

**LEASE TERMINATION AGREEMENT
BETWEEN
PORT OF SEATTLE AND EAGLE MARINE SERVICES, LTD.
TERMINAL 5**

THIS LEASE TERMINATION AGREEMENT (the "Termination Agreement") is made and entered into as of _____, 2014 by and between the PORT OF SEATTLE, a Washington municipal corporation, ("Port"), and EAGLE MARINE SERVICES, LTD. ("EMS"), a Delaware Corporation, and its parent company AMERICAN PRESIDENT LINES, LTD. ("APL"), a Delaware corporation ("APL" together with "EMS," hereinafter called "Lessee").

W I T N E S S E T H:

WHEREAS, the parties entered into a lease agreement dated September 26, 1985, , covering certain premises and activities by APL at the Port's Terminal 5, Seattle, Washington ("Premises"), which was subsequently amended by First Amendment dated March 25, 1986; Second Amendment dated August 11, 1987; Third Amendment dated February 14, 1989; Fourth Amendment dated August 8, 1989; Fifth Amendment dated August 11, 1992; Sixth Amendment and Assignment of Lease dated June 1, 1994; Seventh Amendment dated July 1, 1994; Eighth Amendment dated October 21, 1999; Ninth Amendment dated September 30, 2009; and Tenth Amendment dated March 26, 2014, hereinafter called "Basic Lease;" and

WHEREAS, APL assigned the Basic Lease to EMS, and the Port consented to such assignment, all pursuant an Assignment and Assumption of Lease and Consent of Port of Seattle dated as of June 1, 1994 (the "Assignment").

WHEREAS, by this Termination Agreement, the parties now wish to terminate the Basic Lease upon the terms and conditions set forth in this Termination Agreement; and

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual promises hereinafter contained, the parties hereby agree as follows:

1. **Basic Lease Termination.** Subject to all of the terms and conditions hereof, the parties agree that in lieu of the original expiration date of August 31, 2028 of the Basic Lease, the Basic Lease shall terminate effective July 31, 2014 ("Termination Date"). The Port, APL, EMS and all of APL's and EMS's subsidiaries and affiliates shall not have any further liability under the Basic Lease or the Assignment from and after the Termination Date, except as expressly provided herein. The terminated obligations of EMS and APL under the Basic Lease and the Assignment include, without limitation, the requirement to maintain a bond or other security in favor of the Port. The existing letter of credit provided by EMS to the Port shall be returned to EMS within 10 days after the Termination Date.

2. **Continued APL Presence.** APL will continue its presence in the Seattle Harbor/Elliott Bay and relocate its operations to the Port-owned Terminal 18, pursuant to a separate agreement with SSA Terminals Seattle LLC ("SSAT"), the primary tenant of Terminal 18, and shall continue

to operate at Terminal 18 for a 10-year period from August 1, 2014 through July 31, 2024 (“Guarantee Period”) subject to the terms and conditions more fully described in this Agreement.

3. Guaranteed Lifts. APL will handle at least 150,000 container lifts per year (“Guaranteed Lifts”) through the Port terminals through the Guarantee Period. A lift (“Lift”) is defined as each inbound and outbound container (regardless of size), whether loaded or empty, lifted by a container crane at a Port-owned container facility irrespective of the vessel on which it arrives or departs. Non-containerized cargo is not included in the Lift count.

- i. The Guaranteed Lifts will remain fixed through the Guarantee Period. For purposes of calculating the Guaranteed Lifts, the annual commitment shall run from August 1 through July 31 (“Annual Commitment Period”).
- ii. All volumes affiliated with EMS, APL, existing Terminal 5 customers and G6 partners (so long as APL is a member) or any other shipping partner in whatever alliance APL is a member (“Qualified Partners”) during the Annual Commitment Period, will be counted toward APL’s Guaranteed Lifts.
- iii. In the event that APL fails to meet the Guaranteed Lifts in any given Annual Commitment Period, APL shall pay to the Port a shortfall penalty for each Lift below the Guaranteed Lifts by October 31, based on the following calculation:

Lift Shortfall	Shortfall Penalty (per Lift)
1 to 50,000 Lifts	\$75
50,001 and greater	\$100

Sample Shortfall Calculation: If APL handles 140,000 Lifts in a given year, APL would pay a shortfall penalty as follows: [10,000 Lifts x \$75 per Lift]. If APL handles 90,000 Lifts in a given year, APL would pay a shortfall penalty as follows: [50,000 Lifts x \$75 per Lift, *plus* 10,000 Lifts x \$100.00 per Lift]

4. Guaranteed Vessel Calls. APL will commit to itself providing or having other Qualified Partners provide at least 50 vessel calls of 7,500 twenty-foot equivalent unit (TEU) vessel size (or larger vessels) per year (“Guaranteed Vessel Calls”) though the Guarantee Period. APL will annually provide to the Port on September 1 information on each APL vessel or vessel of a Qualified Partner that called at Terminal 18 or other Port facility (“Qualified Vessel Calls”) during the previous Annual Commitment Period as set forth in Paragraph 5 below.

- i. For purposes of calculating the Guaranteed Vessel Calls, the annual commitment shall run from August 1 through July 31.
- ii. In the event that APL fails to meet the Guaranteed Vessel Calls in any given year during the Guarantee Period, APL shall pay to the

Port, not later than October 31, a shortfall penalty of \$100,000 for each vessel call below the Guaranteed Vessel Calls.

Sample Shortfall Calculation: If APL handles 48 qualifying vessel calls in a given year, APL would pay a shortfall penalty as follows: [2 vessel calls x \$100,000]

- iii. The vessel shortfall penalty payable by APL to the Port shall not apply if the number of Lifts exceeds 250,000 during the same Annual Commitment Period.
- iv. The Port's Chief Executive Officer may exercise reasonable discretion to relieve APL of one or more vessel call obligations based on force majeure (as defined in the SSAT Terminal 18 Lease) or dry-docking schedules of APL or other Qualified Partners.

5. Lifts and Vessel Call Reporting. For purposes of tracking the Guaranteed Vessel Calls and the Guaranteed Lifts, APL will report its monthly activities in marine commerce as outlined below.

- i. Reporting Process. APL will enter information regarding cargo Lifts and Vessel Calls by Qualified Partners as requested by the Port ("Cargo Data") on all vessels (including containers) into the Port's Marine Terminal Information System ("MTIS"). APL will enter the Cargo Data within 10 days after departure of the vessel from or to which the Lift occurred.
- ii. Audit Rights.
 - 1. Right to Audit. The Port may inspect and audit, through its employees or representatives, APL's records regarding Vessel Calls and Lifts ("Records"). APL shall make the Records readily available for such examination. The Port may undertake such inspection and/or audit at any reasonable time and from time to time. In the event the Records are not maintained in the Puget Sound region, they shall be made available for audit locally within five (5) business days of a request by the Port, or APL shall pay in full, any travel, and related expenses of Port representative(s) to travel to the location outside the Puget Sound region.
 - 2. Right to Copy APL Records. The Port or its representatives shall have the right to copy any and all Records.

3. **APL Must Reconstruct Insufficient Documentation.** If upon examination or audit the Port reasonably determines that sufficient documentation is not maintained, retained, or available to verify Lessee's actual Lift and Qualified Vessel Calls, APL shall pay for the actual and reasonable cost of such visit, and in addition, should the Port reasonably deem it necessary, APL shall exercise commercially reasonable efforts to reconstruct, at its sole cost and expense, all Records for the determination of Lift and Qualified Vessel Calls for any period being audited.

6. **Encouragement of Alliance Activity through Seattle.** APL will undertake commercially reasonable efforts to encourage alliance and other volume activity through Terminal 18 in Seattle and to support the Port in marketing container vessel services in the Port.

