

ORIGINAL

BEFORE THE
FEDERAL MARITIME COMMISSION

FILED

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Federal Maritime Commission
Office of the Secretary

Docket No. 08-03
Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT,
DISMISSAL WITH PREJUDICE, AND STAY**

Complainant Maher Terminals, LLC (“Maher”) and Respondent The Port Authority of New York and New Jersey (“Port Authority” or “PANYNJ”), through their respective attorneys, hereby jointly move for (a) approval of the Settlement Agreement (attached hereto as Exhibit B); (b) contingent dismissal with prejudice of (i) Maher’s complaint against the Port Authority filed on June 3, 2008 (“Dkt. No. 08-03”) and (ii) Maher’s complaint against the Port Authority filed on March 3, 2012 (“Dkt. No. 12-02” together, the “Pending Litigations”), including with respect to such Pending Litigation any potential claims for attorneys’ fees and costs (as discussed further below, to be contingent and effective upon the occurrence of certain conditions); and (c) a stay of the Pending Litigations until the Federal Maritime Commission (“FMC” or “Commission”) receives notification from the parties that pursuant to the Settlement Agreement the conditions upon which the requested dismissals are based either have or have not

been fulfilled, as set forth more fully in Section VI below. A proposed order for the FMC's consideration is attached hereto as Exhibit A.

Maher and the Port Authority respectfully submit that the Settlement Agreement meets the FMC's criteria for approval of settlement agreements and therefore should be approved. The stay should be ordered to permit the Commission time to approve the settlement and for the parties to avoid any further burden of litigation in the interim.

I. INTRODUCTION

The Port Authority and Maher, by and through their respective legal counsel, have engaged in significant negotiations in a concerted effort to resolve the remaining litigation between them in the Pending Litigations. The parties are pleased to report that they now have successfully achieved a result that they believe to be in each of their best interests.

Maher's current owner, Deutsche Bank Americas Holdings Corp. ("DBAH"), wishes to transfer its controlling membership interest in Maher to MIP III Yellowtail Holdings LLC ("Yellowtail Holdings"), which is indirectly controlled by Macquarie Infrastructure and Real Assets Inc. ("MIRA"). This transaction (the "Transaction") benefits the parties. The Port Authority has agreed to consent to the transfer of Maher to Yellowtail Holdings—as is required for such a change of control under the terms of Maher's marine terminal lease—conditioned upon the satisfaction of all the requirements set forth in the Consent Agreement, which is attached as Exhibit 1 to the Settlement Agreement (*see* Exhibit B).

To facilitate this Transaction, Maher and the Port Authority have negotiated a global Settlement Agreement that includes a Consent Agreement and supplements to Maher's existing lease, which are attached to the Consent Agreement as Exhibits A – C. Collectively, in addition to allowing for the transfer of Maher to Yellowtail Holdings, these agreements also settle the

Pending Litigations between Maher and the Port Authority. With the Commission's approval, upon consummation of the Transaction, the Settlement Agreement will close the chapter of litigation between the parties, avoid the considerable costs to the parties and the Commission of continuing to litigate the Pending Litigations to their conclusion, and enable the Port Authority, Maher and Yellowtail Holdings to proceed into their new relationship on a clean slate.

II. BACKGROUND

A. Docket No. 08-03

In brief summary, on June 3, 2008, Maher filed a complaint against the Port Authority alleging violations of the Shipping Act of 1984 (the "Shipping Act"), 42 U.S.C. §§ 41106(2), (3) and 41102(c). Maher claimed that the Port Authority: (1) granted unduly and unreasonably more favorable lease terms to non-party APM Terminals North America, Inc. ("APM-Maersk") than it provided to Maher; (2) refused to deal with Maher regarding its request for parity with APM-Maersk; and (3) failed to establish, observe, and enforce just and reasonable regulations and practices. Maher additionally alleged that the Port Authority refused to negotiate with Maher regarding Maher's third-party counter complaint in Docket No. 07-01, in which Maher alleged that the Port Authority violated Maher's lease by failing to provide it with specific dates by which to vacate an 84-acre parcel of land and failing to perform certain improvements to other property.

On April 25, 2014, the Administrative Law Judge ("ALJ") held that Maher had failed to establish any of the Shipping Act violations alleged, and dismissed Maher's complaint with prejudice. The Commission affirmed the ALJ's decision on December 17, 2014. On March 22, 2016, acting on Maher's petition for review, the D.C. Circuit remanded the case for further

explanation of the Commission's opinion and policy.¹ On June 21, 2016, the Commission granted the parties' consent motion for supplemental briefing and directed the parties to therein address seven issues of significance to the parties. The Port Authority submitted its Initial Supplemental Brief on July 15, 2016. On July 29, 2016, the parties submitted a joint motion to stay all proceedings.

B. Docket No. 12-02

On March 30, 2012, while the Dkt. No. 08-03 action was proceeding, Maher initiated the Dkt. No. 12-02 action against the Port Authority alleging fourteen violations of sections 41102(c), 41106(2), 41106(3), and 41106(1) of the Shipping Act. On April 26, 2012, the Port Authority moved to dismiss Maher's complaint and stay the proceeding pending resolution of Docket No. 08-03. While the motion to dismiss was pending, the parties engaged in discovery practice, during which each party served discovery requests and responses. Following those exchanges, the matter was effectively stayed until January 30, 2015, when the ALJ granted the Port Authority's motion to dismiss the complaint for failure to state a claim. After Maher filed Exceptions, the Commission dismissed ten of the fourteen claims with prejudice and remanded four claims, concerning two discrete issues: the Port Authority's change of control practices and letting of a 70-acre parcel adjoining the Global terminal and now subject to the Global Lease. The parties recommenced discovery and motions followed regarding discovery disputes. On July 29, 2016, the Port Authority and Maher submitted a joint motion to stay all proceedings, which was granted on August 3, 2016.

¹ Maher's petition had challenged only the Commission's rejection of its unreasonable preference and unreasonable practice claims based on its rental rate as compared to APM-Maersk's rental rate. Since Maher did not challenge the Commission's rejection of its other claims, they are no longer at issue in the Dkt. No. 08-03 action.

III. REQUEST FOR CHANGE OF CONTROL

After MIRA was identified as a buyer, Maher formally requested the Port Authority's consent for the proposed change of control pursuant to Section 45 of Maher's marine terminal lease, EP-249. After negotiations by and through counsel, which included careful consideration of the benefits and risks of the proposed transaction to each party, Maher and the Port Authority reached a Settlement Agreement that they have determined is satisfactory to both parties. The Port Authority has agreed to consent to the consummation of the acquisition of Maher by Yellowtail Holdings, conditioned upon the satisfaction of all the requirements set forth in the Consent Agreement, which includes the dismissal of the Pending Litigations.

In sum, contingent upon the Commission's approval of the Settlement Agreement, the parties have agreed, *inter alia*, that:

- the Port Authority will consent to the change of control from DBAH to Yellowtail Holdings, upon the satisfaction of the conditions set forth in the Consent Agreement (*see* Exhibit 1 to the Settlement Agreement);
- the Parties will execute any documentation necessary to implement such change of ownership and control, including applicable supplements to the relevant Port Authority leases or permits to which Maher and/or its applicable affiliates are parties (*see* Exhibits A – C to the Consent Agreement); and
- the Port Authority and Maher will agree to voluntarily dismiss the Pending Litigations with prejudice and release each other from any and all claims in any way relating to the leases, permits and the Pending Litigations (*see* Settlement Agreement §§ 1-7).

These mutual releases and concessions contained in the Settlement Agreement and documents annexed thereto are of substantial value to the parties. As noted above, the Settlement Agreement reflects the parties' agreement, expressly contingent on the Commission's approval, to voluntarily dismiss the Pending Litigations in their entirety with prejudice. The

parties submit that these mutual concessions made in connection with the Settlement Agreement fairly and reasonably resolve the outstanding issues between them in the Pending Litigations.

IV. AUTHORITY FOR SETTLEMENT

Rule 91 of the Commission's Rules of Practice and Procedure tracks the language of the Administrative Procedure Act in providing interested parties an opportunity, *inter alia*, to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b); *see* 5 U.S.C. § 554(c). Rule 72 of the Commission's Rules of Practice and Procedure expressly addresses voluntary dismissal the result of a settlement between the parties. 46 C.F.R. § 502.72(b); 79 Fed. Reg. 76.901 (Dec. 23, 2014) (explaining the Commission's standard for approving a settlement and requiring submission of the settlement agreement).

The Commission "has a strong and consistent policy of encouraging settlements and engaging in every presumption which favors a finding that they are fair, correct, and valid." *Am. Stevedoring, Inc. v. PANYNJ*, 32 S.R.R. 466, 467 (ALJ 2011) (citation and quotation marks omitted). Pursuant to this policy, long recognized both in the law generally and by the Commission particularly, the Commission will "uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy":

The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal Co. v. Sea-Land Serv., Inc., 18 S.R.R. 1085, 1092 (ALJ 1978) (quoting 15A Am. Jur., 2d ed., pp. 777-778 (1976)).

Consistent with this policy, “if ‘a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.’” *Econocaribe Consolidators, Inc. v. Amoy Int’l LLC*, Dkt. No. 14-10, 2015 WL 9690306, at *2 (ALJ 2015) (quoting *Old Ben Coal*, 18 S.R.R. at 1093). The Commission will examine a proposed settlement to determine that it “has a reasonable basis and reflects the careful consideration by the parties of such factors as the relative strengths of their positions weighed against the risks and costs of continued litigation [I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement.” *Delhi Petroleum Pty. Ltd. v. U.S. Atl. & Gulf/Australia — New Zealand Conf. & Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

V. THE SETTLEMENT IS FAIR AND REASONABLE AND DOES NOT VIOLATE ANY PROVISION OF THE LAW

The Settlement Agreement between Maher and the Port Authority should be approved because (A) it is fair, adequate, and reasonable for both Maher and the Port Authority; (B) it is “free of fraud, duress, undue influence, [or] mistake,” *Econocaribe Consolidators*, 2015 WL 9690306, at *2; and (C) it does not violate any provision of the law.

A. The Settlement Agreement Is Fair, Adequate And Reasonable

As the ALJ and the Commission are aware, Maher and the Port Authority have disputed their respective positions in litigation since 2007. While the outcome of the Pending Litigations

is uncertain, the Settlement Agreement will relieve both parties, and the Commission, of the need to expend further time and considerable resources litigating these complex disputes to their eventual conclusion. The avoidance of those expenses and of the uncertainties of litigation is of considerable value to each party.

Further, as explained above, Maher and the Port Authority are each receiving something and relinquishing something under the Settlement Agreement, which they have determined, in their respective business judgments, to be a fair and adequate trade. The Settlement Agreement provides for the transfer of ownership of Maher to Yellowtail Holdings. The transaction benefits DBAH, and brings to the region a well-respected and experienced marine terminal operator in MIRA. Moreover, it offers the parties a logical and opportune moment to resolve the legal disputes that have dogged the parties' relationship.

The Settlement Agreement is a reasonable step to take at this juncture. The parties already have expended substantial amounts of time and resources, including millions of dollars in attorneys' fees and costs litigating the Pending Litigations, and their continuation would exact an additional substantial toll. Moreover, the recent amendments to the Commission's Rules of Practice and Procedure regarding attorneys' fees, *see* 46 C.F.R. § 502.254 (2015), present another significant factor to consider. The Settlement Agreement, if approved, would eliminate not only the need for further proceedings, but also the uncertainty and risk of an award of attorneys' fees.

The parties have stipulated that the concessions made by both parties in connection with the Settlement Agreement provide adequate consideration for their agreement to relinquish the claims at issue. And, in fact, "the matter of how much the parties agree to exchange in order to terminate litigation is not one which the courts or the Commission generally question, if, as here,

the amount appears to have been determined in the exercise of the parties' business judgment after lengthy negotiations." *Trident Seafoods Corp. v. Coastal Transp., Inc.*, 91-49, 1993 WL 104677 (ALJ 1993) (citing *Int'l Ass'n of NVOCC's v. Atl. Container Line*, 26 S.R.R. 151, 153 (ALJ 1991)); see also *APM Terminals N.A., Inc. v. PANYNJ* (Dkt. No. 07-01), 31 S.R.R. 623, 626 (FMC 2009) ("The FMC observes long-established precedent giving deference to the parties when it comes to the valuation of settlement concessions. There is no burden on the settling parties to prove that the settlement involves concessions of equal value on both sides.") (citation omitted).

Maher and the Port Authority's decision to forgo substantial and complex litigations, with uncertain outcomes, in exchange for the resolution of any potential liability (including the potential for an award of attorneys' fees) therefore is fair, adequate, and reasonable.

B. The Settlement Agreement Is "Free of Fraud, Duress, Undue Influence, [or] Mistake"

Each party's decision to settle all claims was made after months of negotiations by legal counsel and based on careful consideration of the merits and of the potential costs and benefits to both parties. The protracted litigation between Maher and the Port Authority has been disruptive to both parties and has taxed their resources. In all likelihood, absent a settlement, there will be additional, protracted litigation in each Pending Litigation, as Docket No. 12-02 would proceed on the merits and then from the ALJ back to the Commission and Docket No. 08-03 likely would proceed on the merits before the Commission and then from the Commission back to the D.C. Circuit. This could go on for years. The transfer of Maher to a new owner has presented an opportunity to put the parties' disputes behind them now. It is in the best interests of both parties to settle now. The parties have agreed and stipulated that the settlement is "free of fraud, duress, undue influence, [or] mistake." *Econocaribe Consolidators*, 2015 WL 9690306, at *2

C. The Settlement Agreement Does Not Violate Any Provision Of The Law

“The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy.” *Am. Stevedoring, Inc.*, 32 S.R.R. at 467 (quoting *Old Ben Coal*, 18 S.R.R. at 1092). The parties wish to settle their differences now, and have agreed that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation. See *Delhi Petroleum Pty. Ltd. v. U.S. Atl. & Gulf/Australia — New Zealand Conf. & Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted). As the Commission has explained, when determining whether to approve a settlement agreement it is not necessary to make final determinations of violations or lack of violations since to do so might discourage parties from even attempting to propose settlement in the first place. *Old Ben Coal*, 18 S.R.R. at 1093-94. The Commission adheres to a policy of “encourag[ing] settlements and engag[ing] in every presumption which favors finding that they are fair, correct, and valid.” 79 Fed. Reg. 76.901.

