

FIFTH AMENDMENT	*	UNITED STATES OF AMERICA
TO THE	*	STATE OF LOUISIANA
NASHVILLE AVENUE TERMINAL LEASE BETWEEN	*	PARISH OF ORLEANS
	*	
THE BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS	*	
AND	*	
P&O PORTS LOUISIANA, INC., *		

THIS FIFTH AMENDMENT (hereafter “Fifth Amendment”), made and entered into on the dates written below and effective April 1, 2005, to the Nashville/Henry Clay Avenue Terminal lease between the Board of Commissioners of the Port of New Orleans (hereafter “Board”), a political subdivision of the State of Louisiana, having its principal place of business at 1350 Port of New Orleans Place, New Orleans, Louisiana 70130, represented herein by Gary P. LaGrange, its President and Chief Executive Officer, by virtue of a resolution of said Board taken at its November 18, 2004, public meeting, a certified copy of which is annexed hereto and made part of this Fifth Amendment as Exhibit A, and P&O Ports Louisiana, Inc., (hereafter “Lessee”), a corporation organized and existing under the laws of the State of Louisiana, having its principal place of business at 601 Louisiana Avenue, New Orleans, Louisiana 70130, represented herein by Patrick M. Morrissey, its President, duly authorized to act by virtue of a resolution of its Board of Directors dated November 14, 2002, a certified copy of which is annexed hereto and made part of this Fifth Amendment as Exhibit B,

WITNESSES :

WHEREAS, Board and Lessee entered into an agreement effective June 1, 1997, providing for the lease by Lessee of Board’s Nashville Avenue Terminal Complex and its Henry Clay Avenue Wharf, and their appurtenances and certain adjacent property as set out in the lease (hereafter “the Lease”); and

WHEREAS, Board and Lessee amended the Lease for the first time to provide for a minimum annual revenue guarantee instead of a minimum annual tonnage guarantee, to provide for adjustments in rate increases scheduled in the Lease for the first Renewal Period of the Basic Leased Premises and the second and third Renewal Periods of the Add On Leased Premises as defined in the Lease and other matters mutually agreed to by the parties; and

WHEREAS, Board and Lessee amended the Lease for a second time to allow Lessee to use space in the Napoleon Avenue Container Terminal for cargo for a shipping line whose vessels could not reach P&O’s France Road Terminal facility because of air draft conflicts; and

WHEREAS, Board and Lessee amended the Lease for a third time when the Napoleon Avenue Container Terminal (formerly referred to as the Napoleon Avenue “A” Terminal Complex) lease was executed to adjust land areas that were affected by the close proximity of the Napoleon Avenue Container Terminal to the Leased Premises; and

WHEREAS, Board and Lessee amended the Lease a fourth time to allocate to the Lease a percentage of containers landed in both the Leased Premises and Lessee’s Napoleon Avenue Container Terminal leased premises described in the lease effective November 1, 2003, and to provide average full and empty container weights to be applied to the containers allocated to the Lease; and

WHEREAS, Board and Lessee desire to amend the Lease a fifth time to allow for the collection and disbursement of security fees,

NOW, THEREFORE, for the consideration and on the terms and conditions hereinafter set forth, Board and Lessee hereby agree to amend the Lease as follows:

I.

Section 5 (“Minimum Annual Revenue Guarantee”)

Subsection 5(E) is hereby deleted in its entirety, and the following is added in its place:

All revenues collected by Lessee under Section 6 (“Rent”) below of the Lease except for tariff charges collected pursuant to Subsection 6(H) and security fees collected pursuant to Subsection 6(O) of the Lease shall be credited toward the Minimum Annual Revenue Guarantee.

II.

Section 6 (“Rent”)

(A) Subsection 6(K) is hereby deleted in its entirety, and the following is added in its place:

All charges and fees due to the Board in accordance with this Section except Subsection 6(H) and Subsection 6(O) shall constitute rent for use of the Leased Premises.

(B) The following section is hereby added to the Lease as Subsection 6(O):

(O) (i) Lessee shall publish in its terminal tariff to become effective May 1, 2005, a provision to assess a cargo security fee that is the same as the Cargo Security Fee set out in Board Tariff Section VII (“Security Charges”), Item 704 and any future amendments thereto. Lessee shall collect the Cargo Security Fee on all maritime cargo for which it pays rent to the Board, including cargo handled under Subsection 6(G) above, beginning with vessels that arrive at the dock starting at 0001 hours on May 1, 2005. Lessee shall not assess any other security fees, including, but not limited to vessels, cargo interests and agents, except those Security Fees provided herein.

