (1) All outstanding interest that shall have accrued during the preceding quarter on the Promissory Note at the Floating Rate;
- (2) any default interest due on the Promissory Note;
- (3) any interest that accrued during prior quarters but that was added to the principal amount of the Promissory Note by reason of there being insufficient Gross Receipts available to pay the accrued interest; and
- (4) any amount due Master Concessionaire from the Authority under the terms of this Agreement.

5.2 Collection and Distribution of Capital Receipts. On behalf of the Authority, Master Concessionaire shall collect or require the Facility Operator(s) to collect all Capital Receipts earned in connection with the Facility. Concurrently with the collection of Capital Receipts, Master Concessionaire shall apply Capital Receipts in the following order:

- a. First, to satisfy all amounts due and owing under any loan or other financing related to the Capital Receipt and consented to in writing by Master Concessionaire;
- b. Second, to pay Master Concessionaire any accrued but unpaid interest outstanding under the Promissory Note, including default interest;
- c. Third, to satisfy the outstanding principal balance under the Promissory Note;
- d. Fourth, to pay any amounts then due any Facility Operator(s);
- e. Fifth, to pay any other amounts then due Master Concessionaire hereunder;
- f. With all residual Capital Receipts payable to the Authority.

5.3 Other Payments.

- a. The Authority has the right to pay all or part of the outstanding principal balance of the Promissory Note at any time.

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b. The Master Concessionaire will reimburse the Authority's unamortized bond issuance costs and costs related to completing this transaction, the total not to exceed Four-Hundred Thousand Dollars (\$400,000.00). Within ten (10) days of the execution of this Agreement, the Authority will present to the Master Concessionaire an itemized list of claimed costs, with appropriate justification, as requested. Within thirty (30) days of the receipt of the Authority's justified claim, the Master Concessionaire will make payment. Any disputes concerning this reimbursement will be resolved in accordance with Section 18.10 of this Agreement.

6. Warranties and Representations.

6.1 Warranty of Qualifications. Master Concessionaire represents and warrants to the Authority that Master Concessionaire is qualified and capable, and has adequate financial resources, to fulfill and perform its obligations under this Operating Agreement.

6.2 General Warranty by the Authority. Recognizing that the Parties have not had possession of the Premises nor have they had the opportunity to conduct a comprehensive due diligence, they nevertheless warrant that they are unaware of the Premises presently being the subject of:

- a. any administrative action, notice of violation, cessation order or action in any quasi-judicial or judicial body of competent jurisdiction;
- b. any final order, writ, judgment, injunction, decree, determination, award or other final order or applicable decision of any quasi-judicial, judicial, or government entity which restricts or affects the operation of the Facility;
- c. any investigation into the violation of any Applicable Law; or
- d. any other potential civil action which might have a material effect on Master Concessionaire's financial interests as a Facility Operator.

6.3 Warranty by the Parties of Environmental Conditions. The Baseline Assessment evaluated and documented the environmental conditions of the Larger Parcel of property. Within forty-five (45) days of the execution of this Agreement, the Master Concessionaire shall cause the completion of a final baseline assessment for the entire Facility. Until a baseline assessment that incorporates the Smaller Parcel is completed, the Smaller Parcel will not be included in the operation of the Facility. The Parties covenant, represent and warrant that to the best of their knowledge, except as provided in the Baseline Assessment:

- a. the Facility operating on the Larger Parcel does not violate any applicable federal, state, or local law, statute, ordinance, rule, regulation, order, notice requirement or other Applicable Law pertaining to the collection, transportation, storage, treatment, discharge, release, processing, handling, or disposal of Hazardous Materials.
- b. no written notice has been served on the Authority from any person or governmental entity regarding any existing, pending investigation or inquiry

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nor are there any threatened investigations or inquiries related to violations under any Applicable Laws, or any claims for corrective action, remedial obligations or contribution for removal costs or damages under any Applicable Laws or the designation of the Authority as a potentially responsible party under Applicable Laws.

c. there have been no releases of Hazardous Materials generated, stored, treated or disposed of on the Larger Parcel or on property adjacent to or proximate to the Premises.

6.4 Warranty re: Master Plan.

The Authority represents and warrants its Development Plan was duly adopted and approved by all applicable governmental authorities after notice and hearing in accordance with Section 120.123 of the Port the Authority Act, MCL §120.123.