VI. MECHANICS OF THE PARTIES' REQUEST

As explained above, the parties' negotiated settlement, including the releases and ultimate dismissal of the Pending Litigations, is contingent upon the completion of the closing of Yellowtail Holdings's acquisition of Maher. Likewise, the Port Authority's consent to that change of control is dependent on the Commission's approval of the Settlement Agreement and contingent dismissal of the Pending Litigations.

Accordingly, as a first step, the parties are hereby seeking the Commission's approval of the Settlement Agreement (which should be granted for all of the reasons set forth herein) and contingent dismissal of the Pending Litigations, insofar as the parties respectfully request that

those dismissals not become effective until the closing of Yellowtail Holdings's acquisition of Maher. By structuring the mechanics in this way, the Port Authority is able to provide its consent to the change of control because the Settlement will have already been approved and the Pending Litigations dismissed contingently, effective at the point of the closing. At the same time, holding the effectiveness of the dismissal of the Pending Litigations in abeyance pending the closing allows the parties to be restored to their pre-settlement positions in the Pending Litigations if the transaction does not occur.

In addition, because there will be a short interim period between approval of the settlement and contingent dismissal and the effective date of the settlement and dismissal, the parties also respectfully request a stay during that period in order to avoid any further resources of the parties or the Commission being spent on the Pending Litigations.

To accomplish this sequencing of events, the parties respectfully request—as set forth in the attached Proposed Order—that the Commission:

1. Approve the Settlement Agreement, including all of the terms and conditions set forth therein;
2. Dismiss contingently the above-captioned actions with prejudice, effective immediately upon the closing of Yellowtail Holdings's acquisition of Maher, and Order the parties to notify the Commission when the closing is complete.
3. Stay the Pending Litigations until the Commission either (i) receives notification that the closing is complete; or (ii) receives notice that the requirements under the Consent Agreement have not been satisfied in accordance with the terms thereof and that the anticipated closing has been canceled.

If the Commission is notified that the conditions required under the Consent Agreement

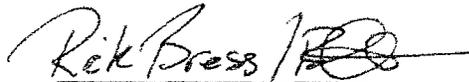
have not been satisfied in accordance with the terms thereof and that the anticipated closing has been canceled, the parties respectfully request that any order approving the settlement and dismissing contingently the Pending Litigations be deemed vacated, and of no further force or effect, and that the Commission restore the parties to their positions in the respective Pending Litigations as they existed immediately prior to entry of this Order.

VII. CONCLUSION

For the reasons stated above, the parties respectfully submit that it is their position that the Settlement Agreement meets the Commission's criteria for approval of a settlement agreement for purposes of voluntary dismissal per Rule 72 and thus should be approved. Further, for the reasons set forth herein, the parties respectfully request that the Commission dismiss contingently the Pending Litigations with prejudice, effective upon the closing of Yellowtail Holdings's acquisition of Maher, and stay the Pending Litigations until such closing or any notification by the parties that the closing has been canceled.

Dated: September 30, 2016

Respectfully submitted,



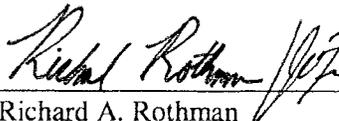
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ATTACHMENT A

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**Docket No. 08-03
Docket No. 12-02**

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

ORDER

Complainant Maher Terminals, LLC (“Maher”) and Respondent the Port Authority of New York and New Jersey (“Port Authority”), having filed a joint motion for approval of settlement agreement (the “Settlement Agreement”), dismissal with prejudice, and stay (the “Motion”), it is hereby Ordered:

1. The Settlement Agreement, including all of the terms and conditions set forth therein, is **APPROVED**.
2. The above-captioned actions shall be **DISMISSED WITH PREJUDICE**, effective immediately upon the Effective Date, as set forth in the Settlement Agreement. Any one of the Parties shall notify the Commission when the Effective Date has occurred.
3. All proceedings in these actions are hereby and shall remain **STAYED** until the Commission either (i) receives notification that the Effective Date has occurred; or (ii) receives

notice that the requirements under the Consent Agreement have not been satisfied in accordance with the terms thereof and that the anticipated Closing has been canceled.

4. If the Commission is notified that the conditions required under the Consent Agreement have not been satisfied in accordance with the terms thereof and that the anticipated Closing has been canceled, this Order shall be deemed vacated, and of no further force or effect, and the Parties shall be restored to their positions in the respective litigations as they existed immediately prior to entry of this Order.

ATTACHMENT B

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into this 30th day of September 2016, by and among The Port Authority of New York and New Jersey (the "Port Authority"), Maher Terminals LLC (formerly Maher Terminals, Inc., and hereinafter, the "Lessee") and the Lessee's indirect parent company, Deutsche Bank Americas Holdings Corp. ("DBAH" and, together with the Port Authority and the Lessee, the "Parties").

WHEREAS, heretofore and as of October 1, 2000, the Port Authority, as lessor, and the Lessee entered into that certain Agreement of Lease No. EP-249 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Lease") covering a portion of the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union, in the State of New Jersey, all as more specifically set forth in the Lease; and

WHEREAS, heretofore and as of January 1, 2003, the Port Authority, as lessor, and Maher 1210 Corbin LLC (formerly Maher 1210 Corbin, Inc., and hereinafter "Maher 1210"), as lessee, entered into that certain Agreement of Lease No. EP-250 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Office Lease") (together with the Lease, the "Maher Leases") covering certain premises located at the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union, in the State of New Jersey, all as more specifically set forth in the Office Lease; and

WHEREAS, heretofore and as of September 1, 2015, the Port Authority, as permittor, and Lessee, as permittee, entered into that certain Space Permit No. PEP-075 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Chassis Permit") covering portions of the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union, in the State of New Jersey, all as more specifically set forth in the Chassis Permit; and

WHEREAS, heretofore and as of September 1, 2015, the Port Authority, as permittor, and Millennium Marine Rail, L.L.C. (hereinafter "Millennium"), as permittee, entered into that certain Space Permit PEP-074 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Millennium Permit") (together with the Chassis Permit, the "Permits") (the Permits, together with the Maher Leases, the "Marine Terminal Agreements") covering approximately 67 acres of area to be used by Millennium for the operation and management of "Expressrail", all as more specifically set forth in the Millennium Permit; and

WHEREAS, on or about July 3, 2007, Maher Terminals USA, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Maher USA"), which owns one hundred percent (100%) of the issued and outstanding membership interests of Lessee, with the consent of the Port Authority, was acquired by Deutsche Bank Americas Holding Corp. ("DBAH") and its affiliates; and

WHEREAS, following the acquisition of Maher USA by DBAH, the Lessee brought certain litigations against the Port Authority in the Federal Maritime Commission ("FMC") relating, among other things, to the terms of the Lease and styled as (i) *Maher*

Terminals LLC v. Federal Maritime Commission, et al. (No. 15-1035) (U.S. Court of Appeals for the D.C. Circuit), (ii) *Maier Terminals LLC v. The Port Authority of New York and New Jersey* (FMC Dkt. No. 08-03), (iii) *Maier Terminals, LLC v. The Port Authority of New York and New Jersey* (FMC Dkt. No. 12-02), and (iv) any and all appeals or remanded proceedings relating to the foregoing clauses (i) through (iii) (collectively, the "Pending Litigations"); and

WHEREAS, each of the Lessee, DBAH and the Port Authority denies any liability or wrongdoing alleged in the Pending Litigations; and

WHEREAS, on April 11, 2016, Lessee provided formal notice to the Port Authority that DBAH has agreed, subject to obtaining certain regulatory consents and approvals, to enter into a potential transaction with MIP III Yellowtail Holdings LLC (the "Acquisition"), that, if consummated, would result in a change of ownership of Lessee, Millennium's and Maier 1210's leasehold and permit interests, as applicable, in the marine terminal operation at the Port Authority's Port Elizabeth location (the "Formal Notice"); and

WHEREAS, the terms of certain of the Marine Terminal Agreements require the consent of the Port Authority to certain changes in the ownership or control of Lessee, Millennium and Maier 1210 and of certain entities having direct or indirect beneficial ownership thereof; and

WHEREAS, pursuant to the Formal Notice, Lessee requested that the Port Authority consent to the proposed change of ownership as a result of the Acquisition, to the extent required under each of the Marine Terminal Agreements (the "Port Authority's Consent"); and

WHEREAS, subject to the terms hereof, the Port Authority and Lessee have agreed to settle, and Lessee has agreed to voluntarily dismiss, with prejudice, the Pending Litigations, and have agreed upon the terms and conditions of the Port Authority's Consent as set forth in the Consent to Transfer of Ownership and Control Agreement dated September 30, 2016 (the "Consent Agreement"), the form of which is attached hereto as Exhibit 1.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, THE PARTIES AGREE AS FOLLOWS:

1. Upon the execution of (i) this Settlement Agreement, and (ii) the Consent Agreement, the parties shall jointly submit a motion to the FMC seeking (a) approval of this Settlement Agreement, (b) dismissal of the Pending Litigations (to be effective upon the Effective Date (as defined below)), and (c) a stay of the Pending Litigations, by filing the motion attached hereto as Exhibit 2. *For the avoidance of doubt*, in the event that the FMC does not approve the Settlement Agreement and/or does not dismiss the Pending Litigations with prejudice as contemplated hereby on or before November 24, 2016, or any of the terms and conditions of the Port Authority's Consent as set forth in the Consent Agreement are not approved by the FMC or if any of the conditions precedent to the effectiveness of the Port Authority's Consent are not satisfied (or otherwise waived by the Port Authority in the Port Authority's sole and absolute discretion) in accordance with the terms thereof on or before

November 24, 2016, or the Closing (as defined in the Consent Agreement) does not occur for any reason by November 24, 2016, this Settlement Agreement (including without limitation the releases contained in Sections 4 through 7 herein) automatically and without further action by any party shall terminate and be of no force or effect *ab initio* (other than as expressly contemplated in Section 19 herein). Moreover, as set forth in the Consent Agreement, in the event of a termination of this Settlement Agreement, by its terms the Consent Agreement automatically and without further action by any Party shall terminate and be of no force or effect *ab initio*.

2. The closing date for the Acquisition will not occur prior to the date upon which all of the conditions precedent set forth in Section 1 of the Consent Agreement have been satisfied in accordance with the terms thereof (for the avoidance of doubt, including, without limitation, the FMC's approval of this Settlement Agreement and the dismissal of the Pending Litigations with prejudice upon Closing). The "Effective Date" is the date on which the Closing of the Acquisition and the satisfaction of all conditions set forth in Section 1 of the Consent Agreement take place.

3. Both (i) the releases contained in Sections 4 through 7 herein, and (ii) the dismissal with prejudice of the Pending Litigations, are to be effective upon the Effective Date. Either the Port Authority or Lessee shall notify the FMC upon the occurrence of all conditions to the Effective Date. If the Effective Date does not occur for any reason by November 24, 2016, either the Port Authority or Lessee shall so notify the FMC and, any FMC order dismissing the Pending Litigations and any request to the FMC contemplated hereby (including the Exhibits attached hereto) automatically and without further action by any party shall terminate and be of no force or effect *ab initio*, and the Parties shall be restored to their status in the Pending Litigations as it existed immediately prior to the execution of this Settlement Agreement. Moreover, as set forth in the Consent Agreement, in the event that the FMC does not dismiss the Pending Litigations, by its terms the Consent Agreement automatically and without further action by any Party shall terminate and be of no force or effect *ab initio*.

4. Lessee hereby covenants not to sue and fully, finally, and forever generally releases, surrenders, remises, acquits, and forever discharges the Port Authority and all of its current and former parents, subsidiaries, affiliates, predecessors, successors and assigns and each of their respective current and former officers, directors and employees (together, the "Port Authority Parties"), of and from any and all claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character, accrued or unaccrued, known or unknown, foreseen or unforeseen, whether based on contract, tort, the Shipping Act or any other statute, that Lessee or any of its current or former parents, subsidiaries, affiliates, predecessors, successors or assigns, including but not limited to Maher 1210 and Maher USA, had, has or may have against any Port Authority Party arising from facts, occurrences, actions, inactions, events or circumstances arising from or related in any way to the Maher Leases, the Permits, any allegation made in or relating to the Pending Litigations, any transactions or other dealings with the Port Authority Parties, the Formal Notice or the Port Authority's Consent, from the beginning of time through the date of this Settlement Agreement, except for any rights and obligations created (or preserved pursuant to Section 8 herein) by this Settlement Agreement or the Consent Agreement. Without limiting the foregoing, the Lessee further warrants to the Port Authority that, to its knowledge, it has no known or foreseeable claims, disputes, demands, actions, suits, liabilities, suits in equity or damages of any kind or character against any Port

Authority Party, accrued or unaccrued, as of the date of this Settlement Agreement, that have not been released by this paragraph. The Lessee agrees, represents and warrants as of the date of this Settlement Agreement that, to its knowledge, the Port Authority has fully and completely satisfied all of its obligations under the Lease.

