

New

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 299

Approved June 26, 1990

RESOLVED, that His Honor the Mayor is hereby authorized to execute an agreement for a ground lease for a portion of Lots 297 and 288 on Assessor's Plat 56 and a license for a portion of Lots 296, 297 and 288 on Assessor's Plat 56, said portions more fully outlined in the attached description, said lots to be leased to Cooper T. Smith Corporation, a corporation organized and existing under the laws of the State of Louisiana, for an initial term of ten (10) years with an option to extend said term for an additional ten (10) years for the following sums:

First 3 years - free of charge (except for costs)

Years 4 & 5 - \$0.50 per square foot

Years 6 - 10 - \$1.00 per square foot

Plus Wharfage and Dockage Fees.

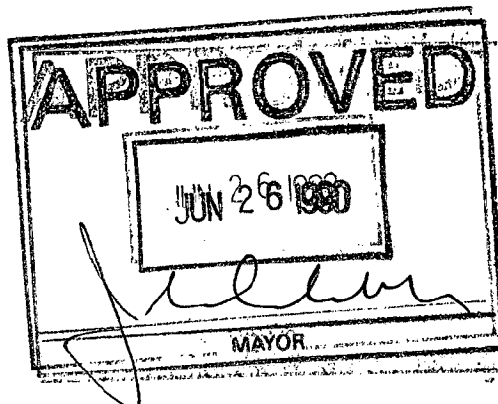
The rate of the extended term will be negotiated at the time the option is exercised.

BE IT FURTHER RESOLVED, that the execution of the ground lease and license agreement is contingent upon cancellation of Crane Associates' perpetual easement allowing placement and use of cranes and associated equipment on and over Lots 296 and 297 and with such other terms and conditions as have been imposed by the Committee on City Property, the City Solicitor and His Honor the Mayor.

IN CITY COUNCIL

JUN 21 1990
READ AND PASSED

Michael W. Easton
PRES.
Michael R. Claret
CLERK
Fris & Deputy



RESOLUTION OF THE CITY COUNCIL

No.

Approved

RESOLVED, that His Honor, the Mayor is hereby authorized to execute a ground lease and license agreement of Lots 296 and a portion of Lot 297 on Assessor's Plat 56, which is more fully outlined on the attached Exhibit, said lots to be leased to Cooper T. Smith Corporation, a corporation organized and existing under the laws of the State of Louisiana, for an initial term of ten (10) years with an option to extend said term for an additional ten (10) years for the following sums:

First 3 years - free of charge (except for costs)

Years 4 & 5 - \$0.50 per square foot

Years 6 - 10 - \$1.00 per square foot

Plus Wharfage and dockage fees.

The rate of the extended term will be negotiated at the time the option is exercised.

BE IT FURTHER RESOLVED, that the execution of the ground lease and license agreement is contingent upon cancellation of Crane Associate's perpetual easement allowing placement and use of cranes and associated equipment on and over Lots 296 and 297 and with such other terms and conditions as have been imposed by the Committee on City Property, the City Solicitor and His Honor the Mayor.

THE COMMITTEE ON
CITY PROPERTY

Approves Passage of
The Within Resolution

Ben Mandel

Clerk ~~Chairman~~

June 7, 1890



3
JOHN R. D'ANTUONO
PORT DIRECTOR
(401) 781-4717

June 5, 1990

Councilman Andrew Annaldo
c/o Rose Mendonca, City Clerk
City Clerk's Office
City Hall
Providence, Rhode Island 02903

Dear Councilman Annaldo:


A lease for the Cooper/T/Smith Corporation has been approved by the Providence Port Commission at its meeting of June 5, 1990.

This agreement calls for a 44,000 square foot portion of lot #297 in assessors plat #56 to be leased as a marshalling area for scrap metal on a ten year term with a ten year option.

Members of the Providence Port Commission and staff will be available at your meeting of June 7th to answer any questions you may have concerning this lease.

It is respectfully requested that the City Council take action authorizing the Mayor to execute this lease with the Cooper/T. Smith Corporation.

Sincerely,



John R. D'Antuono
Port Director

JRD/jh

cc: Patricia McLaughlin

1500 FLEET CENTER
PROVIDENCE, RHODE ISLAND 02903
401 274-2000

FAX: 401 277-9600
TELEX: 952039 HATS PVD-UD

HINCKLEY, ALLEN, SNYDER & COMEN

Attorneys at Law

June 6, 1990

BY MESSENGER

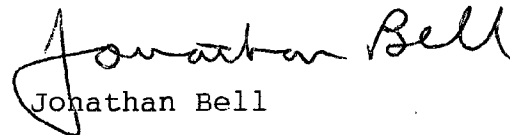
Councilman Andrew J. Annaldo
City of Providence
c/o Rose Mendonca
City Hall
Providence, Rhode Island 02903

Dear Councilman Annaldo:

At the request of Bill Goddard, I am enclosing six (6) copies of the proposed form of Ground Lease and License Agreement between the Port Commission of the City of Providence as Landlord and Cooper/T. Smith Corporation as Tenant with respect to the cranes at Berth 6. The enclosed documents are in the form approved by the Port Commission yesterday morning and are being sent to you in connection with the City Council's property committee meeting scheduled to be held on Thursday, June 7, 1990.