7. Term and Termination of Operating Agreement.

7.1 Term of this Agreement. This Agreement shall be in effect for the Concession Term. The Concession Term shall be subject to three (3) successive twenty-five (25) year extension options to be exercised at the election of Master Concessionaire by delivery to the Authority of at least six (6) months prior written notice of Master Concessionaire's election to extend. Each extension option may only be subject to exercise if, during the Concession Term and each twenty-five (25) year extension period, at least Two Million Dollars (\$2,000,000.00) in "Capital Investment" has been made in the Premises by the Authority, Master Concessionaire, a Facility Operator or other party. Capital Investment shall mean the cost, as noted in third party invoices, of physical improvements made to the Premises (including any Expansion Properties). The following costs may be included in Capital Investment: all hard costs of physical improvements including labor and materials as well as soft costs, including design, engineering, architectural and legal expenses, permitting costs, impact fees, licensing costs, plan review fees, all other governmental expenses, fees and costs associated with the physical improvement of the Premises including any Expansion Properties, interest payable to third parties and attributable to construction periods, oversight fees payable to any third party construction or site manager and other fees and expenses that would typically be funded by a construction lender financing comparable physical improvements. Capital Investment shall only include costs relating to physical improvements that will remain on the Premises or Expansion Properties following the termination of the Master Concession Agreement.

7.2 Return of the Facility. Master Concessionaire shall, upon the termination of this Agreement, leave intact, undisturbed, and in good repair, less normal wear and tear, all fixtures, improvements, and installations, as well as all items comprising the same, pertaining to the Facility paid for by the Authority on the Authority property. Master Concessionaire agrees to remove all of its personal property from the Facility within sixty (60) calendar days from the date of the termination of this Agreement.

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FINAL 3/31/05- CONFIDENTIAL8. Insurance.8.1 Liability Insurance.

a. Master Concessionaire shall cause each Facility Operator to purchase liability insurance (any auto, including owned autos, non-owned autos and hired autos), and commercial general liability insurance protecting the Facility Operator, Master Concessionaire, and the Authority from and against any and all liabilities arising out of or relating to the Facility Operator's use or occupancy of, or the conduct of operations on, the Premises or in connection with the Facility. Limits of liability thereunder shall be in such reasonable amounts as the Authority shall approve as part of each Facility Operation Agreement. The policy shall be in a form and with a company or companies reasonably acceptable to Master Concessionaire and the Authority and with contractual liability coverage for the Facility Operator's covenants to and indemnification of Master Concessionaire and the Authority under the Facility Operation Agreement, if any. This insurance shall provide that it is the primary insurance with respect to any other valid and collectible insurance Master Concessionaire or the Authority may possess, including any self-insured retention or deductible Master Concessionaire or the Authority may have, and that any such other insurance Master Concessionaire or the Authority do possess shall be considered excess insurance only.

b. If the nature of the Facility Operator's use of the Premises or business operations on the Premises or in connection with the Facility are such as to place any or all of the Facility Operator's employees under the coverage of workers' compensation or similar statutes, Master Concessionaire shall also cause the Facility Operator to purchase workers' compensation or similar insurance with a company or companies acceptable to Master Concessionaire and the Authority affording the required statutory coverage and containing the requisite statutory limits.

c. The declarations page(s) from all insurance policies obtained by Facility Operator in accordance with the provisions of this Agreement shall be furnished to Master Concessionaire and the Authority at least fifteen (15) days prior to the commencement of any construction or installation on the Premises, whichever first occurs, and at least thirty (30) days prior to the expiration or termination of the coverage provided under any prior policy. Such declarations page(s) shall indicate that Master Concessionaire and the Authority as additional insured parties. Each declarations page shall indicate that such insurance coverage will not be reduced or canceled without having first given at least thirty (30) days' prior written notice to Master Concessionaire and the Authority.