5. DBAH hereby covenants not to sue and fully, finally, and forever releases, surrenders, remises, acquits, and forever discharges the Port Authority Parties, of and from any and all claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character, accrued or unaccrued, known or unknown, foreseen or unforeseen, whether based on contract, tort, the Shipping Act or any other statute, that DBAH or any of its current or former parents, subsidiaries, affiliates, predecessors, successors or assigns, had, has or may have against any Port Authority Party arising from facts, occurrences, actions, inactions, events or circumstances arising from or related in any way to the Lessee, the Acquisition, the Maher Leases, the Permits, any allegation made in or relating to the Pending Litigations, the Formal Notice or the Port Authority's Consent, from the beginning of time through the date of this Settlement Agreement, except for any rights and obligations created by this Settlement Agreement or the Consent Agreement. Without limiting the foregoing, DBAH further warrants that it has no known or foreseeable claims, disputes, demands, actions, suits, liabilities, suits in equity or damages of any kind or character against the Port Authority arising from facts, occurrences, actions, inactions, events or circumstances arising from or related in any way to the Lessee, the Acquisition, the Maher Leases, the Permits, any allegation made in or relating to the Pending Litigations, the Formal Notice or the Port Authority's Consent, accrued or unaccrued, as of the date of this Settlement Agreement, that have not been released by this paragraph. In agreeing to the release set forth in this Section, DBAH hereby covenants and agrees not to sue the Port Authority on any claim concerning the terms of the Consent Agreement on any theory, including that the terms thereof constitute an alleged violation of the Shipping Act, provided however, any Party remains free to enforce the obligations set forth in the Consent Agreement.

6. The Port Authority hereby covenants not to sue and fully, finally, and forever generally releases, surrenders, remises, acquits, and forever discharges Lessee and all of its current and former parents, subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective current and former officers, directors and employees (together, the "Maher Parties") of and from any and all claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character, accrued or unaccrued, known or unknown, foreseen or unforeseen, whether based on contract, tort, the Shipping Act or any other statute, that the Port Authority or any of its current or former parents, subsidiaries, affiliates, predecessors, successors or assigns, had, has or may have against any Maher Party, arising from facts, occurrences, actions, inactions, events or circumstances arising from or related in any way to the Maher Leases, the Permits, any allegation made in or relating to the Pending Litigations, any transactions or other dealings with the Maher Parties or the DBAH Parties (as defined below), the Formal Notice or the Port Authority's Consent, from the beginning of time through the date of this Settlement Agreement, except for any rights and obligations created (or preserved pursuant to Section 8 herein) by this Settlement Agreement or the Consent Agreement. Without limiting the foregoing, the Port Authority further warrants to Lessee that, to its knowledge, it has no known or foreseeable claims, disputes, demands, actions, suits, liabilities, suits in equity or damages of any kind or character against any Maher Party, accrued or unaccrued, as of the date of this Settlement Agreement, that have not been released by this paragraph. The Port Authority agrees, represents and warrants as of the date of this Settlement Agreement that, to its

knowledge, the Lessee has fully and completely satisfied all of its obligations under the Lease. *For the avoidance of doubt*, nothing in this release is intended to absolve the Maher Parties from their obligation to remit any outstanding Cargo Facility Charges due and owing to the Port Authority pursuant to Port Authority of New York and New Jersey Tariff (PAMT FMC NO. PA-10), Section H, Subrule 34-1220(3)(b)(i)-(iv).

7. The Port Authority hereby covenants not to sue and fully, finally, and forever releases, surrenders, remises, acquits, and forever discharges DBAH and all of its current and former parents, subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective current and former officers, directors and employees (together, the "DBAH Parties") of and from any and all claims, disputes, demands, actions, suits, liabilities, suits in equity and damages of any kind or character, accrued or unaccrued, known or unknown, foreseen or unforeseen, whether based on contract, tort, the Shipping Act or any other statute, that the Port Authority or any of its current or former parents, subsidiaries, affiliates, predecessors, successors or assigns, had, has or may have against any DBAH Party arising from facts, occurrences, actions, inactions, events or circumstances arising from or related in any way to the Lessee, the Acquisition, the Maher Leases, the Permits, any allegation made in or relating to the Pending Litigations, the Formal Notice or the Port Authority's Consent, from the beginning of time through the date of this Settlement Agreement, except for any rights and obligations created by this Settlement Agreement or the Consent Agreement. Without limiting the foregoing, the Port Authority further warrants that it has no known or foreseeable claims, disputes, demands, actions, suits, liabilities, suits in equity or damages of any kind or character against the DBAH Parties arising from facts, occurrences, actions, inactions, events or circumstances arising from or related in any way to the Lessee, the Acquisition, the Maher Leases, the Permits, any allegation made in or relating to the Pending Litigations, the Formal Notice or the Port Authority's Consent, accrued or unaccrued, as of the date of this Settlement Agreement, that have not been released by this paragraph. In agreeing to the release set forth in this Section, the Port Authority hereby covenants and agrees not to sue DBAH on any claim concerning the terms of the Consent Agreement on any theory, including that the terms thereof constitute an alleged violation of the Shipping Act, provided however, any Party remains free to enforce the obligations set forth in the Consent Agreement.

8. Notwithstanding anything contained herein to the contrary, Lessee and the Port Authority do not intend to, and the provisions of Sections 4 through 7 shall not, release, remise, surrender, acquit or discharge the Maher Leases or the Permits, each of which shall remain in full force and effect unmodified hereby.

9. For purposes of this Settlement Agreement:

(a) Neither Lessee nor Maher Terminals USA, LLC, Novelties Distribution LLC, Maher 1210 Corbin LLC or Apexel LLC (collectively, the "Lessee Affiliates") shall be considered to be current or former parents, subsidiaries affiliates, predecessors, successors or assigns of DBAH or Port Elizabeth Holdings, LLC, or any other current or former parent, subsidiary, affiliate, predecessor, successor or assign of DBAH or Port Elizabeth Holdings, LLC; but, *for the avoidance of doubt*, the Lessee Affiliates are affiliates of Lessee.

(b) None of DBAH, Port Elizabeth Holdings, LLC nor any other current or former parents, subsidiaries, affiliates, predecessors, successors or assigns of DBAH or Port

Elizabeth Holdings, LLC, other than the Lessee and Lessee Affiliates, shall be considered to be current or former parents, subsidiaries, affiliates, predecessors, successors or assigns of the Lessee or Lessee Affiliates or any other current or former parent, subsidiary, affiliate, predecessor, successor or assign of the Lessee or Lessee Affiliates; but, *for the avoidance of doubt*, DBAH, Port Elizabeth Holdings, LLC and any other current or former parents, subsidiaries, affiliates, predecessors, successors or assigns of DBAH or Port Elizabeth Holdings, LLC, other than the Lessee and Lessee Affiliates, shall be considered to be current or former parents, subsidiaries, affiliates, predecessors, successors or assigns of DBAH.

(c) Millennium shall not be considered to be a current or former parent, subsidiary, affiliate, predecessor, successor or assign of DBAH, Lessee, Port Elizabeth Holdings, LLC, Maher Terminals USA, LLC, Novelties Distribution LLC, Maher 1210 Corbin LLC or Apexel LLC, or any other current or former parent, subsidiary, affiliate, predecessor, successor or assign of any of the foregoing entities in this clause (c) (and vice versa).

10. The Parties shall cooperate and use reasonable efforts to complete all obligations and events enumerated in this Settlement Agreement, as well as the obligations and events enumerated in Paragraph 1 of the Consent Agreement.

11. Each Party shall be responsible for its own legal fees and costs, and no money or consideration will be exchanged related to the Consent Agreement or the voluntary dismissal of the claims in the Pending Litigations other than what is provided for in this Settlement Agreement and the Consent Agreement.

12. This Settlement Agreement is not intended to and shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns, provided each of the Port Authority Parties shall be a third party beneficiary of Sections 4 and 5, each of the Maher Parties shall be a third party beneficiary of Section 6 and each of the DBAH Parties shall be a third party beneficiary of Section 7.

13. This Settlement Agreement does not constitute an admission by any Party of any violation of the Shipping Act, as amended, or of any violation of law, regulation or any Maher Lease or Permit term, nor does this Settlement Agreement constitute an admission by any Party that any claims asserted by any Party lacked merit.

14. Neither the Commissioners of the Port Authority, nor the shareholders, directors or members of the Lessee or DBAH, nor any of them, nor any officer, manager, director, agent or employee thereof shall be charged personally with any liability or held liable under any term or provision of this Settlement Agreement or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

15. The representatives of the Parties signing below each represent and warrant that, having been advised by their respective counsel, they are duly authorized to enter into this Settlement Agreement on behalf of the party for which they are signing.

16. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. All signatures of the signatories to this Settlement Agreement may be transmitted by facsimile or email and such transmission will, for all purposes, be deemed to be the original

signature of such signatory whose signature it reproduces, and will be binding upon such signatory.

17. This Settlement Agreement shall be governed by the laws of the State of New York and the Shipping Act, without reference to any conflict of law rules that might lead to the application of the laws of any other jurisdiction.

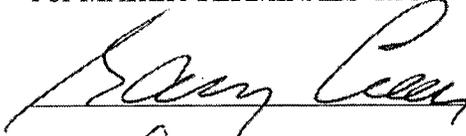
18. Any dispute or proceeding arising out of this Settlement Agreement must be brought either (i) in the Southern District of New York or, only if there is no federal subject matter jurisdiction, in any state court of New York or sitting in New York State, New York County, or (ii) before the Federal Maritime Commission, and each Party hereby submits to jurisdiction in either of those venues for purposes of any such proceeding.

19. This Settlement Agreement shall become effective and enforceable upon execution by each of the Parties. However, if this Settlement Agreement terminates as provided in Sections 1 or 3 above, then Sections 11, 13, 14 and 16 through 19 herein shall survive such termination and the remaining provisions of this Settlement Agreement shall be of no further force or effect *ab initio*. Notwithstanding the foregoing, the Parties reserve all rights with respect to any breach of Section 10 occurring prior to the termination of this Settlement Agreement pursuant to Sections 1 or 3 above, and any and all such claims expressly are preserved and may be asserted by any Party.

[Remainder of page intentionally left blank.]

Dated: September 30, 2016

For MAHER TERMINALS LLC



By: Gary Cross

Title: President + CEO

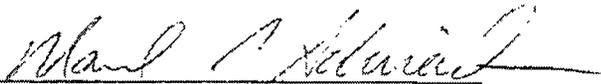


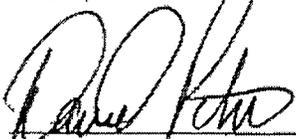
By: Jay Ruble

Title: SVP + General Counsel

Dated: September 30, 2016

For DEUTSCHE BANK AMERICAS HOLDINGS CORP.


By: MANUEL J SCHNADMAN
Title: MANAGING DIRECTOR

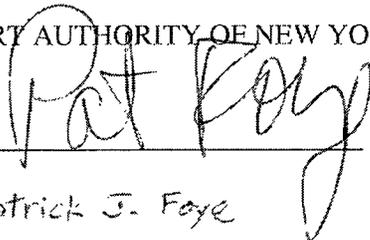

By: _____

Title: **David Petrie**
Director

[Settlement Agreement]

Dated: September 30, 2016

For THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

A handwritten signature in black ink, appearing to read "Pat Foye", written over a horizontal line.

By: Patrick J. Foye

Title: Executive Director

EXHIBIT 1

[CONSENT TO TRANSFER OF OWNERSHIP AND CONTROL]

CONSENT TO TRANSFER OF OWNERSHIP AND CONTROL

CONSENT, dated as of September 30, 2016 (this "Consent"), by **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called the "Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at 4 World Trade Center, New York, New York 10007,

WITNESSETH, That:

WHEREAS, heretofore and as of October 1, 2000, the Port Authority, as lessor, and Maher Terminals LLC (formerly Maher Terminals Inc., and hereinafter "Lessee"), as lessee, entered into that certain Agreement of Lease No. EP-249 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Lease") covering a portion of the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union, in the State of New Jersey, all as more specifically set forth in the Lease; and

WHEREAS, heretofore and as of January 1, 2003, the Port Authority, as lessor, and Maher 1210 Corbin LLC (formerly Maher 1210 Corbin, Inc., and hereinafter "Maher 1210"), as lessee, entered into that certain Agreement of Lease No. EP-250 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Office Lease") covering certain premises located at the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union, in the State of New Jersey, all as more specifically set forth in the Office Lease; and

WHEREAS, heretofore and as of September 1, 2015, the Port Authority, as permittor, and Lessee, as permittee, entered into that certain Space Permit No. PEP-075 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Chassis Permit") covering portions of the Elizabeth-Port Authority Marine Terminal, in the City of Elizabeth, County of Union, in the State of New Jersey, all as more specifically set forth in the Chassis Permit; and

WHEREAS, heretofore and as of September 1, 2015, the Port Authority, as permittor, and Millennium Marine Rail, L.L.C. (hereinafter "Millennium"), as permittee, entered into that certain Space Permit PEP-074 (hereinafter, as the same has been heretofore amended, modified and supplemented, called the "Millennium Permit", and together with the Lease, the Office Lease and the Chassis Permit, collectively the "Marine Terminal Agreements") covering approximately 67 acres of area to be used by Millennium for the operation and management of "Expressrail", all as more specifically set forth in the Millennium Permit; and

WHEREAS, Millennium is a privately held New Jersey limited liability company with its sole members being the Lessee and APM Terminals North America, Inc.; and

WHEREAS, on or about July 3, 2007, Maher Terminals USA, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Maher USA"), which owns one hundred percent (100%) of the issued and outstanding membership

interests of Lessee, with the consent of the Port Authority, was acquired by Deutsche Bank Americas Holding Corp. ("DBAH") and its affiliates; and

WHEREAS, following the acquisition of Maher USA by DBAH, the Lessee brought certain litigations against the Port Authority in the Federal Maritime Commission ("FMC") relating, among other things, to the terms of the Lease and styled as (i) *Maher Terminals LLC v. Federal Maritime Commission, et al.* (No. 15-1035) (U.S. Court of Appeals for the D.C. Circuit), (ii) *Maher Terminals LLC v. The Port Authority of New York and New Jersey* (FMC Dkt. No. 08-03), (iii) *Maher Terminals, LLC v. The Port Authority of New York and New Jersey* (FMC Dkt. No. 12-02), and (iv) any and all appeals or remanded proceedings relating to the foregoing clauses (i) through (iii) (collectively, the "Pending Litigations"); and

WHEREAS, on April 11, 2016, Lessee provided formal notice to the Port Authority that DBAH has agreed, subject to obtaining certain regulatory consents and approvals, to enter into a potential transaction with MIP III Yellowtail Holdings LLC ("Yellowtail"), which is indirectly controlled by Macquarie Group Limited, that, if consummated, would result in a change of ownership of Lessee, Millennium and Maher 1210 (the "Acquisition"), including Lessee's, Millennium's and Maher 1210's leasehold and permit interests, as applicable, in the marine terminal operation at the Port Authority's Port Elizabeth location (the "Formal Notice"); and

WHEREAS, the terms of certain of the Marine Terminal Agreements require the consent of the Port Authority to certain changes in the ownership or control of the Lessee, Millennium and Maher 1210 and of certain entities having direct or indirect beneficial ownership thereof; and

WHEREAS, pursuant to the Formal Notice, Lessee requested that the Port Authority grant its consent to the proposed change of ownership as a result of the Acquisition, to the extent required under each of the Marine Terminal Agreements (the "Port Authority's Consent");

WHEREAS, the Port Authority, Lessee and DBAH have agreed to enter into the Settlement Agreement (as defined below), and Lessee wishes to voluntarily dismiss, with prejudice, the Pending Litigations, based on and subject to the terms and conditions contained herein and in the Settlement Agreement; and

WHEREAS, in consideration for such dismissal, the payment to the Port Authority of the Consent Fee (as defined in Section 1(g) below) and DBAH divesting itself of its direct and/or indirect ownership interests in Lessee, Millennium and Maher 1210, the Port Authority desires to grant the Port Authority's Consent, based on and subject to the terms and conditions contained herein.