If you have any questions, please feel free to call.

Yours sincerely,


Jonathan Bell

JB/alw

cc: William H.D. Goddard

Enclosures

WP:BELL:C0092000-.BR1 June 6, 1990 D1

Ground Lease and License Agreement

between

PORT COMMISSION OF THE CITY OF PROVIDENCE

Landlord

and

COOPER/T. SMITH CORPORATION

Tenant

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GROUND LEASE

THIS LEASE is dated the ____ day of _____, 1990, by and between PORT COMMISSION OF THE CITY OF PROVIDENCE, a municipality organized and existing under the laws of the State of Rhode Island (the "Landlord") and COOPER/T. SMITH CORPORATION, a corporation organized and existing under the laws of the State of Louisiana (the "Tenant").

WITNESSETH:

For good and valuable consideration, and the mutual covenants contained herein, Landlord and Tenant covenant and agree as follows:

SECTION 1. Premises.

(a) Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all those two (2) certain tracts of land, situated in Providence, Providence County, Rhode Island, located on Lot 297, separated (by a thirty foot (30') wide access area, each measuring approximately one hundred feet (100') in width, measured perpendicular to the existing tracks upon which the Cranes (as hereinafter defined) are located, and each running a distance of approximately two hundred twenty feet (220') along

the Westerly boundary line of Lot 296 (collectively, the "Marshalling Area") at the Port of Providence Municipal Wharf at Fields Point and shown on Exhibit A attached hereto and made a part hereof, together with any and all improvements located thereon, appurtenances, privileges and easements benefitting, belonging or appertaining thereto, and together with a license;

(b) Landlord further grants to Tenant a license (i) to use in common with others (A) the areas adjacent to the Marshalling Area as shown on Exhibit A, and (B) the access area and access road as shown on Exhibit A, and (ii) to operate the Cranes upon the rails located as shown on Exhibit A attached hereto and shaded in gray thereon (the "Licensed Premises"). It is understood and agreed that the Tenant's license to operate the Cranes upon the rails is exclusive during the term of this Agreement, provided, however, that the Landlord reserves the right for itself and for third parties moving cargo in the Port of Providence to use Berth 6 and to cross and lay objects upon the rails, provided that such use does not interfere with the Tenant's reasonable requirements for its stevedoring business at the Port of Providence. The Marshalling Area and the Licensed Premises are sometimes hereinafter referred to collectively as the "Premises".

SECTION 2. Term.

(a) Initial Term. The initial term of this Lease shall be for a period of ten (10) years beginning on _____, 1990

(the "Commencement Date") and continuing until midnight on the tenth anniversary of the Commencement Date, together with any extension thereof, as set forth in Section 2(b) (the "Term"), unless terminated sooner as hereinafter provided.

(b) Option to Extend Term. Upon the expiration of the initial Term, Tenant shall have the option to extend the Term of this Lease for a consecutive additional term of ten (10) years. Tenant may exercise its right to extend the Term of this Lease provided Tenant is not in default hereunder at any time prior to the commencement of the extended Term (other than defaults as to which the Landlord has in writing accepted Tenant's cure) and Tenant notifies Landlord in writing of its desire to extend the Term of this Lease at least one (1) year before the end of the initial Term. All of the terms, conditions and covenants of the initial Term except for rent (which shall be based on fair market rental value as set forth below), the wharfage charge for metal scrap and the option set forth in this Section 2(b) shall be the same for the extended Term as contained herein unless Landlord and Tenant mutually agree, in writing, to any change of same prior to the beginning of the extended Term.

SECTION 3. (a) Rent and Dockage and Wharfage Fees. Tenant shall pay to Landlord without notice or demand and without set-off or deduction for any reason at Landlord's office at c/o Director of Port of Providence, Marine Terminal Building, Providence, Rhode Island 02905, or at such other address as

Landlord may from time from time designate, rent and wharfage fees, as set forth below in Subsection (i), (ii) and (iii), and the dockage fees for the use of Berth 6 shall be as set forth in Subsection (iv) below:

- (i) Marshalling Area Rent - (A) use of the Marshalling Area during the first three years of the Term shall be free of charge to Tenant (except for costs set forth elsewhere in this Lease for which Tenant is responsible); (B) for years four and five rent shall be set at \$0.50 per square foot; (C) thereafter, rent shall be set at \$1.00 per square foot; and (D) rent for the extended Term will be determined as set forth in subparagraph (iii) below.
- (ii) Wharfage Fees - Tenant shall pay to Landlord all wharfage fees for all Tenant's cargo loaded and/or unloaded at the Port of Providence (which shall be set at Landlord's published tariff rates as are from time to time in effect for containers and other cargo unless a competing stevedoring company (other than a competing stevedoring company obtaining a special rate in connection with a long-term commitment to the Port of Providence, a commitment to move a guaranteed amount of tonnage through the Port of Providence and/or a commitment

to make a capital investment at the Port of Providence), is obtaining a lower tariff rate at the Port of Providence for any type of cargo in which case Tenant's wharfage fees for such type of cargo shall be set at such lower rate; provided, however, that the wharfage charge will be \$0.20 per ton for metal scrap cargo during the initial Term of this Lease).