8.2 Property Insurance.

a. Master Concessionaire shall cause each Facility Operator, at the Facility Operator's sole cost and expense, to obtain and maintain in effect through the term of this Agreement, for the benefit of Facility Operator, Master Concessionaire, the Authority, their lenders from time to time, and the trustee of certain of the Authority's outstanding revenue bonds, as their interests may appear, property insurance on all

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improvements, furnishings, fixtures, trade fixtures, signs, equipment and other personal property hereafter installed on the Premises or incorporated into the Facility, on a replacement cost basis, in such form and with such company or companies as Master Concessionaire shall approve, with a deductible which does not exceed five percent (5%) of such replacement cost.

b. At least fifteen (15) days prior to the commencement of any construction or installation on the Premises and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided by Facility Operator under this Agreement, Master Concessionaire shall cause each Facility Operator to furnish Master Concessionaire and the Authority the declarations page(s) from the insurance policy or policies evidencing such coverage, and such declarations page(s) shall indicate that Facility Operator, Master Concessionaire, the Authority, their lenders from time to time, and the trustee of any of Authority's outstanding revenue bonds are named as loss payees as their interests may appear, and that the policy or policies will not be canceled or reduced without thirty (30) days' prior written notice thereof to Master Concessionaire and the Authority.

c. Master Concessionaire shall require that each Facility Operator, on behalf of itself and its insurance carrier(s), waives any and all rights of recovery which Facility Operator may have against Master Concessionaire or the Authority for any loss of or damage to property each may suffer as a result of any fire or other peril normally insured against under a policy of property insurance.

8.3 Right of Master Concessionaire or Authority to Purchase. Master Concessionaire shall cause each Facility Operator to pay all of the premiums for insurance required to be maintained hereunder and to deliver proof of such insurance to the Authority. Upon the failure of Master Concessionaire to cause a Facility Operator to obtain such insurance in the names and in the amounts herein called for, to pay the premiums therefor, or to deliver proof of insurance to the Authority, the Authority shall be entitled, but shall have no obligation, to obtain such insurance and pay the premiums therefor, which premiums shall be repayable to the Authority upon written demand therefor. However, before taking such action, if commercially available, the Authority will consult with Master Concessionaire and identify the perceived inadequacies of Master Concessionaire's or any Facility Operator's insurance coverage. In no event shall Master Concessionaire or any Facility Operator be liable to the Authority for damages in excess of the insurance premiums that the Authority pays to purchase replacement insurance. If insurance is not maintained by Master Concessionaire or the Facility Operator, such failure shall not constitute an independent cause of action and shall not result in liability of Master Concessionaire to the Authority or any other party for uninsured damages that may occur.

8.4 Survival of Provisions.

The provisions of this Section 8 shall survive the expiration or earlier termination of this Agreement.

8.5 Blanket Insurance Policies. Notwithstanding anything to the contrary contained in this Article, Master Concessionaire's obligations to carry or to cause a Facility

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Operator to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Master Concessionaire or its Facility Operator(s), as long as the coverage afforded the Authority shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Agreement by reason of the use of such blanket policy of insurance, and all other requirements of this Article shall be satisfied.

8.6 Waiver of Subrogation. The Authority and Master Concessionaire waive all rights against each other, and against any of their respective officers, employees, agents, successors and assigns and any other parties named as insureds or additional insureds in such policies, on account of any loss or damage caused by risks covered by insurance under this Article to the extent such party is covered by that insurance. The Authority and Master Concessionaire intend that the required policies of insurance shall protect all the parties insured and provide primary and exclusive coverage for the losses and damages caused by risks covered by insurance under this Article. Each insurance policy carried by the Authority, Master Concessionaire and each Facility Operator shall provide that the insurance company waives its right of recovery by way of subrogation against the Authority, Master Concessionaire or the Facility Operator and their respective officers, employees, agents, successors and assigns in accordance with this paragraph.

9. Repairs and Destruction of Improvements.

9.1 Maintenance of Improvements. Master Concessionaire shall, without any expense to the Authority, cause the Premises and Facility to be kept and maintained, including without limitation, all structural, nonstructural, interior and exterior portions thereof, in good, sanitary and neat order, condition and repair. Master Concessionaire shall, except as specifically provided herein, restore, repair, replace or rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. Master Concessionaire shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises and Facility or the other improvements thereon, or any activity or condition on or in such Premises.