NOW, THEREFORE, the Port Authority hereby agrees to the following:

1. Effective simultaneously with the consummation of the Acquisition (the "Closing"), the Port Authority hereby grants its consent, to the extent required under each of the Marine Terminal Agreements, to the transfers of, and changes in ownership and control of the

Lessee, Millennium and Maher 1210 pursuant to the Acquisition, *provided*, that, such Port Authority's Consent is subject to the prior or simultaneous satisfaction, on or before November 24, 2016, of the following conditions precedent to the effectiveness of the Port Authority's Consent:

(a) The Port Authority and Lessee shall have fully executed and delivered a supplemental agreement amending the Lease denominated as "Supplement No. 3" (hereinafter called the "Supplement") in the form attached to this Consent as Exhibit A, which shall include, without limitation, a replacement of Section 45 of the Lease reflecting the Acquisition (such replacement, the "Change of Control Language");

(b) The Port Authority and Millennium shall have fully executed and delivered a supplemental agreement amending the Millennium Permit (hereinafter called the "Millennium Supplement") in the form attached to this Consent as Exhibit B;

(c) The Port Authority and Lessee shall have fully executed and delivered a supplemental agreement amending the Chassis Permit (hereinafter called the "Chassis Supplement") in the form attached to this Consent as Exhibit C, which shall include, without limitation, Change of Control Language, *mutatis mutandis*;

(d) The representations of the Lessee made in the Change of Control Language shall be true and correct on the date of the Closing;

(e) The Port Authority, on the one hand, and Lessee and DBAH, on the other, shall have fully executed and delivered a mutually satisfactory settlement agreement to which this Consent Agreement shall be attached as an exhibit (the "Settlement Agreement"), and the Federal Maritime Commission (the "FMC") shall have approved the Settlement Agreement and each of the Pending Litigations shall have been dismissed with prejudice (effective upon the Closing);

(f) Yellowtail, Lessee and any other relevant entities shall have received Committee on Foreign Investment in the United States and Hart-Scott-Rodino regulatory approvals necessary for the consummation of the Acquisition and shall have provided reasonably satisfactory evidence of the same to the Port Authority;

(g) In consideration of the Port Authority Consent and the execution and delivery of the Settlement Agreement, simultaneously with receipt of confirmation from the Port Authority that all conditions precedent (other than the payment of the Consent Fee) to the effectiveness of the Port Authority Consent have been satisfied, the Lessee shall pay or caused to be paid, on the date of the Closing (the "Closing Date") by wire transfer of immediately available funds to an account designated by the Port Authority, a consent fee to the Port Authority in the amount of Twenty-Five Million Dollars (\$25,000,000) (the "Consent Fee"); and

(h) The Port Authority, Lessee and MUFG Union Bank, N.A. shall have executed a letter of acknowledgment of the pledge of the membership interests of

Lessee and each other direct or indirect subsidiary of Maher USA in the form attached as Exhibit D to this Consent.

2. The granting of this Consent by the Port Authority shall not be or be deemed to operate as a waiver of the rights of the Port Authority under the Change of Control Language with respect to any future transfer of ownership or control of Lessee, Millennium or Maher 1210 after the Acquisition or as a consent to any such future transfer, in each case to the extent required thereby.

3. The granting of this Consent hereby shall apply with equal force and effect to each of the Marine Terminal Agreements, to the extent that consent to the Acquisition is otherwise required under any or all of the Marine Terminal Agreements.

4. The Port Authority hereby confirms that any conditions precedent and requirements contemplated by Section 9 of the Office Lease to any existing sublease thereunder have been met or satisfied (or waived), for the avoidance of doubt including in respect of the following subleases: (a) Agreement of Sublease, dated as of April 6, 2004, between Maher 1210 and New York Shipping Association, Inc., or any renewal or replacement sublease in respect thereof; (b) Agreement of Sublease, dated as of July 8, 2008, between Maher 1210 and Evergreen Shipping Agency (America) Corporation; and (iii) Agreement of Sublease, dated as of January 1, 2007, between Maher 1210 and Lessee.

5. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof shall be held personally liable to Lessee under any term or provision of this Consent or because of its execution or because of any breach or alleged breach thereof.

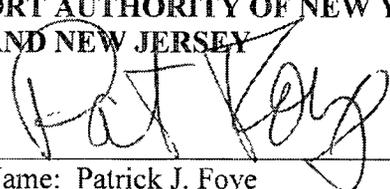
6. This Consent shall become effective and enforceable upon execution by the parties hereto. However, the consent described in Paragraph 1 is subject to satisfaction of the conditions precedent set forth in Paragraph 1. Further, in the event that the Settlement Agreement is terminated in accordance with its terms, or if any of the conditions precedent to the effectiveness of the Port Authority's Consent as set forth herein are not satisfied (or otherwise waived by the Port Authority in the Port Authority's sole and absolute discretion) in accordance with the terms hereof, in each case on or prior to November 24, 2016, this Consent, the Supplement, the Millennium Supplement and the Chassis Supplement, automatically and without further action by any party, shall terminate and be of no force or effect *ab initio* (except Paragraph 5 hereof shall remain in effect notwithstanding any termination of this Consent).

[signature page follows]

IN WITNESS WHEREOF, the Port Authority and Lessee have executed these presents as of the date first above written.

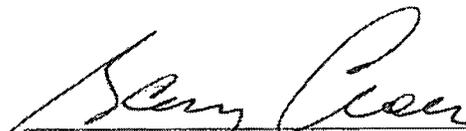
**THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY**

By: _____


Name: Patrick J. Foye
Title: Executive Director

[Consent to Transfer of Ownership and Control]

MAHER TERMINALS LLC

By: 

Name: Gary Cross
Title: President + CEO

By: 

Name: Jerry Ruble
Title: SVP + General Counsel

[Consent to Transfer of Ownership and Control]

EXHIBIT A
[FORM OF LEASE SUPPLEMENT]

CONFIDENTIAL

Port Authority Lease No. EP-249
Supplement No. 3

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of _____, 2016 (this "Agreement"), by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called the "Port Authority") and **MAHER TERMINALS LLC** (formerly Maher Terminals Inc., and hereinafter called the "Lessee"),

WITNESSETH, that:

WHEREAS, heretofore and as of October 1, 2000, the Port Authority and the Lessee entered into an agreement of lease covering the Elizabeth-Port Authority Marine Terminal in the city of Elizabeth, in the County of Union and State of New Jersey (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called the "Lease"); and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

NOW, THEREFORE, for and in consideration of the foregoing and the agreements hereinafter contained, the Port Authority and the Lessee hereby agree as follows:

1. Section 45 of the Lease requires consent by the Port Authority of certain changes in the ownership or control of the Lessee and of certain entities having direct or indirect beneficial ownership in the Lessee. The Lessee has requested that the Port Authority grant its consent to the acquisition by MIP III Yellowtail Holdings LLC and its affiliates of all of the outstanding membership interests of Maher Terminals USA, LLC, a limited liability company organized and existing under the laws of the State of Delaware, which owns one hundred percent (100%) of the issued and outstanding membership interests of the Lessee (hereinafter called the "Acquisition"). The Lessee hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that, immediately following the Closing Date, the Lessee's ownership and control shall be as set forth in Section 45 of the Lease, as such provision is restated, amended and set forth in paragraph 3 of this Agreement. As used herein, the "Closing Date" shall mean the closing of the Acquisition on a date and time on or subsequent to the date first above written.

2. The Port Authority hereby grants its consent and approval under Section 45 of the Lease to the transfers of and changes in ownership and control of the Lessee represented by the Acquisition.

3. Immediately following the closing of the Acquisition on the Closing Date, Section 45 of the Lease shall be deleted and terminated in its entirety and replaced by a new Section 45, which reads in its entirety as follows:

“Section 45. Right of Termination - Ownership and Control”

(a) The Lessee hereby represents as to itself and its Affiliates, knowing that the Port Authority is relying on the accuracy of such representations, that as of the Closing Date:

(1) the organizational structure chart previously provided to the Port Authority by the Lessee is a true and correct representation of the ownership of Lessee; Lessee is a limited liability company organized and existing under the laws of the State of Delaware;

(2) Macquarie Group Limited, a corporation organized and existing under the laws of the Commonwealth of Australia and having an office and place of business at 50 Martin Place, Sydney NSW 2000, Australia (Macquarie Group Limited or any legal successor thereto as a result of an internal reorganization, hereinafter called “Macquarie”) Controls and MIP III (as defined below) indirectly owns 89.8% of the total economic interests and voting power with respect to the issued and outstanding securities of Lessee;

(3) Nippon Yusen Kabushiki Kaisha, a corporation organized and existing under the laws of Japan and having an office and place of business at 3-2 Marunouchi 2 Chome, Chiyoda-Ku, Tokyo 100-0005, Japan (hereinafter called “NYK”) indirectly owns 10.2% of the total economic interests and voting power with respect to the issued and outstanding securities of Lessee;

(4) except as set forth on an organizational structure chart previously provided to the Port Authority by the Lessee, there are no membership interests in MIP III Yellowtail Holdings LLC (“Yellowtail”), Maher Terminals USA, LLC (“Maher USA”) or the Lessee, and there are no Persons other than MIP III and NYKP (as defined below) (or a wholly owned and Controlled subsidiary of either), or holders of publicly traded securities of, Macquarie or NYK, having any direct or indirect beneficial ownership of the Lessee;

(5) there is no Person or group of Related Persons (such group taken in the aggregate), other than Macquarie, individually owning (directly or indirectly) more than twenty percent (20%) of the total economic interests or voting power with respect to the issued and outstanding securities of Lessee;

(6) no Person other than Macquarie directly or indirectly Controls MIP III or Lessee; and

(7) none of MIP III (ECI) AIV, L.P. (the “Fund”) or its general partner, MIP III (ECI) GP LLC (“Fund GP”) which together with the Fund shall collectively be referred to herein as “MIP III”), or NYK Ports LLC (“NYKP”), is a Prohibited Person; and, to the actual knowledge (without any obligation to perform any inquiry or diligence) of MIP III and Lessee, no Person or group of Related Persons directly or indirectly (no matter how remote) owning 5% or more of the total economic

interests or voting power with respect to the issued and outstanding securities of Lessee is a Person identified in clauses (A), (F), (G) or (H) of the definition of Prohibited Person.

(b) The Lessee recognizes the fact that a transfer of securities in the Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or with respect to the identity of the parties in Control of the Lessee, is for practical purposes a transfer or disposition of the rights obtained by the Lessee through this Agreement. The Lessee further recognizes that because of the nature of the obligations of the Lessee hereunder, the qualifications and identity of the Lessee and its direct and indirect owners are of particular concern to the Port Authority. The Lessee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Lessee for the faithful performance of all obligations and covenants hereunder. Therefore, the Lessee represents and agrees with respect to itself and Macquarie that without the prior written approval of the Port Authority, there shall be no direct or indirect (no matter how remote) transfer of any equity securities in the Lessee, other change in ownership of such securities, or change in identity of the parties in Control of Lessee, in each case by (or with respect to) Lessee or any of its Affiliates that would result in: (i) MIP III owning (directly or indirectly) less than eighty percent (80%) of the total economic interests and voting power with respect to the issued and outstanding securities of Lessee; (ii) MIP III ceasing to be Controlled by Macquarie or Fund GP ceasing to be an indirect wholly owned subsidiary of Macquarie; (iii) Macquarie no longer Controlling Lessee; (iv) any Person or group of Related Persons (other than Macquarie directly or indirectly) owning in excess of twenty percent (20%) of the total direct or indirect (no matter how remote) economic interests or voting power with respect to the issued and outstanding securities of Lessee; or (v) any Person or group of Related Persons owning a direct or indirect (no matter how remote) interest in Lessee equal to five percent (5%) or greater of the total economic interests or voting power with respect to the issued and outstanding securities of Lessee being a Person identified under clauses (A), (F), (G) or (H) of the definition of Prohibited Person.