- (iii) Marshalling Area Rent - extended Term - If Tenant timely exercises its option for the extended Term, the rent for the extended Term shall be based upon fair market rental value as hereinafter determined: Tenant shall notify Landlord in writing on or before the end of the ninth (9th) year of the Term of this Lease whether Tenant desires to exercise the option to extend the Term hereof. Landlord and Tenant shall have until thirty (30) days thereafter to determine the rent for the extended Term. If the parties are unable to agree, then Landlord and Tenant shall each employ an independent appraiser, each of whom shall be directed, within thirty (30) days after the later of their respective appointments, to determine the fair market rental value of the Marshalling Area. If the higher appraisal is not more than one hundred ten percent

(110%) of the other appraisal, the average of the two appraisals shall be taken and the resulting figure shall be deemed to be the fair market rental value of the Marshalling Area. If the higher appraisal is more than one hundred ten percent (110%) of the lower and if within twenty (20) days thereafter, Landlord and Tenant do not agree in writing to the fair market rental value, then the two appraisers shall select a third appraiser and within thirty (30) days thereafter a determination of fair market rental value shall be made by the third appraiser and such determination shall be conclusive on the parties hereto; provided, however, that if the two appraisers cannot agree on the selection of the third appraiser, within sixty (60) days after the later of their respective appointments then the determination of the fair market rental value of the Marshalling Area for the extended Term shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association, sitting in Boston, Massachusetts, provided that discovery in any such arbitration shall be conducted in accordance with the discovery rules of the Federal Rules of Civil Procedure. Landlord and Tenant each

shall bear the cost of its own appraiser and, in the event of the selection of a third appraiser or the institution of such arbitration proceedings, the cost thereof shall be borne equally by Landlord and Tenant.

- (iv) Dockage Fees - The dockage fees for any vessels docking at the Port of Providence and utilizing Tenant's stevedoring services at Berth 6 shall be set at the rate set forth in Landlord's applicable tariff schedule as from time to time is in effect.

During the extended Term of this Lease, dockage and wharfage fees will be charged in accordance with the Port tariff as it may be amended from time to time for all commodities including metal scrap.

All of the foregoing per ton or per container rates shall apply only to the actual loading or unloading of cargo aboard a vessel and shall not apply to cargo being marshalled, moved about the dock, or otherwise received prior to vessel loading or after vessel unloading.

All fixed amount payments due hereunder shall be paid in advance on the first day of each month. All payments related to tonnage shall be paid, together with copies of manifests or other verifying documentation, within ten (10) business days following the ship's departure.

(b) Accounting. Since the metal scrap wharfage fee during the initial Term hereof is based on Tenant's estimated costs of repairing the south Crane, which costs Tenant estimates to be \$1,200,000.00, Tenant shall provide Landlord with an accounting, immediately upon completion of such repairs, of all actual out-of-pocket costs and expenses incurred, together with copies of all bills and invoices and evidence of man-hours expended, in support thereof, evidencing the costs of such repairs it being understood and agreed that if any such bills and invoices in connection with the Cranes also relate to repairs being provided to Tenant in conjunction with other stevedoring services, the Tenant may include the portion thereof allocable to the repair of the Cranes provided that the inclusion thereof is reasonable and supported by written evidence from the provider of such services to the effect that such portion is allocable to the repair of the Cranes. At such time as the north Crane is repaired and rendered fully operational, the Tenant shall provide a similar accounting with respect to the cost of repair thereof.

(c) Relationship. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other except as expressly provided in this Lease.

SECTION 4. Rent To Be Net To Landlord. It is the intention of the parties hereto that the rent payable hereunder shall be absolutely net to Landlord, so that this Lease shall yield to Landlord at least the minimum annual rent specified herein during each year throughout the Term of this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises shall be paid by Tenant, it being understood and agreed that the Landlord shall be responsible for the repair and maintenance of the land under the rails as well as the dock and fender at Berth 6 in the condition in which it now is unless damaged by the Tenant, its agents, customers, employees or others on the Premises by invitation of the Tenant. The present condition thereof is hereby acknowledged by the Tenant to be acceptable.

SECTION 5. Use of Premises. (a) It is the intention of the parties hereto that the Tenant own and operate the two (2) Alliance 45-ton dockside gantry cranes, Serial Nos. C-6748 and C-6749 (the "Cranes") presently located on the Premises. Tenant shall, therefore, use the Premises solely for the handling, loading and unloading of cargo only for the transfer of cargo to be shipped by vessel into or out of the Port of Providence Municipal Docks and for no other purpose without the prior written consent of Landlord, which Landlord may grant or withhold in Landlord's sole discretion (provided that, if Berth 6 has been rendered unusable for the loading and unloading of cargo by

vessel through no fault of the Tenant and such unusability has continued for a period of not less than two (2) months, the Tenant may use the Premises to transport cargo by truck until such time as Berth 6 has once again become usable for the shipment of cargo by vessel). Tenant shall have the exclusive right to use the Marshalling Area during the Term of this Lease. Tenant shall not use or occupy, or permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or in any such manner as to constitute a nuisance.