9.2 Damage to and Destruction of Improvements. The damage, destruction, or partial destruction of any building or any other improvements which are on the Premises shall not release or diminish Master Concessionaire's obligations hereunder, except as hereinafter expressly provided. In case of damage to or destruction of buildings or other improvements on the Premises, Master Concessionaire shall, at its expense, subject to the availability of adequate insurance proceeds, promptly repair and restore the same to a condition as good as that which existed prior to such damage or destruction. Without limiting such obligations of Master Concessionaire, it is agreed that, so long as Master Concessionaire is not then in default hereunder, and subject to the rights of any mortgagee of the Premises, the proceeds of any insurance covering such damage or destruction shall be made available to Master Concessionaire for such repair or replacement.

10. Master Concessionaire's Duty to Keep Premises Free of Liens. Except as provided in this Agreement, Master Concessionaire shall keep the Premises, and every part thereof, the buildings and any other improvements at any time located thereon free and clear of

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any and all construction liens for or arising out of or in connection with work or construction by, for or permitted by Master Concessionaire on or about the Premises, and any obligations of any kind incurred by Master Concessionaire, and at all times shall promptly and fully pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify the Authority and all of the Premises, against all such liens and claims of liens and suits or other proceedings pertaining thereto. Notwithstanding the foregoing, Master Concessionaire may contest any such lien in good faith and may permit same to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom; provided that if the Authority so requires, Master Concessionaire shall deposit with an escrow agent, cash or a cash equivalent surety bond in form and substance satisfactory to the Authority, in an amount sufficient to satisfy such lien, including any interest and penalties thereon.

11. Prohibition of Involuntary Assignment; Effect of Bankruptcy or Insolvency.

11.1 Prohibition of Involuntary Assignment. Neither this Agreement, nor the estate of the Authority or Master Concessionaire, nor any interest of the Authority or Master Concessionaire hereunder in the Premises or any improvements thereon, shall be subject to involuntary assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempt at involuntary assignment, transfer or sale shall be void and of no effect.

11.2 Effect of Bankruptcy, Insolvency, Etc. Without limiting the generality of the provisions of the preceding Section, the Authority and Master Concessionaire agree that the following events shall constitute an Event of Default by the bankrupt party:

- a. if any proceedings under federal bankruptcy law shall be commenced by or against either Party and if commenced against either Party, shall not be dismissed within sixty (60) days; or
- b. if either Party becomes insolvent or makes an assignment for the benefit of its creditors; or
- c. if a receiver is appointed in any proceeding or action to which either Party is a party, with authority to take possession or control of all or any part of the Premises or the business conducted thereon, and such receiver is not discharged within a period of thirty (30) days after his appointment; or
- d. if any involuntary assignment prohibited by the provisions of the preceding Section shall occur.

12. Assignment and Transfer by Master Concessionaire.

12.1 Prior Consent by the Authority to Assignment and Transfer of this Agreement. Master Concessionaire shall not assign or transfer this Agreement, without the prior written consent of the Authority, which consent shall not be unreasonably withheld. Consent to an assignment or transfer shall not be deemed to be a consent to any subsequent assignment or transfer. In connection with any approved assignment or transfer of this Agreement, the Authority shall release Master Concessionaire from its obligations under this Agreement to the

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extent of such assignment or transfer. Following an approved Assignment, all references therein to the Master Concessionaire shall mean the assignee entity. If Master Concessionaire assigns its rights under this Agreement without the consent of the Authority, the sole impact shall be that Master Concessionaire shall continue to be liable hereunder for all obligations of Master Concessionaire hereunder.

12.2 Master Concessionaire's Right to Subcontract. Notwithstanding the foregoing, and subject to the limited approval rights specified in Section 2.4 hereof, Master Concessionaire shall be entitled to subcontract all or a portion of its rights or duties under this Agreement to any Facility Operator.

13. Default.

13.1 Event of Default by Master Concessionaire. In addition to any other Master Concessionaire Defaults or Events of Default specified herein, the following shall constitute Master Concessionaire Defaults:

a. Master Concessionaire fails to make any payment on the due date thereof in accordance with this Agreement and fails to cure such delinquency within fifteen (15) days after written notice thereof has been received by Master Concessionaire; or

b. Master Concessionaire breaches any covenant of this Agreement other than the covenant for the payment of Oversight Expenses and fails to cure such breach within thirty (30) days after written notice thereof has been given by the Authority to Master Concessionaire.