(c) At no time during the term of the letting under this Agreement shall any Person or group of Related Persons owning a direct or indirect (no matter how remote) interest in Lessee equal to twenty percent (20%) or greater of the total economic interests or voting power with respect to the issued and outstanding securities of Lessee be a Prohibited Person; provided that the foregoing shall not apply to any direct or indirect owner of MIP III except to the extent to the extent required by Section 45(b)(v) above.

(d) The Lessee acknowledges that the Lessee's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Lessee with the provisions contained in this Section 45 shall constitute an event of default under Section 25 of this Agreement, and the Port Authority shall have the right, to terminate this Agreement and the letting hereunder pursuant to the provisions of said Section 25 hereof.

(e) The foregoing right of termination shall be in addition to all other rights of termination the Port Authority has under this Agreement and the failure of the Port Authority to exercise its right of termination under this Section at any time in which it may have such right

shall not affect, waive or limit its right to exercise said right of termination at any subsequent time.

(f) For the avoidance of doubt, it is expressly acknowledged and agreed by the Port Authority that any issuance or transfer of any limited partnership interests of MIP III shall not require the prior written consent of the Port Authority, provided that the requirements of subsection (b) of this Section 45 are satisfied in full immediately prior to any such issuance or transfer and no such issuance or transfer results in any breach of subsection (b) of this Section 45. Any such issuance or transfer contemplated in this subsection (f) of this Section 45 that fails to satisfy the conditions set forth above shall constitute noncompliance on the part of Lessee with the provisions contained in this Section 45, entitling the Port Authority to terminate this Agreement and the letting hereunder pursuant to the provisions of Section 25 hereof.

(g) Definitions:

(1) The term "Control" as used herein shall mean the direct or indirect power of a Person through contract, arrangement, understanding, relationship, ownership of other business entities or otherwise to (A) dispose of or to direct the disposal of another Person, (B) vote or to direct the voting of, a majority of the voting securities a another Person, (C) manage the operations of such Person, including, without limitation, determining investments, the business plan and other strategic planning aspects of such Person's business and operations, and managing day to day operations, or (D) make all decisions and take all actions with respect to this Agreement.

(2) The term "security" or "securities" shall include any membership interest, stock, any bond which carries voting rights, or rights or options to subscribe to, purchase, convert or transfer into or otherwise acquire equity securities, or any other obligation of a Person, the holder of which has any voting rights including but not limited to the right to vote for the election of members of the governing body or board of directors of said Person and shall include any security convertible into a voting security and any right, option or warrant to purchase a voting security.

(3) The term "Affiliate" shall mean, with respect to any Person, any Person that directly or indirectly Controls or is Controlled by, or is under common Control with, the Person specified.

(4) The term "Person" shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture or other entity.

(5) The term "Prohibited Person" shall mean any Person or any Person controlled by a Person:

(A) that is currently under indictment for or has been convicted of a felony (or an equivalent offense, as applicable) or such lesser offense as would preclude such Person from doing business with a state or federal

governmental agency within the United States or any United States controlled territory, in the preceding ten (10) years;

(B) that has had a development agreement with the Port Authority terminated for willful default or breach, has had a contract terminated by a state or federal governmental agency in the States of New York or New Jersey for willful breach or default or has had a contract terminated for any cause relating to a current indictment or a conviction of such Person or its principals for a felony (or an equivalent offense, as applicable) or such lesser offense as would preclude such Person from doing business with a state or federal governmental agency within the United States or any United States controlled territory, in the preceding ten (10) years;

(C) that is in material default beyond any applicable grace period, under any material agreement with the Port Authority or has been, within the preceding five (5) years, in material default, beyond any applicable grace period, under any material agreement with the Port Authority;

(D) that has been suspended, debarred, found not responsible or otherwise disqualified under applicable debarment regulations from entering into any contract with any state or federal governmental agency in the United States or any United States controlled territory, in the preceding ten (10) years;

(E) that has had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition;

(F) that is organized in or controlled from a country which is subject to any of the following: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (ii) the International Emergency Economic Powers Act of 1976, 50 U.S.C. § 1701, et seq., as amended; and (iii) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405, as amended;

(G) that is, or engages in any dealings or transactions that are, blocked or subject to blocking pursuant to Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"), or is otherwise associated with any such Person in a manner violative of the Executive Order or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (G);

(H) that is on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S.

Department of Treasury's Office of Foreign Assets Control regulation or executive order ("OFAC") and/or with whom the Port Authority is restricted from doing business with under OFAC or under any statute, executive order, or other governmental action or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (H);

(I) that has currently (i) filed a petition under any insolvency statute, (ii) made a general assignment for the benefit of its creditors, (iii) commenced a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (iv) filed a petition seeking reorganization or liquidation or similar relief under any applicable law or statute, or is the subject to any of foregoing;

(J) that is involved or has been involved in a material litigation or similar proceeding relating to performance of contract or business practices adverse to the Port Authority (unless the Port Authority has first waived (in the Port Authority's sole discretion) by written notice to the transferring equity holder, with a copy to Lessee, the prohibition on transfer to such Person during the continuance of the relevant litigation); or

(K) whose involvement or presence in the Premises would create any conflict of interest as defined under the Public Officers Law of the State of New York between any Commissioner of the Port Authority and itself or its chief executive officer, chief operating officer, chief financial officer, president, chairman of the board, other similar senior executive, or any Person or entity which controls, is controlled by, or is under common control with it.

(6) The term "Related Persons" shall mean any Person that Controls, is Controlled by, or is under common Control with another Person, any Family Member of such Person or any Affiliate of, or entity Controlled by, a Family Member or such Person.

(7) The term "Family Member" shall mean as to any Person, any ancestor or descendant, aunt, uncle or first cousin or such Person or any trust of which the primary beneficiaries are any of the foregoing or such Person.

(h) The Lessee shall promptly advise the Port Authority of (i) any breach of the representations made in paragraph (a) of this Section 45 or (ii) any changes to the organizational structure chart previously provided by the Lessee to the Port Authority (provided that any inadvertent failure to provide prompt notice of any change permitted under this Section 45 shall not result in any termination right of the Port Authority pursuant to paragraph (d) of this Section 45).

(i) The Lessee and the Port Authority further agree that in the event that the Port Authority, acting in a non-arbitrary or capricious manner (and consistent with its then current practice of implementing such determinations), shall notify Lessee in writing that any entity owning any direct or indirect economic interests or voting power with respect to the issued and outstanding securities of Lessee is deemed by the Port Authority to be unsuitable by reason of integrity or security concerns, Lessee shall, following such written notice, engage in good faith discussions with the Port Authority to discuss such matters and, shall use good faith efforts to address the Port Authority's concerns, taking into account any legal constraints, its ability to address such matters or any other relevant matters that may impact, prevent or limit the Lessee's ability to address such concerns. Notwithstanding anything to the contrary contained in this Agreement, the Port Authority agrees that specific performance shall be its sole and exclusive remedy to enforce the Lessee's obligations set forth in this paragraph (i), and in no event shall a breach of this paragraph (i) form the basis of an event of default under this Agreement or constitute the basis for termination of this Agreement by the Port Authority or the basis for a determination of a breach under this Agreement. The Lessee and the Port Authority hereby acknowledge and agree that nothing in this paragraph (i) shall permit the Port Authority to expand, alter or modify or give rise to any new obligations under this Agreement or cause the Lessee to comply with any incremental or new or modified obligation under this Agreement, except for the express obligation set forth in this paragraph (i). The Port Authority and the Lessee agree that communications and discussions related to the matters contemplated in this paragraph (i) (and/or any determination with respect thereto) may involve commercially sensitive information and/or trade secrets of Lessee. The Parties agree that, except as otherwise required by applicable law, governmental proceeding or pursuant to a subpoena, and subject to compliance with the laws and policies with respect to records access and freedom of information and, to the extent not applied in an arbitrary, capricious or discriminatory manner, the Port Authority's policies and procedures relating to transparency and the treatment of confidential information, any such information shall be treated confidentially and shall not be intentionally disclosed to any other Persons (other than the directors, officers, shareholders, consultants and agents of each of the parties, on a confidential basis)."

4. On the Closing Date of the Acquisition, the Lessee shall deposit with the Port Authority the Security Deposit (as defined below) in the amount indicated below and Section 40 of the Lease shall be deleted in its entirety and replaced with a new Section 40, which shall read in its entirety as follows:

"Section 40. Security

(a) The Lessee shall deposit and maintain with the Port Authority, subject to adjustment as provided below, a security deposit in the amount of \$26,000,000 (as adjusted as provided herein, the "Security Deposit") which shall be in the form of a letter of credit for such amount.

(b) The Security Deposit shall be adjusted on December 31, 2017, to equal no less than the annual base rent paid in 2017 by Lessee and its affiliates under this Agreement and all other leases with the Port Authority; provided that for purposes of determining the Security

Deposit hereunder, such annual 2017 base rent shall not include any 2017 throughput rent or construction reimbursement amounts.

(c) The Security Deposit and the provisions of this Section 40 shall be subject to the provisions of the Standard Endorsement attached hereto as Annex A.”

5. On the Closing Date, in exchange for the Lessee providing the Security Deposit (as defined above) as provided herein, the Port Authority shall return to the Lessee the letter of credit currently being held by the Port Authority securing the existing security deposit obligation of the Lessee.

6. Immediately following the Closing Date of the Acquisition, paragraph (a) of Section 43 of the Lease shall be deleted in its entirety and replaced with a new paragraph (a), which reads as follows:

“(a) Compliance Certificates. The Lessee shall, subject to the confidentiality restrictions in clause (e) below, provide to the Port Authority, its designated agents and advisors as soon as practicable after providing the same to the lenders under the Credit Agreement (as defined below), a copy of each certificate required to be provided by the chief financial officer of the Lessee under the loan agreement dated on or about the Closing Date (as defined in that certain Supplemental Agreement (Supplement No. 3), dated as of _____, 2016, by and between the Port Authority and the Lessee) (the “Credit Agreement”), among, *inter alia*, the Lessee and the lenders named therein with respect to compliance with the financial covenants thereunder and the absence of any default or event of default thereunder. Capitalized terms used in this Section 43, which are not otherwise defined herein, shall have the respective meanings assigned to them in the Credit Agreement.”

7. Immediately following the Closing Date of the Acquisition, clause (b)(i) of Section 43 of the Lease shall be amended so as to replace the reference therein to “within 45 days” with the words “within 60 days”.

8. Affirmative Action Program. The Lessee hereby agrees that, within sixty (60) days after the Closing Date, it will submit a report to the Port Authority outlining the Lessee’s current plan for implementing a program of Affirmative Action as contemplated by Section 44(b) of the Lease and shall be prepared to discuss its report with the Port Authority. Thereafter, Lessee shall provide the Port Authority with a statement certifying the extent to which it is in compliance with the program of Affirmative Action annually, on or before December 31 of each year.

9. Release and Covenant Not to Sue

(a) Lessee and the Port Authority confirm that the business, economic and legal terms provided for in the Lease as modified by this Agreement (the “Agreed Rental Terms”) were determined by the parties in arm’s-length negotiations on the basis of the unique circumstances of the transactions contemplated in the Lease.

(b) Lessee acknowledges and agrees that Lessee will derive substantial benefits from the Port Authority's agreement to enter into this Agreement and to consent (the "Consent") to the acquisition of Lessee, indirectly, by Macquarie, NYK and their respective subsidiaries, that the terms of the Lease and the Consent represent significant and costly concessions by the Port Authority, and that without the release, agreements and acknowledgements set forth in this Section, the Port Authority likely would not grant the Consent or enter into this Agreement. Lessee acknowledges and agrees that were it to violate the terms of this Section it would be depriving the Port Authority of a material benefit of the bargain to which Lessee and the Port Authority have agreed.

(c) Lessee acknowledges that Lessee (and any and all advisors that either party deemed necessary or appropriate) had the opportunity to review the rental terms of the leases for all other marine container terminals owned by the Port Authority collectively existing as of the date hereof (referred to herein as the "Port Leases") and has fully considered the terms of the Lease as well as the rental terms of such other leases as Lessee deemed relevant. In accepting the concessions and benefits it is receiving hereunder and in the Consent, Lessee believes and expressly agrees that the Agreed Rental Terms are fair and not unreasonable or unreasonably or unduly discriminatory or preferential, and that any differences between the Agreed Rental Terms and the economic, business and legal terms of the Port Leases are justified by legitimate transportation considerations, policy objectives and reasonable business judgments.

(d) In consideration of the above, Lessee, for itself and for its representatives, successors, and assigns, hereby releases and forever discharges the Port Authority, and its representatives, successors, and assigns of and from any and all actions, causes of action and claims arising from facts, occurrences, actions, inactions, events or circumstances arising from or relating to the Lease or the Agreed Rental Terms from the beginning of time through the date of this Agreement (including, without limitation, any attempt to challenge or otherwise invalidate the Agreed Rental Terms pursuant to the Shipping Act, or any other law, on any grounds, including, but not limited to, that such Agreed Rental Terms amount to an unreasonable practice or result in any undue or unreasonable prejudice or disadvantage to Lessee when compared with the Port Leases) (except for any rights and obligations created by this Agreement, the Consent and the litigation settlement agreement contemplated thereby).