(b) Tenant hereby agrees that if, at any time, during the Term of this Lease (and any extended Term), the Tenant's activities at Berth 6 shall be "substantially idle" (as hereinafter defined) then Landlord shall have the right, but not the obligation, to terminate this Lease and/or purchase the Cranes from Tenant at a price equal to the then fair market value thereof (which shall be determined as hereinafter provided). The "fair market value" of the Cranes shall be determined without regard to the value of any monetary concessions granted to the Tenant pursuant to the terms of this Agreement and shall be established upon the following terms:

- (i) At such time as the Landlord determines that the Tenant's activities at Berth 6 have become "substantially idle", the Landlord shall notify the Tenant thereof, which notice shall designate a

"fair market value" of the Cranes. Following such notice, Landlord and Tenant shall have thirty (30) days to determine the fair market value of the Cranes by mutual agreement. If the parties are unable to agree within such time period, then Landlord and Tenant shall each employ an independent appraiser, each of whom shall be directed, within thirty (30) days after the later of their respective appointments, to determine fair market value of the Cranes. If the higher of the two appraisals is not more than One Hundred and Ten Percent (110%) of the other appraisal, the average of the two appraisals shall be taken and the resulting figure shall be deemed to be the fair market value of the Cranes. If the higher appraisal is more than 110% of the lower and if within twenty (20) days thereafter, Landlord and Tenant do not agree in writing as to the fair market value of the Cranes, then the two appraisers shall select a third appraiser and within thirty (30) days thereafter a determination of fair market value shall be made by the third appraiser and such determination shall be conclusive on the parties hereof; provided, however, that if the two appraisers cannot agree on the selection of the

third appraiser within sixty (60) days after the later of their respective appointments, then the determination of the fair market value of the Cranes shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association, sitting in Boston, Massachusetts, provided that the discovery in any such proceeding shall be conducted in accordance with the discovery rules of the Federal Rules of Civil Procedure.

- (ii) If the Tenant disputes whether its activities at the Port of Providence have become "substantially idle", then the Tenant shall notify the Landlord thereof within fifteen (15) days after the notice from the Landlord to the Tenant referred to in subsection (i) above and the dispute shall immediately be submitted to binding arbitration in accordance with the rules of the American Arbitration Association, sitting in Boston, Massachusetts, provided that the discovery in any such arbitration shall be conducted in accordance with the discovery rules of the Federal Rules of Civil Procedure. A dispute between the Landlord and the Tenant as to whether the Tenant's

activities are "substantially idle" shall not delay the determination of the fair market value of the Cranes pursuant to subsection (i) above.

- (iii) Following the determination of the "fair market value" of the Cranes and the resolution of any dispute as to whether the Tenant's activities are "substantially idle" pursuant to subsections (i) and (ii) above, Landlord may (but shall not be required to) exercise its right to purchase the Cranes by giving Tenant written notice thereof, which notice shall specify a date (not later than 30 days following the date of such notice) for the closing of the purchase thereof by the Landlord at which closing the Tenant shall deliver a bill of sale and other appropriate documentation evidencing the transfer of the Cranes to the Landlord or its designee against which the Landlord shall make payment to the Tenant of the purchase price therefor. Tenant's activities at Berth 6 shall be deemed to be "substantially idle" if the Tenant shall fail, for any reason, to move regular and significant shipments of cargo across the Port of Providence docks for a continuous period of one (1) year or more.

(c) Tenant hereby agrees to move a minimum of 100,000 tons of scrap metal cargo per annum through the Port of Providence. In the event that such minimum movement of cargo is not achieved in any year during the term hereof, the Tenant shall pay to the Landlord a minimum fee for wharfage and dockage equal to Fifty Thousand Dollars (\$50,000) for such year less the wharfage and dockage charges actually paid by the Tenant and those utilizing its stevedoring services at the Port of Providence during such year. Payment of such amount shall be made within thirty (30) days following each anniversary date of this Agreement with respect to the year then concluded.

SECTION 6. Rights to Use Berth 6. Tenant shall have the preferential right to use Berth 6 provided that such use is for the loading or unloading of water-borne freight moving by vessel as provided in Section 5(a) hereof into or out of the Port of Providence Municipal Docks and that Tenant notifies the Port Director in writing at least seventy-two (72) hours in advance that a vessel is arriving and specifying in the notice the length of time that vessel will remain in port.

SECTION 7. Construction of Improvements.

(a) Improvements. Tenant shall, at its sole cost and expense, construct only the following improvements to the Premises: (i) an eight inch (8") concrete pad on all of the Marshalling Area and shall install a retaining wall around all or part of the Marshalling Area to retain any scrap metal; and (ii)

provide and install public truck scales (the "Scales") in the area shown in red on Exhibit A attached hereto (the "Improvements").

(b) Cost of Improvements. Any and all costs associated with the Improvements shall be borne by Tenant. Tenant shall cause the Scales to be operated in such a manner as to make them available for public use, at reasonable rates, and in accordance with such reasonable rules as Tenant may establish.

(c) Storage. Any and all cargo and equipment used or to be used by Tenant shall be stored in such a way so as not to obstruct access to and within Berth 6 when Berth 6 is not being used by Tenant to load or unload a ship or vessel. All arrangements for such storage shall be subject to the prior written approval of the Port Director unless completely within the Marshalling Area.