13.2 Authority Rights and Remedies Pursuant to an Event of Default by Master Concessionaire. Following an Event of Default by Master Concessionaire, the Authority shall be entitled to exercise the following, and only the following, rights and remedies:

a. Pursue a claim for actual damages, but expressly excluding consequential damages, punitive damages or other monetary damages, in excess of actual damages, and subject to the additional condition that such damages shall be payable solely from future amounts due Master Concessionaire from the related Facility Operator hereof and without offset against any amounts otherwise due from Master Concessionaire or any other Facility Operator to the Authority hereunder;

b. Enforce the obligations of Master Concessionaire by means of the equitable remedies of specific performance and injunction, but subject to the condition that such equitable remedies shall not be exercised in such a manner inconsistent with the objective of keeping the Facility open as a Port Facility available for use by the general public and operated by a Facility Operator, nor shall such remedies be caused so as to cause a breach by Master Concessionaire of any Master Concessionaire's obligations under any Facility Operating Agreement;

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c. If, in addition to an Event of Default, Master Concessionaire is declared bankrupt or ceases to exist, the Authority may terminate this Agreement; and

d. Notwithstanding the provisions of this Section 13.2, recover reasonable attorneys' fees and enforcement expenses in accordance with Section 18.13 below.

13.3 The Authority's Right to Perform. Upon the occurrence of an Event of Default caused by the continuation of a Master Concessionaire Default, the Authority may, but shall not be required to, do or perform or cause to be done or performed such act or thing, entering upon the Premises for such purposes, if the Authority shall elect, and the Authority shall not be held liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Master Concessionaire on account thereof, except as a result of the Authority's, its agents', or employees' negligent acts or omissions in the performance of such act. Any act or thing done by the Authority pursuant to the provisions of this Section shall not be construed as a waiver of any such default by Master Concessionaire, or as a waiver of any covenant, term or condition herein contained, or of the requirement of performance thereof, or of any other right or remedy of the Authority, hereunder or otherwise. However, the Authority shall not be entitled to recover from Master Concessionaire any amounts expended in connection with the exercise by Authority of the rights specified in this Section 13.3 in excess of those amounts recoverable pursuant to Section 13.2(a) above.

13.4 Event of Default by the Authority. In addition to any other Authority Defaults or Events of Default specified herein, the following shall constitute Authority Defaults:

a. The Authority fails to perform a required duty or obligation as stated in this Agreement and fails to cure such delinquency within fifteen (15) days after written notice thereof has been given by Master Concessionaire to the Authority; or

b. The Authority breaches any representation or warranty of the Authority hereunder.

13.5 Remedies for Master Concessionaire Pursuant to an Authority Event of Default. If an Authority Default continues beyond applicable cure periods, Master Concessionaire shall be entitled to any and all remedies available at law or in equity provided that Master Concessionaire's right to recover monetary damages shall be limited to the Authority's rights and interests in: (a) the Facility; (b) the Premises; (c) the Gross Receipts; (d) the Capital Receipts; (e) any personal property located thereon or related to the Premises and the Facility; (f) any deposits, bonds or other security posted by the Authority and relating to the Facility or work being performed in connection with the Facility or leases or subleases of the Facility; and (g) any a right of offset against any other amounts due the Authority pursuant to this Agreement. In addition, the Master Concessionaire shall be entitled to enforce its rights under the Remainder Agreement and cause the City to take possession of the Premises so as to terminate the Authority's interest in the Premises and the Facility.

13.6 Waiver. The waiver by either Party of, or the failure of that Party to take action with respect to, any breach of any term, covenant or condition herein contained shall not

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be deemed to be a waiver of such term, covenant or condition, or of subsequent breach of the same, or of any other term, covenant or condition herein contained. The subsequent performance or acceptance of payment hereunder by a Party shall not be deemed a release of any term, covenant or condition of this Agreement, other than the failure of that Party to perform or pay the particular performance or payment so accepted, regardless of that Party's knowledge of such preceding breach at the time of acceptance of such performance or payment.

13.7 Default Interest. Amounts due and unpaid hereunder by either of the Parties to the other and delinquent for more than thirty (30) days, shall accrue interest at the Default Rate, compounding monthly, until paid in full.