(e) In agreeing to the release set forth in this Section, Lessee hereby covenants and agrees not to sue the Port Authority on any claim challenging the Agreed Rental Terms on any theory including, that such rates constitute an alleged violation of the Shipping Act, insofar as such claim arises from facts, occurrences, actions, inactions, events or circumstances arising from or relating to the Lease or the Agreed Rental Terms as released pursuant to clause (d) above (except for any rights and obligations created by this Agreement, the Consent and the litigation settlement agreement contemplated thereby). *For the avoidance of doubt*, this provision bars any future claims alleging that any aspect of the Port Leases as they exist as of the date of this Agreement are discriminatory, but would not bar a future claim that some provision of a lease, including any future amendment or modification to any Port Lease, not yet in existence as of the date of this Agreement is discriminatory. Lessee agrees that the Port Authority shall have the right to assert any claim for breach of this Section in the federal or

state courts of New York or, sitting in New York County, or the courts of New Jersey, sitting in Hudson County, and Lessee hereby consents to the jurisdiction of such courts.

(f) Lessee and the Port Authority acknowledge and agree that the damages the Port Authority would suffer in the event that Lessee or any of its affiliates were to commence a lawsuit or any other proceeding against the Port Authority in breach of paragraph (e) above would be uncertain in amount and/or difficult to calculate and, therefore, if said breach is established, Lessee:

(1) consents to the issuance of a temporary and permanent injunction against prosecution of any suit brought in violation of the release set forth in this Section;

(2) agrees to pay the reasonable costs and attorneys' fees in connection with such suit; and

(3) agrees to pay to the Port Authority liquidated damages in the amount of Ten Million Dollars and No Cents (\$10,000,000.00), which amount shall not be deemed to be a penalty and which amount shall be due and payable no later than thirty (30) days after the commencement of such lawsuit or other proceeding in violation of paragraph (e) above. In the event that the foregoing amount is due and payable and Lessee fails to timely pay the same in full, the Port Authority shall be entitled to withdraw such amount from the Lessee's Security Deposit; provided that in the event that the Lessee, within thirty (30) days of such withdrawal, commences legal action (unless otherwise agreed by the parties) disputing the Port Authority's right to withdraw such funds, the Lessee's obligation to replenish the Security Deposit under the Lease shall be suspended until such time as a court of competent jurisdiction determines that such withdrawal was permitted hereby and the Port Authority may seek a declaratory judgment to such effect and until such determination is made, the Lessee shall not be deemed to be in default of any such replenishment obligation under the Lease.

10. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect.

11. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

12. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Agreement.

13. If any term or provision of this Agreement or the Lease, or any application thereof, shall be held invalid or unenforceable, the remainder of this Agreement and/or the Lease and any other application of such term or provision shall not be affected thereby.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall for all purposes constitute one Agreement, binding on all the parties, notwithstanding that all the parties have not signed the same counterpart.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed these presents as of the date first above written.

**THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY**

By: _____
Name:
Title:

WITNESS:

MAHER TERMINALS LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/hér/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

EXHIBIT B

[FORM OF MILLENNIUM SUPPLEMENT]

CONFIDENTIAL

Port Authority Space Permit No. PEP-074
Supplement No. 1

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of _____, 2016 (this "Agreement"), by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called the "Port Authority") and **MILLENNIUM MARINE RAIL, L.L.C.** (hereinafter called the "Permittee"),

WITNESSETH, that:

WHEREAS, heretofore and as of September 1, 2015, the Port Authority and Permittee entered into that certain Space Permit covering certain space at the Elizabeth-Port Authority Marine Terminal, in the city of Elizabeth, in the County of Union and State of New Jersey (hereinafter, as the said agreement of Space Permit has been heretofore amended, modified and supplemented, called the "Space Permit"); and

WHEREAS, immediately following the closing of the Acquisition (as defined below) on a date and time as of or subsequent to the date hereof (the "Closing Date"), Section 45 of Port Authority Lease No. EP-249, which is referenced in clause (b)(ii) of Special Endorsement 23 to the Space Permit, will be amended and restated in connection with a change of indirect ownership (the "Acquisition") of Maher Terminals LLC that has been consented to by the Port Authority in accordance with Port Authority Lease No. EP-249;

WHEREAS, the Port Authority and the Permittee desire to amend clause (b)(ii) of Special Endorsement 23 to the Space Permit in order to acknowledge the amendment and restatement of Section 45 of Port Authority Lease No. EP-249 in accordance with the terms of a supplemental agreement thereto to be dated on or about the date hereof;

NOW, THEREFORE, for and in consideration of the foregoing and the agreements hereinafter contained, the Port Authority and the Permittee hereby agree as follows:

1. Immediately following the closing of the Acquisition on the Closing Date, clause (b)(ii) of Special Endorsement 23 to the Space Permit will be deleted and replaced in its entirety by the following language:

"the securities or interests in the Permittee owned by Maher Terminals LLC (formerly Maher Terminals Inc.) pursuant to any transfer permitted by the provisions of Section 45 of the lease by and between the Port Authority and Maher Terminals LLC, dated October 1, 2000, as amended, supplemented and/or otherwise modified from time to time."

2. As hereby amended, all the terms, provisions, covenants and conditions of the Space Permit shall continue in full force and effect.

3. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Permittee with any liability, or held liable to the Permittee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

4. This Agreement, together with the Space Permit (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Permittee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Permittee. The Permittee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Space Permit or in this Agreement.

5. If any term or provision of this Agreement or the Space Permit, or any application thereof, shall be held invalid or unenforceable, the remainder of this Agreement and/or the Space Permit and any other application of such term or provision shall not be affected thereby.

6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall for all purposes constitute one Agreement, binding on all the parties, notwithstanding that all the parties have not signed the same counterpart.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Port Authority and the Permittee have executed these presents as of the date first above written.

**THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY**

By: _____
Name:
Title:

WITNESS:

MILLENNIUM MARINE RAIL, L.L.C.

By: _____
Name:
Title:

By: _____
Name:
Title:

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

EXHIBIT C
[FORM OF CHASSIS SUPPLEMENT]

CONFIDENTIAL

Port Authority Space Permit No. PEP-075
Supplement No. 1

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of _____, 2016 (this "Agreement"), by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called the "Port Authority") and **MAHER TERMINALS LLC** (formerly Maher Terminals Inc., and hereinafter called the "Permittee"),

WITNESSETH, that:

WHEREAS, heretofore and as of September 1, 2015, the Port Authority and the Permittee entered into a space permit covering certain space at the Elizabeth-Port Authority Marine Terminal in the city of Elizabeth, in the County of Union and State of New Jersey (hereinafter, as the said space permit has been heretofore amended, modified and supplemented, called the "Space Permit"); and

WHEREAS, the Port Authority and the Permittee desire to amend the Space Permit;

NOW, THEREFORE, for and in consideration of the foregoing and the agreements hereinafter contained, the Port Authority and the Permittee hereby agree as follows:

1. Special Endorsement 14 to the Space Permit requires consent by the Port Authority of certain changes in the ownership or control of the Permittee and of certain entities having direct or indirect beneficial ownership in the Permittee. The Permittee has requested that the Port Authority grant its consent to the acquisition by MIP III Yellowtail Holdings LLC and its affiliates of all of the outstanding membership interests of Maher Terminals USA, LLC, a limited liability company organized and existing under the laws of the State of Delaware, which owns one hundred percent (100%) of the issued and outstanding membership interests of the Permittee (hereinafter called the "Acquisition"). The Permittee hereby represents, knowing that the Port Authority is relying on the accuracy of such representation, that, immediately following the Closing Date, the Permittee's ownership and control shall be as set forth in Special Endorsement 14 to the Space Permit, as such provision is restated, amended and set forth in paragraph 3 of this Agreement. As used herein, the "Closing Date" shall mean the closing of the Acquisition on a date and time on or subsequent to the date first above written.

2. The Port Authority hereby grants its consent and approval under Special Endorsement 14 to the Space Permit to the transfers of and changes in ownership and control of the Permittee represented by the Acquisition.

3. Immediately following the closing of the Acquisition on the Closing Date, Special Endorsement 14 to the Space Permit shall be deleted and terminated in its entirety and replaced by a new Special Endorsement 14, which reads in its entirety as follows:

“14. Right of Termination - Ownership and Control”

(a) The Permittee hereby represents as to itself and its Affiliates, knowing that the Port Authority is relying on the accuracy of such representations, that as of the Closing Date (as defined in that certain Supplemental Agreement (Supplement No. 1), dated as of _____, 2016, by and between the Port Authority and the Permittee):

(1) the organizational structure chart previously provided to the Port Authority by the Permittee is a true and correct representation of the ownership of Permittee; Permittee is a limited liability company organized and existing under the laws of the State of Delaware;

(2) Macquarie Group Limited, a corporation organized and existing under the laws of the Commonwealth of Australia and having an office and place of business at 50 Martin Place, Sydney NSW 2000, Australia (Macquarie Group Limited or any legal successor thereto as a result of an internal reorganization, hereinafter called “Macquarie”) Controls and MIP III (as defined below) indirectly owns 89.8% of the total economic interests and voting power with respect to the issued and outstanding securities of Permittee;

(3) Nippon Yusen Kabushiki Kaisha, a corporation organized and existing under the laws of Japan and having an office and place of business at 3-2 Marunouchi 2 Chome, Chiyoda-Ku, Tokyo 100-0005, Japan (hereinafter called “NYK”) indirectly owns 10.2% of the total economic interests and voting power with respect to the issued and outstanding securities of Permittee;

(4) except as set forth on an organizational chart previously provided to the Port Authority by the Permittee, there are no membership interests in MIP III Yellowtail Holdings LLC (“Yellowtail”), Maher Terminals USA, LLC (“Maher USA”) or the Permittee, and there are no Persons other than MIP III and NYKP (as defined below) (or a wholly owned and Controlled subsidiary of either), or holders of publicly traded securities of, Macquarie or NYK, having any direct or indirect beneficial ownership of the Permittee;

(5) there is no Person or group of Related Persons (such group taken in the aggregate), other than Macquarie, individually owning (directly or indirectly) more than twenty percent (20%) of the total economic interests or voting power with respect to the issued and outstanding securities of Permittee;

(6) no Person other than Macquarie directly or indirectly Controls MIP III or Permittee; and

(7) none of MIP III (ECI) AIV, L.P. (the “Fund”) or its general partner, MIP III (ECI) GP LLC (“Fund GP”) which together with the Fund shall collectively be referred to herein as “MIP III”), or NYK Ports LLC (“NYKP”), is a Prohibited Person; and, to the actual knowledge (without any obligation to perform any inquiry or diligence) of MIP III and Permittee, no Person or group of Related Persons directly or indirectly (no matter how remote) owning 5% or more of the total economic

interests or voting power with respect to the issued and outstanding securities of Permittee is a Person identified in clauses (A), (F), (G), or (H) of the definition of Prohibited Person.

(b) The Permittee recognizes the fact that a transfer of securities in the Permittee or of a substantial part thereof, or any other act or transaction involving or resulting in a change in the ownership or distribution of such securities or with respect to the identity of the parties in Control of the Permittee, is for practical purposes a transfer or disposition of the rights obtained by the Permittee through this Agreement. The Permittee further recognizes that because of the nature of the obligations of the Permittee hereunder, the qualifications and identity of the Permittee and its direct and indirect owners are of particular concern to the Port Authority. The Permittee also recognizes that it is because of such qualifications and identity that the Port Authority is entering into this Agreement and, in doing so, is willing to accept and rely on the Permittee for the faithful performance of all obligations and covenants hereunder. Therefore, the Permittee represents and agrees with respect to itself and Macquarie that without the prior written approval of the Port Authority, there shall be no direct or indirect (no matter how remote) transfer of any equity securities in the Permittee, other change in ownership of such securities, or change in identity of the parties in Control of Permittee, in each case by (or with respect to) Permittee or any of its Affiliates that would result in: (i) MIP III owning (directly or indirectly) less than eighty percent (80%) of the total economic interests and voting power with respect to the issued and outstanding securities of Permittee; (ii) MIP III ceasing to be Controlled by Macquarie or Fund GP ceasing to be an indirect wholly owned subsidiary of Macquarie; (iii) Macquarie no longer Controlling Permittee; (iv) any Person or group of Related Persons (other than Macquarie directly or indirectly) owning in excess of twenty percent (20%) of the total direct or indirect (no matter how remote) economic interests or voting power with respect to the issued and outstanding securities of Permittee; or (v) any Person or group of Related Persons owning a direct or indirect (no matter how remote) interest in Permittee equal to five percent (5%) or greater of the total economic interests or voting power with respect to the issued and outstanding securities of Permittee being a Person identified under clauses (A), (F), (G) or (H) of the definition of Prohibited Person.

(c) At no time during the term of the Letting under this Agreement shall any Person or group of Related Persons owning a direct or indirect (no matter how remote) interest in Permittee equal to twenty percent (20%) or greater of the total economic interests or voting power with respect to the issued and outstanding securities of Permittee be a Prohibited Person; provided that the foregoing shall not apply to any direct or indirect owner of MIP III except to the extent to the extent required by clause (b)(v) above.

(d) The Permittee acknowledges that the Permittee's assurance of faithful performance of these provisions is a special inducement for the Port Authority to enter into this Agreement. Noncompliance on the part of the Permittee with the provisions contained in this Special Endorsement 14 shall constitute an event of default under this Agreement, and the Port Authority shall have the right, to terminate this Agreement and the Letting hereunder.

(e) The foregoing right of termination shall be in addition to all other rights of termination the Port Authority has under this Agreement and the failure of the Port Authority to exercise its right of termination under this Special Endorsement at any time in which it may have

such right shall not affect, waive or limit its right to exercise said right of termination at any subsequent time.

(f) For the avoidance of doubt, it is expressly acknowledged and agreed by the Port Authority that any issuance or transfer of any limited partnership interests of MIP III, shall not require the prior written consent of the Port Authority, provided that the requirements of subsection (b) of this Special Endorsement 14 are satisfied in full immediately prior to any such issuance or transfer and no such issuance or transfer results in any breach of subsection (b) of this Special Endorsement 14. Any such issuance or transfer contemplated in this subsection (f) of this Special Endorsement 14 that fails to satisfy the conditions set forth above shall constitute noncompliance on the part of Permittee with the provisions contained in this Special Endorsement 14, entitling the Port Authority to terminate this Agreement and the Letting hereunder.