SECTION 8. Taxes.

(a) Currently the Premises are not assessed for ad valorem tax purposes. If the Premises, the Improvements thereon, or Tenant's interest in this Lease is taxed in the future, Tenant shall pay and discharge punctually, as and when the same shall become due and payable, all such taxes, special and general assessments, and other governmental impositions and charges of every kind and nature whatsoever (the "Taxes").

(b) If a tax is imposed upon rentals as a substitute for any ad valorem tax imposed on the land and improvements, then Tenant shall also pay same.

SECTION 9. Utilities. Except for such utilities and services as are provided by the Landlord for the benefit of its tenants generally and not billed to them, all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, and any and all other utility services used by Tenant on the Premises or by any guests, visitors, invitees or occupants thereof shall be payable by Tenant. Tenant shall be responsible to cause to be separately metered the electrical service to the Cranes and to the Marshalling Area, unless they are already separately metered.

SECTION 10. Maintenance, Repairs, Additions, Replacements and Surrender.

(a) Tenant shall, at all times during the Term of this Lease, and at its own cost and expense, keep and maintain, or cause to be kept and maintained, in good repair and condition, the land and the interior and exterior of the Improvements (including, without limitation, the Cranes but subject to the provisions of the next sentence) and any other Improvements at any time erected on the Premises; shall at any time and from time to time, make such alterations, changes and replacements in and to the Premises, the buildings and the improvements, as may be necessary in order to effectuate the foregoing; and shall use all reasonable precaution to prevent waste, damage or injury. Tenant shall cause the south Crane to be repaired and rendered fully operational as soon as reasonably practicable, but in no event

later than six (6) months after the date hereof, and shall cause the north Crane to be made mobile within said six (6) month period and in such condition in which it can be stored and secured safely. Thereafter, the North Crane shall be kept permanently mobile and capable of moving north and south on the rails and shall be stored in such locations as will not interfere with the reasonable activities of the Tenant, the Landlord and third parties making use of Berth 6. Tenant shall repair and render fully operational the north Crane as soon as it is economically reasonable to do so. Tenant shall not, during the term of this Agreement, remove any of the buildings or Improvements or equipment including, without limitation, the Cranes from the Premises unless Landlord approves in advance in writing to the removal of same and Tenant replaces same with buildings and Improvements or equipment comparable or better in type and quality, which replacements must also be approved in advance in writing by Landlord. Landlord shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the Premises during the Term of this Lease. Landlord agrees to keep Berth 6 dredged and clear from obstructions other than those caused by Tenant and/or ships docking to use its services to a minimum mean low water depth of 35 feet (except at the toe of the Berth wall), provided that Landlord shall have no obligation to undertake any dredging pursuant to the foregoing if the Landlord is no longer

actively operating the Port of Providence as a deep water port for the movement of cargo or if the Landlord has determined not to dredge or clear other Berths at the Port of Providence which have become silted or depth obstructed in such a way as to significantly limit the utility thereof.

(b) Should Tenant default in the performance of its obligations stated in paragraph (a) above, and provided all applicable cure periods have expired, then Landlord, at Landlord's option, may make such repairs and take such steps as Landlord deems advisable to prevent or cure such waste and Tenant shall pay to Landlord immediately and without demand, any and all sums of money so advanced by Landlord.

(c) On the last day or sooner termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Premises, and the buildings and permanent improvements located thereon, including the Improvements, broom-clean and in good condition and repair, ordinary wear and tear and damage by casualty excepted.

SECTION 11. Requirements of Public Authority. During the Term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county and city governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are

in force at the commencement of the Term of this Lease or may in the future be passed, enacted or directed, as well as any and all rules and regulations of uniform application established from time to time by Landlord pertaining to the use, care, management and control of both the Premises and all improvements included, without limitation, the Cranes, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including, without limitation, attorneys' fees, which may in any manner arise out of or be imposed because of the failure of Tenant to comply with the covenants of this Section.

SECTION 12. Covenant Against Liens. If, because of any act or omission of Tenant, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice from Landlord to Tenant of the filing thereof; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including, without limitation, attorneys' fees, resulting therefrom.

SECTION 13. Access to Premises. Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Premises at all times to examine and exhibit the Premises to prospective purchasers and prospective tenants, but in the case of prospective tenants only

during the last twelve (12) months of the then current Term of this Lease. All such visits shall be conducted in such a manner as to not unreasonably interfere with Tenant's use of the Premises or operations therefrom. Any sale during the Term of this Lease of Landlord's interest in the Premises shall be made subject to this Lease and the rights of Tenant hereunder. Tenant shall be permitted access to the Premises upon execution of this Lease for the purpose of constructing the Improvements, repairing and operating the Cranes, and operating the Marshalling Area, and taking such other actions pursuant to this Lease as are required to meet its obligations hereunder.