7. **Mutual Release of Basic Lease Obligations.** In consideration of the promises set forth herein, the Port and Lessee mutually hereby and for their heirs, representatives, executors, administrators, successors and assigns, release, acquit and forever discharge each other and their officers, directors, subsidiaries, affiliates, agents, employees, representatives, attorneys, insurers, either past or present, and all persons acting under them by and through, or in concert with any of them, and each of them from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts and demands, of whatever character, in law or in equity, whether presently known or unknown, relating to the Lease; provided, however, this release shall not extend to any obligation by Lessee: (i) to pay utility expenses incurred by EMS prior to the Termination Date under Paragraph 6 (UTILITIES) of the Basic Lease, (ii) to indemnify the Port against any claims arising from the release by Lessee of any Hazardous Substance during the term of the Lease as set forth in Paragraph 41 of the Basic Lease (as incorporated by the Sixth Amendment, Section 7, (ENVIRONMENTAL STANDARDS)), or (iii) to fail to pay rent (or any other sums due the Port) or to observe any other term of the Lease between the date of this Termination Agreement and the Termination Date; and provided further that this release shall not extend to any obligation by the Port relating to (i) the Hazardous Materials contained in the Expansion Premises prior to Lessee's occupancy of such Expansion Premises as also set forth in Paragraph 41 of the Basic Lease or (ii) the Port's obligation to observe any other term of the Lease between the date of this Termination Agreement and the Termination Date. At the Port's request and effective the first day after the Termination Date, EMS will assign its storm water permit for Terminal 5 ("Permit") to the Port in accordance with the procedures set forth in section ___ of the Permit. EMS will have no obligations under the Permit as of the effective transfer date ("Transfer Date"). The Port will defend, indemnify, and hold EMS harmless from any claims or damages arising from the Permit on or after the Transfer Date. Notwithstanding the foregoing, the Port's obligations under this paragraph do not apply to the extent EMS would have been subject to any claims or damages arising from the Permit if EMS had terminated the Permit on the Transfer Date.

8. **List of Shutdown Items.** EMS and the Port will mutually agree on a list of items required to be addressed by EMS as part of the shutdown of Terminal 5 prior to the Termination Date. This list will include cleaning out the storm water system pipelines and catch basins. EMS

shall not be required to repair or replace Terminal 5 improvements that are reasonably expected to be replaced at such time when the Port refurbishes or expands Terminal 5. If EMS fails to timely complete the mutually agreed shutdown items, EMS shall enter into a limited license agreement with the Port to complete the mutually agreed shutdown items with reasonable diligence and no later than August 31, 2014. Such license agreement shall include reasonable and customary insurance and indemnity obligations equivalent to the Basic Lease and an obligation for EMS to reimburse the Port's actual cost of EMS's use of Utilities. There shall be no additional rent or license fee associated with this limited license. The Port, at its sole discretion, may extend this license at EMS's request, subject to any additional conditions imposed by the Port.

9. Future Port Action. Lessee will not oppose any future action by the Port related to Terminal 5, including refurbishment, expansion, or the leasing of Terminal 5 to another terminal operator, so long as such action does not physically and materially impair APL's ability to operate at Terminal 18.

10. Force Majeure. Notwithstanding the terms of Paragraph 4.iv hereof, in the event Terminal 18 itself is unable to provide services to APL due to force majeure as defined in the SSAT Terminal 18 lease, then APL's obligations relating to the Guaranteed Lifts and Guaranteed Vessel Calls commitments will be suspended. APL's obligations for the Guaranteed Lifts and Guaranteed Vessel Calls will resume once the force majeure event has been resolved.

11. Alternate Service Provider upon Termination of SSAT Terminal 18 Lease. If the SSAT Terminal 18 Lease is terminated for any reason while APL is operating at Terminal 18, APL's obligations for the Guaranteed Lifts and Vessel Calls will be suspended. The Port and APL will work together in good faith to seek a new service provider for APL, either at Terminal 18 or at another location, with capabilities and characteristics substantially equivalent to Terminal 18 mutually acceptable to the Port and APL in their respective reasonable discretion. The new service provider for APL's operation shall provide APL with terminal operation services on similar terms as those provided to APL by SSAT at Terminal 18. APL will have a commercially reasonable period of time to relocate to the new terminal. APL's obligations for the Guaranteed Lifts and Guaranteed Vessel Calls will resume once the relocation has occurred. The suspension period for the Guaranteed Lifts and Guaranteed Vessel Calls will not extend the Guarantee Period.