(g) Definitions:

(1) The term "Control" as used herein shall mean the direct or indirect power of a Person through contract, arrangement, understanding, relationship, ownership of other business entities or otherwise to (A) dispose of or to direct the disposal of another Person, (B) vote or to direct the voting of, a majority of the voting securities a another Person, (C) manage the operations of such Person, including, without limitation, determining investments, the business plan and other strategic planning aspects of such Person's business and operations, and managing day to day operations, or (D) make all decisions and take all actions with respect to this Agreement.

(2) The term "security" or "securities" shall include any membership interest, stock, any bond which carries voting rights, or rights or options to subscribe to, purchase, convert or transfer into or otherwise acquire equity securities, or any other obligation of a Person, the holder of which has any voting rights including but not limited to the right to vote for the election of members of the governing body or board of directors of said Person and shall include any security convertible into a voting security and any right, option or warrant to purchase a voting security.

(3) The term "Affiliate" shall mean, with respect to any Person, any Person that directly or indirectly Controls or is Controlled by, or is under common Control with, the Person specified.

(4) The term "Person" shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture or other entity.

(5) The term "Prohibited Person" shall mean any Person or any Person controlled by a Person:

(A) that is currently under indictment for or has been convicted of a felony (or an equivalent offense, as applicable) or such lesser offense as would preclude such Person from doing business with a state or federal

governmental agency within the United States or any United States controlled territory, in the preceding ten (10) years;

(B) that has had a development agreement with the Port Authority terminated for willful default or breach, has had a contract terminated by a state or federal governmental agency in the States of New York or New Jersey for willful breach or default or has had a contract terminated for any cause relating to a current indictment or a conviction of such Person or its principals for a felony (or an equivalent offense, as applicable) or such lesser offense as would preclude such Person from doing business with a state or federal governmental agency within the United States or any United States controlled territory, in the preceding ten (10) years;

(C) that is in material default beyond any applicable grace period, under any material agreement with the Port Authority or has been, within the preceding five (5) years, in material default, beyond any applicable grace period, under any material agreement with the Port Authority;

(D) that has been suspended, debarred, found not responsible or otherwise disqualified under applicable debarment regulations from entering into any contract with any state or federal governmental agency in the United States or any United States controlled territory, in the preceding ten (10) years;

(E) that has had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition;

(F) that is organized in or controlled from a country which is subject to any of the following: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (ii) the International Emergency Economic Powers Act of 1976, 50 U.S.C. § 1701, et seq., as amended; and (iii) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405, as amended;

(G) that is, or engages in any dealings or transactions that are, blocked or subject to blocking pursuant to Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"), or is otherwise associated with any such Person in a manner violative of the Executive Order or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (G);

(H) that is on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or

executive order (“OFAC”) and/or with whom the Port Authority is restricted from doing business with under OFAC or under any statute, executive order, or other governmental action or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (H);

(I) that has currently (i) filed a petition under any insolvency statute, (ii) made a general assignment for the benefit of its creditors, (iii) commenced a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (iv) filed a petition seeking reorganization or liquidation or similar relief under any applicable law or statute, or is the subject to any of foregoing;

(J) that is involved or has been involved in a material litigation or similar proceeding relating to performance of contract or business practices adverse to the Port Authority (unless the Port Authority has first waived (in the Port Authority’s sole discretion) by written notice to the transferring equity holder, with a copy to Permittee, the prohibition on transfer to such Person during the continuance of the relevant litigation); or

(K) whose involvement or presence in the Premises would create any conflict of interest as defined under the Public Officers Law of the State of New York between any Commissioner of the Port Authority and itself or its chief executive officer, chief operating officer, chief financial officer, president, chairman of the board, other similar senior executive, or any Person or entity which controls, is controlled by, or is under common control with it.

(6) The term “Related Persons” shall mean any Person that Controls, is Controlled by, or is under common Control with another Person, any Family Member of such Person or any Affiliate of, or entity Controlled by, a Family Member or such Person.

(7) The term “Family Member” shall mean as to any Person, any ancestor or descendant, aunt, uncle or first cousin or such Person or any trust of which the primary beneficiaries are any of the foregoing or such Person.

(h) The Permittee shall promptly advise the Port Authority of (i) any breach of the representations made in paragraph (a) of this Special Endorsement 14 or (ii) any changes to the organizational structure chart previously provided by the Permittee to the Port Authority (provided that any inadvertent failure to provide prompt notice of any change permitted under this Special Endorsement 14 shall not result in any termination right of the Port Authority pursuant to paragraph (d) of this Special Endorsement 14).

(i) The Permittee and the Port Authority further agree that in the event that the Port Authority, acting in a non-arbitrary or capricious manner (and consistent with its then current practice of implementing such determinations), shall notify Permittee in writing that any

entity owning any direct or indirect economic interests or voting power with respect to the issued and outstanding securities of Permittee is deemed by the Port Authority to be unsuitable by reason of integrity or security concerns, Permittee shall, following such written notice, engage in good faith discussions with the Port Authority to discuss such matters and, shall use good faith efforts to address the Port Authority's concerns, taking into account any legal constraints, its ability to address such matters or any other relevant matters that may impact, prevent or limit the Permittee's ability to address such concerns. Notwithstanding anything to the contrary contained in this Agreement, the Port Authority agrees that specific performance shall be its sole and exclusive remedy to enforce the Permittee's obligations set forth in this paragraph (i), and in no event shall a breach of this paragraph (i) form the basis of an event of default under this Agreement or constitute the basis for termination of this Agreement by the Port Authority or the basis for a determination of a breach under this Agreement. The Permittee and the Port Authority hereby acknowledge and agree that nothing in this paragraph (i) shall permit the Port Authority to expand, alter or modify or give rise to any new obligations under this Agreement or cause the Permittee to comply with any incremental or new or modified obligation under this Agreement, except for the express obligation set forth in this paragraph (i). The Port Authority and the Permittee agree that communications and discussions related to the matters contemplated in this paragraph (i) (and/or any determination with respect thereto) may involve commercially sensitive information and/or trade secrets of Permittee. The Parties agree that, except as otherwise required by applicable law, governmental proceeding or pursuant to a subpoena, and subject to compliance with the laws and policies with respect to records access and freedom of information and, to the extent not applied in an arbitrary, capricious or discriminatory manner, the Port Authority's policies and procedures relating to transparency and the treatment of confidential information, any such information shall be treated confidentially and shall not be intentionally disclosed to any other Persons (other than the directors, officers, shareholders, consultants and agents of each of the parties, on a confidential basis)."

4. As hereby amended, all the terms, provisions, covenants and conditions of the Space Permit shall continue in full force and effect.

5. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Permittee with any liability, or held liable to the Permittee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

6. This Agreement, together with the Space Permit (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Permittee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and the Permittee. The Permittee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Space Permit or in this Agreement.

7. If any term or provision of this Agreement or the Space Permit, or any application thereof, shall be held invalid or unenforceable, the remainder of this Agreement and/or the Space Permit and any other application of such term or provision shall not be affected thereby.

8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall for all purposes constitute one Agreement, binding on all the parties, notwithstanding that all the parties have not signed the same counterpart.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Port Authority and the Permittee have executed these presents as of the date first above written.

**THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY**

By: _____
Name:
Title:

WITNESS:

MAHER TERMINALS LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

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

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(notarial seal and stamp)

EXHIBIT D

[FORM OF PLEDGE ACKNOWLEDGEMENT LETTER]

[_____] , 2016

Maher Terminals LLC
1210 Corbin Street
Elizabeth, NJ 07201
Attn: Ron Tonuzi, CFO

Dear Sirs:

We refer to Supplemental Agreement - Supplement No. 3 made as of August [___], 2016 ("Lease Supplement No. 3"), by and between The Port Authority of New York and New Jersey (the "Port Authority") and Maher Terminals LLC (formerly Maher Terminals Inc., and hereinafter the "Lessee") in respect of Port Authority Lease No. EP-249 dated as of October 1, 2000 (as amended, including by Lease Supplement No. 3, the "Lease"). All capitalized terms which are used but not defined herein shall have the meaning ascribed to them in Lease Supplement No. 3.

1. This is to acknowledge that the Port Authority has been advised by Lessee that in connection with the closing of the financing under the Credit Agreement for the Acquisition, all of the outstanding membership interests and any certificates representing such membership interests of Lessee and each other direct or indirect subsidiary of Maher Terminals USA, LLC (the "Grantor") (collectively, the "Maher Interests") will be pledged to MUFG Union Bank, N.A., as collateral agent for the Senior Secured Parties referred to therein (the "Collateral Agent"), pursuant to the Membership Interest Pledge Agreement to be entered into as of the date hereof between the Grantor and the Collateral Agent (such agreement, the "Pledge Agreement"). Such membership certificates, if any, will be delivered to the Collateral Agent together with a stock power endorsed in blank by the relevant grantor.
2. We hereby confirm that such pledge of the Maher Interests as described in paragraph 1 above in connection with the Acquisition on the date hereof, in and of itself, will not result in a breach of Section 45 of the Lease (or any similar provision in any other lease agreement or space permit between the Lessee and the Port Authority). We note, however, that any future action that may be taken by the Collateral Agent or the Senior Secured Parties (as such terms are defined in the Credit Agreement or the Pledge Agreement) or any other person that entails executing against or realizing upon the Maher Interests, or effects any change in the ownership or control of the Lessee, or any direct or indirect parent of the Lessee, except as expressly provided under the terms and conditions of Section 45 of the Lease, shall require the prior written approval of the Port Authority as required under Section 45 of the Lease.
3. This is to further confirm that the Collateral Agent shall give notice to the Port Authority promptly of any action on its part or on the part of the Secured Parties to transfer or further pledge any of the Maher Interests, or to exercise any other remedies under or pursuant to the Pledge Agreement that may constitute a transfer of the Maher Interests, or of any amendment, modification or supplement of the terms of the Pledge Agreement.

This letter may be provided to counsel to the Lessee providing any opinion required in connection with the closing under the Credit Agreement. This letter shall inure to the benefit of and bind any successor Collateral Agent.

[Remainder of page intentionally left blank.]

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____

Name:

Title:

Acknowledged and agreed.

MAHER TERMINALS LLC

By: _____

Name:

Title:

By: _____

Name:

Title:

Acknowledged and, as to paragraph 3 above, agreed.

MUFG UNION BANK, N.A.

as Collateral Agent under the Pledge Agreement

By: _____

Name:

Title:

EXHIBIT 2

[JOINT MOTION FOR APPROVAL]

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**Docket No. 08-03
Docket No. 12-02**

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT,
DISMISSAL WITH PREJUDICE, AND STAY**

Complainant Maher Terminals, LLC (“Maher”) and Respondent The Port Authority of New York and New Jersey (“Port Authority” or “PANYNJ”), through their respective attorneys, hereby jointly move for (a) approval of the Settlement Agreement (attached hereto as Exhibit B); (b) contingent dismissal with prejudice of (i) Maher’s complaint against the Port Authority filed on June 3, 2008 (“Dkt. No. 08-03”) and (ii) Maher’s complaint against the Port Authority filed on March 3, 2012 (“Dkt. No. 12-02” together, the “Pending Litigations”), including with respect to such Pending Litigation any potential claims for attorneys’ fees and costs (as discussed further below, to be contingent and effective upon the occurrence of certain conditions); and (c) a stay of the Pending Litigations until the Federal Maritime Commission (“FMC” or “Commission”) receives notification from the parties that pursuant to the Settlement Agreement the conditions upon which the requested dismissals are based either have or have not

been fulfilled, as set forth more fully in Section VI below. A proposed order for the FMC's consideration is attached hereto as Exhibit A.

Maher and the Port Authority respectfully submit that the Settlement Agreement meets the FMC's criteria for approval of settlement agreements and therefore should be approved. The stay should be ordered to permit the Commission time to approve the settlement and for the parties to avoid any further burden of litigation in the interim.

I. INTRODUCTION

The Port Authority and Maher, by and through their respective legal counsel, have engaged in significant negotiations in a concerted effort to resolve the remaining litigation between them in the Pending Litigations. The parties are pleased to report that they now have successfully achieved a result that they believe to be in each of their best interests.

Maher's current owner, Deutsche Bank Americas Holdings Corp. ("DBAH"), wishes to transfer its controlling membership interest in Maher to MIP III Yellowtail Holdings LLC ("Yellowtail Holdings"), which is indirectly controlled by Macquarie Infrastructure and Real Assets Inc. ("MIRA"). This transaction (the "Transaction") benefits the parties. The Port Authority has agreed to consent to the transfer of Maher to Yellowtail Holdings—as is required for such a change of control under the terms of Maher's marine terminal lease—conditioned upon the satisfaction of all the requirements set forth in the Consent Agreement, which is attached as Exhibit 1 to the Settlement Agreement (*see* Exhibit B):

To facilitate this Transaction, Maher and the Port Authority have negotiated a global Settlement Agreement that includes a Consent Agreement and supplements to Maher's existing lease, which are attached to the Consent Agreement as Exhibits A – C. Collectively, in addition to allowing for the transfer of Maher to Yellowtail Holdings, these agreements also settle the

Pending Litigations between Maher and the Port Authority. With the Commission's approval, upon consummation of the Transaction, the Settlement Agreement will close the chapter of litigation between the parties, avoid the considerable costs to the parties and the Commission of continuing to litigate the Pending Litigations to their conclusion, and enable the Port Authority, Maher and Yellowtail Holdings to proceed into their new relationship on a clean slate.