SECTION 14. Assignment and Subletting. Tenant may not assign this Lease or sublease the Premises, in whole or in part, without Landlord's prior written consent, which the Landlord may grant or withhold in the Landlord's sole discretion (other than any such sublease or assignment of the Premises to a third party which meets the Landlord's then current qualifications and standards for a tenant at the Port of Providence to conduct an operation comparable to that to be conducted by the Tenant hereunder) and any such assignment or sublease, made without Landlord's consent, shall be null and void and of no effect. If any such assignment or sublease is made with the written consent of Landlord, Tenant shall nevertheless remain liable to Landlord for payment of rent according to the terms hereof and for due performance of all the terms, covenants and conditions of this

Lease. If written consent is once given by Landlord to any such assignment or subletting, such consent shall not operate as a waiver of the necessity for obtaining Landlord's written consent to any subsequent assignment or subletting. Any transfer or sale of any economic or voting interest in Tenant, or any sale or other transfer of any stock or the voting rights thereunder of Tenant, shall be deemed to constitute an assignment for the purpose of this Lease. Landlord recognizes that the tenant will be contracting with State Line Storage Company, Inc. for the operation of the Marshalling Areas and the Scales and hereby consents thereto.

SECTION 15. Sign Criteria. No sign may be erected on the Premises or on any property of Landlord's without the prior written consent of Landlord approving the size, design, construction specifications, location, color and message which consent shall not be unreasonably withheld or delayed. All such signs shall be constructed at the sole cost of Tenant and shall be maintained in good order and repair by Tenant. Tenant shall not use any advertising within the Premises that, in Landlord's sole discretion, is objectionable based upon criteria even-handedly applied to all areas of the Landlord's property at the Port of Providence.

SECTION 16. Indemnity. Tenant shall defend, indemnify and save harmless Landlord from and against any and all liability, damage, penalties or judgments, including, without limitation,

attorneys' fees arising from any loss, damage or injury to person or property sustained by anyone in and about the Premises resulting from any and all acts, omissions, or negligence of Tenant, its agents, representatives, employees, officers, directors, guests, invitees and visitors, or any failure by Tenant to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Lease on its part to be performed or complied with.

SECTION 17. Insurance.

(a) Tenant shall provide at Tenant's own cost and expense, and keep in force during the Term of this Lease, general liability insurance in a good and solvent insurance company or companies licensed to do business in the State of Rhode Island, selected by Tenant, and satisfactory to Landlord, in a combined single limit of at least Five Million Dollars (\$5,000,000.00) with respect to injury or death to any person or persons or damage to property, or such other amount as Landlord may reasonably require. In addition, such insurance shall specifically insure the performance by Tenant of the indemnity agreement contained in Section 16 of this Lease.

(b) Tenant shall, during the Term hereof, keep or cause to be kept in full force in insurance companies licensed to do business in the State of Rhode Island, and satisfactory to Landlord, a policy or policies of property damage insurance with extended coverage endorsements covering the Cranes and any other

Improvements in an amount equal to their full replacement cost value. During the repair of the Cranes and construction of the Improvements, Tenant or Tenant's contractor shall carry builders' risk insurance in the full insurable value of the Cranes and the Improvements and workers' compensation insurance, covering all risks normally covered by such policies.

(c) All such insurance policies required to be carried pursuant to this Section shall include Landlord as an additional insured party, and the policy or policies required in Paragraph (b) above shall provide that subject to the rights of Tenant's mortgagee, if any, the proceeds shall be paid directly by the insurer into an escrow fund established for the benefit of Tenant and Landlord and applied to reimburse Tenant for its reasonable costs of repair and Tenant shall promptly pursue such repair unless the parties otherwise agree in writing. Tenant agrees to deliver certificates of such insurance to Landlord at the beginning of the Term of this Lease and thereafter not fewer than thirty (30) days prior to the expiration of any such policy. Such insurance shall be non-cancellable without twenty (20) days' written notice to Landlord, and any certificate shall state that the insurer shall notify Landlord of cancellation at least twenty (20) days prior thereof.

(d) Should Tenant fail to perform its obligations stated in this Section after five (5) days written notice from Landlord, Landlord may treat such failure as an event of default

or Landlord, at its option, may secure such insurance in the amounts stated herein and Tenant agrees to pay immediately to Landlord all sums of money so expended by Landlord.

SECTION 18. Waiver of Subrogation. To the extent permissible under the policies of insurance referred to in Section 17, Landlord and Tenant hereby waive all rights of recovery and causes of action against the other and all persons claiming by, through or under them to the extent that such claim or right of recovery is covered by insurance, and all insurance policies carried by either party covering the Premises, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer against the other party.

SECTION 19. Destruction.

(a) Should a substantial portion of the Premises, or of the property of which they are a part, be substantially damaged by fire or other casualty, Landlord may elect to terminate this Lease. When such fire or casualty renders the Premises substantially unsuitable for their intended use, a just and proportionate abatement of rent shall be made, and Tenant may elect to terminate this Lease if:

(a) Landlord fails to give written notice thirty (30) days after its intention to restore the Premises; or

(b) Landlord fails to restore the Premises to a condition substantially suitable for their intended use within ninety (90) days after said fire or casualty.

SECTION 20. Eminent Domain.