(ii) Lessee shall remit to Board the security fees as set out in Appendix B (hereafter “Lessee Security Fee”), attached to and hereby made part of this Lease.

(iii) Lessee may be reimbursed by Board for a portion of Lessee’s security costs using proceeds collected by Board under Section VII (“Security Charges”) of its Tariff, including remittances to Board by Lessee as detailed in Subsection 6(O)(ii) above. Terms and conditions of said reimbursement are set out in Appendix B.

(iv) The same terms and conditions outlined in Section 15 (“Audits”) below regarding maintenance, retention and Board access to Lessee’s records for payment of rent shall also apply to Lessee’s records regarding this

Subsection 6(O).

- (v) The terms and conditions detailed in Appendix B may be amended with the mutual consent of Lessee and Board acting through its president and chief executive officer in his sole discretion.
- (vi) The terms and conditions of this Subsection 6(O) shall survive and continue for one hundred fifty (150) days after the termination of the Lease.

III.

Section 7 (“Time of Payment - Delinquent Fee”)

(A) The following sentence is hereby added to the end of Subsection 7(A):

Payments due under Subsection 6(O) above shall be due and payable under the terms and conditions of Appendix B.

(B) The following sentence is hereby added as the second sentence in Subsection 7(B):

Along with any payment to Board due under Subsection 6(O) above, Lessee shall submit to Board information and reports as detailed in Appendix B.

(C) Subsection 7(B) is further amended such that the last sentence is deleted in its entirety and the following is hereby added in its place:

A delinquent fee of 3/100ths of one percent (0.0333%) per day (approximately 12 percent per annum) will be assessed on any delinquent payments of any rent or Cargo Security Fees due under Section 6 (“Rent”) of this Lease until they have been received and until required supporting documents have been received.

IV.

All Other Terms and Conditions

Except as specifically amended herein, all other terms and conditions of the Lease shall remain in full force and effect as if restated here in their entirety. This Fifth Amendment shall not affect any of the rights of the parties under the Lease which arose before the effective date of this Fifth Amendment.

V.

Federal Maritime Commission

The parties agree that, immediately on execution of this Fifth Amendment, Board may at its option submit a duplicate original of it to the Federal Maritime Commission. Should this Fifth Amendment fail to become effective, the parties agree to negotiate in an effort to eliminate or revise those provisions found to be objectionable to the end that this Fifth Amendment may become effective. If the parties should fail to agree on the deletion, revision or amendment of any provision found to be objectionable, then this Fifth Amendment shall be null, void and of no legal effect.

THUS DONE AND SIGNED in three originals in New Orleans, Louisiana, in the presence of the subscribing witnesses on the dates indicated below and effective as provided above.

**BOARD OF COMMISSIONERS OF
OF THE PORT OF NEW ORLEANS**

WITNESSES:

by: _____
Gary P. LaGrange
President and Chief Executive Officer

date: _____

APPROVED:

Attorney for Board

P&O PORTS LOUISIANA, INC.

WITNESSES:

by: _____
Patrick M. Morrissey
President

date: _____

ACKNOWLEDGMENTS

STATE OF LOUISIANA PARISH OF ORLEANS

On this ____ day of _____, 2005, before me personally came and appeared Gary P. LaGrange, to me known, who, being by me duly sworn, did depose and say that he is the President and Chief Executive Officer of the Board of Commissioners of the Port of New Orleans, the political subdivision of the State of Louisiana described in and which executed the foregoing amendment; that he signed his name thereto pursuant to authority granted to him by that Board; and that the said amendment is the act and deed of that Board.

Furthermore, Gary P. LaGrange did produce to me sufficient proof that he is the President and Chief Executive Officer of said Board of Commissioners of the Port of New Orleans and that he was duly authorized by the Board to execute the foregoing amendment, and I the Notary Public hereby certify that the signature of the said Gary P. LaGrange on the foregoing amendment is authentic.

Notary Public

STATE OF LOUISIANA PARISH OF ORLEANS

On this ____ day of _____, 2005, before me personally came and appeared Patrick M. Morrissey, to me known, who, being by me duly sworn, did depose and say that he is the President of P&O Ports Louisiana, Inc., the corporation described in and which executed the foregoing amendment; that he signed his name thereto pursuant to authority granted to him by the board of that company; and that said amendment is the act and deed of the said entity.

Furthermore, Patrick M. Morrissey did produce to me sufficient proof that he is the President of P&O Ports Louisiana, Inc., and that he was duly authorized by the said entity to execute the foregoing amendment, and I the Notary Public hereby certify that the signature of the said Patrick M. Morrissey on the foregoing amendment is authentic.

Notary Public