II. BACKGROUND

A. Docket No. 08-03

In brief summary, on June 3, 2008, Maher filed a complaint against the Port Authority alleging violations of the Shipping Act of 1984 (the "Shipping Act"), 42 U.S.C. §§ 41106(2), (3) and 41102(c). Maher claimed that the Port Authority: (1) granted unduly and unreasonably more favorable lease terms to non-party APM Terminals North America, Inc. ("APM-Maersk") than it provided to Maher; (2) refused to deal with Maher regarding its request for parity with APM-Maersk; and (3) failed to establish, observe, and enforce just and reasonable regulations and practices. Maher additionally alleged that the Port Authority refused to negotiate with Maher regarding Maher's third-party counter complaint in Docket No. 07-01, in which Maher alleged that the Port Authority violated Maher's lease by failing to provide it with specific dates by which to vacate an 84-acre parcel of land and failing to perform certain improvements to other property.

On April 25, 2014, the Administrative Law Judge ("ALJ") held that Maher had failed to establish any of the Shipping Act violations alleged, and dismissed Maher's complaint with prejudice. The Commission affirmed the ALJ's decision on December 17, 2014. On March 22, 2016, acting on Maher's petition for review, the D.C. Circuit remanded the case for further

explanation of the Commission's opinion and policy.¹ On June 21, 2016, the Commission granted the parties' consent motion for supplemental briefing and directed the parties to therein address seven issues of significance to the parties. The Port Authority submitted its Initial Supplemental Brief on July 15, 2016. On July 29, 2016, the parties submitted a joint motion to stay all proceedings.

B. Docket No. 12-02

On March 30, 2012, while the Dkt. No. 08-03 action was proceeding, Maher initiated the Dkt. No. 12-02 action against the Port Authority alleging fourteen violations of sections 41102(c), 41106(2), 41106(3), and 41106(1) of the Shipping Act. On April 26, 2012, the Port Authority moved to dismiss Maher's complaint and stay the proceeding pending resolution of Docket No. 08-03. While the motion to dismiss was pending, the parties engaged in discovery practice, during which each party served discovery requests and responses. Following those exchanges, the matter was effectively stayed until January 30, 2015, when the ALJ granted the Port Authority's motion to dismiss the complaint for failure to state a claim. After Maher filed Exceptions, the Commission dismissed ten of the fourteen claims with prejudice and remanded four claims, concerning two discrete issues: the Port Authority's change of control practices and letting of a 70-acre parcel adjoining the Global terminal and now subject to the Global Lease. The parties recommenced discovery and motions followed regarding discovery disputes. On July 29, 2016, the Port Authority and Maher submitted a joint motion to stay all proceedings, which was granted on August 3, 2016.

¹ Maher's petition had challenged only the Commission's rejection of its unreasonable preference and unreasonable practice claims based on its rental rate as compared to APM-Maersk's rental rate. Since Maher did not challenge the Commission's rejection of its other claims, they are no longer at issue in the Dkt. No. 08-03 action.

III. REQUEST FOR CHANGE OF CONTROL

After MIRA was identified as a buyer, Maher formally requested the Port Authority's consent for the proposed change of control pursuant to Section 45 of Maher's marine terminal lease, EP-249. After negotiations by and through counsel, which included careful consideration of the benefits and risks of the proposed transaction to each party, Maher and the Port Authority reached a Settlement Agreement that they have determined is satisfactory to both parties. The Port Authority has agreed to consent to the consummation of the acquisition of Maher by Yellowtail Holdings, conditioned upon the satisfaction of all the requirements set forth in the Consent Agreement, which includes the dismissal of the Pending Litigations.

In sum, contingent upon the Commission's approval of the Settlement Agreement, the parties have agreed, *inter alia*, that:

- the Port Authority will consent to the change of control from DBAH to Yellowtail Holdings, upon the satisfaction of the conditions set forth in the Consent Agreement (*see* Exhibit 1 to the Settlement Agreement);
- the Parties will execute any documentation necessary to implement such change of ownership and control, including applicable supplements to the relevant Port Authority leases or permits to which Maher and/or its applicable affiliates are parties (*see* Exhibits A – C to the Consent Agreement); and
- the Port Authority and Maher will agree to voluntarily dismiss the Pending Litigations with prejudice and release each other from any and all claims in any way relating to the leases, permits and the Pending Litigations (*see* Settlement Agreement §§ 1-7).

These mutual releases and concessions contained in the Settlement Agreement and documents annexed thereto are of substantial value to the parties. As noted above, the Settlement Agreement reflects the parties' agreement, expressly contingent on the Commission's approval, to voluntarily dismiss the Pending Litigations in their entirety with prejudice. The

parties submit that these mutual concessions made in connection with the Settlement Agreement fairly and reasonably resolve the outstanding issues between them in the Pending Litigations.

IV. AUTHORITY FOR SETTLEMENT

Rule 91 of the Commission's Rules of Practice and Procedure tracks the language of the Administrative Procedure Act in providing interested parties an opportunity, *inter alia*, to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b); *see* 5 U.S.C. § 554(c). Rule 72 of the Commission's Rules of Practice and Procedure expressly addresses voluntary dismissal the result of a settlement between the parties. 46 C.F.R. § 502.72(b); 79 Fed. Reg. 76.901 (Dec. 23, 2014) (explaining the Commission's standard for approving a settlement and requiring submission of the settlement agreement).

The Commission "has a strong and consistent policy of encouraging settlements and engaging in every presumption which favors a finding that they are fair, correct, and valid." *Am. Stevedoring, Inc. v. PANYNJ*, 32 S.R.R. 466, 467 (ALJ 2011) (citation and quotation marks omitted). Pursuant to this policy, long recognized both in the law generally and by the Commission particularly, the Commission will "uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy":

The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal Co. v. Sea-Land Serv., Inc., 18 S.R.R. 1085, 1092 (ALJ 1978) (quoting 15A Am. Jur., 2d ed., pp. 777-778 (1976)).

Consistent with this policy, “if ‘a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.’” *Econocaribe Consolidators, Inc. v. Amoy Int’l LLC*, Dkt. No. 14-10, 2015 WL 9690306, at *2 (ALJ 2015) (quoting *Old Ben Coal*, 18 S.R.R. at 1093). The Commission will examine a proposed settlement to determine that it “has a reasonable basis and reflects the careful consideration by the parties of such factors as the relative strengths of their positions weighed against the risks and costs of continued litigation [I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement.” *Delhi Petroleum Pty. Ltd. v. U.S. Atl. & Gulf/Australia — New Zealand Conf. & Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

V. THE SETTLEMENT IS FAIR AND REASONABLE AND DOES NOT VIOLATE ANY PROVISION OF THE LAW

The Settlement Agreement between Maher and the Port Authority should be approved because (A) it is fair, adequate, and reasonable for both Maher and the Port Authority; (B) it is “free of fraud, duress, undue influence, [or] mistake,” *Econocaribe Consolidators*, 2015 WL 9690306, at *2; and (C) it does not violate any provision of the law.

A. The Settlement Agreement Is Fair, Adequate And Reasonable

As the ALJ and the Commission are aware, Maher and the Port Authority have disputed their respective positions in litigation since 2007. While the outcome of the Pending Litigations

is uncertain, the Settlement Agreement will relieve both parties, and the Commission, of the need to expend further time and considerable resources litigating these complex disputes to their eventual conclusion. The avoidance of those expenses and of the uncertainties of litigation is of considerable value to each party.

Further, as explained above, Maher and the Port Authority are each receiving something and relinquishing something under the Settlement Agreement, which they have determined, in their respective business judgments, to be a fair and adequate trade. The Settlement Agreement provides for the transfer of ownership of Maher to Yellowtail Holdings. The transaction benefits DBAH, and brings to the region a well-respected and experienced marine terminal operator in MIRA. Moreover, it offers the parties a logical and opportune moment to resolve the legal disputes that have dogged the parties' relationship.

The Settlement Agreement is a reasonable step to take at this juncture. The parties already have expended substantial amounts of time and resources, including millions of dollars in attorneys' fees and costs litigating the Pending Litigations, and their continuation would exact an additional substantial toll. Moreover, the recent amendments to the Commission's Rules of Practice and Procedure regarding attorneys' fees, *see* 46 C.F.R. § 502.254 (2015), present another significant factor to consider. The Settlement Agreement, if approved, would eliminate not only the need for further proceedings, but also the uncertainty and risk of an award of attorneys' fees.

The parties have stipulated that the concessions made by both parties in connection with the Settlement Agreement provide adequate consideration for their agreement to relinquish the claims at issue. And, in fact, "the matter of how much the parties agree to exchange in order to terminate litigation is not one which the courts or the Commission generally question, if, as here,

the amount appears to have been determined in the exercise of the parties' business judgment after lengthy negotiations." *Trident Seafoods Corp. v. Coastal Transp., Inc.*, 91-49, 1993 WL 104677 (ALJ 1993) (citing *Int'l Ass'n of NVOCC's v. Atl. Container Line*, 26 S.R.R. 151, 153 (ALJ 1991)); see also *APM Terminals N.A., Inc. v. PANYNJ* (Dkt. No. 07-01), 31 S.R.R. 623, 626 (FMC 2009) ("The FMC observes long-established precedent giving deference to the parties when it comes to the valuation of settlement concessions. There is no burden on the settling parties to prove that the settlement involves concessions of equal value on both sides.") (citation omitted).

Maher and the Port Authority's decision to forgo substantial and complex litigations, with uncertain outcomes, in exchange for the resolution of any potential liability (including the potential for an award of attorneys' fees) therefore is fair, adequate, and reasonable.

B. The Settlement Agreement Is "Free of Fraud, Duress, Undue Influence, [or] Mistake"

Each party's decision to settle all claims was made after months of negotiations by legal counsel and based on careful consideration of the merits and of the potential costs and benefits to both parties. The protracted litigation between Maher and the Port Authority has been disruptive to both parties and has taxed their resources. In all likelihood, absent a settlement, there will be additional, protracted litigation in each Pending Litigation, as Docket No. 12-02 would proceed on the merits and then from the ALJ back to the Commission and Docket No. 08-03 likely would proceed on the merits before the Commission and then from the Commission back to the D.C. Circuit. This could go on for years. The transfer of Maher to a new owner has presented an opportunity to put the parties' disputes behind them now. It is in the best interests of both parties to settle now. The parties have agreed and stipulated that the settlement is "free of fraud, duress, undue influence, [or] mistake." *Econocaribe Consolidators*, 2015 WL 9690306, at *2

C. The Settlement Agreement Does Not Violate Any Provision Of The Law

“The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy.” *Am. Stevedoring, Inc.*, 32 S.R.R. at 467 (quoting *Old Ben Coal*, 18 S.R.R. at 1092). The parties wish to settle their differences now, and have agreed that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation. See *Delhi Petroleum Pty. Ltd. v. U.S. Atl. & Gulf/Australia — New Zealand Conf. & Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted). As the Commission has explained, when determining whether to approve a settlement agreement it is not necessary to make final determinations of violations or lack of violations since to do so might discourage parties from even attempting to propose settlement in the first place. *Old Ben Coal*, 18 S.R.R. at 1093-94. The Commission adheres to a policy of “encourag[ing] settlements and engag[ing] in every presumption which favors finding that they are fair, correct, and valid.” 79 Fed. Reg. 76.901.

VI. MECHANICS OF THE PARTIES’ REQUEST

As explained above, the parties’ negotiated settlement, including the releases and ultimate dismissal of the Pending Litigations, is contingent upon the completion of the closing of Yellowtail Holdings’s acquisition of Maher. Likewise, the Port Authority’s consent to that change of control is dependent on the Commission’s approval of the Settlement Agreement and contingent dismissal of the Pending Litigations.

Accordingly, as a first step, the parties are hereby seeking the Commission’s approval of the Settlement Agreement (which should be granted for all of the reasons set forth herein) and contingent dismissal of the Pending Litigations, insofar as the parties respectfully request that

those dismissals not become effective until the closing of Yellowtail Holdings's acquisition of Maher. By structuring the mechanics in this way, the Port Authority is able to provide its consent to the change of control because the Settlement will have already been approved and the Pending Litigations dismissed contingently, effective at the point of the closing. At the same time, holding the effectiveness of the dismissal of the Pending Litigations in abeyance pending the closing allows the parties to be restored to their pre-settlement positions in the Pending Litigations if the transaction does not occur.

In addition, because there will be a short interim period between approval of the settlement and contingent dismissal and the effective date of the settlement and dismissal, the parties also respectfully request a stay during that period in order to avoid any further resources of the parties or the Commission being spent on the Pending Litigations.

To accomplish this sequencing of events, the parties respectfully request—as set forth in the attached Proposed Order—that the Commission:

1. Approve the Settlement Agreement, including all of the terms and conditions set forth therein;
2. Dismiss contingently the above-captioned actions with prejudice, effective immediately upon the closing of Yellowtail Holdings's acquisition of Maher, and Order the parties to notify the Commission when the closing is complete.
3. Stay the Pending Litigations until the Commission either (i) receives notification that the closing is complete; or (ii) receives notice that the requirements under the Consent Agreement have not been satisfied in accordance with the terms thereof and that the anticipated closing has been canceled.

If the Commission is notified that the conditions required under the Consent Agreement

have not been satisfied in accordance with the terms thereof and that the anticipated closing has been canceled, the parties respectfully request that any order approving the settlement and dismissing contingently the Pending Litigations be deemed vacated, and of no further force or effect, and that the Commission restore the parties to their positions in the respective Pending Litigations as they existed immediately prior to entry of this Order.

VII. CONCLUSION

For the reasons stated above, the parties respectfully submit that it is their position that the Settlement Agreement meets the Commission's criteria for approval of a settlement agreement for purposes of voluntary dismissal per Rule 72 and thus should be approved. Further, for the reasons set forth herein, the parties respectfully request that the Commission dismiss contingently the Pending Litigations with prejudice, effective upon the closing of Yellowtail Holdings's acquisition of Maher, and stay the Pending Litigations until such closing or any notification by the parties that the closing has been canceled.

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Respectfully submitted,

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