(a) If the whole, or such part of the Premises as render same untenable in substantial part, shall be acquired by an authority having the power of eminent domain, this Lease shall terminate as of the date such authority takes possession or title to the Premises, whichever first occurs. Notwithstanding the method and manner used in determining the award by the condemnor, Tenant shall share in the proceeds of an award for the Premises only to the extent of receiving that percentage amount of the award for the Improvements as Tenant's unamortized cost of the Improvements taken bears to the total cost of the Improvements taken. For the purpose of this section the cost of the Improvements shall be amortized by the straight line method based upon a useful life of ten (10) years commencing on the Commencement Date and the amortization of the cost of any other improvements placed on the Premises by Tenant shall be on the date such improvement is placed into service. Tenant shall not otherwise share in the award for the Premises.

(b) In the event of a partial acquisition which does not render the Premises untenable in substantial part, then this Lease shall not terminate and Tenant shall within thirty (30) days thereafter commence restoration, and shall complete same with all reasonable diligence, to a mutually agreeable condition comparable to the condition of the Premises at the time of the acquisition by such authority, less the portion lost

thereby, using to the extent available, the award or proceeds from the condemning authority for such restoration. All proceeds or awards for such partial taking shall be placed by Landlord in an interest-bearing account or certificate of deposit with a financial institution mutually acceptable to Landlord and Tenant. The proceeds and interest may then be withdrawn to meet Tenant's periodic construction draws, provided such draws are supported by estimates/payment certificates of a mutually agreeable architect having supervision of the restoration, certifying that the amount of such construction draw is the correct amount based upon work in place and stored materials. Any funds remaining after restoration is completed shall be paid first, to Landlord, in an amount equal to the value of the real property taken, second, to Tenant, in an amount equal to Tenant's unamortized cost of the Improvements which were taken by the condemnor and not replaced in the restoration. Any funds remaining after such distribution shall be the property of and belong to Landlord. Tenant's minimum rent shall be permanently reduced in the same proportion as the value of property taken bears to the value of the whole Premises. Such reduction shall not affect Tenant's obligation to pay the percentage rental as provided herein. This Lease shall automatically terminate as to such portion taken as of the date such authority takes possession or title, whichever first occurs.

(c) Tenant shall have the right to claim and recover from such acquiring authority, but not from Landlord, such compensation as may be separately awarded or recoverable by

Tenant in its own right on account of any and all damages to Tenant's businesses by reason of such acquisition and any award which may be made under federal or Rhode Island law for moving expenses, for the taking or personal property, or for damages for business interruption or displacement.

SECTION 21. Landlord's Right to Grant Other Easements. The thirty foot (30') wide access area indicated on Exhibit A shall be available to Landlord, its agents, employees, customers, guests, business visitors and invitees, without restriction, obstruction, interference or hindrance by Tenant, or its agents, employees, customers, guests, business visitors or invitees. Landlord retains the right to grant or reserve easements or rights of way on or over the Premises for roadways, telephone, electricity, water, sanitary or storm sewers and for such other purposes as may be necessary for serving Landlord's adjoining property; provided such easements or rights of way will not permanently impair Tenant's use of the Premises. Tenant agrees to execute and deliver such instruments tendered by Landlord as may be necessary to accomplish this purpose. Tenant's indemnity pursuant to Section 16 hereof shall not extend to any claim arising out of or related to any use of the Premises or such access area flowing from any grant of easement or right of way made pursuant to this Section 21.

SECTION 22. Performance by Subtenant. Any act required to be performed by Tenant pursuant to the terms of this Lease may be

performed by any approved subtenant of Tenant occupying all or any part of the Premises and the performance of such act shall be deemed to be performance by Tenant and shall be acceptable as Tenant's act by Landlord.

SECTION 23. Quiet Enjoyment. Tenant, upon paying the rent and all sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease, without unreasonable hindrance or molestation by Landlord.

SECTION 24. Defaults. (a) In the event any one or more of the following events shall have occurred: (1) Tenant's failure to pay any installment of rent, or any other sums that become due under this Lease and such nonpayment continues for a period of ten (10) days after same has become due; (2) Tenant's failure to perform any of the other covenants, conditions, and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of thirty (30) days; or if the default cannot reasonably be cured within thirty (30) days, Tenant shall have such additional time as may be needed if Tenant commences to cure the default within the thirty (30) day period and diligently and in good faith pursues the cure of the default. In any of the aforesaid events, Landlord shall have all such rights and remedies as are provided by law in respect of such default, and

Landlord may, at its option, terminate this Lease, in which event the Term and estate hereby vested in Tenant shall cease and any and all other right, title and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire Term of this Lease had elapsed.

(b) Upon any termination of the Term of this Lease pursuant to paragraph (a) of this Section, or any time thereafter, Landlord may, at its option, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, reenter the Premises, recover possession thereof and dispossess any or all occupants of the Premises in the manner prescribed by statute relating to summary proceedings, or similar statutes.

SECTION 25. Bankruptcy and Insolvency. If, after the Commencement Date: (a) Tenant shall be adjudicated a bankrupt or adjudged to be insolvent; (b) a receiver or trustee shall be appointed for Tenant's property and affairs; (c) Tenant shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or (d) any execution or attachment shall be issued against Tenant or any of Tenant's property, whereby the Premises or any building or any of the Improvements thereon shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant,

except as may herein be permitted, and such adjudication, appointment, assignment petition, execution or attachment shall not be set aside, vacated, discharged or bonded within sixty (60) days after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of Section 24 shall become effective and Landlord shall have the rights and remedies provided for therein.