14. Effect of Eminent Domain.

14.1 Effect of Total Condemnation. If the entire Premises and Facility shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, or shall with the consent of Master Concessionaire, be conveyed by the Authority to any public or quasi-public authority under a threat of such appropriation or taking, this Agreement shall terminate and expire as of the date of such taking or conveyance, payment shall be prorated to such date, and Master Concessionaire and the Authority shall thereupon be released from any liability thereafter accruing hereunder. All proceeds with respect to the Premises shall be divided between the Authority and Master Concessionaire as Capital Receipts to the extent that such proceeds relate to property owned by the Authority, or paid one hundred percent (100%) to Master Concessionaire to the extent that such proceeds relate to property in which Master Concessionaire has a reversionary interest.

14.2 Effect of Partial Condemnation. If the taking consists of less than the whole of the Premises or Facility, there will be no termination of this Agreement if Master Concessionaire determines, in its sole discretion, that its operation on the Premises can continue in substantially the same manner as before the taking. If Master Concessionaire determines that it cannot continue to operate on the Premises as herein required, either the Authority or Master Concessionaire may terminate this Agreement, and if this Agreement is terminated, the proceeds will be applied in the same way as under the preceding Section. If this Agreement is not terminated, then Master Concessionaire shall continue operations to the extent possible, and consistent with this Agreement, identify replacement improvements to be constructed by Master Concessionaire at the expense of the Authority. Subject to the rights of any mortgagee of the Premises, the proceeds of the partial condemnation shall be used first to pay for such construction, and any excess will go to the Authority and Master Concessionaire as their interests may appear as specified in the preceding paragraph.

15. Right of First Refusal. The Authority shall not sell the Premises or any interest in the Premises during the Concession Term except in accordance with this Section. Should the Authority receive from a bona fide, arm's-length purchaser not affiliated in any way with the Authority, a bona fide written offer ("**Bona Fide Offer**") to purchase all or any part of the Premises and should the Authority desire to accept the Bona Fide Offer, it shall first make a written offer (the "**First Offer**") to sell the Premises to Master Concessionaire at the price and upon the terms and conditions set forth in the Bona Fide Offer. The First Offer shall be accompanied by a copy of the Bona Fide Offer. Master Concessionaire may accept the First

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Offer by service of notice of acceptance to the Authority on or before the thirtieth (30th) day next following delivery of the First Offer to Master Concessionaire plus any earnest money delivered therewith. Failure of Master Concessionaire to respond during said thirty (30) day period shall be deemed a conclusive waiver of Master Concessionaire's right to accept the First Offer. If the First Offer is accepted, the purchase and sale shall be closed at the principal office of the Authority on the date set forth in the Bona Fide Offer or at such other place, time and date as the Authority and the Master Concessionaire may mutually agree upon, by payment of the Purchase Price against conveyance of the Premises subject to the terms of the First Offer. If Master Concessionaire fails to fully and timely accept the First Offer as herein provided, the Authority may make the bona fide sale of the Premises to the bona fide prospective purchaser making the Bona Fide Offer in accordance with the terms thereof; provided, however, that if the Authority fails to consummate the sale of the Premises in accordance with the Bona Fide Offer, Master Concessionaire's right of first refusal described in this Section shall remain in full force and effect. Master Concessionaire shall be entitled to require the Authority to execute a memorandum of this right of First Offer in recordable form and record that right of First Offer against the Premises.

16. Port Authority Activities. For the purpose of giving Master Concessionaire comfort that the Port Authority will remain solvent and that the Authority will spend adequate resources, both in man-hours and bonding capability, on the success of the Facility, the Port Authority agrees that any freight handling or storage Port Facility, intermodal rail loading and unloading facility, truck loading terminal, or other comparable transportation facility located in Wayne County under the control, authority or supervision of the Port Authority will, at the election of Master Concessionaire, be subject to the terms and provisions of this Master Concession Agreement and incorporated into the Facility.