12. Intermodal Lift Fee Shortfall Payment. EMS will pay the Port \$140,731.20, representing a prorated portion of the shortfall in meeting its annual minimum guarantee for intermodal lifts. This amount was derived from a seven-month requirement of 29,905 intermodal lifts based on an annual requirement of 51,266 intermodal lifts under Section 6, subparagraph (i) of the Sixth Amendment. EMS was 12,132 intermodal lifts short of the prorated requirement. EMS's shortfall payment is \$11.60 for each intermodal lift under the requirement. EMS will pay the Port within 30 days of the Termination Date.

13. Entire Termination Agreement; Modification. This Termination Agreement sets forth all covenants, promises, agreements, conditions, or understandings between the parties regarding EMS's termination of its lease at Terminal 5. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties other than as

are set forth in this document. (APL's separate agreement with SSAT referenced in Paragraph 2 above may be subject to approval by the Port.) No subsequent alteration, amendment, change, or addition to this Termination Agreement shall be binding unless reduced to writing and signed by all parties.

14. Governing Law. This Termination Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to choice of law principles. In the event that any term, covenant, condition, or other provision of this Agreement is held to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement shall remain in full force and effect.

15. Fair Construction. The parties acknowledge and agree that the language of this Termination Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the parties. The captions and paragraph numbers appearing in this Termination Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs not in any way affect this Termination Agreement.

16. Attorneys' Fees. In the event any party requires the services of an attorney in connection with enforcing the terms of this Termination Agreement or in the event that suit is brought for the breach of any representation, warranty, covenant or condition of this Termination Agreement, the prevailing party shall be entitled to a reasonable sum for attorneys' fees, consultants' or experts' fees, witness fees and other costs, both at trial and on appeal.

17. Successors and Assigns. This Termination Agreement and each of its covenants and conditions shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns. Lessee's rights and obligations under this Termination Agreement shall be freely assignable to another assignee with the prior written consent of the Port in each instance. Lessee shall at the time the Lessee requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee, including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee.

18. Shipping Act. This instrument is subject to the applicable provisions of the Shipping Act of 1984, the Shipping Act of 1916, the Ocean Shipping Reform Act of 1998 and their respective implementing regulations. No future amendment or modification to this Lease will become effective until the appropriate procedures, if any, have been completed in accordance with the procedures of the appropriate federal agency that has jurisdiction.

19. General. Time is of the essence of this Agreement. Each of the undersigned parties represents and warrants to the other that each has full right, authority, and capacity to execute and perform this Agreement and to complete the transactions contemplated herein. This Agreement may be executed in counterparts, which together shall constitute one document. To facilitate execution, this Agreement may be executed and transmitted electronically by facsimile or .pdf

format to the other party and that executed electronically transmitted counterpart shall be binding and enforceable as an original.

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement as of the day and year first above written.

PORT OF SEATTLE

EAGLE MARINE SERVICES, LTD.

By _____
Its _____

By _____
Its _____

AMERICAN PRESIDENT LINES, LTD.

By _____
Its _____

Draft

Notary to Lease Termination Agreement with EMS
and APL at Terminal 5.

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ___ day of _____, 20__ before me personally appeared _____, to me known to be the _____ of the PORT OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)

Notary Public, in and for the State of Washington,
residing at _____

My Commission expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ___ day of _____, 20__ before me personally appeared _____, to me known to be the _____ of the _____, the individual/entity that executed the within and foregoing instrument at Lessee, and acknowledged said instrument to be the free and voluntary act and deed of said individual/entity, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)

Notary Public, in and for the State of Washington,
residing at _____

My Commission expires: _____

Notary to Lease Termination Agreement with EMS
and APL at Terminal 5.

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 20__ before me personally appeared _____, to me known to be the _____ of the _____, the individual/entity that executed the within and foregoing instrument at Lessee, and acknowledged said instrument to be the free and voluntary act and deed of said individual/entity, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)

Notary Public, in and for the State of Washington,
residing at _____

My Commission expires: _____