SECTION 26. Nondiscrimination.

(a) (1) In connection with the performance of all work under this Lease, including maintenance and operation of the Premises, Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

(2) Tenant and its employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex or national origin by curtailing or refusing to furnish facilities, services, or use privileges offered to the public generally.

(3) Tenant shall include and require compliance with the above nondiscrimination provisions in any subcontract made with Landlord's approval with respect to its operations under this Lease.

(b) In connection with the performance of its obligations under this Lease, Tenant agrees as follows:

(1) Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. If required by any federal, state or local law or regulation, Tenant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this discrimination clause.

(2) Tenant shall, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

SECTION 27. Conflicts and Interests of Public Officers and Employees. Tenant warrants and covenants that as of the date of this Lease, no stockholder, officer, or director of Tenant is an officer or employee of the General Assembly of the State of Rhode Island or is an officer or employee of an agency of the State of Rhode Island or any political subdivision thereof.

SECTION 28. Waivers. Failure of Landlord to complain of any act or omission on the part of Tenant, no matter how long the same may continue, shall not be deemed to be a waiver by Landlord of any of its rights hereunder. No waiver by Landlord at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

SECTION 29. Force Majeure. In the event that Landlord or Tenant shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, or the act, failure to act, or default of the other party, or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that this provision shall have no application to Tenant's obligation to pay rent or other monetary obligations hereunder.

SECTION 30. Tenant's Duty to Remove. At the expiration or sooner termination of this Lease, Landlord may, at Landlord's

election, demand the removal from the Premises of either none, all, or only certain of, Tenant's fixtures and improvements. The costs of such removal shall be paid solely by Tenant and Tenant shall provide as security for compliance with this section, a bond or demolition insurance in a reasonable amount anticipated by Landlord, in Landlord's sole discretion, to cover such costs. The duty imposed by this section on Tenant may include, but shall not be limited to, the duty to demolish and remove all buildings and the wall around the Marshalling Area and to leave the Premises safe and free from debris and hazards.

SECTION 31. Notices and Landlord's Representative. Every request, notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, effective as of the date postmarked, directed to the other party at their respective addresses set forth below or such other address and to such other party or parties as either Landlord or Tenant may designate to the other by notice given from time to time in accordance with this Section:

LANDLORD

Director of Port of Providence
Marine Terminal Building
Providence, Rhode Island 02905

Copy to:

City Solicitor
City of Providence
City Hall
Providence, Rhode Island 02903

TENANT

Cooper/T. Smith Corporation
P.O. Box 1566
Mobile, AL 36633

Copy to: T.K. Jackson, III, Esq.
P.O. Box 2846
Mobile, AL 36652

SECTION 32. Governing Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Rhode Island.

SECTION 33. Partial Invalidity. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 34. Short-Form Lease. The parties hereto will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of lease, setting forth a description of the Premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may reasonably request, provided, however, that the terms

of this Agreement shall control any dispute regarding the rights of Landlord and Tenant with respect to the lease described herein.

SECTION 35. Interpretation. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any permitted sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

SECTION 36. Entire Agreement. No oral statement or prior written matter except for the Proposal shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or cancelled except by writing subscribed by Landlord and Tenant. Time is of the essence in each and every provision of this Lease.

SECTION 37. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns.

SECTION 38. Hazardous Material. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord, which Landlord shall not unreasonably withhold so long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept, stored and disposed of in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material in the Premises caused or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant shall indemnify, protect, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the

loss or restriction on use of or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local government agency or political subdivision because of Hazardous Material present in the soil, surface water or ground water on, near or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Material in the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to such introduction of any such Hazardous Material to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not have any material adverse long-term effect on the Premises. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in

the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law but shall not include any such substance, material or waste existing at the Premises at the inception of this Agreement.

Landlord and its agents shall have the right, but not the duty, to inspect the Premises at any time to determine whether Tenant is complying with the terms of this Lease. If Tenant is not in compliance with this Lease, Landlord shall have the right to immediately enter upon the Premises to remedy any contamination caused by Tenant's failure to comply notwithstanding any other provision of this Lease. In exercising its rights described in the foregoing sentence, Landlord shall use reasonable efforts to minimize interference with Tenant's business but shall not be liable for any interference caused thereby.

Any default under this Section 38 shall be a material default enabling Landlord to exercise any of the remedies set forth in this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written but actually on the dates set forth below.

TENANT:

COOPER/T. SMITH CORPORATION

LANDLORD:

PORT COMMISSION OF THE CITY OF
PROVIDENCE

By: _____
Its: _____

Date: _____

By: _____
Its: _____

Date: _____

APPROVED:

Mayor of City of Providence

EXHIBIT
"A"

PROVIDENCE RIVER

BERTH 2

BERTH 3

BERTH 4

BERTH 5

BERTH 6

LEASED AREA
44,000 SQ. FT.

TERMINAL BLDG.

SCALE

#296

STOP

C/T'S

C/T'S

RAILS

PETROLANE

PATRIOT

SEA VIEW DR.

ACE WAREHOUSE

HARBORSIDE BLVD.

GEO.
MANU.

#297

LUMBER TERM.

#288

NEW YORK AVE.

FIELDS POINT DR.