17. Tax Treatment. It is recognized that Master Concessionaire and the Authority are sophisticated entities and are advised by experienced legal counsel. It is the intent of Master Concessionaire and the Authority that for federal income tax purposes the transaction described in this Agreement is to be treated as a concession agreement and not as a capital lease between the Authority and the Master Concessionaire. Ownership of the Premises and the buildings, docks and other permanent improvements thereon shall reside in the Authority. The following items are expressly agreed to not constitute real property and ownership, thereof shall not transfer to the Authority by reason of their being incorporated into the Facility: furniture, trade fixtures, cranes, and other machinery for loading and unloading ships. The Authority and Master Concessionaire agree that, to the extent permitted by Applicable Laws, each shall file all tax returns in conformity with the foregoing intentions. The parties acknowledge and agree that (a) neither has made any representations or warranties to the other concerning the tax, accounting or legal characteristics of the transaction detailed in this Agreement and (b) each have obtained and relied upon such tax, accounting and legal advice concerning this Agreement and the transactions described herein and therein as they deem appropriate. The Authority and Master Concessionaire covenant not to challenge the characterization of the transaction created pursuant to this Agreement as anything other than as outlined above. Each party expressly acknowledges that the parties intend that the transactions described herein not be construed as a joint venture or partnership transaction. Each party acknowledges that neither the Authority nor Master

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Concessionaire would have entered into the transactions contemplated hereby and thereby if a joint venture or partnership were being created.

18. Miscellaneous.

18.1 Execution of this Agreement. This Agreement and any modifications, supplements or amendments thereto shall be valid only when it is executed by duly authorized agents of each Party.

18.2 Collection of Prior Accounts Receivable. Any accounts receivables which have outstanding balances at the time this Agreement takes effect for work performed at the Facility will constitute Gross Receipts.

18.3 Applicable Law. This Agreement shall be governed and construed by the substantive laws of the State of Michigan. In the event any provision(s) of this Agreement shall be adjudged invalid by a court or arbitrator having competent jurisdiction over the Parties, the invalid provision(s) shall be deleted from this Agreement and this Agreement shall be construed as to give effect to the remaining provisions.

18.4 Notices. All notices provided for herein shall be in writing and shall be tendered by U.S. Certified Mail to the receiving Party hereto at:

If to Master Concessionaire:

Ambassador Port Company
12225 Stephens
Warren, MI 48089

With a copy to:

Foley & Lardner LLP
500 Woodward Avenue, Suite 2700
Detroit, MI 48226
Attn: George Ash, Esq.

If to the Authority:

Detroit/Wayne County Port Authority
8109 E. Jefferson Avenue
Detroit, MI 48214
Attn: Executive Director

With a copy to:

Lewis & Munday, P.C.
2490 First National Building
660 Woodward Avenue
Detroit, MI 48226
Attn: David Baker Lewis, Esq.

In the case of a change in the mailing address of any Party hereto, the Party so changing its mailing address shall give notice thereof to the other Party hereto, and in the absence of any such notice of change of mailing address executed in accordance with this paragraph, notice given to

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the respective aforesated mailing addresses shall be deemed sufficient for all purposes of this Agreement.

18.5 Captions. The captions appearing in this Agreement are for identification purposes only and shall not be construed as affecting in any way the meaning of the provisions hereof.

18.6 Attachments. All attachments are an integral part of this Agreement and set forth the entire understanding of the Parties in respect of the transactions contemplated. These documents supersede all prior agreements, arrangements, and understandings of the Parties concerning this Agreement and the operation of the Facility.

18.7 Modifications to this Agreement. This Agreement shall not be amended, modified, or altered, in whole or in part, except by mutual written agreement of the Parties hereto, properly executed by the same. No evidence of any such amendment, modification, or alteration of this Agreement shall be received in any controversy arising out of or pursuant to same except if it is in writing and executed in accordance with this subsection.

18.8 Successors and Assigns. This Agreement shall inure to the sole and exclusive benefit of and be of full and binding effect upon the Parties hereto and their respective successors and assigns. Nothing set forth in this Agreement, expressed, implied, or otherwise, is intended or shall be construed to confer upon or give to any person or entity other than the Parties hereto, and their respective successors and assigns, any right, remedy, benefit, cause of action, and/or chose in action under or by reason of this Agreement.

18.9 Force Majeure. Master Concessionaire shall be not liable for its failure to perform in whole or in part due to contingencies which have a material effect on its contractual performance, including, but not limited to, strikes, riots, war, fire, acts of God, compliance with any law, regulation, or order, whether valid or invalid of any other governmental body or any instrumentality thereof, whether now existing or hereafter created, or a delay in payment from the Facility Operator, as long as the Master Concessionaire diligently pursues such payment from the Facility Operator.

18.10 Dispute Resolution Procedures. All disputes arising under this Agreement shall be resolved pursuant to the procedures set forth in this paragraph 18.10 unless otherwise agreed by the Parties in writing.

a. Nothing in this paragraph shall be construed as limiting or delaying Master Concessionaire's right to seek injunctive relief from a court.

b. Except as set forth in subparagraph (a) above, neither Party shall initiate litigation under this Agreement without first following the dispute resolution procedure set forth herein.

c. In the event of a dispute arising under this Agreement, the aggrieved Party shall provide the other Party with written notice of a dispute. The Parties

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agree to negotiate in good faith for a period of ten (10) days following receipt of the notice of a dispute.

d. If the Parties are unable to resolve the dispute(s) through good faith negotiations, then the Parties agree to submit the dispute to non-binding mediation with a third- Party mediator to be mutually agreed upon by the Parties. Each Party agrees to pay one half of the mediator's costs and fees. Five (5) days prior to the initial mediation session, each Party shall submit a written summary of its position regarding the dispute(s) to the mediator and the other Party. The mediation session(s) shall take place in the City, State of Michigan. If by the end of the mediation session, the Parties are not able to come to an accord, each party shall submit to the mediator a proposed final solution to the dispute. The mediator shall determine the proposed solution that most closely represents the proper outcome based on the mediator's application of the terms and conditions of this Agreement to the facts and circumstances at issue. If the Parties are not able to reach an accord, the mediator shall not be entitled to modify either proposed solution offered by the Parties. The parties agree that in any litigation, the proposed solution selected by the mediator shall be presumptively correct absent gross negligence or bad faith on the part of the mediator or the existence of material facts not known to the Parties and presented to the mediator at the time of the mediation.

e. If the Parties are unable to resolve the dispute(s) within thirty (30) days of the initial mediation session, then either Party may initiate litigation. The Federal District Court for the Eastern District of Michigan and the Circuit Court for the County of Macomb shall be the exclusive venues for litigating disputes arising under this Agreement. Each Party agrees to submit to the personal jurisdiction of the Federal District Court for the Eastern District of Michigan and/or the Circuit Court for the County of Macomb.

18.11 Remedies Cumulative. All remedies hereinbefore and hereinafter conferred on the Authority and Master Concessionaire shall be deemed cumulative, and no one remedy shall be exclusive of another or of any other remedy conferred by law.

18.12 Perpetuities Savings Clause. If any right of the Authority or Master Concessionaire provided for in this Agreement would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one years less one day after the date of death of the last survivor of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy and Ambassador to the Court of Saint James, but if any such rights, privileges and options shall be or become valid under Applicable Law for a period subsequent to the twenty-first anniversary of the death of the last such survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross, exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue

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in effect, but only if such non-termination and extension shall then be valid under Applicable Law until such time as the same shall under Applicable Law cease to be valid.

18.13 Expenses of Enforcement. Master Concessionaire or the Authority shall pay all reasonable attorneys' fees and actual expenses incurred by the other Party in enforcing any provisions of this Agreement, caused by a defaulting Party hereunder, upon written demand therefor made by the non-defaulting Party.

IN TESTIMONY WHEREOF, the Parties have caused their respective corporate signatures to be subscribed by their respective duly authorized officers; these presents being executed in duplicate copies, each of which shall be considered as an original, this the date first above written.

DETROIT/WAYNE COUNTY PORT
AUTHORITY

THE AMBASSADOR PORT COMPANY

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

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STATE OF MICHIGAN

COUNTY OF _____, to-wit:

The foregoing Agreement was acknowledged before me by _____
_____, who holds the position of _____
at _____, a Michigan corporation, for and on behalf of said corporation, this
_____ day of _____, 2005.

My commission expires: _____

NOTARY PUBLIC

STATE OF MICHIGAN

COUNTY OF _____, to-wit:

The foregoing Agreement was acknowledged before me by _____
_____, who holds the position of _____ at the
Authority, a Michigan corporation, for and on behalf of said corporation, this _____ day of
_____, 2005.

My commission expires: _____

NOTARY PUBLIC